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FROM

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REPORT OF CASES

DETERMINED IN THE

SUPREME COURT OF THE PHILIPPINES

EN BANC

[A.C. No. 5573. November 21, 2017]

GIZALE O. TUMBAGA, *complainant, vs.* **ATTY. MANUEL P. TEOXON,** *respondent.*

SYLLABUS

1. LEGAL ETHICS; ATTORNEYS; DISBARMENT AND SUSPENSION; IN ORDER TO JUSTIFY THE IMPOSITION OF THE PENALTY OF DISBARMENT OR SUSPENSION ON A MEMBER OF THE BAR, HIS/HER GUILT MUST FIRST BE ESTABLISHED BY SUBSTANTIAL EVIDENCE; CASE AT BAR.— Section 27, Rule 138 of the Rules of Court provides for the imposition of the penalty of disbarment or suspension if a member of the Bar is found guilty of committing grossly immoral conduct, x x x In order to justify the imposition of the above administrative penalties on a member of the Bar, his/her guilt must first be established by substantial evidence. As explained in *Re: Rafael Dimaano*, substantial evidence or that amount of relevant evidence that a reasonable mind might accept as adequate to support a conclusion. After a thorough review of the records of the case, the Court upholds the findings of the IBP as there is indeed substantial evidence that respondent committed gross immorality by maintaining an extramarital affair with complainant. x x x A perusal of the above decision reveals that the findings and conclusions therein were arrived at by the MTCC after a trial on the merits of the case. In other words, the trial court first heard the parties and received their respective evidence

before it rendered a decision. As such, the trial court cannot be accused of arriving at the aforementioned findings lightly. Accordingly, the Court finds no reason to mistrust the observations and findings of the MTCC. Respondent did not even point out any reason for us to do so. While the issues in the replevin case and the instant administrative case are indeed different, they share a common factual backdrop, *i.e.*, the parties' contrasting account of the true nature of their relationship. From the evidence of both parties, the MTCC chose the complainant's version of the events. Incidentally, it was respondent himself who brought to light the existence of the MTCC decision in the replevin case when he attached the same to his answer in the present case to substantiate his narration of facts. Thus, he cannot belatedly plead that the decision be disregarded after the statements and findings therein were used against him.

2. ID.; ID.; ID.; TECHNICAL RULES OF PROCEDURE AND EVIDENCE ARE NOT STRICTLY APPLIED IN ADMINISTRATIVE PROCEEDINGS.— In his motion for reconsideration of the IBP Board of Governors Resolution No. XVIII-2009-15, respondent further argued that the pictures were not conclusive and the admission of the same was not in accordance with the Rules of Court as nobody testified on the circumstances of the taking of the pictures and the accuracy thereof. The IBP correctly disregarded this argument given that technical rules of procedure and evidence are not strictly applied in administrative proceedings. Administrative due process cannot be fully equated to due process in its strict judicial sense.

3. ID.; ID.; ID.; WHILE THE BURDEN OF PROOF IS UPON THE COMPLAINANT, RESPONDENT LAWYER HAS THE DUTY TO SHOW THAT HE IS MORALLY FIT TO REMAIN A MEMBER OF THE BAR; FAILURE TO PROVE HIS DEFENSE, A THREE-YEAR SUSPENSION FROM THE PRACTICE OF LAW IS PROPER; CASE AT BAR.— In the face of the accusations and the evidence offered against him, respondent was duty-bound to meet the same decisively head-on. As the Court declared in *Narag v. Narag:* While the burden of proof is upon the complainant, respondent has the duty not only to himself but also to the court to show that he is morally fit to remain a member of the bar. Mere denial does not suffice. x x x Unfortunately, respondent failed to prove his defense when the burden of evidence shifted to him. He

could neither provide any concrete corroboration of his denials in this case nor satisfactorily prove his claim that complainant was merely extorting money from him. In light of the foregoing, the Court finds that respondent should be held liable for having illicit relations with complainant. As to whether respondent also sired complainant's second child, Billy John, the Court finds that the same was not sufficiently established by the evidence presented in this case. The paternity and/or acknowledgement of Billy John, if indeed he is respondent's illegitimate child, must be alleged and proved in separate proceedings before the proper tribunal having jurisdiction to hear the same. x x x However, considering respondent's blatant attempts to deceive the courts and the IBP regarding his true relationship with complainant, we agree with the IBP Board of Governors that the proper penalty in this instance is a three-year suspension from the practice of law.

LEONEN, *J.*, *concurring opinion*:

LEGAL ETHICS; ATTORNEYS; DISBARMENT AND SUSPENSION; GROSS IMMORALITY AS A GROUND; LAWYERS AND JUDGES MAY ONLY BE HELD ADMINISTRATIVELY LIABLE FOR IMMORAL CONDUCT WHEN IT RELATES TO THEIR CONDUCT AS OFFICERS OF THE COURT, SUCH AS IT AFFECTS THE PUBLIC'S CONFIDENCE IN THE RULE OF LAW; ESTABLISHED IN CASE AT BAR.— Good moral character is necessary for a lawyer to practice the profession. An attorney is expected not only to be professionally competent, but to also have moral integrity. As such, grossly immoral conduct is a ground for disbarment. However, to warrant an administrative penalty, a lawyer's immoral conduct must be so gross as to be "willful, flagrant, or shameless," so much so that it "shows a moral indifference to the opinion of the good and respectable members of the community." Grossly immoral conduct must be an act that is "so corrupt and false as to constitute a criminal act or so unprincipled as to be reprehensible to a high degree." There is no fixed formula to define what constitutes grossly immoral conduct. The determination depends on the circumstances. x x x This Court has further ruled that to respect constitutionally-protected rights, the determination of what constitutes immoral conduct should be independent of religious beliefs and ought to be based on secular moral standards. x x x

> This principle extends to the determination of morality in administrative cases against lawyers and judges. As stated, this Court "ha[s] jurisdiction over matters of morality only insofar as it involves conduct that affects the public or its interest." Thus, lawyers and judges may only be held administratively liable for immoral conduct when it relates to their conduct as officers of the court, such that it affects the public's confidence in the Rule of Law: x x x These circumstances show that Atty. Teoxon is guilty of gross immorality. He displayed that he lacked good moral character, acting dishonestly and with deceit. Moreover, in denying his relations with Tumbaga, he displayed a lack of accountability and integrity. His actions injured others. Deceit and lack of accountability and integrity reflect on his ability to perform his functions as a lawyer, who is always expected to act and appear to act lawfully and honestly and must uphold the integrity and dignity of the legal profession. A lawyer is expected not only to have good moral character, but must also *appear* to have good moral character.

APPEARANCES OF COUNSEL

Angel C. Navarroza for complainant.

D E C I S I O N

LEONARDO-DE CASTRO, *J.*:

Before the Court is an administrative complaint filed by complainant Gizale O. Tumbaga against respondent Atty. Manuel P. Teoxon, charging him with gross immorality, deceitful and fraudulent conduct, and gross misconduct. The parties hereto paint contrastive pictures not only of their respective versions of the events but also of their negative portrayals of each other's character. They are, thus, separately outlined below.

The Complaint

In a **verified complaint**[1] dated October 9, 2001 filed directly with the Court, complainant narrated that she met respondent

[1] *Rollo*, pp. 36-41.

sometime in September 1999. He was then the City Legal Officer of Naga City from whom complainant sought legal advice. After complainant consulted with him a few times, he visited her often at her residence and brought gifts for her son, Al Greg Tumbaga. Respondent even volunteered to be the godfather of Al Greg. In one of his visits, respondent assured complainant's mother that although he was already married to Luzviminda Balang,[2] his marriage was a sham because their marriage contract was not registered. In view of respondent's persistence and generosity to her son, complainant believed his representation that he was eligible to marry her.

Complainant averred that on December 19, 1999, she moved in with respondent at the Puncia Apartment in Naga City. In April 2000, she became pregnant. Respondent allegedly wanted to have the baby aborted but complainant refused. After the birth of their son, Billy John, respondent spent more time with them. He used their apartment as a temporary law office and he lived there for two to three days at a time.

After Billy John was baptized, complainant secured a Certificate of Live Birth from the Office of the Civil Registrar of Naga City and gave it to respondent to sign. He hesitantly signed it and volunteered to facilitate its filing. After respondent failed to file the same, complainant secured another form and asked respondent to sign it twice. On February 15, 2001, the Certificate of Live Birth was registered.

Thereafter, complainant related that respondent rarely visited them. To make ends meet, she decided to work in a law office in Naga City. However, respondent compelled her to resign, assuring her that he would take care of her financial needs. As respondent failed to fulfill his promise, complainant sought assistance from the Office of the City Fiscal in Naga City on the second week of March 2001. In the early morning of the conference set by said office, respondent gave complainant an affidavit of support and told her there was no need for him to appear in the conference. Complainant showed the affidavit

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[2] Also referred to as Minda B. Teoxon in other parts of the records.

to Fiscal Elsa Mampo, but the latter advised her to have the respondent sign the affidavit again. Fiscal Mampo was unsure of the signature in the affidavit as she was familiar with respondent's signature. Complainant confronted respondent about the affidavit and he half-heartedly affixed his true signature therein.

In May 2001, complainant went to respondent's office as he again reneged on his promise of support. To appease her anger, respondent executed a promissory note. However, he also failed to honor the same.

In June 2001, complainant moved out of the Puncia Apartment as respondent did not pay the rentals therefor anymore. In the evening of September 9, 2001, respondent raided complainant's new residence, accompanied by three SWAT members and his wife. Visibly drunk, respondent threatened to hurt complainant with the bolo and the lead pipe that he was carrying if she will not return the personal belongings that he left in their previous apartment unit. As respondent barged into the apartment, complainant sought help from the SWAT members and one of them was able to pacify respondent. Respondent's wife also tried to attack complainant, but she too was prevailed upon by the SWAT members. The incident was recorded in the police blotter.

To corroborate her allegations, complainant attached the following documents to her complaint, among others: (a) pictures showing respondent lying in a bed holding Billy John,[3] respondent holding Billy John in a beach setting,[4] complainant holding Billy John in a beach setting,[5] respondent holding Billy John in a house setting,[6] and respondent and complainant seated beside each other in a restaurant[7]; (b) the Certificate of Live

[3] *Rollo*, p. 142.

[4] *Id*. at 143.

[5] *Id*. at 46.

[6] *Id*. at 47.

[7] *Id*. at 48.

Birth of Billy John with an Affidavit of Acknowledgment/ Admission of Paternity showing respondent's signature[8]; (c) the affidavit of support[9] executed by respondent; (d) the promissory note[10] executed by respondent; (e) the police blotter entry[11] dated September 9, 2001; and (f) copies of pleadings[12] showing the signature of respondent.

Respondent's Answer

In his **answer**,[13] respondent denied the allegations in the complaint. He asserted that complainant merely wanted to exact money from him.

Respondent alleged that he became the godfather of complainant's son, Al Greg, but he was only one of four sponsors. He began to visit complainant's residence to visit his godson. He also denied being the father of Billy John since complainant supposedly had several live-in partners. He cited the affidavit of Antonio Orogo, complainant's uncle, to attest to his allegations. According to the affidavit, Al Greg is the son of the complainant's live-in partner named Orac Barrameda. Complainant allegedly used Al Greg to extort money from Alfrancis Bichara, the former governor of Albay, with whom complainant also had a sexual relationship.

Respondent denied that he lived together with complainant at the Puncia Apartment since he was already married. As complainant was his *kumadre*, he would pass by her house whenever he visited the house of Representative Sulpicio S. Roco, Jr. Respondent was then a member of Representative Roco's legislative staff. Sometimes, respondent would leave a bag of clothing in complainant's house to save money for his

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

[9] *Id*. at 51.

[10] *Id*. at 52.

[11] *Id*. at 53.

[12] *Id*. at 54-56.

[13] *Id*. at 81-85.

fare in going to the office of Representative Roco in the House of Representatives in Quezon City. In one instance, complainant and her mother refused to return one of his bags such that he was forced to file a replevin case. The Municipal Trial Court in Cities (MTCC) of Naga City decided the case in his favor.

Respondent also claimed that complainant falsified his signature in the Certificate of Live Birth of Billy John so he filed a complaint for the cancellation of his acknowledgment therein. Complainant allegedly made it look like he appeared before Notary Public Vicente Estela on February 15, 2001, but he argued that it was physically impossible for him to have done so as he attended a hearing in the Regional Trial Court (RTC) of Libmanan, Camarines Sur that day. He also contended that complainant forged his signature in the Affidavit of Support.

As to the pictures of respondent with Billy John, he argued that the same cannot prove paternity. He explained that in one of his visits to Al Greg, complainant left Billy John in his care to keep the child from falling off the bed. However, complainant secretly took his picture as he was lying in the bed holding Billy John. As to his picture with Billy John taken at the beach, respondent alleged that at that time complainant gave Billy John to respondent as she wanted to go swimming. While he was holding the child, complainant secretly took their picture. Respondent accused complainant of taking the pictures in order to use the same to extort money from him. This is the same scheme allegedly used by complainant against her previous victims, who paid money to buy peace with her.

Respondent further alleged that politics was also involved in the filing of the complaint as complainant was working in the office of then Representative Luis Villafuerte, the political opponent of Representative Roco.

Respondent attached to his answer the following documents, among others: (a) the affidavit of Antonio Orogo[14]; (b) the Decision[15]

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

[15] *Id.* at 88-91.

dated May 8, 2006 of the MTCC of Naga City in Civil Case No. 11546, which is the replevin case; (c) copies of the Minutes of Proceedings[16] and the Order[17] of the RTC of Libmanan, Camarines Sur, both dated January 15, 2001, showing that respondent attended a hearing therein on said date; and (d) a photocopy[18] of respondent's credit card and automated teller machine (ATM) card showing his signature.

The Proceedings before the IBP Commission on Bar Discipline

The parties appeared before the IBP Commission on Bar Discipline for a few hearings and the marking of their respective evidence. Complainant marked the following documents, among others, in addition to those already attached to the complaint: (a) a picture[19] showing respondent seated in a restaurant with complainant hugging him; (b) a receipt[20] issued by the Clerk of Court of the MTCC of Naga City, enumerating the objects (consisting mostly of items of clothing) returned by complainant to respondent in the replevin case; and (c) receipts[21] purportedly showing respondent's payment of the rentals for complainant's apartment unit.

On motion of complainant, the IBP issued an order[22] directing respondent, complainant, and Billy John to undergo DNA testing in the DNA laboratory of the National Bureau of Investigation (NBI) to determine the child's paternity. Upon motion[23] from respondent, however, the IBP annulled its prior order in the interest of the speedy disposition of the case.[24]

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[16] *Id*. at 99.

[17] *Id*. at 100.

[18] *Id*. at 104.

[19] *Id*. at 142.

[20] *Id*. at 149.

[21] *Id*. at 152B-152C.

[22] *Id*. at 159-161.

[23] *Id*. at 168-170.

[24] *Id*. at 176-177.

On November 14, 2008, the IBP Commission on Bar Discipline issued its **Report and Recommendation**,[25] finding that respondent maintained an illicit affair with complainant and that he should be meted the penalty of suspension for a period of two (2) years.

In the **Resolution No. XVIII-2009-15**[26] **dated February 19, 2009**, the IBP Board of Governors approved the above recommendation and increased the recommended period of suspension to three (3) years.

Respondent filed a motion for reconsideration[27] of the above resolution. Attached thereto were: (a) the affidavits[28] of Representative Roco and respondent's wife, Minda B. Teoxon, which allegedly refuted complainant's contention that respondent lived with complainant at the Puncia Apartment in Naga City; (b) the transcript of stenographic notes (TSN) dated May 10, 2005[29] in Civil Case No. 11546 for replevin, wherein complainant supposedly admitted to her past relationships; and (c) a letter[30] from the University of Nueva Caceres that informed respondent that he was chosen to be the recipient of its Diamond Achiever Award.

The IBP Board of Governors denied the motion for reconsideration in its **Resolution No. XX-2012-539**[31] **dated December 14, 2012**.

The IBP thereafter transmitted the record of the case to the Court for final action.

The Ruling of the Court

The Court agrees with the conclusion of the IBP that the actuations of respondent in this case showed his failure to live

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[25] *Id*. at 310-327.

[26] *Id*. at 309.

[27] *Id*. at 328-335.

[28] *Id*. at 336-338.

[29] *Id*. at 339-356.

[30] *Id*. at 357.

[31] *Id*. at 364.

up to the good moral conduct required of the members of the legal profession.

We held in *Advincula v. Advincula*[32] that:

> The good moral conduct or character must be possessed by lawyers at the time of their application for admission to the Bar, and must be maintained until retirement from the practice of law. In this regard, the Code of Professional Responsibility states:
>
> Rule 1.01 — A lawyer shall not engage in unlawful, dishonest, immoral or deceitful conduct.
>
> x x x x x x x x x
>
> CANON 7 — A lawyer shall at all times uphold the integrity and dignity of the legal profession, and support the activities of the Integrated Bar.
>
> x x x x x x x x x
>
> Rule 7.03 — A lawyer shall not engage in conduct that adversely reflects on his fitness to practice law, nor should he, whether in public or private life, behave in a scandalous manner to the discredit of the legal profession.
>
> Accordingly, it is expected that every lawyer, being an officer of the Court, must not only be in fact of good moral character, but must also be seen to be of good moral character and leading lives in accordance with the highest moral standards of the community. **More specifically, a member of the Bar and officer of the Court is required not only to refrain from adulterous relationships or keeping mistresses but also to conduct himself as to avoid scandalizing the public by creating the belief that he is flouting those moral standards.** If the practice of law is to remain an honorable profession and attain its basic ideals, whoever is enrolled in its ranks should not only master its tenets and principles but should also, in their lives, accord continuing fidelity to them. The requirement of good moral character is of much greater import, as far as the general public is concerned, than the possession of legal learning.
>
> Immoral conduct has been described as conduct that is so willful, flagrant, or shameless as to show indifference to the opinion of good and respectable members of the community. To be the basis of

[32] A.C. No. 9226, June 14, 2016, 793 SCRA 237, 247-248.

disciplinary action, such conduct must not only be immoral, but grossly immoral, that is, it must be so corrupt as to virtually constitute a criminal act or so unprincipled as to be reprehensible to a high degree or committed under such scandalous or revolting circumstances as to shock the common sense of decency. (Citations omitted; emphasis supplied.)

Section 27, Rule 138 of the Rules of Court provides for the imposition of the penalty of disbarment or suspension if a member of the Bar is found guilty of committing grossly immoral conduct, to wit:

> SEC. 27. *Disbarment or suspension of attorneys by Supreme Court, grounds therefor*. — A member of the bar may be disbarred or suspended from his office as attorney by the Supreme Court for any deceit, malpractice, or other gross misconduct in such office, grossly immoral conduct, or by reason of his conviction of a crime involving moral turpitude, or for any violation of the oath which he is required to take before the admission to practice, or for a willful disobedience of any lawful order of a superior court, or for corruptly or willfully appearing as an attorney for a party to a case without authority to do so. x x x.

In order to justify the imposition of the above administrative penalties on a member of the Bar, his/her guilt must first be established by substantial evidence.[33] As explained in *Re: Rafael Dimaano*,[34] substantial evidence or that amount of relevant evidence that a reasonable mind might accept as adequate to support a conclusion.

After a thorough review of the records of the case, the Court upholds the findings of the IBP as there is indeed substantial evidence that respondent committed gross immorality by maintaining an extramarital affair with complainant.

One of the key pieces of evidence that the IBP considered in ruling against respondent is the Decision dated May 8, 2006 of the MTCC of Naga City in Civil Case No. 11546 for replevin.

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[33] *Reyes v. Nieva*, A.C. No. 8560, September 6, 2016, 802 SCRA 196, 219.

[34] A.M. No. 17-03-03-CA & IPI No. 17-258-CA-J (Resolution), July 11, 2017.

In said case, respondent made it appear that he was merely seeking to recover personal belongings that he left behind at one time in complainant's house. The items included a traveling bag with various articles of clothing and file folders of cases that he was handling. He also tried to recover the pieces of furniture that he allegedly bought for the complainant, which the latter failed to reimburse as promised. These include a brass bed with foam mattress, a plastic dining table with six plastic chairs, a brass sala set with a center table, and a plastic drawer. For her defense, complainant argued that the respondent gradually left the items of clothing in their apartment unit during the period that they cohabited therein from time to time. She also said that the furniture were gifts to her and Billy John.

In its decision, the MTCC did rule in favor of respondent. However, the following elucidation by the MTCC is quite telling:

> To the Court, this is one case that should not have been brought to court because [respondent] could have resorted to a more diplomatic or tactful way of retrieving his personal belongings rather than going on record with a lot of pretext and evasion as if the presiding judge is too naive to appreciate human nature and the truth. [Respondent] would have done well if he was gentleman, candid and responsible enough to admit his misadventure and accept responsibility for his misdeeds rather than try to distort facts and avoid facing the truth. It is not manly.
>
> Of course, the [MTCC] is fully convinced that the personal belongings listed in the complaint [are] owned by him and the [furniture] that were eventually sold by [complainant] was bought by him, even without showing any receipts for it. However, the [MTCC] is not persuaded by his allegation that he left his bag with [complainant] because he was in a hurry in going to Manila. He boldly declared in [the trial court] that he has three residences in Naga City and of all places he had to leave his shirt and underwear with a lady whom he had visited "only twice".
>
> [Respondent] could deny all the way up to high heaven that he has no child with [complainant] but the [MTCC] will forever wonder why the latter would refuse to part with the shirts and pants unless she is a bare-face extortionist. But to the [MTCC], she did not appear to be so. In fact, the [MTCC] had the occasion to observe [complainant]

with two little handsome boys who appeared to be her sons. Hence, this lends credence to the fact that she might have really demanded money in exchange for the shirts and pants to support her children.

Be that as it may, the [MTCC] is duty bound to apply the law. There is no issue on the ownership of the personal belongings contained in a bag allegedly left by the [respondent] in the house of [complainant].

x x x x x x x x x

However, as far as the [furniture] is concerned, like the brass bed, sala set, dining table and plastic drawer, the [MTCC] is not persuaded by [respondent's] claim that he meant to be paid by [complainant] for it. [Respondent] is a lawyer and although he is not engage[d] in the buying and selling of [furniture] he should have known that if he really intended to be paid back for it, he should have asked [complainant] to [sign] a promissory note or even a memorandum. As it is, he failed to show any evidence of such an undertaking. That it was a gift of love is more like it.[35]

The IBP posited that the above ruling was more than sufficient to prove that respondent tried to distort the truth that he and complainant did live together as husband and wife in one apartment unit. The Court agrees with the IBP on this matter.

The MTCC plainly disbelieved respondent's claim that he merely left his bag of clothing in complainant's house before he left for his place of work in Metro Manila — a claim which he likewise made in the present case. The trial court further posited that the pieces of furniture sought to be recovered by respondent were indeed bought by him but the same were intentionally given to complainant out of love. Clearly, the MTCC was convinced that respondent and complainant were involved in an illicit relationship that eventually turned sour and led to the filing of the replevin case.

A perusal of the above decision reveals that the findings and conclusions therein were arrived at by the MTCC after a trial on the merits of the case. In other words, the trial court first heard the parties and received their respective evidence

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[35] *Rollo*, pp. 90-91.

before it rendered a decision. As such, the trial court cannot be accused of arriving at the aforementioned findings lightly.

Accordingly, the Court finds no reason to mistrust the observations and findings of the MTCC. Respondent did not even point out any reason for us to do so. While the issues in the replevin case and the instant administrative case are indeed different, they share a common factual backdrop, *i.e.*, the parties' contrasting account of the true nature of their relationship. From the evidence of both parties, the MTCC chose the complainant's version of the events. Incidentally, it was respondent himself who brought to light the existence of the MTCC decision in the replevin case when he attached the same to his answer in the present case to substantiate his narration of facts. Thus, he cannot belatedly plead that the decision be disregarded after the statements and findings therein were used against him.

Complainant further attached pictures of respondent with her and Billy John as proof of their romantic relations. A perusal of these pictures convinces this Court that while the same cannot indeed prove Billy John's paternity, they are nevertheless indicative of a relationship between complainant and respondent that is more than merely platonic.

One of the annexed pictures shows the couple in a restaurant setting, smiling at the camera while seated beside each other very closely that their arms are visibly touching. Another picture shows the couple in the same setting, this time with complainant smiling as she embraced respondent from behind and they were both looking at the camera. From the facial expressions and the body language of respondent and complainant in these pictures, the same unfailingly demonstrate their unmistakable closeness and their lack of qualms over publicly displaying their affection towards one another. Thus, the attempts of respondent to downplay his relationship with complainant flop miserably. Curiously, respondent did not bother to explain the aforesaid pictures.

In his answer to the complaint, respondent only managed to comment on the pictures of himself with Billy John. Even then, respondent's accounts as to these pictures are too flimsy and

incredible to be accepted by the Court. Respondent previously admitted to the genuineness of the pictures but not to the alleged circumstances of the taking thereof.[36] However, respondent's allegation that the pictures were surreptitiously taken by complainant falls flat on its face. The pictures clearly show that he and Billy John were looking directly at the camera when the pictures were taken. Moreover, the angles from which the pictures were taken suggest that the person taking the same was directly in front of respondent and Billy John.

In his motion for reconsideration of the IBP Board of Governors Resolution No. XVIII-2009-15, respondent further argued that the pictures were not conclusive and the admission of the same was not in accordance with the Rules of Court as nobody testified on the circumstances of the taking of the pictures and the accuracy thereof.[37] The IBP correctly disregarded this argument given that technical rules of procedure and evidence are not strictly applied in administrative proceedings. Administrative due process cannot be fully equated to due process in its strict judicial sense.[38]

With respect to the affidavit of support, the promissory note, and the Certificate of Live Birth of Billy John that contained an Affidavit of Acknowledgment/Admission of Paternity, respondent likewise failed to provide sufficient controverting evidence therefor.

In the affidavit of support and the promissory note, respondent supposedly promised to provide monetary support to Billy John, whom he acknowledged as his illegitimate son. Respondent verbally repudiated said documents, pointing out that the same were typewritten while he used a computer in his office, not a typewriter.[39] Respondent further accused complainant of falsifying his signatures therein and, to prove his charge, he

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[36] TSN, January 31, 2007, pp. 18-19.

[37] *Rollo*, p. 330.

[38] *Ferancullo v. Ferancullo, Jr.*, 538 Phil. 501, 514 (2006).

[39] TSN, January 31, 2007, pp. 21-22 and July 18, 2007, p. 12.

submitted photocopies of his credit card and ATM card that allegedly showed his customary signatures.

The Court, still, finds this refutation wanting. To the naked eye, the sample signatures in the credit card and ATM card do appear to be different from the ones in the affidavit of support, the promissory note, and the Certificate of Live Birth. However, we likewise compared the sample signatures to respondent's signatures in his pleadings before the IBP and other documents submitted in evidence and we find that the signatures in the two sets appear to be likewise dissimilar, which suggests respondent uses several different signatures. Thus, respondent's claim of forgery is unconvincing. Moreover, as the IBP noted, the records of the case do not indicate if he filed criminal charges against complainant for her alleged acts of falsification.

As to the Certificate of Live Birth of Billy John, respondent did file a complaint for the cancellation of his acknowledgment therein. Thus, the Court will no longer discuss the parties' arguments regarding the validity of respondent's signature in said certificate of birth as the issue should be threshed out in the proper proceeding.

In his answer to the complaint, respondent attached the affidavit of Antonio Orogo in order to belie complainant's allegations and that she merely wanted to exact money from respondent. In the affidavit, Orogo claimed that respondent did not live with complainant in the Puncia Apartment in Naga City. Orogo further accused complainant and her mother of engaging in the practice of extorting money from various men since she was just 11 years old. The alleged instances of extortion involved the complainant falsely accusing one man of rape and falsely claiming to another man that he was the father of her first child.

The Court can hardly ascribe any credibility to the above affidavit. Given the materiality of Orogo's statements therein, not to mention the gravity of his accusations against complainant and her mother, he should have been presented as a witness before the IBP investigating commissioner in order to confirm his affidavit and give complainant the opportunity to cross-

examine him. For whatever reason, this was not done. As it is, Orogo's affidavit lacks evidentiary value. In *Boyboy v. Yabut*,[40] we cautioned that:

> It is not difficult to manufacture charges in the affidavits, hence, it is imperative that their truthfulness and veracity be tested in the crucible of thorough examination. The hornbook doctrine is that unless the affiants themselves take the witness stand to affirm the averments in their affidavits, those affidavits must be excluded from the proceedings for being inadmissible and hearsay x x x. (Citation omitted.)

In like manner, the Court cannot give much weight to the affidavits of Representative Roco and Minda B. Teoxon, both of whom attested to the statements of respondent regarding his places of residence during the time material to this case. It should be stressed that said affidavits were executed only on June 15, 2009 or about four months after the IBP Board of Governors issued its Resolution No. XVIII-2009-15 on February 19, 2009, which affirmed respondent's culpability for grossly immoral conduct. This attenuates the credibility of the statements as the same were only given as corroborative statements at so late a time given the relevancy thereof.

In the face of the accusations and the evidence offered against him, respondent was duty-bound to meet the same decisively head-on. As the Court declared in *Narag v. Narag*[41]:

> While the burden of proof is upon the complainant, respondent has the duty not only to himself but also to the court to show that he is morally fit to remain a member of the bar. Mere denial does not suffice. Thus, when his moral character is assailed, such that his right to continue practicing his cherished profession is imperiled, he must meet the charges squarely and present evidence, to the satisfaction of the investigating body and this Court, that he is morally fit to have his name in the Roll of Attorneys. x x x. (Citation omitted.)

Unfortunately, respondent failed to prove his defense when the burden of evidence shifted to him. He could neither provide

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[40] 449 Phil. 664, 670 (2003).

[41] 353 Phil. 643, 659 (1998).

any concrete corroboration of his denials in this case nor satisfactorily prove his claim that complainant was merely extorting money from him.

In light of the foregoing, the Court finds that respondent should be held liable for having illicit relations with complainant. As to whether respondent also sired complainant's second child, Billy John, the Court finds that the same was not sufficiently established by the evidence presented in this case. The paternity and/or acknowledgement of Billy John, if indeed he is respondent's illegitimate child, must be alleged and proved in separate proceedings before the proper tribunal having jurisdiction to hear the same.

As to the penalty that should be imposed against respondent in this case, the Court had occasion to rule in *Samaniego v. Ferrer*,[42] that:

> We have considered such illicit relation as a disgraceful and immoral conduct subject to disciplinary action. The penalty for such immoral conduct is disbarment, or indefinite or definite suspension, depending on the circumstances of the case. Recently, in *Ferancullo v. Ferancullo, Jr.*, we ruled that suspension from the practice of law for two years was an adequate penalty imposed on the lawyer who was found guilty of gross immorality. In said case, we considered the absence of aggravating circumstances such as an adulterous relationship coupled with refusal to support his family; or maintaining illicit relationships with at least two women during the subsistence of his marriage; or abandoning his legal wife and cohabiting with other women. (Citations omitted.)

However, considering respondent's blatant attempts to deceive the courts and the IBP regarding his true relationship with complainant, we agree with the IBP Board of Governors that the proper penalty in this instance is a three-year suspension from the practice of law.

WHEREFORE, the Court finds respondent Atty. Manuel P. Teoxon **GUILTY** of gross immorality and is hereby **SUSPENDED**

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[42] 578 Phil. 1, 4-5 (2008).

from the practice of law for a period of **three (3) years** effective upon notice hereof, with a **STERN WARNING** that a repetition of the same or similar offense shall be punished with a more severe penalty.

Let copies of this Decision be entered in the personal record of respondent as a member of the Philippine Bar and furnished the Office of the Bar Confidant, the Integrated Bar of the Philippines, and the Court Administrator for circulation to all courts in the country.

SO ORDERED.

Carpio,[*] *Peralta, Bersamin, del Castillo, Perlas-Bernabe, Jardeleza, Caguioa, Martires, Tijam,* and *Gesmundo, JJ.,* concur.

Leonen, J., see separate concurring opinion.

Velasco, Jr. and *Reyes, Jr., JJ.,* on official leave.

Sereno, C.J., on leave.

CONCURRING OPINION

LEONEN, *J.*:

This case involves a verified administrative complaint by Petitioner Gizale O. Tumbaga (Tumbaga) against Atty. Manuel P. Teoxon (Atty. Teoxon) for gross immorality, deceitful and fraudulent conduct, and gross misconduct.

I concur in the ponencia's finding that Atty. Teoxon is guilty of the charges against him and should be administratively liable.

Under Canon 1, Rule 1.01 of the Code of Professional Responsibility:

> Rule 1.01. A lawyer shall not engage in unlawful, dishonest, immoral or deceitful conduct.

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[*] Designated Acting Chief Justice per Special Order No. 2519 dated November 21, 2017.

In relation to this, Rule 138, Section 27 of the Rules of Court provides that an attorney may be removed or suspended from the bar for deceit or grossly immoral conduct:

> Section 27. *Disbarment or suspension of attorneys by Supreme Court; grounds therefor.* — A member of the bar may be disbarred or suspended from his office as attorney by the Supreme Court for any deceit, malpractice, or other gross misconduct in such office, *grossly immoral conduct*, or by reason of his conviction of a crime involving moral turpitude, or for any *violation of the oath* which he is required to take before admission to practice, or for a wilful disobedience of any lawful order of a superior court, or for corruptly or wilfully appearing as an attorney for a party to a case without authority so to do. The practice of soliciting cases at law for the purpose of gain, either personally or through paid agents or brokers, constitutes malpractice. (Emphasis supplied)

Good moral character is necessary for a lawyer to practice the profession. An attorney is expected not only to be professionally competent, but to also have moral integrity.[1] As such, grossly immoral conduct is a ground for disbarment.

However, to warrant an administrative penalty, a lawyer's immoral conduct must be so gross as to be "willful, flagrant, or shameless," so much so that it "shows a moral indifference to the opinion of the good and respectable members of the community."[2] Grossly immoral conduct must be an act that is "so corrupt and false as to constitute a criminal act or so unprincipled as to be reprehensible to a high degree."[3]

There is no fixed formula to define what constitutes grossly immoral conduct. The determination depends on the circumstances. In *Arciga v. Maniwang*,[4]

> It is difficult to state with precision and to fix an inflexible standard as to what is "grossly immoral conduct" or to specify the moral

[1] See *Arciga v. Maniwang,* 193 Phil. 730 (1981) [Per *J.* Aquino, Second Division].

[2] *Arciga v. Maniwang,* 193 Phil. 730, 735 (1981) [Per *J.* Aquino, Second Division] *citing* 7.C.J.S 959.

[3] *Reyes v. Wong,* 159 Phil. 171, 177 (1975) [Per *J.* Makasiar, First Division].

[4] 193 Phil. 730 (1981) [Per *J.* Aquino, Second Division].

delinquency and obliquity which render a lawyer unworthy of continuing as a member of the bar. The rule implies that what appears to be unconventional behavior to the straight-laced may not be the immoral conduct that warrants disbarment.

. . . . . .

There is an area where a lawyer's conduct may not be in consonance with the canons of the moral code but he is not subject to disciplinary action because his misbehavior or deviation from the path of rectitude is not glaringly scandalous. It is in connection with a lawyer's behavior to the opposite sex where the question of immorality usually arises. Whether a lawyer's sexual congress with a woman not his wife or without the benefit of marriage should be characterized as "grossly immoral conduct" will depend on the surrounding circumstances.[5]

This Court has further ruled that to respect constitutionally-protected rights, the determination of what constitutes immoral conduct should be independent of religious beliefs and ought to be based on secular moral standards.

Thus, in *Perfecto v. Esidera*:[6]

The non-establishment clause bars the State from establishing, through laws and rules, moral standards according to a specific religion. Prohibitions against immorality should be based on a purpose that is independent of religious beliefs. When it forms part of our laws, rules, and policies, morality must be secular. Laws and rules of conduct must be based on a secular purpose.

In the same way, this court, in resolving cases that touch on issues of morality, is bound to remain neutral and to limit the bases of its judgment on secular moral standards. When laws or rules refer to morals or immorality, courts should be careful not to overlook the distinction between secular and religious morality if it is to keep its part in upholding constitutionally guaranteed rights.

There is the danger of "compelled religion" and, therefore, of negating the very idea of freedom of belief and non-establishment of religion when religious morality is incorporated in government regulations and policies . . .

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[5] *Id*. at 735-736.

[6] 764 Phil. 384 (2015) [Per *J*. Leonen, Second Division].

. . . . . .

This court may not sit as judge of what is moral according to a particular religion. We do not have jurisdiction over and is not the proper authority to determine which conduct contradicts religious doctrine. *We have jurisdiction over matters of morality only insofar as it involves conduct that affects the public or its interest.* (Citations omitted, emphasis supplied)[7]

This principle extends to the determination of morality in administrative cases against lawyers and judges. As stated, this Court "ha[s] jurisdiction over matters of morality only insofar as it involves conduct that affects the public or its interest." Thus, lawyers and judges may only be held administratively liable for immoral conduct when it relates to their conduct as officers of the court, such that it affects the public's confidence in the Rule of Law:

Thus, for purposes of determining administrative liability of lawyers and judges, "immoral conduct" should relate to their conduct as officers of the court. To be guilty of "immorality" under the Code of Professional Responsibility, a lawyer's conduct must be so depraved as to reduce the public's confidence in the Rule of Law. Religious morality is not binding whenever this court decides the administrative liability of lawyers and persons under this court's supervision. At best, religious morality weighs only persuasively on us.[8]

Given these standards and parameters, in *Anonymous Complaint v. Dagala*,[9] I opined that this Court should not appoint itself as the curator of all alleged immoral conduct of lawyers. As in all cases of gross immorality, it depends on the circumstances, with the overall consideration being whether or not it affects the lawyer's public conduct as an officer of the court.

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[7] *Id*. at 398-399.

[8] *Id*. at 399-400.

[9] A.M. No. MTJ-16-1886, July 25, 2017, <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2017/july2017/MTJ-16-1886.pdf> [*Per Curiam, En Banc*].

In *Dagala*, an anonymous complaint alleged that Judge Exequil L. Dagala (Judge Dagala) brandished a high-powered firearm during an altercation and took part in illegal logging.[10] The complaint mentioned in passing that there were rumors of Judge Dagala maintaining several mistresses.[11] From this, the issue of immorality arose. In explaining the situation, Judge Dagala admitted to having children outside his marriage but alleged that he and his wife have chosen to live separately, with the former regularly sending financial support to the latter.[12] Judge Dagala explained that his wife has knowledge of his other children.[13] Neither his wife nor his children were shown to have complained from this arrangement.[14] Judge Dagala stated that his wife had forgiven and forgotten him, and has submitted to the idea that they were "not really meant for each other and for eternity."[15] In finding that Judge Dagala is not guilty of gross imorality, I stated:

> I appreciate the ponente's acknowledgment that "immorality only becomes a valid ground for sanctioning members of the Judiciary when the questioned act challenges his or her capacity to dispense justice." This affirms this Court's principle that our jurisdiction over acts of lawyers and judges is confined to those that may affect the people's confidence in the Rule of Law. There can be no immorality committed when there are no victims who complain. And even when they do, it must be shown that they were directly damaged by the immoral acts and their rights violated. A judge having children with women not his wife, in itself, does not affect his ability to dispense justice. What it does is offend this country's predominantly religious sensibilities.
>
> We should not accept the stereotype that all women, because they are victims, are weak and cannot address patriarchy by themselves. The danger of the State's over-patronage through its stereotype of

[10] *Id*. at 2.

[11] *Id*. at 2-3.

[12] *Id*. at 3.

[13] *Id*.

[14] *Id*.

[15] *Id*. at 8.

victims will be far reaching. It intrudes into the autonomy of those who already found their voice and may have forgiven.

The highest penalty should be reserved for those who commit indiscretions that (a) are repeated, (b) result in permanent rearrangements that cause extraordinary difficulties on existing legitimate relationships, or (c) are prima facie shown to have violated the law. The negligence or utter lack of callousness of spouses who commit indiscretions as shown by their inability to ask for forgiveness, their concealment of the act from their legitimate relationships, or their lack of support for the children born out of wedlock should be aggravating and considered for the penalty to be imposed.

VII

Many of us hold the view that it is unethical to breach one's fervent commitments in an intimate relationship. At times however, the breach is not concealed and arises as a consequence of the couple's often painful realization that their marriage does not work. In reality, there are couples who already live separately and whose children have grown and matured understanding that their environment best nurtured them when their natural parents do not live with each other with daily pain.

. . . . . .

It is time that we show more sensitivity to the reality of many families. Immorality is not to be wielded high-handedly and in the process cause shame on many of its victims. It should be invoked in a calibrated manner, always keeping in mind the interests of those who have to suffer its consequences on a daily basis. There is a time when the law should exact accountability; there is also a time when the law should understand the humane act of genuine forgiveness.[16] (Citations omitted)

The circumstances in *Dagala* are different from the case at bar.

First, the instant complaint is one for gross immorality and is commenced by Tumbaga as the misled paramour directly affected by Atty. Teoxon's acts. Tumbaga asserts that Atty.

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[16] *Dissenting and Concurring Opinion* of *J.* Leonen in *Anonymous Complaint v. Dagala,* A.M. No. MTJ-16-1886, July 25, 2017, <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2017/july2017/MTJ-16-1886_leonen.pdf> 15–16 [*Per Curiam, En Banc*].

Teoxon assured her and her mother that his marriage was a sham. There was fraud committed on Tumbaga.

Second, there is substantial evidence to support the allegation that Atty. Teoxon did have an extramarital affair with Tumbaga. Atty. Teoxon failed to prove that Tumbaga was only seeking to exact money from him.

Third, it is not shown or alleged that Atty. Teoxon's wife was aware of or consented to his extramarital affair with Tumbaga. Tumbaga even alleged that Atty. Teoxon's wife attacked her during the September 9, 2001 raid; thus, showing hostility, which may indicate that the latter had objections to their relations.

Fourth, there is no showing that Atty. Teoxon was repentant. He even still denies his relations with Tumbaga and even accuses her of extortion.

As to Billy John, his paternity remains to be proved definitely and should be the subject matter of a separate case. However, assuming Atty. Teoxon is Billy John's father, which is what is stated in the latter's Birth Certificate, Atty. Teoxon's denial of his paternity and withdrawal of financial support may even amount to violence against women and children under Republic Act No. 9262.[17]

These circumstances show that Atty. Teoxon is guilty of gross immorality. He displayed that he lacked good moral character,

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[17] Rep. Act No. 9262, Sec. 5(e) provides:

Section 5. Acts of Violence Against Women and Their Children. — The crime of violence against women and their children is committed through any of the following acts:

. . . .

(e) Attempting to compel or compelling the woman or her child to engage in conduct which the woman or her child has the right to desist from or to desist from conduct which the woman or her child has the right to engage in, or attempting to restrict or restricting the woman's or her child's freedom of movement or conduct by force or threat of force, physical or other harm or threat of physical or other harm, or intimidation directed against the woman or child. This shall include, but not limited to, the folowing acts committed with the purpose or effect of controlling or restricting the woman's or her child's movement or conduct.

. . . .

acting dishonestly and with deceit. Moreover, in denying his relations with Tumbaga, he displayed a lack of accountability and integrity. His actions injured others.

Deceit and lack of accountability and integrity reflect on his ability to perform his functions as a lawyer, who is always expected to act and appear to act lawfully and honestly and must uphold the integrity and dignity of the legal profession.[18] A lawyer is expected not only to have good moral character, but must also *appear* to have good moral character. In *Tolosa v. Cargo* this Court said:[19]

> As officers of the court, lawyers must not only in fact be of good moral character but must also be seen to be of good moral character and leading lives in accordance with the highest moral standards of the community. More specifically, a member of the Bar and officer of the court is not only required to refrain from adulterous relationships or the keeping of mistresses but must also so behave himself as to avoid scandalizing the public by creating the belief that he is flouting those moral standards.[20] (Citation omitted)

Atty. Teoxon failed in these respects as a lawyer.

ACCORDINGLY, I concur in the result finding Atty. Manuel P. Teoxon **GUILTY** of **GROSS IMMORALITY**.

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(2) Depriving or threatening to deprive the woman or her children of financial support legally due her or her family, or deliberately providing the woman's children insufficient financial support[.]

[18] Code of Professional Responsibility, Canon 1, Canon 7, and Rule 7.03 provide:

Canon 1, RULE 1.01 A lawyer shall not engage in unlawful, dishonest, immoral or deceitful conduct.

. . . . . .

Canon 7 — A lawyer shall at all times uphold the integrity and dignity of the legal profession, and support the activities of the integrated bar.

. . . . . .

RULE 7.03 A lawyer shall not engage in conduct that adversely reflects on his fitness to practice law, nor shall he, whether in public or private life, behave in a scandalous manner to the discredit of the legal profession.

[19] 253 Phil. 154 (1989) [Per *J.* Feliciano, Third Division].

[20] *Id*. at 159.

EN BANC

[A.C. No. 11836. November 21, 2017]

CARLINA P. ROBIÑOL, *complainant, vs.* **ATTY. EDILBERTO P. BASSIG,** *respondent.*

SYLLABUS

1. LEGAL ETHICS; ATTORNEYS; DISBARMENT AND SUSPENSION; IN DISBARMENT PROCEEDINGS, THE BURDEN OF PROOF RESTS UPON THE COMPLAINANT AND THE EVIDENTIARY THRESHOLD IS SUBSTANTIAL EVIDENCE; WHILE THESE PROCEEDINGS ARE *SUI GENERIS,* COMPLIANCE WITH THE BASIC RULES ON EVIDENCE MAY NOT BE ALTOGETHER DISPENSED WITH; CASE AT BAR.— In disbarment proceedings, the burden of proof rests upon the complainant and the proper evidentiary threshold is substantial evidence. Here, Robiñol failed to discharge the burden of proof. For one, the evidence submitted were inadmissible. It must be noted that the receipts showing payment of Atty. Bassig to Robiñol and the promissory note executed and signed by Atty. Bassig were photocopies of the original. A photocopy, being a mere secondary evidence, is not admissible unless it is shown that the original is unavailable. x x x In this case, nowhere in the record shows that Robiñol laid down the predicate for the admission of said photocopies. Thus, aside from the bare allegations in her complaint, Robiñol was not able to present any evidence to prove that Atty. Bassig failed to pay his rent and that he had in fact leased a house from Robiñol. Moreover, We cannot deem Atty. Bassig's failure to file his verified answer and to attend in the scheduled mandatory conferences as an admission of the allegations in the complaint. The consequences of such omission are clearly laid down in Section 5, Rule V of the Rules of Procedure of the Commission on Bar Discipline of the IBP, x x x Disciplinary proceedings against lawyers are *sui generis*— neither purely civil nor purely criminal. They do not involve a trial of an action or a suit, but rather investigations by the Court into the conduct of its officers. While these proceedings are *sui generis*, compliance with the basic rules on evidence may not be altogether dispensed with. More so, in this case when the

evidence in consideration fails to comply with basic rules on admissibility.

2. ID.; ID.; ID.; CONDUCT UNBECOMING OF A LAWYER; IN DISREGARDING THE ORDERS OF THE INTEGRATED BAR OF THE PHILIPPINES (IBP), THE LAWYER EXHIBITED A CONDUCT WHICH RUNS CONTRARY TO HIS SWORN DUTY AS AN OFFICER OF THE COURT; PRESENT IN CASE AT BAR.— It must be noted that Atty. Bassig, despite due notice, repeatedly failed to abide by the orders of the IBP, *i.e.* filing a verified answer, appearing in two mandatory conferences and filing of position paper. In fact, when the IBP ordered him to file a position paper, it is in view of the expunction of his answer. Notwithstanding, Atty. Bassig still ignored the directive. For his behavior, Atty. Bassig committed an act in violation of Canon 11 of the Code of Professional Responsibility, x x x His attitude of refusing to obey the orders of the IBP indicates his lack of respect for the IBP's rules and regulations, but also towards the IBP as an institution. Remarkably, the IBP is empowered by this Court to conduct proceedings regarding the discipline of lawyers. Hence, it is but proper for Atty. Bassig to be mindful of his duty as a member of the bar to maintain his respect towards a duly constituted authority. Verily, Atty. Bassig's conduct is unbecoming of a lawyer, for lawyers are particularly called upon to obey court orders and processes and are expected to stand foremost in complying with court directives being themselves officers of the court. In disregarding the orders of the IBP, he exhibited a conduct which runs contrary to his sworn duty as an officer of the court.

D E C I S I O N

TIJAM, *J.*:

This is a disbarment case against respondent Atty. Edilberto P. Bassig (Atty. Bassig) for violation of Code of Professional Responsibility and Lawyer's Oath.

The Facts

In her Complaint-Affidavit, complainant Carlina Robiñol (Robiñol) alleged that respondent rented a house from her in

Brgy. Tanong, Marikina City, for a monthly rental of ₱8,500.00. Said lease, without any written contract, was for a period of two years, or from June 12, 2010 to August 12, 2012. Upon the start of the lease agreement, it was agreed that Atty. Bassig will pay a one month advance and another one month deposit, both of which are equivalent of one month rental payment. However, he did not comply with the same. Atty. Bassig instead paid the monthly rental from June 13, 2010 to July 13, 2010.[1]

Atty. Bassig then paid his rents belatedly from July 2010 to January 2012. However, after said period, he stopped making any payment, to wit[2]:

Month/s covered	**Payment date**	**Amount paid**
July 13, 2010 to August 13, 2010	August 12, 2010	PhP 8,500.00
August 13, 2010 to October 13, 2010	November 24, 2010	PhP 17,000.00
October 13, 2010 to November 13, 2010	October 13, 2010	PhP 8,500.00
November 13, 2011 to December 13, 2011	January 4, 2012	PhP 8,500.00
December 13, 2011 to January 13, 2012	March 13, 2012	PhP 8,500.00

Robiñol alleged that the last payment in the amount of ₱17,000.00, for two months' rent was made in July 2012, but no receipt was issued upon Atty. Bassig's instruction. Atty. Bassig told Robiñol that he will be receiving a big amount from his client and that he will thereafter pay the remaining unpaid rent.[3]

Believing that Atty. Bassig will remain truthful to his promise, Robiñol allowed him to stay in the premises. However, when Typhoon Habagat struck Marikina City, Atty. Bassig left the

[1] *Rollo*, pp. 2-4.

[2] *Id*. at 3.

[3] *Id*.

house because of the heavy flood. When he left, he neither informed Robiñol of his intended destination nor satisfied his unsettled obligation.[4]

When the situation in Marikina City got better, Atty. Bassig still failed to return to his rented house.[5]

Later on, Robiñol chanced upon Atty. Bassig's daughter and learned that Atty. Bassig was living with her. Robiñol then went to the said house and demanded payment from Atty. Bassig. As a consequence, he executed a promissory note[6] dated August 18, 2012, undertaking to pay the amount of ₱127,500.00 on installment basis. The promissory note indicates that half of the amount due would be paid on August 31, 2012 and the other half on September 30, 2012. However, Atty. Bassig reneged on his obligation.[7]

Because of the foregoing incidents, Robiñol was constrained to hire a counsel to protect her interest. Thus, a demand letter[8] was sent to Atty. Bassig on December 8, 2012.

In an unverified answer, Atty. Bassig acknowledged his obligation to Robiñol and promised to pay the same within the next two months after the answer was filed. He maintained that he had difficulty in managing his finances as he was paying for his son's medical expenses and his car's monthly amortizations.[9]

A Notice of Mandatory Conference/Hearing[10] dated January 21, 2015 was issued by the IBP Commissioner Rebecca Villanueva-Maala. However, the Orders dated February 25,

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

[5] *Id*. at 4.

[6] *Id*. at 9.

[7] *Id*. at 4.

[8] *Id*. at 10-11.

[9] *Id*. at 24-25.

[10] *Id*. at 28.

2015[11] and March 25, 2015[12] issued by the Integrated Bar of the Philippines-Commission on Bar Discipline (IBP-CBD) reveals that only Robiñol appeared in the scheduled mandatory conferences. The latter Order also expunged the answer filed by Atty. Bassig for lack of verification. In view thereof, the parties were directed to file their respective position paper.

In a Report and Recommendation dated November 20, 2015[13], the IBP-CBD recommended the suspension of Atty. Bassig from the practice of law for a period of two years. The IBP Commissioner ruled that Atty. Bassig's failure to file his answer despite due notice and to appear on the scheduled hearings showed his resistance to lawful orders and illustrated his despiciency for his oath of office as a lawyer, which deserves disciplinary sanction. The *fallo* thereof reads:

> IN VIEW THEREOF, we respectfully recommend that respondent, **ATTY. EDILBERTO P. BASSIG**, be **SUSPENDED** for a period of **TWO (2) YEARS** from receipt hereof, from the practice of law and as member of the Bar.
>
> **RESPECTFULLY SUBMITTED**.[14]

In a Resolution No. XXII-2016-165,[15] CBD Case No. 14-4447, entitled Carlina P. Robiñol v. Atty. Edilberto P. Bassig, dated February 25, 2016, the IBP Board of Governors adopted the recommendation of the IBP-CBD and disposed thus:

> *RESOLVED to ADOPT the recommendation of the Investigating Commissioner imposing a penalty of suspension from the practice of law for two (2) years considering that there was a previous sanction of suspension of two (2) years against the same Respondent in another disbarment case.*

As this Court has disciplinary authority over members of the bar, We are tasked to resolve the instant case against Atty. Bassig.

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[11] *Id.* at 35.

[12] *Id.* at 41.

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

[14] *Id.*

[15] *Id.* at 65.

In disbarment proceedings, the burden of proof rests upon the complainant[16] and the proper evidentiary threshold is substantial evidence.[17]

Here, Robiñol failed to discharge the burden of proof. For one, the evidence submitted were inadmissible. It must be noted that the receipts showing payment of Atty. Bassig to Robiñol and the promissory note executed and signed by Atty. Bassig were photocopies of the original.

A photocopy, being a mere secondary evidence, is not admissible unless it is shown that the original is unavailable.[18] Section 5, Rule 130 of the Rules of Court states:

> SEC.5 *When original document is unavailable*.—When the original document has been lost or destroyed, or cannot be produced in court, the offeror, upon proof of its execution or existence and the cause of its unavailability without bad faith on his part, may prove its contents by a copy, or by a recital of its contents in some authentic document, or by the testimony of witnesses in the order stated.

In the case of *Country Bankers Insurance Corporation v. Antonio Lagman*[19]*,* the Court held that:

> Before a party is allowed to adduce secondary evidence to prove the contents of the original, the offeror must prove the following: (1) the existence or due execution of the original; (2) the loss and destruction of the original or the reason for its non-production in court; and (3) on the part of the offeror, the absence of bad faith to which the unavailability of the original can be attributed. x x x[20]

In this case, nowhere in the record shows that Robiñol laid down the predicate for the admission of said photocopies. Thus, aside from the bare allegations in her complaint, Robiñol was not able to present any evidence to prove that Atty. Bassig

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[16] *Concepcion v. Atty. Fandino, Jr.,* 389 Phil. 474, 481 (2000).

[17] *Reyes v. Atty. Nieva*, A.C. No. 8560, September 6, 2016.

[18] *Lee v. Atty. Tambago*, 568 Phil. 363, 374 (2008).

[19] 669 Phil. 205 (2011).

[20] *Id*. at 216.

failed to pay his rent and that he had in fact leased a house from Robiñol.

Moreover, We cannot deem Atty. Bassig's failure to file his verified answer and to attend in the scheduled mandatory conferences as an admission of the allegations in the complaint. The consequences of such omission are clearly laid down in Section 5, Rule V of the Rules of Procedure of the Commission on Bar Discipline of the IBP, to wit:

> Section 5. Non-appearance of parties, and Non-verification of Pleadings.— a) Non-appearance at the mandatory conference or at the clarificatory questioning date shall be deemed a waiver of the right to participate in the proceedings. Ex parte conference or hearings shall then be conducted. Pleadings submitted or filed which are not verified shall not be given weight by the Investigating Commissioner.

Disciplinary proceedings against lawyers are *sui generis*– neither purely civil nor purely criminal. They do not involve a trial of an action or a suit, but rather investigations by the Court into the conduct of its officers.[21] While these proceedings are *sui generis*, compliance with the basic rules on evidence may not be altogether dispensed with. More so, in this case when the evidence in consideration fails to comply with basic rules on admissibility.

Nevertheless, Atty. Bassig is not completely exculpated from any administrative liability.

It must be noted that Atty. Bassig, despite due notice, repeatedly failed to abide by the orders of the IBP, *i.e.* filing a verified answer, appearing in two mandatory conferences and filing of position paper. In fact, when the IBP ordered him to file a position paper, it is in view of the expunction of his answer. Notwithstanding, Atty. Bassig still ignored the directive.

For his behavior, Atty. Bassig committed an act in violation of Canon 11 of the Code of Professional Responsibility, to wit:

> Canon 11 – A lawyer shall observe and maintain the respect due to the courts and to judicial officers and should insist on similar conduct by others.

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[21] *Gonzales v. Atty. Alcaraz*, 534 Phil. 471, 482 (2006).

His attitude of refusing to obey the orders of the IBP indicates his lack of respect for the IBP's rules and regulations[22], but also towards the IBP as an institution. Remarkably, the IBP is empowered by this Court to conduct proceedings regarding the discipline of lawyers.[23] Hence, it is but proper for Atty. Bassig to be mindful of his duty as a member of the bar to maintain his respect towards a duly constituted authority.

Verily, Atty. Bassig's conduct is unbecoming of a lawyer, for lawyers are particularly called upon to obey court orders and processes and are expected to stand foremost in complying with court directives being themselves officers of the court.[24] In disregarding the orders of the IBP, he exhibited a conduct which runs contrary to his sworn duty as an officer of the court.

As a final note, We commiserate with Robiñol, a nonagenarian, on her unfortunate circumstances as she should no longer be dealing with this kind of anxiety. Nevertheless, We sanction Atty. Bassig to pay a fine in the amount of ₱10,000.00 for his arrant neglect to maintain acceptable deportment as member of the bar.

WHEREFORE, premises considered, respondent Atty. Edilberto P. Bassig is hereby **ORDERED** to pay a **FINE** in the amount of **Ten Thousand Pesos** (₱10,000.00) with the **STERN WARNING** that commission of the same or similar offense in the future will result in the imposition of a more severe penalty.

SO ORDERED.

Carpio,[*] *Leonardo-de Castro, Peralta, Bersamin, del Castillo, Perlas-Bernabe, Leonen, Jardeleza, Caguioa, Martires,* and *Gesmundo, JJ.,* concur.

Velasco, Jr. and *Reyes, Jr., JJ.,* on official leave.

Sereno, C.J., on leave.

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[22] *PO1 Caspe v. Atty. Mejica*, 755 Phil. 312, 32 (2015).

[23] *Id*.

[24] *Cabauatan v. Atty. Venida*, 721 Phil. 733, 738 (2013).

[*] Designated Acting Chief Justice per Special Order No. 2519 dated November 21, 2017.

EN BANC

[A.M. No. P-16-3527. November 21, 2017]
(Formerly OCA IPI No. 12-3987-P)

ATTY. RENATO E. FRADES, Clerk of Court VI, Regional Trial Court, Gapan City, Nueva Ecija, *complainant, vs.* **JOSEPHINE A. GABRIEL, Clerk III, Office of the Clerk of Court, Regional Trial Court, Gapan City, Nueva Ecija,** *respondent.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; PUBLIC OFFICERS AND EMPLOYEES; CIRCUMSTANCES WHICH MUST BE PRESENT FOR DISHONESTY TO BE CONSIDERED SERIOUS, THUS, WARRANTING THE PENALTY OF DISMISSAL FROM SERVICE, ENUMERATED.— Dishonesty has been defined as "intentionally making a false statement on any material fact, or practicing or attempting to practice any deception or fraud in securing his examination, appointment, or registration". It is a serious offense which reflects a person's character and exposes the moral decay which virtually destroys his honor, virtue, and integrity. It is a malevolent act that has no place in the judiciary, as no other office in the government service exacts a greater demand for moral righteousness from an employee than a position in the judiciary. For dishonesty to be considered serious – warranting the penalty of dismissal from the service— the presence of any one of the following attendant circumstances must be present: (1) The dishonest act caused serious damage and grave prejudice to the Government; (2) The respondent gravely abused his authority in order to commit the dishonest act; (3) Where the respondent is an accountable officer, the dishonest act directly involves property, accountable forms or money for which he is directly accountable and the respondent shows an intent to commit material gain, graft and corruption; **(4) The dishonest act exhibits moral depravity on the part of the respondent; 5) The respondent employed fraud and/or falsification of official documents in the commission of the dishonest act related to his/her employment;** (6) The

dishonest act was committed several times or in various occasions; (7) The dishonest act involves a Civil Service examination irregularity or fake Civil Service eligibility such as, but not limited to impersonation, cheating and use of crib sheets; Other analogous circumstances. x x x Conduct prejudicial to the best interest of the service deals with a demeanor of a public officer which "tarnished the image and integrity of his/her public office."

2. **ID.; ID.; COURT PERSONNEL; THE IMAGE OF THE JUDICIARY IS THE SHADOW OF ITS OFFICERS AND EMPLOYEES, A SIMPLE MISFEASANCE OR NONFEASANCE MAY HAVE DISASTROUS REPERCUSSIONS ON THAT IMAGE; CASE AT BAR.—** Proceeding from these definitions, the Court agrees that Gabriel is guilty of serious dishonesty for deliberately impersonating De Guzman in order to use the latter's roundtrip ticket between Manila and Puerto Princesa. The OCA was correct in finding that if indeed Gabriel legally bought De Guzman's flight reservation, she could have easily presented as part of her defense her new boarding pass issued under her name. The travel to Palawan by Gabriel could have only been accomplished through Gabriel's illegal impersonation of De Guzman. A clerk of court's office is the hub of activities, and he or she is expected to be assiduous in performing official duties and in supervising and managing the court's dockets, records and exhibits. The image of the Judiciary is the shadow of its officers and employees. A simple misfeasance or nonfeasance may have disastrous repercussions on that image. After considering the records and the investigations conducted on the matter, it is undisputed that Gabriel failed to meet the requirement expected of her as Clerk III.

3. **ID.; ID.; ID.; UNDER THE CIVIL SERVICE LAW, LENDING MONEY AT USURIOUS RATES OF INTEREST IS PROHIBITED, WHICH IS PUNISHABLE AS A LIGHT OFFENSE.—** Anent the issue of Gabriel's money-lending activities and encashment of other employees' checks, and for being quarrelsome, records show that Gabriel was engaged in lending activities, charging an interest rate of five percent (5%) per month. Under the Civil Service Law, lending money at usurious rates of interest is prohibited. So is the lending of money by subordinates to superior officers. The same is

punishable as a light offense under Section 22, Rule XIV of the Omnibus Rules implementing the Civil Service Law, as amended, and for which Gabriel must likewise be penalized.

D E C I S I O N

***PER CURIAM*:**

For resolution is the complaint[1] dated October 25, 2012 filed by Atty. Renato E. Frades (Frades), Clerk of Court VI, in the Office of the Clerk of Court (OCC), Regional Trial Court (RTC), Gapan City, Nueva Ecija, against Ms. Josephine A. Gabriel (Gabriel), Clerk III, in the OCC, RTC, Gapan City, Nueva Ecija, for grave misconduct, dishonesty, gross insubordination, abandonment of work and conduct prejudicial to the best interest of the service.

Frades averred that Gabriel, as Cash Clerk, failed to remit payments made to the Sheriff's Trust Fund from September 2009 up to an unspecified date in 2010.[2] Frades discovered the omission after Atty. Gilda A. Sumpo, Chief Judicial Staff Officer of the Accounting Division of the Office of the Court Administrator (OCA), Supreme Court, sent a letter addressed to Frades, requesting their office to furnish the OCA a copy of the Statement of Unwithdrawn Sheriff's Trust Fund for reconciliation process.[3] Frades alleged that Gabriel admitted to him that she failed to remit the payments made to the Sheriff's Trust Fund for a year because that was what her co-employee taught her.[4] Frades thereafter verbally instructed Gabriel to submit copies of the report of Unwithdrawn Sheriff Trust Fund within seven (7) days.[5] However, instead of complying with the said

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[1] *Rollo*, pp. 1-9.

[2] *Id*. at 1, 10, 467.

[3] *Id*. at 1, 467.

[4] *Id*. at 1.

[5] *Id*. at 1-2, 467.

verbal order, Gabriel was absent from May 15 to 18, 21, 24, 25 and 28, 2012, without filing an application for leave.[6]

Frades asserted that it has been the practice of Gabriel, even during the time of her former superior, Atty. Hermenegildo M. Linsangan, Frades' predecessor, in excluding her Daily Time Records (DTRs) from those transmitted to the OCA, in order to manipulate some of her absences, made without the appropriate application for leave.[7] This matter was the subject of Memorandum Order No. 01-2001 dated January 26, 2001 issued by Atty. Linsangan against Gabriel. Years later, the co-employees of Gabriel also confirmed Gabriel's practice of excluding her DTRs from those transmitted to the OCA.[8]

Frades further stated that Gabriel attended the National Convention of Philippine Association of Court Employees (PACE) held in Puerto Princesa City, Palawan from May 8-12, 2012, without the corresponding travel order. He added that Gabriel used a falsified identification card, making it appear that she was a certain Lea[9] De Guzman (De Guzman), in order to use De Guzman's plane ticket to board the plane.[10]

Frades further alleged that while he was on leave on September 10, 2012, Gabriel distributed the checks for the salaries and allowances of court personnel of RTC-Branches 34, 36, 87 and OCC, Gapan City in violation of OCA Circular No. 15-1997-A dated April 24, 1997 and Memorandum Circular on Administrative Supervision of Courts dated May 5, 1998.[11]

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[6] *Id*. at 2, 467.

[7] *Id*. at 2, 468.

[8] *Id*. at 2, 12-13, 468.

[9] Also spelled as Leah in other parts of the *rollo*.

[10] *Rollo*, pp. 2-3, 468.

[11] See *id*. at 3, 4, 468-469. These circulars require that all checks for salaries and allowances of Judges and court personnel of the lower courts shall be mailed directly to the Clerk of Court being the bonded official of the court to see to it that all checks released shall be duly acknowledged by the named payee and the individual payee shall be required to sign opposite their names as acknowledgment of check's receipt.

Frades thereafter issued Office Memorandum No. 01-12 dated September 11, 2012, directing Gabriel to explain why no disciplinary action should be taken against her for opening and distributing the envelope containing checks for salaries and allowances of Judges and Court personnel without proper authority.[12]

Frades likewise claimed that Gabriel was known to the court as a money lender for "5-6".[13] Her practice is to withhold the checks belonging to employees who borrow money from her.[14] Freddie F. Fernando, a process server in RTC-Branch 87, disclosed to Frades that in 2006, he borrowed fifteen thousand pesos (₱15,000.00) from Gabriel.[15] They agreed that Fernando will pay his debt by giving to Gabriel his salary check for the first fifteen (15) days of every month.[16] On one occasion, Fernando asked Gabriel to spare his incoming salary check because he had prior financial problems to be settled first.[17] Notwithstanding his request, Gabriel withheld his check and tried to encash the same, prompting Fernando to personally ask the manager of Land Bank not to encash his check.[18]

Frades also recounted different instances[19] showing Gabriel's attitude problem and her inability to work harmoniously with her co-employees.

Frades further averred that Gabriel was usually not in the office to perform her duty to docket criminal cases as she was always at RTC-Branch 87 and at the Municipal Trial Court in Cities (MTCC), Gapan City, Nueva Ecija, for no valid reason,

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[12] *Id*. at 4-5, 19, 469.

[13] *Id*. at 3, 469.

[14] *Id*.

[15] *Id*. at 3-4, 412, 469.

[16] *Id*. at 412.

[17] *Id*. at 4, 412, 469.

[18] See *id*. at 4, 412-413.

[19] *Id*. at 5-7, 197-198.

and without even asking permission from Frades.[20] When asked what she was doing in the said offices, Gabriel arrogantly replied, "*Wala, nag-aaral mag-steno at saka nagpapaalam naman ako kay Noli*".[21] According to Frades, Gabriel was referring to Noli Garcia, the utility worker assigned to their office.[22] Gabriel never informed Frades, her superior, whenever she would take a leave of absence from work.[23]

Lastly, Frades reported that Gabriel hid a tape recorder on her table in their office for the purpose of recording the communication of her co-employees while she was away, in violation of Republic Act No. 4200, otherwise known as the Anti-Wire Tapping Act.[24]

Acting on the instant complaint, the OCA, in an Indorsement[25] dated November 6, 2012, directed Gabriel to file her Comment on the instant complaint.

Counter-Affidavit of Gabriel

In lieu of a Comment, Gabriel filed her Counter-Affidavit[26] dated January 7, 2013, wherein she denied failing to deposit payments for the Sheriff's Trust Fund, explaining that, in addition to her regular duties as Clerk III, she was designated as Cash Clerk to handle the Sheriff's Trust Fund account from September 2009 to December 2011.[27] She asserted that she regularly and periodically deposited the fund to the Land Bank of the Philippines (Land Bank) under account number 1531-1013-12,[28] submitting, as proof thereof, copies of the Monthly Report of

[20] *Id*. at 7, 470.

[21] *Id*.

[22] *Id*.

[23] See *id*. at 2, 7, 467, 470.

[24] *Id*. at 7, 470.

[25] *Id*. at 48.

[26] *Id*. at 52-56.

[27] *Id*. at 52.

[28] *Id*. at 53.

Collections of the Sheriff's Trust Fund from September 2009 to December 2011, containing the following: (1) cover letter signed by Frades himself; (2) monthly report of collections and withdrawals; and (3) cash deposit slips of Land Bank.[29] Gabriel claimed that these deposit slips prove that she regularly deposited the fund.[30] She added that having a background in accounting she also maintained a ledger book where she entered and recorded all the transactions she made in the Sheriff's Trust Fund.[31]

Gabriel also denied that her absences in May 2012 were without official leave. She averred that she was "*on official business*" from May 8 to 11, 2012 as she attended the PACE Convention in Puerto Princesa City, Palawan.[32] On May 17, 18, 21 and 28, 2012, she claimed that she was on "*official leave from work*" due to a medical check-up.[33] Gabriel asserted that her applications for leave on the above-mentioned dates were granted and approved by then Executive Judge Celso O. Baguio.[34]

Gabriel further denied that she failed to submit her DTRs for March, April and May 2012. She insisted that she submitted her DTRs for the said months to the OCC, RTC, Gapan City, Nueva Ecija.[35] She pointed out that she had no obligation to submit another copy of her DTR to the Leave Section, OCA because the responsibility of submitting a copy of her DTR is with the proper liaison officer of the OCC.[36]

Gabriel likewise denied impersonating De Guzman in order to use her plane ticket to Palawan to attend the PACE Convention.

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[29] *Id*. at 53, 64-150.

[30] *Id*.

[31] *Id*.

[32] See *id*.

[33] *Id*.

[34] *Id*.

[35] *Id*.

[36] *Id*. at 54.

She claimed that such allegation is mere hearsay and not even supported by personal knowledge and documentary evidence.[37]

Gabriel explained that she opened the envelope containing the checks for the salaries and allowances of court employees for September 2012 and distributed them to the employees because, on September 10, 2012, almost half of the employees of the OCC, RTC, Gapan City, Nueva Ecija, including Frades, were on leave.[38] As a regular practice of the employees in their office, she took it upon herself to open and distribute the checks contained therein.[39]

Denying her alleged quarrelsome attitude, Gabriel maintained that such allegations were designed merely to harass her.[40] She posited that her conflicts with her co-employees should be best resolved by the Grievance Committee and should not have ripened into actual administrative proceedings, as in this case.[41]

In a Report[42] dated April 7, 2014, the OCA recommended that the instant administrative complaint against Gabriel be referred to Executive Judge Cielitolindo A. Luyun, RTC, Gapan City, Nueva Ecija, for investigation, report and recommendation within sixty (60) days from receipt of the records.[43] The said recommendation was adopted in a Resolution[44] dated July 2, 2014 by the First Division of this Court.

In view of the disability retirement of Executive Judge Luyun effective November 1, 2014, the instant administrative complaint was then referred to Vice Executive Judge Mildred V. Hernal

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[37] *Id*.

[38] *Id*.

[39] *Id*.

[40] *Id*.

[41] *Id*.

[42] *Id*. at 195-200.

[43] *Id*. at 200.

[44] *Id*. at 201.

(Investigating Judge Hernal), RTC, Gapan City, Nueva Ecija, for investigation, report and recommendation, pursuant to Resolution[45] dated February 25, 2015 issued by the Third Division of this Court.

During the preliminary conference before Investigating Judge Hernal, Frades manifested that he is withdrawing his complaint, averring that Gabriel has already reformed; the witnesses are no longer interested to testify; and some of the original copies of his supporting documents could no longer be found.[46] Notwithstanding Frades' plea to have the case dismissed, Investigating Judge Hernal proceeded with the investigation.[47]

Investigation Report dated July 1, 2015 by Investigating Judge Hernal

In the Investigation Report[48] dated July 1, 2015, Investigating Judge Hernal ruled that Gabriel satisfactorily explained her side in all the charges except in issues pertaining to her money lending activities and engaging in quarrels.[49]

Investigating Judge Hernal found that Gabriel extended loans and earned not only interest (could be considered usurious at 5% monthly interest) but enemies as well.[50] The quarrels and disputes with co-employees and her superior (the private complainant) stemmed from issues of indebtedness.[51]

Based on the accounts of witnesses, Investigating Judge Hernal found that Gabriel's rude and humiliating words and comments against her co-employees can be considered misconduct and conduct prejudicial to the best interest of the service.[52]

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

[46] TSN, April 28, 2015, pp. 2-3; *id*. at 326-327.

[47] *Id*. at 3; *id*. at 327.

[48] *Id*. at 441-466.

[49] *Id*. at 464.

[50] *Id*.

[51] *Id*.

[52] *Id*. at 465.

Gabriel's lack of respect to Frades was also manifest.[53] The disrespect or contempt was probably a result of the availment of loan by Frades from Gabriel.[54]

It was also found that both Frades and Gabriel failed to observe the Civil Service Rule on borrowing and lending money between superior and subordinate.[55] Under the said Rule, "[b]orrowing money by superior officers from subordinates or lending by subordinates to superior officers" is prohibited and may subject them both to disciplinary action.[56]

Based on the foregoing findings, Investigating Judge Hernal recommended that Gabriel be suspended for a period of thirty (30) days.[57]

OCA Report and Recommendation

In a Report[58] dated April 11, 2016, the OCA recommended the following: (a) the instant administrative complaint against Josephine A. Gabriel, Clerk III, OCC, RTC, Gapan City, Nueva Ecija, be re-docketed as a regular administrative matter; and (b) Gabriel be found guilty of serious dishonesty, loafing from duty during regular office hours, conduct prejudicial to the best interest of the service, lending money at usurious rates of interest, lending money to a superior officer, insubordination and violation of the reasonable office rules and regulations, and be dismissed from the service with forfeiture of retirement benefits, except accrued leave credits, and with prejudice to re-employment in the government service, including government-owned or-controlled corporations.[59]

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[53] *Id*.

[54] *Id*.

[55] *Id*.

[56] *Id*. at 465-466.

[57] *Id*. at 466.

[58] *Id*. at 467-477.

[59] *Id*. at 476-477.

The OCA found good reason to administratively charge Gabriel with conduct prejudicial to the best interest of the service, loafing during regular office hours, violation of reasonable office rules and regulations, simple misconduct and insubordination.[60]

First. On the issue of non-deposit of collections of the Sheriff's Trust Fund, Frades failed to substantiate his allegation.[61] To the contrary, Gabriel was able to present countervailing documents that she was not remiss in her duty.[62] As an accountable officer, she affirmed the veracity of her monthly reports and presented deposit slips relative to the deposit of her collections of the Sheriff's Trust Fund.[63]

Second. On the issue of non-submission or late submission of her DTR, Frades also failed to provide evidence to prove his allegation.[64] In fact, witness Jocelyn Pangilinan stated that there was never an instance when the salaries of the trial court's employees were withheld by the Court as a consequence of the late or non-submission of Gabriel's DTRs.[65] This would negate the allegation that Gabriel failed or belatedly submitted her DTRs to the Court.[66]

Third. On the issue of attending the PACE Convention without travel order and impersonating De Guzman, the OCA gave credence to the explanation of witness Roque that it is not necessary that an employee must first secure a travel authority in order to attend the PACE Convention.[67]

The OCA was however not convinced that Gabriel did not impersonate De Guzman when she used the latter's roundtrip

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[60] *Id*. at 474.

[61] *Id*.

[62] *Id*.

[63] *Id*.

[64] *Id*.

[65] *Id*.

[66] *Id*.

[67] *Id*.

ticket between Manila and Puerto Princesa.[68] If indeed Gabriel legally bought the airline reservation of De Guzman, as approved by the airline company, she should have a new printed boarding pass that is under her name.[69] In fact, it is of common knowledge and the strict practice of all airline companies that before a passenger can be allowed to board an airplane, a valid identification card should be first presented for comparison with the name in the boarding pass and/or itinerary.[70] Indeed, it taxes one's credulity on how Gabriel was able to travel to Palawan using the itinerary and boarding pass of De Guzman.[71] This could only have been accomplished through Gabriel's illegal impersonation of De Guzman.[72]

Fourth. On the issue of acceptance of the envelope and distribution of the checks/salaries of employees without authority, the OCA found Gabriel administratively liable for violating reasonable office rules and regulations.[73] While the acceptance by Gabriel of the envelope containing the checks can be justified due to the absence of most of the employees at the OCC, RTC, including Frades, nevertheless, the distribution of the checks was done by Gabriel without authority, in violation of the reasonable office rules and regulations.[74]

Under OCA Circular No. 15-1997-A, it is the Executive Judge, upon recommendation of the OCC-Clerk of Court, being the bonded officer, who shall designate a liaison officer who shall be authorized to receive the checks.[75] The Clerks of Court are accountable for every check/salary to be distributed to the

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[68] *Id*.

[69] *Id*.

[70] *Id*. at 474-475.

[71] *Id*. at 475.

[72] *Id*.

[73] *Id*.

[74] *Id*.

[75] *Id*.

employees and they shall immediately return all unclaimed checks to the Check Disbursement Division, OCA, stating the reason for their return.[76] Despite the fact that no checks were lost, the distribution is still the responsibility of the Clerk of Court.[77] Thus, an employee distributing a check should be first authorized by the Clerk of Court.[78]

Fifth. In connection with Office Memorandum No. 01-12 dated September 11, 2012, issued by Frades directing Gabriel to explain why no disciplinary action should be taken against her for opening and distributing an envelope containing checks for salaries and allowance of court personnel without proper authority, the records do not show that Gabriel ever responded to the office memorandum.[79] It was only when the instant administrative complaint was filed that Gabriel explained the reason for her action.[80] Her failure to respond when required by her superior constitutes insubordination.[81]

As correctly pointed out by Investigating Judge Hernal, Gabriel's lack of respect for Frades was very evident.[82] The disrespect or contempt was probably the result of the fact that Frades himself had also availed of a loan from Gabriel.[83] Had he not done so, Gabriel would not have had the temerity to verbally lash out at him the way she did.[84] Records show that Gabriel was engaged in lending activities, charging an interest rate of five percent (5%) per month.[85] Under the Civil Service

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[76] *Id*.

[77] *Id*.

[78] *Id*.

[79] *Id*. at 475-476.

[80] *Id*. at 476.

[81] *Id*.

[82] *Id*.

[83] *Id*.

[84] *Id*.

[85] *Id*.

Law, lending money at usurious rates of interest is prohibited.[86] So is the lending of money by subordinates to superior officers.[87] The same is punishable as a light offense under Section 22, Rule XIV of the Omnibus Rules Implementing the Civil Service Law, as amended, and for which Gabriel must likewise be penalized.[88]

The OCA also found that the issue with respect to violating the Anti-Wire Tapping Act should be dismissed for failure of Frades to substantiate his allegations.[89]

The act of impersonating another person constitutes serious dishonesty punishable under Section 46(A)(1) of the Revised Rules on Administrative Cases in the Civil Service (RRACCS) and punishable by dismissal from service for the first offense.[90] Moreover, Gabriel's loafing from duty during regular office hours, her combativeness in so many instances, and refusal to reform amount to conduct prejudicial to the best interest of the service, a grave offense punishable under Section 46(B)(10)(5)(8) of the same Rule.[91] Gabriel is also guilty of lending money at usurious rates of interest, lending money to a superior officer, insubordination and violation of reasonable office rules and regulations.[92]

Section 50, Rule X of the RRACCS states that if the respondent is found guilty of two (2) or more charges or counts, the penalty imposed should be that corresponding to the most serious charge or counts and the rest may be considered aggravating circumstances.[93]

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[86] *Id*., citing P.D. No. 807, Art. IX, Sec. 36(b)(21). See also Omnibus Rules Implementing Book V of Executive Order No. (EO) 292 and Other Pertinent Civil Service Laws, Rule XIV, Sec. 22(h), Light Offenses.

[87] *Id*., citing P.D. No. 807, *id*., Sec. 36(b)(20). See also *id*., Sec. 22(g), *id*.

[88] *Id*.

[89] *Id*.

[90] *Id*.

[91] *Id*.

[92] *Id*.

[93] *Id*.

The Court's Ruling

The Court finds no cogent reason to depart from the findings and recommendations of the OCA.

Dishonesty has been defined as "intentionally making a false statement on any material fact, or practicing or attempting to practice any deception or fraud in securing his examination, appointment, or registration". It is a serious offense which reflects a person's character and exposes the moral decay which virtually destroys his honor, virtue, and integrity. It is a malevolent act that has no place in the judiciary, as no other office in the government service exacts a greater demand for moral righteousness from an employee than a position in the judiciary.[94] For dishonesty to be considered serious — warranting the penalty of dismissal from the service — the presence of any one of the following attendant circumstances must be present:

(1) The dishonest act caused serious damage and grave prejudice to the Government;

(2) The respondent gravely abused his authority in order to commit the dishonest act;

(3) Where the respondent is an accountable officer, the dishonest act directly involves property, accountable forms or money for which he is directly accountable and the respondent shows an intent to commit material gain, graft and corruption;

(4) The dishonest act exhibits moral depravity on the part of the respondent;

(5) The respondent employed fraud and/or falsification of official documents in the commission of the dishonest act related to his/her employment;

(6) The dishonest act was committed several times or in various occasions;

(7) The dishonest act involves a Civil Service examination irregularity or fake Civil Service eligibility such as, but not limited to impersonation, cheating and use of crib sheets;

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[94] *Civil Service Commission v. Longos*, 729 Phil. 16, 19 (2014), citing *Office of the Court Administrator v. Bermejo*, 572 Phil. 6, 14 (2008).

(8) Other analogous circumstances. x x x[95] (Emphasis supplied)

Conduct prejudicial to the best interest of the service deals with a demeanor of a public officer which "tarnished the image and integrity of his/her public office."[96]

Section 36, Article IX of Presidential Decree No. 807, on the other hand, states that:

SEC. 36. *Discipline*: *General Provisions*. — (a) No officer or employee in the Civil Service shall be suspended or dismissed except for cause as provided by law and after due process.

(b) The following shall be grounds for disciplinary action:

(20) Borrowing money by superior officers from subordinates or lending by subordinates to superior officers;

(21) Lending money at usurious rates of interest[.] (Emphasis supplied)

Section 22(h), Rule XIV of the Omnibus Rules Implementing Book V of Executive Order No. 292 and Other Pertinent Civil Service Laws meanwhile prohibits the following:

SEC. 22. Administrative offenses with its corresponding penalties are classified into grave, less grave, and light, depending on the gravity of its nature and effects of said acts on the government service.

x x x x x x x x x

The following are light offenses with their corresponding penalties:

x x x x x x x x x

(g) Borrowing Money by Superior Officers from Subordinates

1st Offense — Reprimand
2nd Offense — Suspension for one (1) to thirty (30) days
3rd Offense — Dismissal

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[95] CSC Resolution No. 06-0538 (2006), Section 2, cited in *Alfornon v. Delos Santos,* G.R. No. 203657, July 11, 2016, 796 SCRA 194, 206-207.

[96] *Largo v. Court of Appeals*, 563 Phil. 293, 305 (2007).

(h) Lending Money at Usurious Rates of Interest

1st Offense — Reprimand
2nd Offense — Suspension for one (1) to thirty (30) days
3rd Offense — Dismissal (Emphasis supplied)

Proceeding from these definitions, the Court agrees that Gabriel is guilty of serious dishonesty for deliberately impersonating De Guzman in order to use the latter's roundtrip ticket between Manila and Puerto Princesa. The OCA was correct in finding that if indeed Gabriel legally bought De Guzman's flight reservation, she could have easily presented as part of her defense her new boarding pass issued under her name. The travel to Palawan by Gabriel could have only been accomplished through Gabriel's illegal impersonation of De Guzman.

A clerk of court's office is the hub of activities, and he or she is expected to be assiduous in performing official duties and in supervising and managing the court's dockets, records and exhibits.[97] The image of the Judiciary is the shadow of its officers and employees.[98] A simple misfeasance or nonfeasance may have disastrous repercussions on that image.[99]

After considering the records and the investigations conducted on the matter, it is undisputed that Gabriel failed to meet the requirement expected of her as Clerk III. She herself admitted that she was always at the other office/branch of the RTC or MTCC and studying stenography.

Anent the issue of Gabriel's money-lending activities and encashment of other employees' checks, and for being quarrelsome, records show that Gabriel was engaged in lending activities, charging an interest rate of five percent (5%) per month.[100] Under the Civil Service Law, lending money at usurious

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[97] *Hon. Ma. Cristina C. Botigan-Santos v. Leticia C. Gener*, A.M. No. P-16-3521, September 4, 2017, p. 5.

[98] *Id*.

[99] *Id*.

[100] *Rollo*, pp. 475, 476.

rates of interest is prohibited.[101] So is the lending of money by subordinates to superior officers.[102] The same is punishable as a light offense under Section 22, Rule XIV of the Omnibus Rules implementing the Civil Service Law, as amended, and for which Gabriel must likewise be penalized.

WHEREFORE, IN VIEW OF THE FOREGOING, the Court hereby finds respondent Josephine A. Gabriel, Clerk III, Office of the Clerk of Court, Regional Trial Court, Gapan City, Nueva Ecija, **GUILTY** of serious dishonesty, loafing from duty during regular office hours, conduct prejudicial to the best interest of the service, lending money at usurious rates of interest, lending money to a superior officer, insubordination and violation of the reasonable office rules and regulations, and she is accordingly **DISMISSED** from the service with forfeiture of retirement benefits, except accrued leave credits, and with prejudice to re-employment in the government service, including government-owned or -controlled corporations.

SO ORDERED.

Carpio,[*] *Leonardo-de Castro, Peralta, Bersamin, del Castillo, Perlas-Bernabe, Leonen, Jardeleza, Caguioa, Martires, Tijam,* and *Gesmundo, JJ.,* concur.

Velasco, Jr. and *Reyes, Jr., JJ.,* on official leave.

Sereno, C.J., on leave.

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[101] P.D. No. 807, *supra* note 85. See also Omnibus Rules Implementing Book V of EO 292 and Other Pertinent Civil Service Laws, *supra* note 85.

[102] P.D. No. 807, *supra* note 86. See also Omnibus Rules Implementing Book V of Executive Order No. 292 and Other Pertinent Civil Service Laws, *supra* note 86.

[*] Designated Acting Chief Justice per Special Order No. 2519 dated November 21, 2017.

EN BANC

[A.M. No. P-17-3763. November 21, 2017]
[Formerly OCA IPI No. 14-4320-P]

ENGR. DARWIN A. RECI, *complainant, vs.* **ATTY. EMMANUEL P. VILLANUEVA, Former Clerk Of Court V and SONIA S. CARREON, Former Court Stenographer III, both of the Regional Trial Court of Manila, Branch 9,** *respondents.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; COURT EMPLOYEES; CLERK OF COURT; SIMPLE NEGLECT OF DUTY; FAILURE TO COMPLY WITH THE ORDER TO TRANSMIT RECORDS TO THE APPELLATE COURT.— ***Atty. Villanueva is liable for simple neglect of duty*** Section 10, Rule 41 of the Rules of Court explicitly provides: Sec. 10. *Duty of clerk of court of the lower court upon perfection of appeal.* — Within thirty (30) days after perfection of all the appeals in accordance with the preceding section, it shall be the duty of the clerk of court of the lower court: x x x **(d) To transmit the records to the appellate court.** Here, as found by the OCA, Atty. Villanueva admitted in his Memorandum dated April 19, 2012 addressed to Judge Tria-Infante that he has no valid excuse for his failure to comply with the order directing him to immediately transmit to the CA the records of Criminal Case No. 05-236956. x x x Pursuant to Section 46D (1), Rule 10 of the Revised Rules on Administrative Cases in the Civil Service, simple neglect of duty is classified as a less grave offense. It is punishable by suspension of one (1) month and one (1) day to six (6) months for the first offense and dismissal from the service for the second offense.

2. ID.; ID.; ID.; NEGLECT OF DUTY; IMPOSITION OF ADMINISTRATIVE SANCTION NOT WARRANTED IN THE ABSENCE OF PROOF THEREOF.— "It is well-settled that in administrative proceedings, the burden of proof that respondent committed the acts complained of rests on the complainant." Here, Engr. Reci failed to show that Carreon committed neglect of duty in the performance of her duty x x x

Thus, absent any showing that the failure or delay in the transmittal of the case was attributed to her negligence, there is nothing in record which would warrant the imposition of an administrative sanction against her.

D E C I S I O N

***PER CURIAM*:**

This case stemmed from the Sworn Complaint[1] dated March 8, 2012 of complainant Engr. Darwin Azuela Reci (Engr. Reci), addressed to Court Administrator Midas Marquez, expressing his disappointment over the inaction of Judge Amelia Tria-Infante (Judge Tria-Infante) in the transmittal of the court records to the Court of Appeals (CA), relative to Criminal Case No. 05-236956, entitled *People of the Philippines v. PO2 Dennis Reci y Azuela, Feliciano Manansala y Pangilinan and John Doe alias "Mommy Angel"* for violation of Republic Act (R.A.) No. 9208[2] also known as the Anti-Trafficking in Persons Act of 2003 in relation to R.A. No. 9231.[3]

Facts of the Case

In Criminal Case No. 05-236956, Judge Tria-Infante rendered a Decision on September 17, 2009 wherein Engr. Reci's brother, PO2 Dennis Reci was convicted of the crime of Qualified

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[1] *Rollo,* p. 1.

[2] AN ACT TO INSTITUTE POLICIES TO ELIMINATE TRAFFICKING IN PERSONS ESPECIALLY WOMEN AND CHILDREN, ESTABLISHING THE NECESSARY INSTITUTIONAL MECHANISMS FOR THE PROTECTION AND SUPPORT OF TRAFFICKED PERSONS, PROVIDING PENALTIES FOR ITS VIOLATIONS, AND FOR OTHER. Approved on May 26, 2003.

[3] AN ACT PROVIDING FOR THE ELIMINATION OF THE WORST FORMS OF CHILD LABOR AND AFFORDING STRONGER PROTECTION FOR THE WORKING CHILD, AMENDING FOR THIS PURPOSE REPUBLIC ACT NO. 7610, AS AMENDED, OTHERWISE KNOWN AS THE "SPECIAL PROTECTION OF CHILDREN AGAINST CHILD ABUSE, EXPLOITATION AND DISCRIMINATION ACT." Approved on December 19, 2003.

Trafficking in Persons and was sentenced to a penalty of life imprisonment and a fine in the amount of ₱2,000,000.00.[4]

The decision was promptly appealed[5] on October 2, 2009 but Engr. Reci later discovered that after almost three years, no transmittal of the records of the case was made to the CA.[6]

Consequently, Engr. Reci filed an administrative complaint against Judge Tria-Infante for grave abuse of discretion and gross neglect of duty[7] docketed as A.M. No. RTJ-14-2397, entitled *"Engr. Darwin A. Reci v. Judge Amelia J. Tria-Infante, Regional Trial Court, Br. 9, Manila."*

In a Resolution[8] dated September 17, 2014, however, the Court declared that the delay is attributed to Clerk of Court Atty. Emmanuel P. Villanueva (Atty. Villanueva) and Court Stenographer Sonia S. Carreon (Carreon) (respondents), who were tasked to prepare the case records, collate the Transcript of Stenographic Notes, and transmit them to the CA.

Accordingly, the Court resolved to docket the complaint as a separate administrative matter against the respondents, and to submit their comments thereto within 10 days from receipt thereof.[9]

In her Comment,[10] Carreon averred that as court stenographer, it was not part of her duties and obligation to prepare records of cases for transmittal to another court.

Moreover, Carreon countered that Atty. Villanueva coerced her to execute her Memorandum[11] dated April 18, 2012 wherein she allegedly admitted the blame in the delay of the transmittal

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[4] *Rollo,* pp. 23-24.

[5] *Id*. at 4.

[6] *Id*. at 24.

[7] *Id*. at 25.

[8] *Id*. at 5.

[9] *Id*. at 6.

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

[11] *Id*. at 17-18.

of the records of the case. Considering that Atty. Villanueva was her immediate supervisor, she was forced to just comply with his order.[12]

In its 1st Tracer,[13] the Office of the Court Administrator (OCA) reiterated its order to Atty. Villanueva to file his comment and was given another five days to comply, counted from the day of receipt thereof. No return card, however, was received by the Court despite repeated re-sending of the Court's resolutions to him in the address indicated in his 201 file. Thus, the OCA proceeded with the evaluation of the case and was submitted to the Court.[14]

Recommendation of OCA

On July 26, 2017, the OCA issued its Memorandum[15] wherein it recommended the dismissal of Atty. Villanueva from the service for gross neglect of duty. Considering, however, that he already resigned from office on December 31, 2012, the OCA recommended the forfeiture of his separation benefits, except accrued leave credits, with prejudice to re-employment in the government or any of its agencies, including government-owned or controlled corporations.

Also, the OCA recommended that Carreon, who already resigned on February 14, 2014, be fined in the amount of ₱20,000.00, to be deducted from any benefits due her, for gross neglect of duty.

The OCA noted that as a result of the instant administrative case against herein respondents, they have not been issued clearances by the Court despite their resignation.

Issue

Mainly, the issue to be resolved in the instant case is whether or not the respondents are guilty of the offense charged.

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[12] *Id*. at 10.

[13] *Id*. at 20.

[14] *Id*. at 26-28.

[15] *Id*. at 23-28.

Ruling of the Court

The Court finds the recommendation of OCA against Atty. Villanueva proper under the circumstances. With regard to Carreon, however, the Court finds that the administrative complaint against her should be dismissed for lack of merit.

Atty. Villanueva is liable only for simple neglect of duty

Section 10, Rule 41 of the Rules of Court explicitly provides:

> Sec. 10. *Duty of clerk of court of the lower court upon perfection of appeal.* — Within thirty (30) days after perfection of all the appeals in accordance with the preceding section, it shall be the duty of the clerk of court of the lower court:
>
> (a) To verify the correctness of the original record or the record on appeal, as the case may be aid to make certification of its correctness;
>
> (b) To verify the completeness of the records that will be transmitted to the appellate court;
>
> (c) If found to be incomplete, to take such measures as may be required to complete the records, availing of the authority that he or the court may exercise for this purpose; and
>
> **(d) To transmit the records to the appellate court.** (Emphasis supplied)

Here, as found by the OCA, Atty. Villanueva admitted in his Memorandum dated April 19, 2012 addressed to Judge Tria-Infante that he has no valid excuse for his failure to comply with the order directing him to immediately transmit to the CA the records of Criminal Case No. 05-236956.[16]

Indeed, Atty. Villanueva cannot escape liability by imputing liability to Carreon. As clerk of court, he occupies a very sensitive position that calls for the exercise of competence and efficiency to affirm the confidence of the public in the administration of justice. He is responsible for the shortcomings of his

[16] *Id.* at 26.

subordinates and thus, he is still primarily liable for the negligence of his staff.[17]

The next question to be resolved is whether Atty. Villanueva's negligence, in failing to immediately transmit the records of Criminal Case No. 05-236956 to the CA, is gross in nature.

The Court rules in the negative.

In *Judge Fuentes v. Atty. Fabro, et al.*[18] the respondent clerk of court was found guilty only of simple neglect of duty for failure to elevate the records of the case for more than two years.

Pursuant to Section 46D (1), Rule 10 of the Revised Rules on Administrative Cases in the Civil Service, simple neglect of duty is classified as a less grave offense. It is punishable by suspension of one (1) month and one (1) day to six (6) months for the first offense and dismissal from the service for the second offense.

Based from the OCA's Memorandum, however, records from the Docket and Clearance Division, Legal Office, show that Atty. Villanueva was previously suspended for three months on September 21, 2010 on account of a judicial audit conducted at his station.[19] Thus, the imposition of dismissal from service is in order.

In view, however, of Atty. Villanueva's resignation from office on December 31, 2012, the penalty of dismissal can no longer be implemented. In lieu thereof, the penalty of forfeiture of whatever benefits still due him from the government, except for the accrued leave credits, if any, that he had earned, and his disqualification from further employment in any branch or instrumentality of the government including government-owned or controlled corporations.

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[17] *Obañana, Jr. v. Judge Ricafort,* 473 Phil. 207, 215 (2004).

[18] 709 Phil. 577 (2013).

[19] *Rollo,* p. 26.

Carreon is not liable for gross neglect of duty

In its Memorandum, the OCA explained Carreon's supposed liability in the following manner, to wit:

> It is hard to believe that one would tell a "lie" and admit culpability for somebody else even when his or her name, career and family are at stake. If respondent Carreon had nothing to do with the transmittal, why should she accept the blame? Why would she risk administrative sanction when she is supposedly innocent? Or perhaps, she was really partly responsible in the transmittal of the records. She could have presented her "original explanation" disowning her participation in the delayed transmittal. She has only herself to blame for assuming responsibility for the fiasco if she is indeed faultless. It appearing that the two (2) explanations are contradictory to each other, we cannot be absolutely certain which is more credible although we are inclined to believe her original explanation, x x x.[20]

The Court does not agree.

"It is well-settled that in administrative proceedings, the burden of proof that respondent committed the acts complained of rests on the complainant."[21] Here, Engr. Reci failed to show that Carreon committed neglect of duty in the performance of her duty that would have warranted the imposition of administrative sanction against her.

As sufficiently explained by Carreon, she was merely impelled to prepare her Memorandum dated April 18, 2012 wherein she allegedly took blame for the delay in the transmittal of the records of the case. According to her, the explanation she originally prepared denied any participation on her part and narrated the actual events that transpired. Due, however, to Atty. Villanueva's moral ascendancy as her immediate supervisor, she succumbed to the former's request to take the blame in order to help him from getting a possible administrative liability.

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[20] *Id.* at 27.

[21] *Re: Letter-Complaint of Atty. Cayetuna, et al. against Justice Elbinias, CA-Mindanao Station,* 654 Phil. 207, 222 (2011).

At any rate, the transmittal of the records of the case to the CA is not among the duties and responsibilities listed for court stenographers. Thus, absent any showing that the failure or delay in the transmittal of the case was attributed to her negligence, there is nothing in record which would warrant the imposition of an administrative sanction against her.

WHEREFORE, premises considered, the Court finds that:

1) Respondent Atty. Emmanuel P. Villanueva, former Branch Clerk of Court of the Regional Trial Court of Manila, Branch 9, is hereby **DISMISSED** from the service for simple neglect of duty; however, considering that the penalty of dismissal cannot be imposed on him as he has already resigned from the service, his separation benefits, except accrued leave credits, that he may be entitled to, be **FORFEITED,** and with prejudice to re-employment in the government or any of its agencies, including government-owned or controlled corporations; and

2) The administrative complaint against respondent Sonia S. Carreon is hereby **DISMISSED** for lack of merit.

Let copies of this Decision be furnish all courts, the Office of the Bar Confidant, and the Integrated Bar of the Philippines for their information and guidance. The Office of the Bar Confidant is directed to append a copy of this Decision to respondent's record as member of the Bar.

SO ORDERED.

Carpio,[*] *Leonardo-de Castro, Peralta, Bersamin, del Castillo, Perlas-Bernabe, Leonen, Jardeleza, Caguioa, Martires, Tijam,* and *Gesmundo, JJ.,* concur.

Velasco, Jr. and *Reyes, Jr., JJ.,* on official leave.

Sereno, C.J., on leave.

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[*] Designated Acting Chief Justice per Special Order No. 2519 dated November 21, 2017.

EN BANC

[G.R. No. 156208. November 21, 2017]

NPC DRIVERS AND MECHANICS ASSOCIATION (NPC DAMA), represented by its President ROGER S. SAN JUAN, SR., NPC EMPLOYEES & WORKERS UNION (NEWU)-NORTHERN LUZON, REGIONAL CENTER, represented by its Regional President JIMMY D. SALMAN, in their own individual capacities and in behalf of the members of the associations and all affected officers and employees of National Power Corporation (NPC), ZOL D. MEDINA, NARCISO M. MAGANTE, VICENTE B. CIRIO, JR., NECITAS B. CAMAMA, in their individual capacities as employees of National Power Corporation, *petitioners, vs.* **THE NATIONAL POWER CORPORATION (NPC), NATIONAL POWER BOARD OF DIRECTORS (NPB), JOSE ISIDRO N. CAMACHO as Chairman of the National Power Board of Directors (NPB), ROLANDO S. QUILALA, as President-Officer-in-Charge/CEO of National Power Corporation and Member of National Power Board, and VINCENT S. PEREZ, JR., EMILIA T. BONCODIN, MARIUS P. CORPUS, RUBEN S. REINOSO, JR., GREGORY L. DOMINGO and NIEVES L. OSORIO,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; APPEALS; FINALITY OF JUDGMENT; A JUDGMENT THAT HAS LAPSED INTO FINALITY IS IMMUTABLE AND UNALTERABLE; RATIONALE.—** The basic rule is that a judgment that has lapsed into finality is immutable and unalterable. Thus, the matters that have already been resolved in the Main Decision and Resolution dated September 17, 2008 should no longer be disturbed. The respondents' persistence to overturn an unfavorable but final judgment is exactly what the rule on immutability of judgments seeks to address. A losing party cannot endlessly evade an obligation by filing appeal after appeal. Nor can a winning party

continuously demand for more than what has been adjudged in his favor by asking the court to repeatedly reconsider his/her claims. There must be an end to litigation. Controversies cannot drag on indefinitely because fundamental considerations of public policy and sound practice demand that the rights and obligations of every litigant must not hang in suspense for an indefinite period of time. The NPC and OSG's mistaken belief that they could repeatedly raise the same defenses in the hopes of securing a judgment in their favor has even led the Court to find them guilty of indirect contempt after they refused to comply with Our Resolution dated December 8, 2008.

2. LABOR AND SOCIAL LEGISLATION; ELECTRIC POWER INDUSTRY REFORM ACT (EPIRA); EPIRA MANDATED THE NPC'S (NATIONAL POWER CORPORATION) PRIVATIZATION; THE NPC, AS EMPLOYER, IS LIABLE FOR THE ILLEGAL DISMISSAL OF ITS SUBJECT EMPLOYEES AND, IN EFFECT, THE PAYMENT OF THEIR ENTITLEMENT; EXCEPTIONS; APPLICATION IN CASE AT BAR.— The settled rule is that an employer who terminates the employment of its employees without lawful cause or due process of law is liable for illegal dismissal. When the EPIRA mandated the NPC's privatization, it directed the sale, disposition, change and transfer of ownership and control of NPC's assets and IPP contracts for the purpose of pooling funds to liquidate NPC's liabilities. This transaction is akin to an asset sale-type corporate acquisition in the law of mergers and acquisitions where one entity.—the seller—sells all or substantially all of its assets to another—the buyer. In *SME Bank, Inc. v. De Guzman*, we held that the rule in asset sales is that the employees may be separated from their employment, but the seller is liable for the payment of separation pay; on the other hand, the buyer in good faith is not required to retain the affected employees in its service, nor is it liable for the payment of their claims. This is consistent with Our ruling in *Sundowner Development Corporation v. Drilon*, that unless expressly assumed, labor contracts such as employment contracts and collective bargaining agreements are not enforceable against a buyer of an enterprise, labor contracts being *in personam*, thus binding only between the seller-employer and its employees. Following these rules, the NPC, as employer, is liable for the illegal dismissal and, in effect, the payment of the petitioners' entitlement. x x x There are however

recognized exceptions to the general rule, where the employer's liability for the separation of its employees is nonetheless devolved upon the transferee of the employer's assets. x x x ***1. The transferee acknowledges the contractual obligation to be liable for separation pay*** x x x ***2. The transferee assumes the obligation through a transfer document*** x x x We reiterate Our finding in Our Resolution dated June 30, 2014 that, upon the NPC's privatization, PSALM **assumed** all of its liabilities, **including the separation benefits due to the petitioners**. That PSALM assumed the NPC's liability to pay these separation benefits is clear based on the following reasons: (1) The liability was already **existing** at the time of the EPIRA's effectivity and was transferred from NPC to PSALM by virtue of Section 49 of the law; (2) It is a "**Transferred Obligation**" as defined under the Deed of Transfer; and (3) Under the EPIRA, PSALM is **duty-bound** to settle the subject liability.

3. POLITICAL LAW; CONSTITUTIONAL COMMISSIONS; COMMISSION ON AUDIT (COA); EXCLUSIVE JURISDICTION OF COA TO SETTLE ALL DEBTS AND CLAIMS OF ANY SORT DUE FROM OR OWING TO THE GOVERNMENT OR ANY OF ITS SUBDIVISIONS, AGENCIES, AND INSTRUMENTALITIES; THE PROPER PROCEDURE TO ENFORCE A JUDGMENT AWARD AGAINST THE GOVERNMENT IS TO FILE A SEPARATE ACTION BEFORE THE COA FOR ITS SATISFACTION; CASE AT BAR.— We have consistently ruled that the back payment of any compensation to public officers and employees cannot be done through a writ of execution. The COA has exclusive jurisdiction to settle "all debts and claims of any sort due from or owing to the Government or any of its subdivisions, agencies, and instrumentalities." **The proper procedure to enforce a judgment award against the government is to file a separate action before the COA for its satisfaction.** x x x The NPC List and Computation is by no means final and binding either on the Court or the COA, regardless of the petitioners' acceptance and admission of the same. It is still subject to the COA's validation and audit procedures. To enforce the satisfaction of the judgment award, the amount of which has been *provisionally* computed in the NPC List and Computation, the petitioners must now go before the COA and file a separate money claim against the NPC and PSALM.

Whether the claim shall be allowed or disallowed is for the COA to decide, subject only to the remedy of appeal by petition for *certiorari* to this Court. **In other words, while the Court has determined that PSALM, a government owned and controlled corporation, is liable to the petitioners, it is for the COA to ascertain the exact amount of its liability in accordance with its audit rules and procedures**, after a separate money claim for the satisfaction of the judgment award is properly filed.

4. ID.; REPUBLIC ACT NO. 6656 (AN ACT TO PROTECT THE SECURITY OF TENURE OF CIVIL SERVICE OFFICERS AND EMPLOYEES IN THE IMPLEMENTATION OF GOVERNMENT REORGANIZATION, JUNE 10, 1988); REINSTATEMENT AND BACKWAGES FOR ILLEGALLY DISMISSED CIVIL SERVICE EMPLOYEES; THE AWARD OF SEPARATION PAY IN ILLEGAL DISMISSAL CASES IS AN ACCEPTED DEVIATION FROM THE GENERAL RULE OF ORDERING REINSTATEMENT BECAUSE THE LAW CANNOT EXACT COMPLIANCE WITH WHAT IS IMPOSSIBLE; CASE AT BAR.— The established rule is that an illegally dismissed civil service employee shall be entitled to *reinstatement* plus *backwages*. This rule is echoed in Section 9 of Republic Act No. 6656, which relates specifically to illegal dismissals due to a government agency restructuring plan found to be invalid. However, when an entirely new set-up takes the place of the entity's previous corporate structure, the abolition of positions and offices cannot be avoided, thus, making reinstatement impossible. In which case, *separation pay* shall be awarded in *lieu of reinstatement*. The award of separation pay in illegal dismissal cases is an accepted deviation from the general rule of ordering reinstatement because the law cannot exact compliance with what is impossible. Under the law, the separation pay in lieu of reinstatement due to each petitioner shall be *either* the: (1) Separation pay under the EPIRA and the NPC restructuring plan; or (2) Separation gratuity under Republic Act No. 6656, depending on their *qualifications*.

5. ID.; ID.; ID.; FOR THE PURPOSE OF COMPUTING SEPARATION PAY IN LIEU OF REINSTATEMENT, THE LENGTH OF SERVICE SHALL BE COMPUTED UNTIL THE TIME REINSTATEMENT WAS RENDERED

IMPOSSIBLE; CASE AT BAR.— Both the *separation pay* under the NPC restructuring plan and *separation gratuity* under Republic Act No. 6656 entitle the employee to benefits based on the **number of years of service** rendered. While there is no question that length of service shall be counted from the first year of employment of each petitioner, We now clarify when this period must end. Again, *separation pay* is awarded in this case because the petitioners could no longer be reinstated due to the abolition of their former positions and overall restructuring of the NPC. Thus, for purposes of computing separation pay in lieu of reinstatement, the length of service shall be computed **until the time reinstatement was rendered impossible**. In the present case, the petitioners' reinstatement became impossible when their illegal dismissal was subsequently validated by the issuance of NPB Resolution No. 2007-55 on September 14, 2007, as correctly pointed out by PSALM. Thus, for purposes of computing the petitioners' separation pay, their years of service shall be counted *from* their first year of employment *until* September 14, 2007, *unless* in the meanwhile, they would have reached the compulsory retirement age of sixty-five years.

6. ID.; ID.; ID.; ILLEGALLY DISMISSED GOVERNMENT EMPLOYEE IS ENTITLED TO BACK WAGES FROM THE TIME OF HIS ILLEGAL DISMISSAL UNTIL HIS REINSTATEMENT OR UNTIL THE TIME REINSTATEMENT WAS RENDERED IMPOSSIBLE; CASE AT BAR.— We have consistently ruled that an illegally dismissed government employee is entitled to back wages from the time of his illegal dismissal until his reinstatement because he is considered as not having left his office. Following *Galang v. Land Bank of the Philippines*, back wages shall be computed based on the **most recent salary rate upon termination**. The rationale in awarding back wages is to recompense the illegally dismissed employee for the entire period of time that he/she was wrongfully prevented from performing the duties of his/her position and from enjoying its benefits because, in the eyes of the law, he/she never truly left office. Thus, as a rule, it is reckoned from the time of illegal termination. x x x As a rule, back wages shall be computed until actual reinstatement. However, since reinstatement is no longer possible in this case, it must be computed from the petitioners' effective dates of termination *until* **September 14, 2007** or the petitioners' **date**

of retirement, in case petitioners retired *after* the effective date of termination but before September 14, 2007. To be clear, the computation of *separation pay* is based on the length of the employee's service; and the computation of *back wages* is based on the actual period when the employee was unlawfully prevented from working. While these two awards are reckoned from different dates, both are computed in the present case until September 14, 2007 or the date of retirement, whichever is earlier. The period of overlap is proper because the period where back wages are awarded must be included in the computation of separation pay.

APPEARANCES OF COUNSEL

V.V. Orocio Law Offices, Cornelio P. Aldon Law Office, and *Yulo & Belo Law Office* for petitioners.

Lloyd Ismael O. Del Socorro for petitioners Joel B. Barsales, *et al.*

The Solicitor General for National Power Corporation.

Office of the Government Corporate Counsel for PSALM.

Maria Florinia B. Binalay-Estilo for PGEA-NPC.

Angara Abello Concepcion Regala & Cruz for Garnishee Manila Electric Co.

R E S O L U T I O N

LEONARDO-DE CASTRO, *J.*:

For resolution are the following motions filed subsequent to the entry in the Book of Entries of the Judgment of the Court's decision in the above-entitled case: (a) the National Power Corporation (NPC)'s Manifestation and Motion dated August 22, 2014; (b) Power Sector Assets and Liabilities Management Corporation (PSALM)'s Omnibus Motion dated August 22, 2015; (c) the petitioners' Motion to Expunge dated September 1, 2014; and (d) Meralco's Special Appearance with Urgent Motion for Clarification dated September 4, 2014.

Antecedent Facts

The Electric Power Industry Reform Act (EPIRA)[1] was enacted to ordain reforms in the electric power industry, including the privatization of the assets and liabilities of the NPC. Pursuant to this objective, the said law created the **National Power Board (NPB)** consisting of **nine (9) heads of agencies** as members, to wit: (a) Secretary of Finance, (b) Secretary of Energy, (c) Secretary of Budget and Management, (d) Secretary of Agriculture, (e) Director-General of the National Economic and Development Authority, (f) Secretary of Environment and Natural Resources, (g) Secretary of the Interior and Local Government, (h) Secretary of the Department of Trade and Industry, and (i) President of the NPC.[2]

In line with NPC's privatization, the EPIRA also called for the NPC's restructuring. In this regard, **the NPB passed NPB Resolution Nos. 2002-124 and 2002-125** directing the termination from service of all NPC employees effective January 31, 2003. The restructuring plan covered even "Early-leavers" or those who: (a) did not intend to be rehired by NPC based on the new organizational structure, *or* (b) were no longer employed by NPC after June 26, 2001, the date of the EPIRA's effectivity, for any reason other than voluntary resignation.[3]

The Main Decision

In Our **Decision**[4] **dated September 26, 2006**, we ruled that the above-mentioned resolutions were void and without effect. These were not passed by a **majority** of NPB's members, as only three out of nine members voted. The other four signatories to the resolutions were not members of the Board. They were merely representatives of those actually named under the EPIRA to sit as members of the NPB. Thus, their votes did not count.

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[1] Republic Act No. 9136, June 8, 2001.

[2] EPIRA, Section 48.

[3] Annex B, NPB Resolution No. 2002-124; *rollo* (Vol. I), pp. 129-144.

[4] *NPC Drivers and Mechanics Association (DAMA) v. National Power Corporation*, 534 Phil. 233 (2006).

Clarifiying the Main Decision

Subsequently, We clarified the effect of Our Decision in our **Resolution dated September 17, 2008** to wit:

1. The Court's Decision does not preclude the NPB from passing another resolution, in accord with law and jurisprudence, approving a new separation program from its employees.
2. The **termination** of the petitioners' employment on January 31, 2003 was **illegal**.
3. Due to the illegal dismissal, as a general rule, the petitioners are entitled to reinstatement. However, **reinstatement has become impossible** because NPC was still able to proceed with its reorganization prior to the promulgation of the Decision dated September 26, 2006.
4. Thus, the petitioners are **entitled** to the following:
    a. **Separation pay in lieu of reinstatement**, based on a validly approved separation program of the NPC; and
    b. **Back wages** together with **wage adjustments and all other benefits** which they would have received had it not been for the illegal dismissal, **computed from January 31, 2003 until actual reinstatement or payment of separation pay**.
5. However, any amount of separation benefits **already received** by the petitioners under NPB Resolution Nos. 2002-124 and 2002-125 shall be **deducted** from their total entitlement.

We also approved a **10% charging lien** in favor of the petitioners' counsels, Attys. Aldon and Orocio, in accordance with the Labor Code which limits attorney's fees in illegal dismissal cases (in the private sector) to 10% of the recovered amount.

Finally, We **deferred the computation** of the actual amounts due the petitioners and the enforcement of payment thereof by execution to the proper forum, as this Court is not a trier of facts. We held that this Court is not equipped to receive evidence and determine the truth of the factual allegations of the parties on this matter.

NPB Ratifies NPB Resolution Nos. 2002-124 and 2002-125

In the meantime, on September 14, 2007, the NPB issued Resolution No. 2007-55, which adopted, confirmed, and approved the principles and guidelines enunciated in NPB Resolution Nos. 2002-124 and 2002-125.

Entry of Judgment

Our Decision dated September 26, 2006 became **final and executory** on October 10, 2008. The **entry of judgment** thereof was made on October 27, 2008. Thus, in Our **Resolution dated December 10, 2008**, we granted the petitioners' motion for execution. We directed the Chairman and Members of the NPB and the President of NPC (NPB/NPC) to prepare a **verified list** of the names of all NPC employees terminated/separated as a result of NPB Resolution Nos. 2002-124 and 2002-125, and the amounts due to each of them, *including 12% legal interest*. We also directed the Office of the Clerk of Court and *ex-officio* Sheriff of the Regional Trial Court (RTC) of Quezon City to: a) issue a **writ of execution** based on the list submitted by the NPC, and b) undertake all necessary actions to execute the herein decision and resolution.

The petitioners sought to cite the NPB/NPC for contempt for its alleged failure to comply with the Court's directive. They also insisted for the garnishment and/or levy of NPC's assets, **including those of PSALM**, for the satisfaction of the judgment.

The NPC countered that there were actually only **16 NPC personnel terminated on January 31, 2003**. Also, the issuance of NPB Resolution No. 2007-55 cured the infirm NPB Resolution Nos. 2002-124 and 2002-125. Thus, the termination on January 31, 2003 was valid and legal.

Extent of Illegal Dismissal and PSALM's Liability

In our **Resolution dated December 2, 2009**, We held that Our previous rulings contemplated the illegal dismissal of **all NPC employees** pursuant to NPB Resolution Nos. 2002-124 and 2002-125, not just 16. Based on NPC Circular No. 2003-09, the terminations were implemented in four (4) tranches, *viz.*:

(a) **Top executives** — effective January 31, 2003; (b) **Early-leavers** — effective January 15, 2003; (c) **Those no longer employed in the NPC after June 26, 2001** — effective on the date of actual separation; and (d) **All other personnel** — effective February 28, 2003.

We ruled further that the issuance of NPB Resolution No. 2007-55 on September 14, 2007 only means that the services of all NPC employees have been **legally** terminated on this date. Thus, the petitioners' entitlement (*i.e.*, separation pay in lieu of reinstatement plus back wages less benefits already received) **shall be reckoned from the above-mentioned dates (instead of just January 31, 2003) up to September 14, 2007.**

Lastly, We held that PSALM's assets may be subject of the execution of this case. We explained that under the EPIRA, PSALM shall assume all of NPC's existing generation assets, liabilities, IPP contracts, real estate, and other disposable assets. **It would be unfair and unjust if PSALM gets nearly all of NPC's assets but will not pay for liabilities incurred by NPC during the privatization stage**. Further, there was a **transfer of interest** over these assets by operation of law. **These properties may be used to satisfy the judgment**.[5]

Our Jurisdiction, Legal Interest, and NPB Resolution No. 2007-55's Non-Retroactivity

In our **Resolution dated June 30, 2014**, we emphasized that by virtue of **Section 78 of the EPIRA**, **We have jurisdiction** to rule on the issue of the illegal termination of NPC employees. Also, since Our Decision dated September 26, 2006 and Resolution dated September 17, 2008 have already become final and executory, NPC is barred by the principles of **estoppel** and **finality of judgments** from raising arguments aimed at modifying Our final rulings.

Further, we held that Our Resolution dated September 17, 2008 did not grant additional reliefs. It merely **clarified** the Decision dated September 26, 2006.

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[5] See Section 19, Rule 3, Rules of Court.

On the other hand, we also ruled that Our Resolution dated December 10, 2008 did not exceed the terms of the Resolution dated September 17, 2008 (inasmuch as it also awarded **interest**). Legal interest on the judgment debt shall be computed as follows:

1. **12%** from October 10, 2008 (finality of the Decision dated September 26, 2006) until June 30, 2013; and
2. **6%** from July 1, 2013 (effectivity of Central Bank Circular No. 799) onwards.

As for NPB Resolution No. 2007-55, We pointed out that it did not affect our final rulings as the said resolution shall be applied **prospectively** (September 14, 2007 onwards).

We continued to explain PSALM's liability in this case. Pursuant to Sections 47, 49, 50, and 55 of the EPIRA, **PSALM assumed NPC's liabilities** existing at the time of the EPIRA's effectivity, **including the separation benefits due to the petitioners**.

Finally, We found the NPC and Office of the Solicitor General (OSG) guilty of **indirect contempt** due to their noncompliance with our final orders. The parties were ordered to pay a fine of ₱30,000.00 each.

Implementation and Execution of the Court's Main Decision and Resolutions

Pursuant to Our Resolution dated June 30, 2014, the RTC Clerk of Court and *Ex-Officio* Sheriff issued a Demand for Immediate Payment dated July 28, 2014 and served the same upon the NPC and PSALM. The demand amounted to ₱62,051,646,567.13 broken down as follows:

Judgment amount,[6] inclusive of 10% charging lien	₱60,244,316,841.88
Lawful fees and costs of execution	1,807,329,725.25
Total amount demanded	₱62,051,646,567.13

[6] According to the Demand for Immediate Payment, "[t]he adjusted and revised amounts include the additional/accrued interests of 12%/6% per annum

A few days later, in a letter dated July 31, 2014, the RTC Clerk of Court and *Ex-Officio* Sheriff asked the Court to clarify the effects of our Resolution dated June 30, 2014, specifically whether the judgment may already be executed. In response, some of the petitioners, as represented by Attys. Aldon and Orocio, also wrote a letter dated August 5, 2014 to request the Court to immediately act on this matter.

Before the Court could act on the above-mentioned correspondences, the RTC Clerk of Court and *ex-officio* Sheriff issued Notices of Garnishment addressed to the Manila Electric Company (Meralco), and National Transmission Commission (Transco)[7] with respect to all credits in or under their possession or control owing or payable to NPC and/or PSALM, including but not limited to bank deposits and financial interests, goods, effects, stocks, interest in stock and shares, and any other personal properties. Another Notice of Garnishment was also served upon Land Bank of the Philippines (Landbank) in relation to NPC and PSALM's bank accounts.[8]

In separate letters, PSALM, through its president and chief executive officer Emmanuel R. Ledesma, Jr., advised Meralco and Transco to "exercise restraint and refrain from improvidently releasing funds" owing to PSALM to satisfy the Notices of Garnishment served upon them.

NPC Employees List Requirement and Suspension of Execution

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pursuant to the said June 30, 2014 resolution (pages 31 and 51) for the period from February 1, 2009 to June 30, 2014 (65 months) and the amounts for the Early Leavers who were inadvertently omitted in the list as provided for in NPC Circular Nos. 2003-09 and 2003-11 (page 19)." (*Rollo* [Vol. VI], p. 2970.)

[7] This Court was given a copy of a letter from Pedro L. Borja, Sheriff IV of the RTC Office of the Clerk of Court and *Ex-Officio* Sheriff addressed to Transco. The letter referred to a similar Notice of Garnishment served upon Transco.

[8] As an annex to its Compliance (Consolidated Comment) dated September 30, 2014, the PSALM submitted a copy of a letter from Atty. Rosemarie M. Osoteo, Vice-President for Litigation of Landbank. The letter also referred to a similar Notice of Garnishment served upon Landbank.

In Our **Resolution dated September 9, 2014**, the Court directed the parties to submit their **separate lists of NPC employees** as of January 31, 2002, showing the following data:

i. The full name;

ii. Date of hire;

iii. Last date of uninterrupted service after date of hire;

iv. Position and salary as of last date of service; and

v. If termination or separation pay has been received at any time from NPC, the amount of termination or separation pay received and date of receipt.

Further, We directed the RTC Clerk of Court and *Ex-Officio* Sheriff: (a) to **defer** the implementation of the Main Decision and the Resolutions dated September 17, 2008, December 2, 2009, and June 30, 2014 while We consider the submissions now before Us and until further notice; and (b) **lift** the Notice of Garnishment dated August 14, 2014.

Subsequently, in Our **Resolution dated October 20, 2014**, we **modified** the terms of Our Resolution dated September 9, 2014 and required a more detailed list as follows:

a. Employee's full name;

b. Date of hire;

c. Position as of date of hire;

d. Date of actual termination under NPB Resolution Nos. 2002-124 and 2002-125;

e. Position as of date of actual termination under NPB Resolution Nos. 2002-124 and 2002-125;

f. Salary as of last date of actual termination;

g. Separation pay that the employee *is entitled to* under the approved separation pay program;

h. Date of receipt of separation pay;

i. Amount of separation pay received;

j. Wage adjustments and other benefits that the employee *is entitled to* from the date of actual termination until September 14, 2007;

k. Wage adjustments and other benefits that the employee *has received* from the date of actual termination until September 14, 2007;

l. Date of re-hire by the NPC, the PSALM, or the TRANSCO, if any;

m. Position as of date of re-hire by the NPC, the PSALM, or the TRANSCO, if any;

n. Salary as of date of re-hire by the NPC, the PSALM, or the TRANSCO, if any;

o. Subsequent position/s in the NPC, the PSALM, or the TRANSCO as a result of personnel actions after the date of re-hire;

p. Date of release of appointment papers in the subsequent position/s;

q. Salary in the subsequent position/s;

r. Date of actual termination in the NPC, the PSALM, or the TRANSCO, if any;

s. Separation pay that the employee *is entitled to* under the approved separation pay program;

t. Amount of separation pay received;

u. Date of receipt of separation pay.[9]

The NPC and PSALM submitted their compliance to our Resolution dated October 20, 2014.

The **NPC submitted a list of 9,272 employees**, including details required by our Resolution dated October 20, 2014, through their Compliance *Ad Cautelam* dated March 16, 2015. However, it made the following reservations:

1. Its submission should not prejudice the reliefs prayed for in NPC's Manifestation and Motion dated August 22, 2014.

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[9] *Rollo* (Vol. IX), pp. 4152-4156.

2. The figures in the submission are necessarily indeterminate because they are subject to the final outcome of disallowance proceedings under the Commission on Audit and a pending case before the RTC (Case No. R-QZN-15-01290 CV) based on their lack of appropriation cover.

On the other hand, PSALM's submission was partially based on the information it received from NPC, the custodian of personnel records, which considered **47 former NPC employees**. PSALM points out that it is unable to provide complete information.

It argues that assuming that it is liable, the affected NPC employees have already been paid separation benefits pursuant to Rule 33 of the EPIRA Implementing Rules.

Motions Pending Resolution

The motions that remain pending before Us (after the Resolution dated June 30, 2014) are as follows: (a) the NPC's Manifestation and Motion dated August 22, 2014; (b) PSALM's Omnibus Motion dated August 22, 2015; (c) the petitioners' Motion to Expunge dated September 1, 2014; and (d) Meralco's Special Appearance with Urgent Motion for Clarification dated September 4, 2014.

The NPC's Manifestation and Motion dated August 22, 2014

The NPC argues as follows:

1. The subject matter of the case has a **huge financial impact**, which must be decided *en banc*.

PSALM echoes this view.[10] It further claims that two divisions of the Court have given conflicting decisions—while one has ruled that PSALM is an indispensable party, the other considered them as a necessary party. Thus, in PSALM's view, to remedy the **seeming conflict** between the two rulings, the present case must be referred to the Court *en banc*.

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[10] Supplement to the Compliance dated November 5, 2014 (*Rollo* [Vol. VIII], pp. 3660-3684.)

In Our Resolution dated September 9, 2014, we deferred the resolution of this matter pending full consideration of other remaining motions submitted by the parties.

2. The Supreme Court has no jurisdiction over illegal dismissal cases of NPC employees. Jurisdiction is vested with the Civil Service Commission (CSC).

3. Department secretaries may vote through representatives.

4. In the absence of an actual computation of the amounts due to the petitioners, the RTC Clerk of Court and *Ex-Officio* sheriff of Quezon City cannot garnish NPC's properties. The Court's delegation of authority must first be raffled to an RTC judge for proper determination pursuant to the Court's Resolution dated June 30, 2014.

PSALM's Omnibus Motion dated August 22, 2015[11]

PSALM maintains that it should be absolved from any liability in this case due to the following reasons:

1. PSALM shall only be liable for obligations/liabilities that were exclusively listed under the EPIRA, to wit: (1) NPC liabilities transferred to PSALM, (2) transfers from the national government, (3) new loans, and (4) NPC stranded contract costs.[12] Thus, despite the privatization of NPC's assets, NPC remained as separate and distinct from PSALM. It is capable of fulfilling its own obligations that were not assumed by PSALM.

2. The obligation to pay separation benefits was not among the liabilities assumed by PSALM because it arose only after the EPIRA took effect.[13]

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[11] Including arguments raised in its Compliance dated September 30, 2014 (*Rollo* [Vol. VII], pp. 3441-3460) and the Supplement to the Compliance dated November 5, 2014 (*id.*).

[12] *Rollo* (Vol. VI), p. 3003.

[13] *Id.* at 3004.

a. Under Section 49 of the EPIRA, PSALM shall be liable only for NPC's selected **outstanding obligations**. The obligation to pay separation benefits in the present case was not an outstanding obligation assumed by PSALM because, at the time of the EPIRA's passage, the obligation did not yet exist nor did it arise from any loan, bond issuance, security and other instrument or indebtedness.[14]

b. The obligation to pay the separation benefits in the present case only arose after the EPIRA took effect. Only NPC liabilities existing during the effectivity of the EPIRA were transferred to PSALM. Such transfer could not have included even NPC liabilities incurred after the EPIRA took effect.

3. NPC remains to be solely liable for the payment of separation benefits in this case.

a. Separation benefits as a result of the privatization of NPC are governed by Section 63 of the EPIRA and Rule 33 of its Implementing Rules.

b. Under Section 4, Rule 33 of the Implementing Rules, **funds necessary to cover the payment of separation pay shall be provided by either the GSIS or from the corporate funds of the NEA or the NPC, as the case may be. The Buyer or Concessionaire or the successor company shall not be liable for the payment thereof.**

c. There is no basis to hold PSALM liable. The IRR clearly mandates that the payment of separation pay in favor of displaced NPC employees shall be out of NPC's own corporate funds.

4. If PSALM is at all liable, its liability is limited to the separation pay of NPC employees terminated pursuant to a valid separation plan. PSALM cannot be held liable for

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[14] *Id.* at 3005.

separation pay arising from a separation/restructuring plan that was tainted with irregularities and bad faith. If the law had intended PSALM to assume even the obligation to pay separation pay, the same would have been clear and categorical.[15]

However, in PSALM's Supplement to the Compliance dated October 27, 2014,[16] it argues that the separation program was effected through valid board actions. The laws applicable to government corporations like NPC recognize the validity of designating alternates to sit as members of the governing boards.

Further, based on the Congressional deliberations leading to the EPIRA's enactment, the legislature intended to limit NPC liabilities to be transferred and assumed by PSALM only to NPC debts arising from **direct contractual obligations with banking and multilateral financial institutions**.[17]

5. Its right to due process was violated when it was declared as a mere necessary party to the case.

6. In keeping with PSALM's right to due process, the Notices of Garnishment issued to it by the Regional Trial Court, Quezon City, Clerk of Court should be quashed for being fatally defective.

7. Prior approval by the Commission on Audit (COA) must first be obtained before any money judgment can be enforced against PSALM.

On the other hand, the petitioners counter that while government funds are generally not subject to execution, this rule admits of exceptions.[18] Relying on *National Housing Authority v. Heirs of Isidro Guivelondo*,[19] they argue that funds

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[15] *Id.* at 3009.

[16] *Id.* (Vol. VIII), p. 3670.

[17] *Id.* at 3673.

[18] In their Omnibus Comment dated September 26, 2014; *rollo* (Vol. VII), pp. 3392-3400.

[19] 452 Phil. 481 (2003).

belonging to a public corporation or a government-owned or controlled corporation like PSALM, which is clothed with its own personality, separate, and distinct from that of the government are not exempt from garnishment.[20]

Petitioners' Motion to Expunge dated September 1, 2014

The petitioners argue that the NPC's Manifestation and Motion dated August 22, 2014 and PSALM's Omnibus Motion dated August 22, 2015 violate the prohibition against the filing of a second motion for reconsideration. In their view, the arguments raised in these motions are mere rehashes of issues already resolved and disposed of by the Court. Thus, the petitioners request that these motions be denied and excluded from the records of the case altogether.

Meralco's Special Appearance with Urgent Motion for Clarification dated September 4, 2014

Meralco filed its Special Appearance before the Court in view of: (a) the Notice of Garnishment dated August 14, 2014 served by the RTC Clerk of Court and *Ex-Officio* Sheriff garnishing *all* credits owing to PSALM but in and under Meralco's possession and control; and (b) PSALM's letter of even date cautioning Meralco to exercise restraint and refrain from releasing funds due to PSALM but still in its (Meralco) possession.

Meralco manifests to the Court the following:

1. In response to the Notice of Garnishment, it filed a Compliance and Manifestation dated August 19, 2014. Meralco informed the RTC Clerk of Court and *Ex-Officio* Sheriff that it is ready and willing to comply with the RTC's directives and processes. However, there are serious repercussions that may arise due to the garnishment of PSALM's credits (*i.e.*, suspension and/or nonpayment/-

[20] *Rollo* (Vol. VII), p. 3397.

fulfillment of reciprocal obligations between PSALM and Meralco, possible breach of contract on Meralco's part, *etc*.). Thus, the parties must first clarify these matters with and seek guidance from the Court.

2. Meralco also asserts that its regular remittances to PSALM may be any one of three types, to wit: (a) *universal charges* for: 1) NPC's stranded contract costs, 2) missionary electrification, and 3) environmental charges; (b) *line rental costs* for energy purchases of Sunpower Philippines Manufacturing Limited (Sunpower); and (c) *deferred accounting adjustments — generation rate adjustment mechanism* (DAA-GRAM).

It discusses each type of remittance as follows:

a. *Universal charges* are collected by Meralco and remitted to PSALM by virtue of several Energy Regulatory Commission (ERC) rulings.[21] In accordance with the EPIRA, upon remittance, PSALM will then place the amounts received in a Special Trust Fund (STF), which shall be disbursed for purposes specified in Section 34 of the EPIRA[22] and in favor of identified beneficiaries.

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[21] ERC Case No. 2011-091 RC dated January 28, 2013; ERC Case No. 2012-085 RC dated August 12, 2013; ERC Case No. 2012-046 RC dated October 10, 2013; ERC Case No. 2009-016 RC dated July 8, 2013.

[22] SECTION 34. Universal Charge. — Within one (1) year from the effectivity of this Act, a universal charge to be determined, fixed and approved by the ERC, shall be imposed on all electricity end-users for the following purposes: (a) Payment for the stranded debts in excess of the amount assumed by the National Government and stranded contract costs of NPC and as well as qualified stranded contract costs of distribution utilities resulting from the restructuring of the industry; (b) Missionary electrification; (c) The equalization of the taxes and royalties applied to indigenous or renewable sources of energy *vis-à-vis* imported energy fuels; (d) An environmental charge equivalent to one-fourth of one centavo per kilowatt-hour (₱0.0025/kWh), which shall accrue to an environmental fund to be used solely for watershed rehabilitation and management. Said fund shall be managed by NPC under existing arrangements; and (e) A charge to account for all forms of cross-subsidies for a period not exceeding three (3) years.

Meralco claims that the judgment obligation in the present case has not been included in the previous filings of the NPC/PSALM for the recovery of any component of universal charge.

b. *Line rental cost* is an amount billed by the Philippine Electricity Market Corporation (PMC) to buyers of electricity covered by bilateral contracts to account for the cost of energy lost in the process of delivering contracted energy volumes from a generator's plant to the buyers. Sunpower is one of the said buyers of electricity. There is a special arrangement with regard to the line rental cost attributable to Sunpower where, instead of billing Sunpower directly, PMC bills PSALM, which in turn bills Meralco. Meralco then has the duty to collect the amount from Sunpower. Upon collection, Meralco shall remit the amount to PSALM, which will ultimately be remitted to PMC. Thus, while the amounts of line rental cost will be initially remitted to PSALM, the latter does not own the same nor will it accrue in its favor.

c. *DAA-GRAM* is a means approved by the ERC allowing the NPC to recover the difference between the allowable fuel and purchased power costs and the amounts recovered under the basic generation charge for the period from January 2007 to April 2010. Meralco shall collect the DAA-GRAM from the end users and remit the same in favor of the NPC. Stated differently, it is a pass-through charge.

Meralco points out that since the Notice of Garnishment covers all credits owing to PSALM/NPC, it is thus being required to withhold all the above-mentioned remittances. However, the law sets aside these collections for specific purposes. There is also an established process before Meralco can collect these amounts from its customers.[23]

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[23] With respect to the NPC's stranded contract costs.

Finally, Meralco avers that it is not in a position to determine the validity of the Notice of Garnishment or whether the amounts in its possession and owing to PSALM are proper subjects of the garnishment. It is not even a party to the present case. Thus, Meralco has come before the Court to clarify: (a) whether the amounts in its possession pertaining to universal charges, line rental cost, and DAA-GRAM may be garnished in satisfaction of the judgment obligation in the present case, and (b) whether separation benefits may be recovered as part of the universal charge.

In its comment to Meralco's Special Appearance,[24] PSALM maintains that separation benefits are not recoverable from collections of universal charges. Section 34 of the EPIRA clearly enumerates the purposes by which the proceeds from these charges may be disbursed. The judgment obligation in the present case not being one of these purposes, the garnishment of the universal charges in the custody of the Meralco and payable to PSALM violates the EPIRA.

PSALM adds that amounts pertaining to universal charges, line rental cost, and DAA-GRAM are not NPC assets. These are exactions authorized by law for a specific purpose and, thus, cannot be garnished.

On the other hand, the petitioners aver that the amounts pertaining to the universal charge may be garnished.

Issues

Based on the parties' submissions, the issues now before Us are as follows:

1. May PSALM be held directly liable for the judgment debt?
2. Can the RTC Clerk of Court and *Ex-Officio* Sheriff immediately and directly proceed with the garnishment or levy of NPC assets?
3. What is the formula to compute the petitioners' entitlement?

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[24] Compliance (Consolidated Comment) dated September 30, 2014; *rollo* (Vol. VII), pp. 3441-3460.

The Court's Ruling

At the onset, We emphasize that most of the matters raised by respondents NPC and PSALM in their respective submissions have already been ruled upon by the Court and have since attained finality, *i.e.*, (a) NPB Resolution Nos. 2002-124 and 2002-125 are void and without legal effect; (b) As a result, the petitioners were illegally dismissed; (c) As illegally dismissed employees, they are entitled to separation pay in lieu of reinstatement, back wages, and other wage adjustments, but after deduction of the separation pay they already received under the restructuring plan; and (d) Counsels for the petitioners are entitled to a 10% charging lien.

Thus, this resolution shall address only the new matters raised in the above-mentioned pending motions.

First, We affirm Our Resolution dated June 30, 2014 that PSALM is directly liable for the judgment obligation. While the general rule is that the NPC, as the employer guilty of illegal dismissal, shall be liable for the petitioners' entitlement, PSALM assumed this obligation. PSALM's assumption is clear based on the following reasons: (a) the subject liability was already **existing** at the time of the EPIRA's effectivity and was transferred from NPC to PSALM by virtue of Section 49 of the law; (b) the subject liability is a "**Transferred Obligation**" as defined under the Deed of Transfer; and (c) under the EPIRA, PSALM is **duty-bound** to settle this liability.

Second, while PSALM is directly liable for the payment of the petitioners' entitlement, We direct the petitioners to follow the proper procedure to enforce a judgment award against the government. We have consistently ruled that the back payment of any compensation to public officers and employees cannot be done through a writ of execution.[25] The COA has exclusive

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[25] *Republic v. Cortez*, G.R. Nos. 187257 and 187776, February 7, 2017. Also see *Republic v. National Labor Relations Commission*, G.R. No. 174747, March 9, 2016, 787 SCRA 90; *National Electrification Administration v. Morales*, 555 Phil 74 (2007) and *Lockheed Detective and Watchman Agency, Inc. v. University of the Philippines*, 686 Phil. 191 (2012).

jurisdiction to settle "all debts and claims of any sort due from or owing to the Government or any of its subdivisions, agencies, and instrumentalities."[26] **The proper procedure to enforce a judgment award against the government is to file a separate action before the COA for its satisfaction.**[27]

Third, as a matter of prudence, We also propose guidelines that shall aid the COA in determining, re-computing, and validating the amount due to the petitioners.

The petitioners' entitlement shall be computed based on the following general formula: Separation pay in lieu of reinstatement plus back wages plus other wage adjustments minus separation pay already received under the plan.[28]

On the other hand, the attorney's charging lien shall be **10% of the petitioners' entitlement, after deducting the separation pay already received by the petitioners under the restructuring plan**.

Lastly, aside from the petitioners' entitlement, illegally dismissed employees are entitled to interest **at the legal rate**.[29] The payment of legal interest is a "natural consequence of a final judgment."[30] Interest on the judgment award shall be computed as follows: (1) **12% per annum** *from* October 8, 2008,[31] *until* June 30, 2013; and (2) **6% per annum** *from* July 1, 2013 onwards.

Issues Already Resolved with Finality

Before proceeding to the above-mentioned issues, We observe that the NPC and PSALM have, up to this point, repeatedly

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[26] Section 26, Presidential Decree No. 1445 otherwise known as the Government Auditing Code of the Philippines.

[27] See *Republic v. Cortez*, *supra* note 25; *National Electrification Administration v. Morales*, *supra* note 25 at 85.

[28] Our Resolution dated September 17, 2008.

[29] *Philippine Airlines, Inc. v. Dawal*, 781 Phil. 474, 530 (2016).

[30] *BPI Employees Union-Metro Manila v. Bank of the Philippine Islands*, 673 Phil. 599, 615 (2011).

[31] Date of finality of Our Main Decision.

and continuously defended the validity of NPB Resolution Nos. 2002-124 and 2002-125, as well as the resulting separation of NPC employees.

To recall, Our *Main Decision dated September 26, 2006* and Resolution dated September 17, 2008 have already been entered in the Book of Entries of Judgment.[32] Thus, as we ruled in Our Resolution dated June 30, 2014, it is clear that these rulings have become final and executory.

For emphasis, the matters resolved by the Court in these rulings are as follows:

ILLEGAL DISMISSAL

1. NPB Resolution Nos. 2002-124 and 2002-125 are void and without legal effect (Main Decision).

2. The logical and necessary consequences (Resolution dated September 17, 2008) of these invalid resolutions are as follows:

    a. The terminations pursuant to these resolutions were **illegal dismissals**.

        i. This contemplates the illegal dismissal of **all NPC employees**, not just 16 employees, who were dismissed on different dates pursuant to the NPC restructuring (Resolutions dated December 2, 2009 and June 30, 2014).

    b. Reinstatement has become **impossible**.

    c. Those illegally dismissed are entitled to: **separation pay** in lieu of reinstatement *plus* **back wages** *less* **benefits already received** under the approved separation program (Petitioners' entitlement).

3. The issuance of **NPB Resolution No. 2007-55** on September 14, 2007 only means that the services of all NPC employees have been **legally** terminated on this date (Resolution dated

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[32] *Rollo* (Vol. I), pp. 545-548.

December 2, 2009). It shall be applied **prospectively** (Resolution dated June 30, 2014).

CHARGING LIEN

4. Attys. Aldon and Orocio are entitled to a **10% charging lien** (Resolution dated September 17, 2008).

The basic rule is that a judgment that has lapsed into finality is immutable and unalterable.[33] Thus, the matters that have already been resolved in the Main Decision and Resolution dated September 17, 2008 should no longer be disturbed.

The respondents' persistence to overturn an unfavorable but final judgment is exactly what the rule on immutability of judgments seeks to address. A losing party cannot endlessly evade an obligation by filing appeal after appeal. Nor can a winning party continuously demand for more than what has been adjudged in his favor by asking the court to repeatedly reconsider his/her claims. There must be an end to litigation. Controversies cannot drag on indefinitely because fundamental considerations of public policy and sound practice demand that the rights and obligations of every litigant must not hang in suspense for an indefinite period of time.[34]

The NPC and OSG's mistaken belief that they could repeatedly raise the same defenses in the hopes of securing a judgment in their favor has even led the Court to find them guilty of indirect contempt after they refused to comply with Our Resolution dated December 8, 2008.

The Court En Banc properly resolved to accept the case

Both respondents request that the present case be resolved by the Court *en banc*. While the NPC grounds its request on

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[33] See *One Shipping Corp. v. Peñafiel*, 751 Phil. 204, 211 (2015), citing *Mocorro, Jr. v. Ramirez*, 582 Phil. 357, 366 (2008).

[34] *Pinausukan Seafood House, Roxas Boulevard, Inc. v. Far East Bank & Trust Company*, 725 Phil. 19, 32 (2014).

the subject matter's sizeable financial impact, PSALM claims that there are conflicting rulings that may only be resolved by the Court sitting *en banc*.

We agree with the NPC.

Verily, the Court has already struck down similar requests made previously by the NPC.[35] However, the following must be considered:

1. Based on the list submitted by the NPC[36] pursuant to Our Resolution dated October 20, 2014, a total of **9,272 former NPC employees** stand to benefit from the judgment award.

2. The NPC has estimated that these employees may be entitled to **separation pay** amounting to at least **₱7,311,084,851.79**. However, this amount still does not include:

    a. **Back wages and other wage adjustments**, and

    b. **Legal interest** on the judgment debt, which started to accrue as early as October 10, 2008—the date when the Main Decision became final—and has continued to run to this day, almost a decade after.

From these, it is clear that the present case's subject matter will have a **huge financial impact** on the NPC and/or PSALM, both of which play major parts in the country's electric power industry. Thus, a decision that may greatly affect the operations of these entities may, in turn, also affect the rendition of their services to the general public.

Cases of this nature are cognizable by the Court *en banc*, as provided in Rule 2, Section 3(k) of Our Internal Rules, *viz.*:

SEC. 3. *Court en banc matters and cases.* — The Court *en banc* shall act on the following matters and cases:

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[35] *See* rulings as per Resolutions dated June 30, 2014 and June 4, 2007.

[36] *See* the NPC's Compliance *Ad Cautelam* dated March 16, 2015. (*Rollo* [Vol. XI), pp. 5644-5647.)

(k) Division cases where the subject matter has a huge financial impact on businesses or affects the welfare of a community[.]

Matters Pending Court's Resolution

I. PSALM is directly liable for the judgment obligation

In Our Resolution dated June 30, 2014, we held that the separation benefits in the present case were NPC's "existing liability" at the time of the EPIRA's enactment and, thus, the same was transferred to PSALM. We explained:

> The separation of NPC employees affected by its reorganization and privatization was a foregone conclusion. In recognition of this, the EPIRA gave the assurance that these employees shall receive the separation pay and other benefits due them under existing laws, rules or regulations or be able to avail of the privileges under a separation plan which shall be one and one-half month salary for every year of service in the government. **The employees' separation being an unavoidable consequence of the mandated restructuring and privatization of the NPC, the liability to pay for their separation benefits should be deemed existing as of the EPIRA's effectivity, and were thus transferred to PSALM pursuant to Section 49 of the law**.[37]

In its Omnibus Motion dated August 22, 2015,[38] PSALM denies this liability by arguing as follows: (a) The liability to pay the separation benefits only arose after the effectivity of the EPIRA, (b) It was not among the obligations exclusively listed under the EPIRA for which PSALM shall be liable; and (c) NPC remains to be solely liable.

We disagree with PSALM.

The Court already held that herein petitioners are entitled to separation pay in lieu of reinstatement, plus back wages and

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[37] *NPC Drivers and Mechanics Association (DAMA) v. National Power Corporation*, 737 Phil. 210, 270-271 (2014).

[38] Including arguments raised in its Compliance dated September 30, 2014 (*Rollo* [Vol. VII], pp. 3441-3460) and the Supplement to the Compliance dated November 5, 2014. (*Rollo* [Vol. VIII], pp. 3660-3683.)

other wage adjustments, less separation pay already received by virtue of the restructuring plan because they were illegally dismissed. Thus, to clarify, the liability is not limited just to *separation pay* but to the *full entitlement* of an illegally terminated employee, as We will further qualify below.

A. The General Rule

The settled rule is that an employer who terminates the employment of its employees without lawful cause or due process of law is liable for illegal dismissal.[39]

When the EPIRA mandated the NPC's privatization, it directed the sale, disposition, change and transfer of ownership and control of NPC's assets and IPP contracts[40] for the purpose of pooling funds to liquidate NPC's liabilities. This transaction is akin to an asset sale-type corporate acquisition in the law of mergers and acquisitions where one entity—the seller—sells all or substantially all of its assets to another—the buyer.[41]

In *SME Bank, Inc. v. De Guzman*,[42] we held that the rule in asset sales is that the employees may be separated from their employment, but the seller is liable for the payment of separation pay; on the other hand, the buyer in good faith is not required to retain the affected employees in its service, nor is it liable for the payment of their claims.

This is consistent with Our ruling in *Sundowner Development Corporation v. Drilon*,[43] that unless expressly assumed, labor contracts such as employment contracts and collective bargaining agreements are not enforceable against a buyer of an enterprise,

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[39] *SME Bank, Inc. v. De Guzman*, 719 Phil. 103, 132 (2013), citing *Lambert Pawnbrokers and Jewelry Corp. v. Binamira*, 639 Phil. 1 (2010).

[40] EPIRA, Section 4(pp).

[41] *SME Bank, Inc. v. De Guzman*, *supra* note 39 at 125, citing Dale A. Oesterle, *The Law of Mergers, Acquisitions and Reorganizations*, 35, 39 (1991).

[42] *Supra* note 39 at 125.

[43] 259 Phil. 481, 485 (1989).

labor contracts being *in personam*, thus binding only between the seller-employer and its employees.

Following these rules, the NPC, as employer, is liable for the illegal dismissal and, in effect, the payment of the petitioners' entitlement.

B. The Exceptions

There are however recognized exceptions to the general rule, where the employer's liability for the separation of its employees is nonetheless devolved upon the transferee of the employer's assets.

1. The transferee acknowledges the contractual obligation to be liable for separation pay

In *Republic v. National Labor Relations Commission*,[44] the government acquired Bicolandia Sugar Development Corporation (Bisudeco)'s assets and identified the same for privatization. Pursuant to the privatization, the assets were transferred to the Asset Privatization Trust (APT) for conservation, provisional management, and disposal. We recognized that, as a mere transferee/conservator of Bisudeco's assets, the APT did not substitute Bisudeco as employer. The transfer was not for the purpose of continuing the latter's business. **However**, We found that the APT issued a resolution authorizing the payment of the Bisudeco employees' separation benefits. Thus, through the resolution, the APT **acknowledged its contractual obligation to be liable** for benefits arising from an employer-employee relationship **even though, as a mere conservator of assets, it was not supposed to be liable**.

2. The transferee assumes the obligation through a transfer document

On the other hand, in *Bank of the Philippine Islands v. BPI Employees Union-Davao Chapter-Federation of Unions in BPI*

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[44] *Supra* note 25.

Unibank,[45] pursuant to a corporate merger, the assets and liabilities of Far East Bank & Trust Company, the absorbed corporation, were transferred to the Bank of the Philippine Islands (BPI), the surviving entity. We recognized that employment is a personal consensual contract. Thus, in mergers, the absorbed corporation's *employment contracts* are not automatically absorbed by the surviving entity. **However**, the liability for separation and other benefits due to the absorbed corporation's former employees can be transferred to the surviving **entity if the latter clearly assumed the obligation pursuant to the *articles of merger***.

C. The Present Case Falls Within the Exceptions

We reiterate Our finding in Our Resolution dated June 30, 2014 that, upon the NPC's privatization, PSALM **assumed** all of its liabilities, **including the separation benefits due to the petitioners**.

That PSALM assumed the NPC's liability to pay these separation benefits is clear based on the following reasons: (1) The liability was already **existing** at the time of the EPIRA's effectivity and was transferred from NPC to PSALM by virtue of Section 49 of the law; (2) It is a "**Transferred Obligation**" as defined under the Deed of Transfer; and (3) Under the EPIRA, PSALM is **duty-bound** to settle the subject liability.

1. The subject liability was existing at the time of the EPIRA's effectivity and was transferred from NPC to PSALM by virtue of Section 49 of the law

The EPIRA provides:

SECTION 49. *Creation of Power Sector Assets and Liabilities Management Corporation*. — There is hereby created a government-owned and -controlled corporation to be known as the "Power Sector

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[45] 642 Phil. 47 (2010).

Assets and Liabilities Management Corporation," hereinafter referred to as the "PSALM Corp.," **which shall take ownership of all *existing* NPC generation** assets, **liabilities,** IPP contracts, real estate and all other disposable assets. All outstanding obligations of the NPC arising from loans, issuances of bonds, securities and other instruments of indebtedness shall be transferred to and assumed by the PSALM Corp. within one hundred eighty (180) days from the approval of this Act. (Emphasis supplied.

In Our Resolution dated June 30, 2014, the Court explained that the term "existing" in Section 49 qualified "liabilities" to mean that only those liabilities *existing at the time of the EPIRA's effectivity* were subject of the transfer.

Verily, the liability (to pay separation benefits) here arose due to the petitioners' illegal dismissal. However, the separation from employment *per se* took place only pursuant to the EPIRA's mandate on NPC's privatization and restructuring, except that its implementation through NPB Resolution Nos. 2002-124 and 2002-125 was later on invalidated.

Stated differently, since the EPIRA mandated the NPC's privatization and subsequent restructuring, the law, when it took effect on June 26, 2001, had already contemplated the termination of all NPC employees as a logical effect of its mandate. To be sure, **the liability to pay the full entitlement arising from the employees' separation is deemed to have existed upon the EPIRA's effectivity.**

Thus, PSALM assumed the liability to pay the petitioners' full entitlement in the present case because: (a) Section 49 of the EPIRA mandated the transfer of all ***existing* NPC liabilities** to PSALM, and (b) Such liability was already ***existing*** at the time of the EPIRA's effectivity.

2. The subject liability is a "Transferred Obligation" as defined under the Deed of Transfer

Under the EPIRA, following are valid claims against PSALM:

SECTION 56. *Claims Against the PSALM Corp.* — The following shall constitute the claims against the PSALM Corp.:

(a) NPC liabilities transferred to the PSALM Corp.;

(b) Transfers from the National Government;

(c) New Loans; and

(d) NPC stranded contract costs. (Emphasis supplied.)

In the Deed of Transfer[46] executed between them, the NPC and PSALM laid out the scope of the term "liabilities transferred" by differentiating their responsibilities over "**Transferred Obligations**" and "**Contingent Liabilities**."

On the one hand, PSALM assumed all of NPC's **Transferred Obligations**, which included **all other liabilities and obligations of the NPC**: (a) mandated by the EPIRA to be transferred to PSALM, and (b) which *have been* validated, fixed and finally determined to be legally binding on NPC by the proper authorities.[47]

In contrast, NPC agreed to be solely responsible for its **Contingent Liabilities** or those **as of the transfer date** *have not yet been* validated, fixed, and finally determined to be legally binding on NPC.[48]

Based on these provisions, it appears that the parties delineated their responsibility over NPC liabilities that arose as a result of a **final determination of a proper authority**, such that if such final determination *has not yet been made as of the transfer date* it is a Contingent Liability. *Otherwise*, it is a Transferred Obligation for which PSALM assumes responsibility.

Thus, the liability to pay the petitioners' separation benefits satisfies the conditions giving rise to a Transferred Obligation.

Our Rulings finally determined that the liability is legally binding and enforceable against the NPC

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[46] *Rollo* (Vol. III), pp. 1668-1693.

[47] *Id.* at 1675, Section 3.01(d).

[48] *Id.*, Section 3.02.

A plain reading[49] of the provisions in the Deed of Transfer will reveal that a final judgment rendered by a court with competent jurisdiction holding the NPC liable for an obligation falls within the meaning of a liability "validated, fixed, and finally determined to be legally binding on NPC."

To emphasize, We adjudged that the NPC's liability for the petitioners' illegal dismissal and, consequently, the payment of their full entitlement was the logical and necessary effect of the nullification of NPB Resolution Nos. 2002-124 and 2002-125. Our ruling lapsed into finality on **October 10, 2008**.[50] Clearly, Our Ruling constitutes a **final determination** that the liability is **legally binding and enforceable against the NPC**.

Our final determination of the liability was made as of the transfer date

If there had already been a final determination of the NPC's liability, the next question is: Was the final determination made as of the transfer date?

We answer in the affirmative.

According to the Deed of Transfer, the "transfer date" is "the date on which all of the conditions precedent are either fulfilled or are waived."[51] While it would appear that the parties have executed such a waiver,[52] **there is no indication in Our records of the exact date of execution**, other than NPB Resolution No. 2009-40,[53] which refers to *October 1, 2008* as the date of "transfer of assets and liabilities" of the NPC to PSALM.

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[49] We ruled in *Benguet Corporation v. Cabildo* (585 Phil. 23, 35 [2008], citing *Abad v. Goldloop Properties, Inc.*, 549 Phil. 641, 654 [2007].) that, "[w]here the written terms of the contract are not ambiguous and can only be read one way, the court will interpret the contract as a matter of law."

[50] *Rollo* (Vol. I), pp. 545-548.

[51] Section 1.01(nn), Deed of Transfer, *rollo* (Vol. III), p. 1671.

[52] As agreed in NPC Resolution No. 2007-66 dated November 14, 2007, *rollo* (Vol. III), p. 1694.

[53] *Rollo* (Vol. III), p. 1696.

However, upon further examination,[54] both the NPC[55] and PSALM[56] disclosed in their respective COA-audited financial statements that the actual transfer date was on **December 31, 2008**.

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[54] The parties' audited financial statements were not made part of Our records. These are available on the companies' respective websites pursuant to the Transparency Provision of the General Appropriations Act of FY 2012, as reiterated by the Department of Budget and Management in its National Budget Circular No. 542, *viz.*: "Sec. 93. TRANSPARENCY SEAL. To enhance transparency and enforce accountability, all national government agencies shall maintain a transparency seal on their official websites. The transparency seal shall contain the following information: i. the agency's mandates and functions, names of its officials with their position and designation, and contact information; **ii. annual reports, as required under National Budget Circular Nos. 507 and 507-A dated January 31, 2007 and June 12, 2007, respectively, for the last three (3) years;** iii. x x x.

The respective heads of the agencies shall be responsible for ensuring compliance with this section.

A Transparency Seal, prominently displayed on the main page of the website of a particular government agency, is a certificate that it has complied with the requirements of Section 93. This Seal links to a page within the agency's website which contains an index of downloadable items of each of the above-mentioned documents. (Emphasis supplied.)

[55] Note 1 of the Notes to the 2012 NPC Audited Financial Statements states:

As mandated under the EPIRA and pursuant to the instructions from the respective Boards and Managements of NPC, PSALM and TransCo, the actual separation of books of TransCo from NPC and the asset-debt accounts transfer from NPC to PSALM was implemented on October 1, 2008 based on the balances of the interim financial report as at September 30, 2008. **Full implementation was effected on December 31, 2008**. (Emphasis supplied.)

Available at: http://www.napocor.gov.ph/images/Reports/financial_reports/FS_2012.pdf

[56] Note 2 of Notes to the 2012 PSALM Audited Financial Statements states:

The financial statements of PSALM are prepared on a historical cost basis and transactions are recorded using the accrual basis of accounting. The assets transferred from NPC were recorded at their carrying amounts (balances as reflected in NPC books) **as of the transfer date of 31 December 2008**. (Emphasis supplied.)

On the other hand, Note 3 states:

"Property, plant, and equipment transferred from NPC include electrification, power and energy structures and referred to as utility plants. The last external revaluation of these plants was of the 1996 asset prices. These structures

The "transfer of assets and liabilities" that took place on October 1, 2008 was merely the transfer of "asset-debt accounts" from the NPC's books of account to PSALM's.[57]

To be clear, the liability was **finally determined by the Court on October 10, 2008**, the date of Our Ruling's finality, **or before December 31, 2008**, the actual transfer date recognized by the parties. Thus, the liability should be considered as a **Transferred Obligation**, the responsibility for which was passed on to PSALM pursuant to the terms of the Deed of Transfer.

3. Under the EPIRA, PSALM is duty-bound to settle the subject liability.

PSALM was created under the EPIRA for the **principal purpose** of privatizing the NPC's generation assets, real estate and other disposable assets, and IPP contracts **with the ultimate objective of liquidating all NPC financial obligations and stranded contract costs**.[58] It is empowered to take possession of, administer, and conserve, and subsequently sell or dispose the assets transferred to it pursuant to its established purpose.[59]

In 2012, PSALM disclosed[60] that the joint boards of directors of the NPC and PSALM authorized utilization of the privatization proceeds to pay the NPC's principal and **other financial obligations**. The proceeds from privatization shall include not

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are recognized in PSALM's books at their carrying amounts as stated in NPC books **as of the transfer date of 31 December 2008**."

Available at: https://www.psalm.gov.ph/assets/documents/TRANSPARENCY%20SEAL/II.CodeofCorporateGovernance/3.%20Financial%20and%20Operational%20Matters/1.%20Annual%20Audited%20FS%20and%20Corporate%20Accomplishment%20Report/2012/2012_Notes%20of%20Financial%20Statement.pdf

[57] Note 1 of the Notes to the 2012 NPC Audited Financial Statements.

[58] EPIRA, Section 50.

[59] *Id*., Section 51(b).

[60] As part of its Key Undertakings disclosure under Note 1 of its audited financial statements, the PSALM disclosed as follows:

only the proceeds from sale and disposition of NPC's generation and other disposable assets **but also the proceeds from NPC's net profits**.[61]

Without a doubt, PSALM is **statutorily mandated** not only to privatize NPC's generation assets, but also to manage the proceeds obtained from privatization including its net profits and **use these proceeds to settle *all* of NPC's financial obligations**, without exception.

This blanket responsibility is evident from PSALM's role even in the settlement of the NPC's Contingent Liabilities. Under the Deed of Transfer, while the NPC shall retain sole responsibility of a Contingent Liability, **PSALM shall nonetheless provide for a mechanism to allow the NPC to satisfy the claim** through, for example, a reserve fund or a provision under the Operation and Maintenance Agreement or any other agreement to be entered into by the parties.[62] Thus, whether or not the NPC has been finally determined to be liable for the claim, **PSALM must see to it that the same is settled**.

Management of Privatization Proceeds

PSALM started receiving privatization proceeds from the sale of NPC generating plants in January 2005. As of 31 December 2012, actual privatization proceeds collected amounted to US$2.933 billion and ₱145.017 billion.

On 20 June 2007, the joint Boards of PSALM and NPC, under Board Resolution No. 07-29, approved the utilization of the privatization proceeds to liquidate principal and interest obligations of NPC as they fall due. This was amended on 04 October 2007 by Board Resolution No. 07-61, **which granted authority to PSALM Management to utilize the privatization proceeds to**:

• Prepay NPC's principal obligations;

• Settle NPC's principal and interest obligations as they become due only after NPC shows deficit in its cash flow after utilization of its own internally generated cash;

• Manage NPC's liabilities with the objectives of reducing interest cost and liquidity risk in 2009-2012 and hedging foreign exchange risks at terms and conditions advantageous to the government; and

• **Pay other financial obligations of NPC.** (Emphasis supplied.)

[61] EPIRA Implementing Rules and Regulations (IRR), Rule 21, Section 11.

[62] Section 3.02, Deed of Transfer, *rollo* (Vol. III), p. 1676.

All told, PSALM **expressly undertook** all NPC Transferred Obligations under **Section 3.01 of the Deed of Transfer**, which, as previously discussed, includes the liability to pay the petitioners' entitlement. Thus, it is now bound to ensure that it is settled.

Even if We rule that the liability was not a Transferred Obligation nor was it ever voluntarily assumed under the Deed of Transfer, it is still clear that the law itself mandated PSALM to satisfy the same. PSALM's obligation is provided in: (a) **Section 49 of the EPIRA, where it was directed to take ownership of all *existing* NPC liabilities**; and (b) **Section 50 of the EPIRA, where it was mandated to liquidate *all* NPC financial obligations**.

Clearly, PSALM cannot now turn its back on an obligation that is both contractual and statutory. Although the liability was initially imposed upon the NPC as the petitioners' employer, **the responsibility for its satisfaction now rests with PSALM**.

This ruling is not affected by Section 4, Rule 33[63] of the EPIRA IRR, which provides that the "funds necessary to cover the separation pay" of all NPC employees displaced as a result of the restructuring plan "shall be provided either by the Government Service Insurance System (GSIS) or **from the NPC's corporate funds**."

As it now stands, after privatization, We find that the NPC's corporate funds are largely within PSALM's control.

Prior to the EPIRA, the NPC performed and derived corporate funds from three main functions: *generation*, *transmission*, and *missionary electrification*. Upon privatization, the NPC divested

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[63] SECTION 4. Funding. — Funds necessary to cover the separation pay under this Rule shall be provided either by the Government Service Insurance System (GSIS) or from the corporate funds of the NEA or the NPC, as the case may be; and in the case of the DOE and the ERB, by the GSIS or from the general fund, as the case may be.

The Buyer or Concessionaire or the successor company shall not be liable for the payment of the separation pay.

its *generation and transmission assets* but continued operations as to its *missionary electrification* function, *viz.*:

SECTION 70. *Missionary Electrification*. — Notwithstanding the divestment and/or privatization of NPC assets, IPP contacts and spun-off corporations, NPC shall remain as a National Government-owned and -controlled corporation **to perform the missionary electrification function** through the Small Power Utilities Group (SPUG) and shall be responsible for providing power generation and its associated power delivery systems in areas that are not connected to the transmission system. **The missionary electrification function shall be funded from the revenues from sales in missionary areas and from the universal charge to be collected from all electricity end-users as determined by the ERC**.[64] (Emphases supplied.)

The *generation* function having been devolved to PSALM, all net profits from its operations also accrued in their favor after the date of transfer.[65]

On the other hand, the revenues from *missionary electrification* function retained by the NPC are collected from end-users via the *universal charge.* However, all collections of the universal charge shall be remitted monthly to PSALM. In turn, PSALM, acting as administrator, shall create a Special Trust Fund, which shall be disbursed only for the purposes specified by the EPIRA in an open and transparent manner.[66]

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[64] EPIRA.

[65] Section 11, Rule 21 of the EPIRA IRR provides, "Property of PSALM. — The following funds, assets, contributions and other properties shall constitute the property of the PSALM: (a)The generation assets, real estate, IPP Contracts, other disposable assets of NPC, proceeds from the operation or disposition of such assets and the residual assets from BOT, ROT, and other variations thereof. The proceeds from the operation and disposition of NPC assets shall include: **(i) Net profit of NP**[.]" (Emphasis supplied.)

[66] Section 34 of the EPIRA provides, "Universal Charge. — Within one (1) year from the effectivity of this Act, a universal charge to be determined, fixed and approved by the ERC, shall be imposed on all electricity end-users for the following purposes: x x x (b) Missionary electrification x x x The universal charge shall be a non-bypassable charge which shall be passed on and collected from all end-users on a monthly basis by the distribution

PSALM's control over the NPC's corporate funds is consistent with its principal purpose of privatizing the NPC's generation assets and ultimate objective of liquidating all NPC financial obligations and stranded contract costs. Thus, this control makes it clear that PSALM is now directly responsible for the settlement of the liability due to the petitioners.

II. The RTC cannot directly proceed with the execution before a separate money claim is filed with and approved by the COA

While PSALM is directly liable for the payment of the petitioners' entitlement, **the proper procedure to enforce a judgment award against the government is to file a separate action before the COA for its satisfaction.**[67]

We have consistently ruled that the back payment of any compensation to public officers and employees cannot be done through a writ of execution.[68] The COA has exclusive jurisdiction to settle "all debts and claims of any sort due from or owing to the Government or any of its subdivisions, agencies, and instrumentalities."[69] **The proper procedure to enforce a judgment award against the government is to file a separate action before the COA for its satisfaction.**[70]

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utilities. Collections by the distribution utilities and the TRANSCO in any given month shall be remitted to the PSALM Corp. on or before the fifteenth (15th) of the succeeding month, net of any amount due to the distribution utility. Any end-user or self-generating entity not connected to a distribution utility shall remit its corresponding universal charge directly to the TRANSCO.

[67] See *Republic v. Cortez*, *supra* note 25; *National Electrification Administration v. Morales*, *supra* note 25.

[68] *Republic v. Cortez*, *supra* note 25. *Also* see *Republic v. National Labor Relations Commission*, *supra* note 25; *National Electrification Administration v. Morales*, *supra* note 25 and *Lockheed Detective and Watchman Agency v. University of the Philippines*, *supra* note 25.

[69] Section 26, Presidential Decree No. 1445 otherwise known as the Government Auditing Code of the Philippines.

[70] See *Republic v. Cortez*, *supra* note 25; *National Electrification Administration v. Morales*, *supra* note 25.

A. Parties' compliance to Our Resolution dated October 20, 2014

In the present case, We have noted the parties' respective compliance to Our Resolution dated October 20, 2014, directing them to submit a complete list of NPC employees affected by the NPC restructuring, as well as their respective computations of the petitioners' entitlement.

In particular, the NPC, through their Compliance *Ad Cautelam* dated March 16, 2017,[71] listed 9,272 employees and provided its own computation of the amounts each employee is supposedly entitled to and other details as required by the Court (NPC List and Computation).[72]

For their part,[73] PSALM points out that it could only provide a list of *46 former NPC employees subsequently employed by PSALM* since it does not have on record the total number of NPC employees prior to the restructuring.

On the other hand, the petitioners fully adopted the NPC List and Computation.[74]

B. The Court's Ruling vis-a-vis the COA's Jurisdiction

The NPC List and Computation is by no means final and binding either on the Court or the COA, regardless of the petitioners' acceptance and admission of the same. It is still subject to the COA's validation and audit procedures.

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[71] *Rollo* (Vol. XI), pp. 5644-5650.

[72] *Id.* at 5684-5905.

[73] In their Compliance dated March 16, 2015, *rollo* (Vol. XI), pp. 5652-5671.

[74] The petitioners fully adopted the NPC's list of employees and computation in their Manifestation and Compliance dated March 24, 2015, *viz.*: "3. Petitioners have reviewed the contents of said '1-A' and '1-B' attachments**, which they find to be in substantial compliance** with said 20 October 2014 Resolution x x x 5. **The Petitioners hereby adopt said attachments** (1-A and 1-B) of the respondent NPC as their Compliance to said Resolution x x x" (*Rollo* (Vol. XI), p. 5517.)

To enforce the satisfaction of the judgment award, the amount of which has been *provisionally* computed in the NPC List and Computation, the petitioners must now go before the COA and file a separate money claim against the NPC and PSALM. Whether the claim shall be allowed or disallowed is for the COA to decide, subject only to the remedy of appeal by petition for *certiorari* to this Court.[75]

In other words, while the Court has determined that PSALM, a government owned and controlled corporation, is liable to the petitioners, it is for the COA to ascertain the exact amount of its liability in accordance with its audit rules and procedures, after a separate money claim for the satisfaction of the judgment award is properly filed.

III. Guidelines on the computation of the petitioners' entitlement

Inasmuch as the final judgment award will be re-computed and validated by the COA upon the filing of a separate money claim, We deem it proper and prudent to lay out guidelines precisely governing *the petitioners' entitlement*—a logical and necessary effect of the invalidation of NPB Resolution Nos. 2002-124 and 2002-125 and their illegal dismissal.

To dispel any notion that the Court, with these guidelines, is pre-empting the COA's jurisdiction, We clarify that these rules govern only the general formula by which the judgment award shall be computed.

Verily, jurisprudence is replete with general principles on the computation of separation pay in lieu of reinstatement, back wages, and other money claims filed by illegally dismissed employees. However, these guidelines are tailor-fitted to the **extraordinary circumstances surrounding the facts of the present case** and in accordance with Our previous rulings, the EPIRA and its IRR, and other applicable laws.

These guidelines shall aid the COA in determining, re-computing, and validating the amount due to the petitioners.

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[75] *National Electrification Administration v. Morales*, *supra* note 25.

In this regard, PSALM raises points for the Court's consideration, *viz.*:

1. There were two reorganizations undertaken in NPC - 2003 and 2013.
2. The approval of NPB Resolution No. 2007-55 on September 14, 2007 meant that the services of all NPC employees have been legally terminated on this date.
3. There were NPC officials and employees that were rehired by the government and immediately reported for work the day after their termination from NPC as a consequence of the 2003 reorganization x x x. The effect of such continued employment with the NPC or with other government agencies x x x should be considered.
4. The number of NPC employees might have included contractual employees or those having a fixed-term of employment.
5. A separation package was given to NPC employees that operated the generation assets upon these assets' privatization.
6. There were NPC employees who were rehired in 2003 but subsequently tendered their resignation prior to the issuance of NPB Resolution No. 2007-55.[76]

At the onset, We emphasize that the petitioners went before the Court and assailed the validity of NPB Resolution Nos. 2002-124 and 2002-125, which directed the termination of all NPC employees effective January 31, 2003 (2003 Reorganization). Thus, the Court's ruling invalidating these resolutions could only affect the restructuring plan implemented in 2003. The implementation of any other restructuring plan, like the one in 2013, as PSALM points out, cannot affect the computation of the judgment award in the present case. It is not a matter presented for the Court's resolution.

Summary of Petitioners' Entitlement

Again, the petitioners' entitlement consists of the following: (a) separation pay in lieu of reinstatement; (b) backwages;

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[76] *Rollo* (Vol. VI), p. 3015.

(c) wage adjustments; minus any separation pay already received under the restructuring plan.

A. Separation pay in lieu of reinstatement

The established rule is that an illegally dismissed civil service employee shall be entitled to *reinstatement* plus *backwages*.[77] This rule is echoed in Section 9 of Republic Act No. 6656,[78] which relates specifically to illegal dismissals due to a government agency restructuring plan found to be invalid.

However, when an entirely new set-up takes the place of the entity's previous corporate structure, the abolition of positions and offices cannot be avoided, thus, making reinstatement impossible.[79] In which case, *separation pay* shall be awarded

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[77] *Campol v. Balao-As*, G.R. No. 197634, November 28, 2016; *Civil Service Commission v. Magnaye, Jr.*, 633 Phil. 353, 368 (2010), citing *Civil Service Commission v. Gentallan*, 497 Phil. 594, 601 (2005).

[78] Section 9 of Republic Act No. 6656 (An Act to Protect the Security of Tenure of Civil Service Officers and Employees in the Implementation of Government Reorganization [June 10, 1988]) provides, "All officers and employees who are found by the Civil Service Commission to have been separated in violation of the provisions of this Act, shall be ordered reinstated or reappointed as the case may be without loss of seniority and shall be entitled to full pay for the period of separation. Unless also separated for cause, all officers and employees, including casuals, and temporary employees, who have been separated pursuant to reorganization shall, if entitled thereto, be paid the appropriate separation pay and retirement and other benefits under existing laws within ninety (90) days from the date of the effectivity of their separation or from the date of the receipt of the resolution of their appeals as the case may be: Provided, That application for clearance has been filed and no action thereon has been made by the corresponding department or agency. Those who are not entitled to said benefits shall be paid a separation gratuity in the amount equivalent to one (1) month salary for every year of service. Such separation pay and retirement benefits shall have priority of payment out of the savings of the department or agency concerned."

[79] *Manalang-Demigillo v. Trade and Investment Development Corporation of the Philippines*, 705 Phil. 331, 351 (2013). *Also* see *Galindez v. Rural Bank of Llanera, Inc.*, 256 Phil. 585 (1989).

in lieu of reinstatement.[80] The award of separation pay in illegal dismissal cases is an accepted deviation from the general rule of ordering reinstatement because the law cannot exact compliance with what is impossible.[81]

Under the law, the separation pay in lieu of reinstatement due to each petitioner shall be *either* the: (1) Separation pay under the EPIRA and the NPC restructuring plan; or (2) Separation gratuity under Republic Act No. 6656, depending on their *qualifications*.

1. Separation pay under the EPIRA and the NPC restructuring plan

Republic Act No. 6656, the general law governing corporate reorganizations in the civil service, provides that the separation pay due to *entitled* civil service employees separated pursuant to a reorganization plan shall be the *appropriate separation pay and retirement and other benefits under existing laws*, **which in this case is the EPIRA mandating the NPC restructuring plan**.

A person is *qualified* to receive separation benefits under the NPC's restructuring plan if the following requirements concur: (a) he/she is an official or employee whose employment was severed pursuant to the privatization of the NPC;[82] (b) he/she has rendered at least one year of service as of June 26, 2001;[83] (c) he/she must not have qualified or opted to retire under existing laws;[84] and (d) if a casual or contractual employee,

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[80] In *Rubio v. People's Homesite & Housing Corporation* (264 Phil. 254, 264 [1990]), We ruled that since reinstatement to the **employees'** former positions **in the civil service** is no longer possible, they must be deemed entitled to receive the separation pay provided by Batas Pambansa Blg. 337 instead of reinstatement.

[81] *Galindez v. Rural Bank of Llanera, Inc*., *supra* note 78 at 592.

[82] EPIRA IRR, Rule 33, Section 3(f).

[83] *Id*. at Section 3(a).

[84] *Id*. at Section 3(f). *Also* see *Herrera v. National Power Corporation*, 623 Phil. 383 (2009).

he/she must have had his/her appointment approved or attested to by the CSC.[85]

If qualified, the employee shall receive *separation pay under the NPC restructuring plan*, which is equal to **one and one-half months' salary for every year of service in the government**.[86] To clarify, the formula to compute the amount of separation pay has **three components**, *viz.*: (a) base amount, consisting of the monthly salary; (b) multiplier of one and one-half months or 1.5; and (c) length of service.

As for the first component, the EPIRA IRR clearly defines "salary" as the basic pay *including* the 13th month pay received by an employee pursuant to his appointment but *excluding* per diems, bonuses, overtime pay, honoraria, allowances and any other emoluments received in addition to the basic pay under existing laws.[87] **In other words, the "base amount" must consist of *basic pay or salary* and *13th month pay* exclusively.**

2. Separation gratuity under Republic Act No. 6656

If the person does not meet all the above-mentioned requirements (*i.e.*, he/she is a contractual employee whose appointment was not approved by the CSC, *etc*.) but was separated pursuant to the restructuring, he/she is *not qualified* to receive the separation pay under the NPC's restructuring plan but is nonetheless entitled to a *separation gratuity* provided in Republic Act No. 6656 in the amount equivalent to **one month basic salary for every year of service**.[88]

Reckoning period

Both the *separation pay* under the NPC restructuring plan and *separation gratuity* under Republic Act No. 6656 entitle

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[85] *Id*. at Section 1.

[86] *Id*. at Section 3(a) *cf.* Section 63, EPIRA.

[87] *Id*. at Section 3(e).

[88] Republic Act No. 6656, Section 9.

the employee to benefits based on the **number of years of service** rendered. While there is no question that length of service shall be counted from the first year of employment of each petitioner, We now clarify when this period must end.

Again, *separation pay* is awarded in this case because the petitioners could no longer be reinstated due to the abolition of their former positions and overall restructuring of the NPC. Thus, for purposes of computing separation pay in lieu of reinstatement, the length of service shall be computed **until the time reinstatement was rendered impossible**.[89]

In the present case, the petitioners' reinstatement became impossible when their illegal dismissal was subsequently validated by the issuance of NPB Resolution No. 2007-55 on September 14, 2007,[90] as correctly pointed out by PSALM.

Thus, for purposes of computing the petitioners' separation pay, their years of service shall be counted *from* their first year of employment *until* September 14, 2007, *unless* in the meanwhile, they would have reached the compulsory retirement age of sixty-five years.

B. Back wages

We have consistently ruled that an illegally dismissed government employee is entitled to back wages from the time of his illegal dismissal until his reinstatement because he is considered as not having left his office.[91] Following *Galang v. Land Bank of the Philippines*,[92] back wages shall be computed based on the **most recent salary rate upon termination**.

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[89] *Olympia Housing, Inc. v. Lapastora*, G.R. No. 187691, January 13, 2016, 780 SCRA 449, 466.

[90] In Our Resolution dated December 2, 2009, We ruled that NPB Resolution No. 2007-55 must be applied **prospectively.**

[91] *Civil Service Commission v. Magnaye, Jr.*, *supra* note 76 at 368, citing *Civil Service Commission v. Gentallan*, *supra* note 76 at 601.

[92] 665 Phil. 37, 53-54 (2011).

Reckoning period

1. Start date

The rationale in awarding back wages is to recompense the illegally dismissed employee for the entire period of time that he/she was wrongfully prevented from performing the duties of his/her position and from enjoying its benefits because, in the eyes of the law, he/she never truly left office.[93] Thus, as a rule, it is reckoned from the time of illegal termination. Verily, NPB Resolution Nos. 2002-124 and 2002-125 directed the termination from service of all NPC employees effective January 31, 2003. However, the NPC subsequently issued NPC Circular No. 2003-09 setting forth **four different dates of effectivity**, *viz.*:

Group	Effective date of termination
a) Top executives	January 31, 2003
b) Early-leavers[94]	January 15, 2003
c) Those no longer employed after June 26, 2001[95]	Date of actual separation
d) All other NPC personnel	February 28, 2003

Thus, back wages shall be counted *from* **each group's respective effective date of termination**, as the case may be.

2. End date

As a rule, back wages shall be computed until actual reinstatement. However, since reinstatement is no longer possible in this case, it must be computed from the petitioners' effective dates of termination *until* **September 14, 2007** or the petitioners' **date of retirement**, in case petitioners retired *after* the effective date of termination but before September 14, 2007.[96]

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[93] *Campol v. Balao-As*, *supra* note 76.

[94] Paragraph 5, Part I, Annex B of NPB Resolution No. 2002-124.

[95] After the effectivity of the EPIRA.

[96] See *Larin v. Exec. Secretary*, 345 Phil. 962 (1997).

To be clear, the computation of *separation pay* is based on the length of the employee's service; and the computation of *back wages* is based on the actual period when the employee was unlawfully prevented from working.[97] While these two awards are reckoned from different dates, both are computed in the present case until September 14, 2007 or the date of retirement, whichever is earlier. The period of overlap is proper because the period where back wages are awarded must be included in the computation of separation pay.[98]

Effect of employment in the civil service immediately succeeding termination

In the recent case of *Campol v. Balao-As*,[99] the Court explained at length the rationale supporting the award of **full back wages** in favor of an illegally dismissed civil service employee, **without deducting any income** that he may have earned in case he is employed anew in another government position during the pendency of the action. In *Campol*, the Sangguniang Bayan (SB) of Boliney, Abra passed a resolution in 2004 terminating Julius B. Campol as SB Secretary. In 2005, while his illegal termination case was still pending, Campol obtained another job as an administrative aide in the Public Attorney's Office. The Court ruled that Campol's PAO earnings should not be deducted from the award of full backwages, explaining as follows:

> This entitlement to full backwages also means that there is no need to deduct Campol's earnings from his employment with PAO from the award. The right to receive full backwages means exactly this - that it corresponds to Campol's salary at the time of his dismissal until his reinstatement. Any income he may have obtained during the litigation of the case shall not be deducted from this amount.

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[97] *Bani Rural Bank, Inc. v. De Guzman*, 721 Phil. 84. 101 (2013), citing *Session Delights Ice Cream and Fast Foods v. Court of Appeals*, 625 Phil. 612 (2012).

[98] *Aliling v. Feliciano*, 686 Phil. 889, 918 (2012), citing *Sagales v. Rustan's Commercial Corporation*, 592 Phil. 468, 484 (2008).

[99] *Supra* note 76.

This is consistent with our ruling that an employee illegally dismissed has the **right to live and to find employment elsewhere during the pendency of the case**. At the same time, an employer who illegally dismisses an employee has the obligation to pay him or her **what he or she should have received had the illegal act not be done**. It is an **employer's price or penalty** for illegally dismissing an employee.[100] (Emphases supplied.)

The Court further explained that this is also the prevailing doctrine in the award of back wages in the private sector, as previously held in *Bustamante v. National Labor Relations Commission*[101] and *Equitable Banking Corporation v. Sadac*.[102]

However, We revisit Our ruling in *Campol*. We agree with Hon. Justice Antonio T. Carpio's opinion that the award of full back wages in favor of an illegally dismissed civil service employee who was subsequently employed in another government agency certainly violates the constitutional prohibitions against double office-holding[103] and double compensation in the civil service.[104]

Section 7, Article IX-B of the Constitution provides:

Section 7. No elective official shall be eligible for appointment or designation in any capacity to any public office or position during his tenure.

Unless otherwise allowed by law or by the primary functions of his position, no appointive official shall hold any other office or employment in the Government or any subdivision, agency or instrumentality thereof, including government-owned or controlled corporations or their subsidiaries.

On the other hand, Section 8, Article IX-B of the Constitution provides:

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[100] *Id*.

[101] 332 Phil. 833, 842 (1996).

[102] 523 Phil. 781 (2006).

[103] 1987 Constitution, Article IX-B, Section 7.

[104] *Id*., Section 8.

SECTION 8. No elective or appointive public officer or employee shall receive additional, double, or indirect compensation, unless specifically authorized by law, nor accept without the consent of the Congress, any present, emolument, office, or title of any kind from any foreign government.

Pensions or gratuities shall not be considered as additional, double, or indirect compensation.

Thus, We rule that petitioners who were subsequently: (a) rehired by the NPC, (b) absorbed by PSALM or Transco, or (c) transferred or employed by other government agencies, are not entitled to back wages.

Moreover, to award full back wages even to those who remained employed as a direct result of the 2003 reorganization amounts to unjust enrichment and damage to the government.

In the present case, the EPIRA and its IRR established policies governing the subsequent placement of all NPC employees affected by the restructuring, *viz.*: (a) giving the NPC board of directors the sole prerogative to hire the separated employees as new employees and to assign them to new positions with the corresponding compensation in accordance with its restructuring program; and (b) entitling qualified displaced or separated personnel to preference in the hiring of the manpower requirements of PSALM and Transco.[105]

Pursuant to these policies and as pointed out by PSALM, there were NPC employees who were: (a) rehired by NPC or (b) absorbed by PSALM or Transco as a direct result of the 2003 reorganization (Rehired or Absorbed NPC Personnel). These personnel immediately reported for work the day after their termination from NPC. True enough, a perusal of NPC's list of employees submitted in compliance to Our Resolution dated October 20, 2014 reveals that a majority of the listed personnel were either rehired by NPC or absorbed by PSALM or Transco on March 1, 2003 or within March 2003.

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[105] See Section 63, EPIRA *cf.* Section 3(c) and Section 5, Rule 33, EPIRA IRR.

These circumstances lend peculiarity to the present case, setting it apart from *Campol*, *Bustamante,* and *Equitable Banking Corporation*. The novelty of this case's factual backdrop is even more evident in the following:

First, it is important to note that there was no break or gap in the rehired or absorbed NPC personnel's government service. They continuously had employment and a means to receive regular and periodic compensation. Thus, they were not deprived of the right to live nor prevented from earning a living to support their daily expenses and financial obligations. Moreover, they were not forced to seek employment elsewhere, because they were able to capitalize on the statutory preference given to them in filling up the manpower requirements in PSALM or Transco. Obviously, the evil sought to be avoided in the above-cited jurisprudence does not exist insofar as the rehired or absorbed NPC personnel are concerned.

Second, verily, the Court nullified NPB Resolution Nos. 2002-124 and 2002-125, and consequently held that the herein petitioners were illegally dismissed. However, in the meantime, NPC proceeded to implement these resolutions. As a result, some of the petitioners were re-employed by NPC or hired by PSALM or Transco. In other words, while they may have been illegally dismissed, it cannot be denied that the rehired or absorbed NPC personnel nonetheless benefitted from the now-defunct NPB resolutions when they continued to be employed in the government and receive compensation for their service.

To allow them: (a) to enjoy, without reimbursement, the employee benefits they earned as rehired or absorbed NPC employees after termination from NPC until September 14, 2007 or the date of retirement, whichever is earlier and *simultaneously*, and (b) to benefit from the award of full back wages covering the same period is tantamount to permitting these personnel to occupy multiple positions in the civil service (*i.e.*, their original position in the NPC *and* their new position in the NPC, PSALM, or Transco after the reorganization) and to receive benefits separately for each of those positions.

It is clear that sustaining the effects of these NPB resolutions prior to nullification is incompatible with upholding the prevailing doctrine on the award of full back wages as a result of illegal separation after the same NPB resolutions were invalidated.

On the other hand, petitioners who were neither rehired by the NPC or absorbed by PSALM or Transco pursuant to the 2003 reorganization and subsequently employed in the private sector shall be entitled to full back wages (applying *Bustamante* and *Equitable Banking Corporation*).

C. Wage Adjustments and Other Benefits

In addition, We have also ruled that back wages should include **other monetary benefits** attached to the employee's salary following the principle that an illegally dismissed government employee who is later reinstated is entitled to all the rights and privileges that accrue to him/her by virtue of the office he/she held.[106]

D. Separation pay already received under the restructuring plan

Recall that the Court did not issue a temporary restraining order or a preliminary injunction to enjoin the implementation of NPB Resolution Nos. 2002-124 and 2002-125. In effect, the NPC proceeded with the implementation of the restructuring plan, the termination of the petitioners' employment,[107] and consequently the payment of the personnel's separation pay under the plan.

Thus, while the petitioners are entitled to separation pay in lieu of reinstatement, back wages, and other wage adjustments, **the amount they shall receive must be reduced by any**

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[106] *Galang v. Land Bank of the Philippines*, *supra* note 91 at 54, citing *Civil Service Commission v. Magnaye, Jr.*, *supra* note 76 at 368.

[107] Our Resolution dated September 17, 2008.

separation pay each of them has already received under the separation plan.

Interest and Attorney's Lien

A. Attorney's lien

In Our Resolution dated September 17, 2008, we approved a charging lien in favor of Attys. Aldon and Orocio. Their lien shall be **10% of the petitioners' entitlement, after deducting the separation pay already received by the petitioners under the restructuring plan**.

B. Legal interest

Aside from the petitioners' above-mentioned entitlement, the amount due shall earn interest **at the legal rate**.[108] The payment of legal interest is a "natural consequence of a final judgment."[109]

As We held in *Eastern Shipping Lines, Inc. v. Court of Appeals*,[110] interest at the legal rate of **12% per annum** shall accrue from the finality of judgment until the judgment award is fully settled. However, pursuant to *Nacar v. Galleray Frames*,[111] beginning July 1, 2013, the legal rate of **6% per annum** shall apply by virtue of Central Bank Circular No. 799.

To be sure, the judgment award in this case upon which interest shall accrue is the **petitioners' entitlement** *after deducting* **the separation pay already received by the petitioners under the restructuring plan** *and* the 10% charging lien. The exclusion of the charging lien from the amount of judgment award to be used as a basis in accruing legal interest is only proper considering that in *Bach v. Ongkiko Kalaw Manhit & Acorda Law Offices*,[112]

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[108] *Philippine Airlines, Inc. v. Dawal*, *supra* note 29 at 530-531.

[109] *BPI Employees Union-Metro Manila v. Bank of the Philippine Islands*, *supra* note 30 at 615.

[110] 304 Phil. 236, 254 (1994).

[111] 716 Phil. 267, 283 (2013).

[112] 533 Phil. 69, 84 (2006). In this case, the Court held that, "The imposition of legal interest on the amount payable to private respondent as attorney's

the Court categorically held that legal interest must not be imposed on attorney's fees.

Following these principles, interest on the judgment award shall be computed as follows: (1) **12% per annum** *from* October 8, 2008,[113] *until* June 30, 2013; and (2) **6% per annum** *from* July 1, 2013 onwards.

WHEREFORE, the Court resolves to:

1. **GRANT** PSALM's prayer to lift and quash the Demand for Immediate Payment and the Notices of Garnishment issued against it and the NPC;
2. **DENY** the petitioners' request to immediately execute the judgment award; and
3. **DIRECT** the petitioners to file a claim against the government before the Commission on Audit, pursuant to its rules, which shall be resolved in accordance with the guidelines herein set forth.

SO ORDERED.

Carpio[*] *(Acting Chief Justice), Bersamin, del Castillo, Perlas-Bernabe, Leonen, Martires, Tijam,* and *Gesmundo, JJ.,* concur.

Peralta, Jardeleza, and *Caguioa, JJ.,* no part.

Velasco, Jr., and *Reyes, Jr., JJ.*, on official leave.

Sereno, C.J., on leave.

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fees is unwarranted. Even as we agree that parties can freely stipulate on the terms of payment, still the imposition of interest in the payment of attorney's fees is not justified. In the case of *Cortes v. Court of Appeals*, we ruled that Article 2209 of the Civil Code does not even justify the imposition of legal interest on the payment of attorney's fees as it is a provision of law governing ordinary obligations and contracts. It deleted the 6% interest imposed by the appellate court on the payment of attorney's fees." (Citations omitted.)

[113] Date of finality of Our Main Decision.

[*] Per Special Order No. 2519 dated November 21, 2017.

EN BANC

[G.R. No. 195105. November 21, 2017]

METROPOLITAN WATERWORKS AND SEWERAGE SYSTEM, *petitioner, vs.* **COMMISSION ON AUDIT,** *respondent.*

[G.R. No. 220729. November 21, 2017]

DARLINA T. UY, LEONOR C. CLEOFAS, MA. LOURDES R. NAZ, JOCELYN M. TOLEDO, LOIDA G. CEGUERRA, and MIRIAM S. FULGUERAS, *petitioners, vs.* **METROPOLITAN WATERWORKS AND SEWERAGE SYSTEM, COMMISSION ON AUDIT,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; RULES OF COURT; THE GENERAL RULE IS THAT THE RETROACTIVE EFFECT OF THE RULES OF PROCEDURE ADMITS OF EXCEPTIONS; THE EXCEPTIONS ARE WHEN THE RULE ITSELF EXPRESSLY OR BY NECESSARY IMPLICATION SO PROVIDES OR WHEN TO ALLOW THE RETROACTIVE APPLICATION OF THE RULE WOULD CREATE GREAT INJUSTICE TO THE PARTIES WHO WERE GOVERNED BY THE PREVIOUS RULE; CASE AT BAR.— The general rule that a rule of procedure can be given retroactive effect admits of exceptions, such as where the rule itself expressly or by necessary implication provides that pending actions are excepted from its operation, or where to apply it to pending proceedings would impair vested rights. In the situation before us, there were already four years and seven months from the filing of the petition in G.R. No. 195105, which resulted in the stay of execution of Decision No. 2009-072 dated September 1, 2009 and Decision No. 2010-145 dated December 30, 2010. To allow the retroactive application of Resolution No. 2011-006 would really create a great injustice to the petitioners who were governed by the previous rule at the time of the filing of the petition of the MWSS to assail the decisions. Such retroactive

application would deprive them of their salaries and compensation, and would not be fair to them, to say the least.

2. POLITICAL LAW; ADMINISTRATIVE LAW; REPUBLIC ACT NO. 6758 (COMPENSATION AND POSITION CLASSIFICATION OF 1989); THE GOVERNING BOARDS OF THE GOCCS (GOVERNMENT OWNED AND CONTROLLED CORPORATIONS) NO LONGER WIELD THE POWER TO FIX COMPENSATION AND ALLOWANCES OF THEIR PERSONNEL; VIOLATION IN CASE AT BAR.— Upon the effectivity of R.A. No. 6758, government-owned and controlled corporations (GOCCs) were included in the Compensation and Position Classification System under the law. As the aforequoted provision indicates, R.A. No. 6758 has repealed all corporate charters of the GOCCs, and such repeal has been put to rest by this Court. x x x As things now stand, the governing boards of the GOCCs no longer wield the power to fix compensation and allowances of their personnel, including the authority to increase the rates, pursuant to their specific charters. COA rightly submits that the grant by the Board of Trustees of the MWSS of the benefits constituted an *ultra vires* act. Verily, what is *ultra vires* or beyond the power of the MWSS to do must also be *ultra vires* or beyond the power of its Board of Trustees to undertake. The powers of the Board of Trustees, who under the law were authorized to exercise the corporate powers, were necessarily limited by restrictions imposed by law on the MWSS itself, considering that Board of Trustees only acted in behalf of the latter. Upon the effective repeal of the MWSS Charter, the Board of Trustees could no longer fix salaries, pay rates or allowances of its officials and employees upon the effectivity of R.A. No. 6758.

3. ID.; ID.; ID.; THE GENERAL RULE IS THAT ALL ALLOWANCES ARE DEEMED INCLUDED IN THE STANDARDIZED SALARY, UNLESS EXCLUDED BY LAW OR BY AN ISSUANCE BY DBM (DEPARTMENT OF BUDGET AND MANAGEMENT); NON-INTEGRATED ALLOWANCES THAT GOVERNMENT PERSONNEL MAY CONTINUE TO RECEIVE IN ADDITION TO THEIR STANDARDIZED SALARY RATES, ENUMERATED.— It is the distinct policy of Section 12, R.A. No. 6758, to standardize salary rates among government personnel and to do away with multiple allowances and other incentive packages

as well as the resulting differences in compensation among them. Thus, the general rule now is that all allowances are deemed included in the standardized salary, unless excluded by law or by an issuance by DBM. The integration of the benefits and allowances is by legal fiction. Without the issuance by DBM, the enumerated non-integrated allowances in Section 12 remain exclusive. The following non-integrated allowances under Section 12 are the only allowances that government personnel may continue to receive in addition to their standardized salary rates, unless DBM shall add other items thereto, namely: 1. Representation and transportation allowances (RATA); 2. Clothing and laundry allowances; 3. Subsistence allowance of marine officers and crew on board government vessels; 4. Subsistence allowance of hospital personnel; 5. Hazard pay; 6. Allowances of foreign service personnel stationed abroad; and 7. Such other additional compensation not otherwise specified herein as may be determined by the DBM.

4. ID.; CONSTITUTIONAL COMMISSIONS; COMMISSION ON AUDIT (COA); POWER AND FUNCTION; COA HAS THE POWER TO ASCERTAIN WHETHER THE PUBLIC FUNDS WERE UTILIZED FOR THE PURPOSE FOR WHICH THEY HAD BEEN INTENDED.— In the discharge of its constitutional mandate, COA is endowed with enough latitude to determine, prevent and disallow irregular, unnecessary, excessive, extravagant, or unconscionable expenditures of government funds. It has the power to ascertain whether public funds were utilized for the purpose for which they had been intended. The 1987 Constitution has expressly made COA the guardian of public funds, vesting it with broad powers over all accounts pertaining to government revenue and expenditures and the uses of public funds and property, including the exclusive authority to define the scope of its audit and examination, establish the techniques and methods for such review, and promulgate accounting and auditing rules and regulations. We find no grave abuse of discretion on the part of COA in issuing the assailed Decisions. By *grave abuse of discretion* is meant such capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction. The abuse of discretion must be grave as where the power is exercised in an arbitrary or despotic manner by reason of passion or personal hostility and must be so patent and gross as to amount to an evasion of positive duty or to a virtual refusal to perform the duty enjoined by or

to act at all in contemplation of law. The burden is on the part of petitioner to prove not merely reversible error, but grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the public respondent issuing the impugned order. Mere abuse of discretion is not enough; it must be grave. We find no grave abuse of discretion on the part of COA in issuing the assailed Decisions. On the contrary, COA only thereby steadfastly complied with its duty under the 1987 Constitution to exercise its general audit power.

5. ID.; ID.; ID.; 2009 RULES AND REGULATIONS ON SETTLEMENT OF ACCOUNTS; THE APPROVING OFFICERS WERE PERSONALLY LIABLE FOR THE AMOUNT OF THE DISALLOWED BENEFITS, WHICH IN CASE AT BAR ARE THE MEMBERS OF THE BOARD OF TRUSTEES.— Based on the evolving jurisprudence, and in view of Section 16 of the 2009 Rules and Regulations on Settlement of Accounts, the approving officers of the MWSS were personally liable for the amount of disallowed benefits. Despite the lack of authority for granting the benefits, they still approved the grant and release of the benefits in excess of the allowable amounts and extended the same benefits to its officials and employees not entitled thereto, patently contravening the letter and spirit of R.A. No. 6758 and related laws. x x x The COA has not proved or shown that the petitioners, among others, were the approving officers contemplated by law to be personally liable to refund the illegal disbursements in the MWSS. While it is true that there was no distinct and specific definition as to who were the particular approving officers as well as the respective extent of their participation in the process of determining their liabilities for the refund of the disallowed amounts, we can conclude from the fiscal operation and administration of the MWSS how the process went when it granted and paid out benefits to its personnel. The Board of Trustees, in whom all the corporate powers and functions of the MWSS were vested, governed the agency. In turn, the Management of the MWSS was at the center of decision-making for the day-to-day affairs of the MWSS. Nonetheless, it was the Board of Trustees, through board resolution, that issued the authority granting the benefits and allowances to the employees. The Management, acting by virtue of and pursuant to the resolution, implemented the same. In this connection, it is notable that the resolution approving the release of the mid-year financial assistance for CY 2000 facially indicated that

the authority had emanated from the Board of Trustees. Under the circumstances, the petitioners in G.R. No. 220727, albeit officials of the MWSS, were not members of the Board of Trustees and, as such, could not be held personally liable for the disallowed benefits by virtue of their having had no part in the approval of the disallowed benefits. In turn, the recipients of the benefits — officials and employees alike — were not liable to refund the amounts received for having acted in good faith due to their honest belief that the grant of the benefits had legal basis.

APPEARANCES OF COUNSEL

Office of the Government Corporate Counsel for MWSS.
Rodolfo A. Caddarao for petitioners in G.R. No. 220729.
The Solicitor General for Commission on Audit.

D E C I S I O N

BERSAMIN, *J.*:

The petitioners, albeit officials of the agency, cannot be held personally liable for the disallowed benefits because they had no participation in the approval thereof. The recipients of the benefits, having acted in good faith because of their honest belief that the grant of the benefits had legal basis, need not refund the amounts received.

The Case

Assailed in G.R. No. 195105 are Decision No. 2009-072 dated September 1, 2009[1] and Decision No. 2010-145 dated December 30, 2010,[2] whereby the Commission on Audit (COA Proper) affirmed the disallowance of certain benefits received by the employees of petitioner Metropolitan Waterworks and Sewerage System's (MWSS), and ordered the officers of the MWSS responsible for the approval and payment of the benefits to refund the total amount disallowed.

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[1] *Rollo* (G.R. No. 195105), pp. 32-46.

[2] *Id*. at 27-31.

In G.R. No. 220729, the petitioners seek to set aside COA Order of Execution No. 2015-174(COE) dated August 6, 2015,[3] whereby the COA identified them as the MWSS officers personally liable to refund the total amount of the benefits and allowances subject of the disallowance being assailed in G.R. No. 195105.

Antecedents

Prior to the enactment of Republic Act No. 6758 (*Compensation and Position Classification Act of 1989*), the Board of Trustees of the MWSS approved the grant of certain benefits to its employees over a period of time. The benefits included the mid-year financial assistance granted on May 21, 1987; *bigay-pala* approved on September 24, 1987; meal/medical allowance granted on March 6, 1980; productivity bonus since October 29, 1987; year-end financial assistance allowed since November 18, 1987; and longevity pay, which the employees had been enjoying since January 31, 1972.[4]

Upon the enactment of R.A. No. 6758, Lakambini Q. Razon, then the Resident Auditor of MWSS, issued a Notice of Disallowance (ND) dated August 15, 2000 [ND-2000-017-07 (99)] disallowing the payment of the benefits to the MWSS employees for the period from January 2000 to November 2000.[5] Subsequently, the COA specified the following NDs:[6]

	Amount Disallowed	Nature of Payment	Reason for Disallowance
2001-025-05 (00) 2001-006-05 (00)	₱2,128,780.40 601,919.70	Mid-Year FA – CY-2000	Violation of Section 12, RA 6758
2001-024-05 (00) 2001-022-05 (00)	1,929,610.60 799,682.04	Year-End FA – CY-2000	Violation of Section 12, RA 6758
2001-021-05 (00)	742,573.90	Bigay-Pala Anniv. Bonus	Violation of Section 12, RA 6758

[3] *Rollo* (G.R. No. 220729), pp. 54-57.

[4] *Rollo* (G.R. No. 195105), pp. 5-6.

[5] *Id*. at 68.

[6] *Id*. at 32-33.

2001-023-05 (00)	2,147,432.60	PIB CY 1999	Violation of: a) AO No. 161 dated Dec. 6, 1994 b) NCC No. 73 dated Dec. 27, 1994 c) NCC No. 73A dated Mar. 1, 1995
2001-019-05 (00)	235,000.00	Medical Allowance CY 2000	Increase after 1989 is in violation of RA 6758
2001-018-05 (00)	155,838.32	RATA (Jan.-Aug. 2000)	Not entitled. Violation of Sec. 41 GAA 2000 and COA Memo No. 90-653 dated June 4, 1990
Total	**₱8,740,837.56**		

On October 3, 2001, the MWSS moved for the reconsideration of the NDs.[7] As a consequence, the COA Legal and Adjudication Office-Corporate (COA-LAO) modified its decision and allowed the payment of the mid-year financial assistance, year-end financial assistance, *bigay-pala* anniversary bonus, and medical allowance to employees already enjoying the benefits as of June 30, 1989,[8] or on or before the July 1, 1989 effectivity of R.A. No. 6758. The COA-LAO also allowed the PIB only to the extent of ₱2,000.00 per occupied/filled up position under Administrative Order No. 161; and the RATA equivalent to 40% of the basic salary to employees already employed and enjoying the benefit as of July 1, 1989, while the employees hired thereafter would receive RATA as authorized under the General Appropriations Act.[9]

[7] *Id*. at 55-61.

[8] *Id*. at 108.

[9] *Id*. at 108-109.

The MWSS appealed but the COA Proper denied the appeal on September 1, 2009 for its lack of merit,[10] to wit:

WHEREFORE, foregoing premises considered, herein appeal is hereby **DENIED** for lack of merit and the following disallowances are hereby **SUSTAINED,** with some modifications in the amounts, viz:

Benefit	Basis	Amount Disallowed
Mid-Year FA 2000	Per ND No. 2001-025-05 (00)	₱ 2,128,780.40
Mid-Year FA 2000	Per ND No. 2001-006-05 (00)	601,919.70
Year-End FA 2000	Per ND No. 2001-024-05 (00)	1,929,610.60
Year-End FA 2000	Per ND No. 2001-022-05 (00) (as rectified by the Auditor)	735,243.34
Bigay Pala Anniv Bonus	Per ND No. 2001-021-05 (00)	742,573.90
PIB	Under ND No. 2001-023-05 (00) Per computation	2,157,932.65
Medical Allowance	Under ND No. 2001-019-05 (00)Per computation	287,500.00
RATA	Under ND No. 2001-018-05 (00)Per computation	179,387.72
	TOTAL	**₱ 8,762,948.31**

The officials who approved/authorized the grant of subject benefits are required to refund the total disallowed amount of ₱8,762,948.31. The Supervising Auditor is also directed to inform this Commission of the settlement made thereon.[11]

The COA Proper later denied the MWSS's motion for reconsideration with finality on January 6, 2011.[12]

Meanwhile, on August 6, 2015, the COA issued COA Order of Execution (COE) 2015-174[13] addressed to the Administrator

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[10] *Id*. at 32-46.

[11] *Id*. at 45.

[12] *Id*. at 110.

[13] *Rollo* (G.R. No. 220729), pp. 54-58.

of the MWSS identifying the petitioners in G.R. No. 220729 (namely: Darlina T. Uy, Leonor C. Cleofas, Ma. Lourdes R. Naz, Jocelyn M. Toledo, Loida G. Ceguerra, and Miriam S. Fulgueras), along with eight other MWSS officials, as among the certifying/approving officials personally liable to refund the disallowed amounts. COE 2015-174 further stated:

> Please withhold the payment of the salaries or any amount due to the above-named persons liable for the settlement of their liabilities pursuant to the NDs/Decisions referred to above, copies attached and made integral parts hereof.
>
> In case any of the above-named persons are no longer in the service, please cause the collection or settlement of the same directly from them, and inform this office within fifteen (15) days from receipt of this COE of efforts made to collect pursuant hereto.
>
> Payment of salaries or any amount due them in violation of this instruction will be disallowed in audit and you will be held liable therefor.
>
> If full settlement has been made, please disregard this COE, and furnish this office with authenticated copy/ies of official receipts or equivalent proof of settlement, for record and monitoring purposes.[14]

On August 20, 2015, the petitioners, asserting that the COA had no basis in rendering them personally liable to refund the disallowed amounts, filed a motion to set aside COE 2015-174.[15]

In the letter-reply dated September 7, 2015,[16] however, then COA Assistant Commissioner and General Counsel (now Commissioner) Isabel D. Agito denied due course to the petitioners' motion to set aside COE 2015-174, stating in part:

> Please be informed that COA Resolution No. 2011-006 dated August 17, 2011, amended Section 9, Rule X of the 2009 Revised Rules of Procedure of the Commission on Audit and adopted Section 8, Rule 64 of the 1997 Revised Rules of Court, which provides:

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[14] *Id*. at 55.

[15] *Id*. at 85-93.

[16] *Id*. at 265.

> A decision or resolution of the Commission upon any matter within its jurisdiction **shall become final and executory** after the lapse of thirty (30) days from notice of the decision or resolution.
>
> **The filing of a petition for *certiorari* shall not stay the execution** of the judgment or final order or resolution sought to be reviewed, **unless the Supreme Court shall direct otherwise upon such terms as it may deem just.**

In view thereof, the assailed COA decision became final and executory in the absence of a Temporary Restraining Order issued by the SC. x x x[17]

Accordingly, the petitioners have come to the Court for relief.

Issues

The petitioners seek the review of the NDs and the setting aside of COE 2015-174, asserting that the COA Proper thereby gravely abused its discretion amounting to lack or excess of jurisdiction.

The MWSS raises the following issues in G.R. No. 195105:

1. WHETHER OR NOT RESPONDENT COA COMMITTED GRAVE ABUSE OF DISCRETION, AMOUNTING TO LACK OF JURISDICTION, IN AFFIRMING THE DISALLOWANCE OF THE MID-YEAR FINANCIAL ASSISTANCE FOR CY 2000, YEAR-END FINANCIAL ASSISTANCE FOR CY 2000, BIGAY PALA 2000, ANNIVERSARY BONUS, PRODUCTIVITY AND INCENTIVE BONUS CY 1999, MEDICAL ALLOWANCE CY 2000 AND REPRESENTATION AND TRANSPORTATION ALLOWANCE (RATA) JANUARY–AUGUST 2000 GRANTED TO PETITIONER MWSS' EMPLOYEES AND OFFICIALS.

2. WHETHER OR NOT RESPONDENT COA COMMITTED GRAVE ABUSE OF DISCRETION, AMOUNTING TO LACK OF JURISDICTION, IN RULING THAT THE OFFICIALS WHO APPROVED AND AUTHORIZED THE GRANT OF SUBJECT BENEFITS ARE REQUIRED TO REFUND THE TOTAL DISALLOWED AMOUNT.[18]

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[17] *Id*.

[18] *Rollo* (G.R. No. 195105), p. 9.

The MWSS submits that the COA committed grave abuse of discretion in issuing the NDs inasmuch as the grant of the benefits by its Board of Trustees had legal bases, rendering the grant valid; that RA No. 6758 did not repeal the MWSS Charter, which afforded authority to the Board of Trustees to grant or to continue granting benefits to its employees; that the benefits specified in the Concession Agreement had been duly approved by then President Ramos, through Secretary Gregorio Vigilar of the Department of Public Works and Highways (DPWH); that the requirement that any other benefits granted must have authority from the President or the Department of Budget and Management (DBM) had thus been complied with; and that the grant of RATA had already been resolved in favor of the MWSS in *Cruz v. Commission on Audit*.[19]

In contrast, COA insists that the mid-year and year-end financial assistance and the *bigay-pala* anniversary bonus initially granted in 1987 were not among the benefits authorized under Item 5 of Letter of Implementation (LOI) No. 97 dated August 31, 1979;[20] that said benefits had been granted pursuant to board resolutions without the imprimatur of the Office of the President (OP) as required by Section 2 of Presidential Decree (PD) No. 985;[21] that the act of the Board of Trustees of the MWSS in increasing the amount of medical allowance without the authority from the OP was an *ultra vires* act; and that the productivity incentive benefit equivalent to one-month pay in 1999 was grossly in excess of the prescribed ₱2,000.00 cap in violation of A.O. No. 161.[22]

The petitioners in G.R. No. 220729 assert:

I.

COA COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK/EXCESS OF JURISDICTION WHEN IT DEMANDED

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[19] G.R. No. 134740, October 23, 2001, 368 SCRA 85, 89.

[20] *Rollo* (G.R. No. 195105), p. 36.

[21] *The Budgetary Reform Decree on Compensation and Position Classification of 1976.*

[22] *Rollo* (G.R. No. 195105), p. 43.

REFUND FROM THE PETITIONERS UNDER COE 2015-174 WHEN THEIR BAD FAITH AND LIABILITIES WERE NEVER DISCUSSED NOR ESTABLISHED UNDER THE DECISIONS RENDERED.

II.

COA CARELESSLY LISTED ALL IDENTIFIABLE NAMES ON THE PAYROLLS WITHOUT ASSESSING THE NATURE OF THE CERTIFICATIONS MADE BY THE SIGNATORIES;

EXPENDITURE WAS LEGAL: PETITIONERS RELIED IN GOOD FAITH ON (1) THE CONFIRMATION MADE BY FORMER PRESIDENT FIDEL V. RAMOS, (2) BOARD RESOLUTIONS OF THE BOARD OF TRUSTEES AND (3) THE CERTIFICATION OF AVAILABILITY OF THE BUDGET WHEN THEY AFFIXED THEIR SIGNATURES ON THE PAYROLLS;

PETITIONERS WERE NOT DIRECTLY RESPONSIBLE FOR THE DISBURSEMENT: NONE OF THE PETITIONERS HAD THE POWER TO GRANT THE BENEFITS ASSAILED;

PETITIONERS ARE NOT ACCOUNTABLE OFFICERS UNDER SECTION 106 OF PD 1445 NEITHER POSSESSED NOR HAD CUSTODY OF GOVERNMENT FUNDS.

III.

EXECUTION IS PREMATURE UNDER SECTION 9, RULE X OF THE 2009 COA RULES OF PROCEDURE (WITHOUT AMENDMENTS); APPLICATION OF COA RESOLUTION 2011-006 DATED AFTER THE FILING OF THE INSTANT PETITION IS MISPLACED

IV.

MWSS AND COA MUST DESIST FROM CARRYING OUT COE 2015-174 AND DEDUCTING FROM THE PETITIONERS' SALARIES THE ASSAILED DISALLOWANCES BECAUSE IT VIOLATES THE PETITIONERS' RIGHT TO DUE PROCESS

V

THE *EX PARTE* ISSUANCE OF A WRIT OF PRELIMINARY INJUNCTION AND/OR TEMPORARY RESTRAINING ORDER IS PROPER TO RESTRAIN MWSS AND COA FROM IMMEDIATELY IMPLEMENTING COE 2015-174 AND CARRYING OUT THE DEDUCTIONS AGAINST PETITIONERS.

The petitioners allege that under Section 9, Rule X of the 2009 COA Rules of Procedure a decision of COA became final and executory after 30 days from notice thereof unless a motion for reconsideration or a recourse to the Court was seasonably filed; that COA instead applied its Resolution No. 2011-006 dated August 17, 2011, whereby it amended said Section 9 to provide that the petition for *certiorari* should not stay the execution of the decision unless the Court ordered so; and that the amendatory rule should not be held to apply to them retrospectively.

In fine, the issues herein are: (1) whether or not COA gravely abused its discretion in upholding the validity of the NDs issued against MWSS; and (2) in case of an affirmative response to the first issue, whether the petitioners in G.R. No. 220729 were liable to refund the disallowed amount.

Ruling of the Court

After a careful evaluation of the facts and pertinent laws, the Court finds and declares that COA Proper did not gravely abuse its discretion in issuing the NDs against the MWSS; but the Court holds that the petitioners in G.R. No. 220729 should not be held liable to refund the disallowed benefits and allowances.

1.

Propriety of applying COA Resolution No. 2011-006, amending the 2009 COA Revised Rules of Procedures

We shall deal first with the procedural question on which rule of procedure was applicable.

In issuing COE 2015-174, COA applied COA's Resolution No. 2011-006, and held that notwithstanding the filing of the petition for *certiorari* under Rule 64 of the *Rules of Court*, its decisions should forthwith commence and would not be stayed unless the Court itself directed otherwise. To recall, the original rule (Section 9, Rule X of the 2009 COA Rules of Procedure) deemed the finality and execution of the decision stayed by the filing of the motion for reconsideration or of the recourse in this Court.

We note that the petition in G.R. No. 195105 was filed on February 1, 2011 and COE 2015-174 was issued on September 7, 2015; and Resolution No. 2011-006 was approved on August 17, 2011 and took effect 15 days after its publication in two newspapers of general circulation. It is evident that if the old rule on the finality of judgment were to be applied, the petitioners would have no reason to apply for the temporary restraining order and/or writ of preliminary injunction to prevent COA from deeming the assailed decisions executory and issuing COE 2015-174, considering that their salaries and other benefits were not in any danger of being withheld pending the final resolution of their petitions by the Court. Instead, COA retroactively applied Resolution No. 2011-006.

We rule that such application by COA constituted grave abuse of discretion under the circumstances obtaining herein.

The general rule that a rule of procedure can be given retroactive effect admits of exceptions, such as where the rule itself expressly or by necessary implication provides that pending actions are excepted from its operation, or where to apply it to pending proceedings would impair vested rights.[23] In the situation before us, there were already four years and seven months from the filing of the petition in G.R. No. 195105, which resulted in the stay of execution of Decision No. 2009-072 dated September 1, 2009 and Decision No. 2010-145 dated December 30, 2010. To allow the retroactive application of Resolution No. 2011-006 would really create a great injustice to the petitioners who were governed by the previous rule at the time of the filing of the petition of the MWSS to assail the decisions. Such retroactive application would deprive them of their salaries and compensation, and would not be fair to them, to say the least.

2.

R.A. No. 6758 repealed the pertinent provisions of the MWSS's corporate charter

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[23] *Tan Jr. v. Court of Appeals,* G.R. No.136368, January 16, 2002, 373 SCRA 524, 537.

Section 16 of R.A. No. 6758 provides:

Section 16. ***Repeal of Special Salary Laws and Regulations*****.** – All laws, decrees, executive orders, **corporate charters**, and other issuances **or parts thereof**, that exempt agencies from the coverage of the System, or **that authorize and fix** position classification, **salaries, pay rates or allowances** of specified positions, or groups of officials and employees or of agencies, which are inconsistent with the System, including the proviso under Section 2, and Section 16 of Presidential Decree No. 985 are hereby repealed. (Emphasis supplied)

Upon the effectivity of R.A. No. 6758, government-owned and controlled corporations (GOCCs) were included in the Compensation and Position Classification System under the law. As the aforequoted provision indicates, R.A. No. 6758 has repealed all corporate charters of the GOCCs, and such repeal has been put to rest by this Court. In the 1999 ruling in *Philippine International Trading Corporation v. Commission on Audit*,[24] the Court opined:

> x x x [T]he repeal by Section 16 of RA 6758 of "all corporate charters that exempt agencies from the coverage of the System" was clear and expressed necessarily to achieve the purposes for which the law was enacted, that is, the standardization of salaries of all employees in government owned and/or controlled corporations to achieve "equal pay for substantially equal work." Henceforth, PITC should now be considered as covered by laws prescribing a compensation and position classification system in the government including RA 6758. This is without prejudice, however, as discussed above, to the non-diminution of pay of incumbents as of July 1, 1989 as provided in Sections 12 and 17 of said law.[25]

As things now stand, the governing boards of the GOCCs no longer wield the power to fix compensation and allowances of their personnel, including the authority to increase the rates, pursuant to their specific charters.

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[24] G.R. No. 132593, June 25, 1999, 309 SCRA 177.

[25] *Id.* at 191-192.

COA rightly submits that the grant by the Board of Trustees of the MWSS of the benefits constituted an *ultra vires* act. Verily, what is *ultra vires* or beyond the power of the MWSS to do must also be *ultra vires* or beyond the power of its Board of Trustees to undertake. The powers of the Board of Trustees, who under the law were authorized to exercise the corporate powers, were necessarily limited by restrictions imposed by law on the MWSS itself, considering that Board of Trustees only acted in behalf of the latter.[26] Upon the effective repeal of the MWSS Charter, the Board of Trustees could no longer fix salaries, pay rates or allowances of its officials and employees upon the effectivity of R.A. No. 6758.

3.

Consolidation of allowances and compensation of government employees

Section 12 of R.A. No. 6758 states:

Section 12. ***Consolidation of Allowances and Compensation.*** - All allowances, except for representation and transportation allowances; clothing and laundry allowances; subsistence allowance of marine officers and crew on board government vessels and hospital personnel; hazard pay; allowances of foreign service personnel stationed abroad; and such other additional compensation not otherwise specified herein as may be determined by the DBM, shall be deemed included in the standardized salary rates herein prescribed. Such other additional compensation, whether in cash or in kind, being received by incumbents only as of July 1, 1989 not integrated into the standardized salary rates shall continue to be authorized.

Existing additional compensation of any national government official or employee paid from local funds of a local government unit shall be absorbed into the basic salary of said official or employee and shall be paid by the National Government.

This provision consolidated or integrated allowances in the standardized salary in the Philippine position classification and

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[26] *Republic v. Sandiganbayan (First Division),* G.R. Nos. 166859, 169203, and 180702, April 12, 2011, 648 SCRA 47, 293-294 (Dissenting Opinion of Associate Justice Arturo D. Brion).

compensation system, which previous laws on standardization of compensation of government officials and employees did not do. Presidential Decree No. 985, as amended by Presidential Decree No. 1597,[27] the law antecedent to Republic Act No. 6758, repealed all laws, decrees, executive orders, and other issuances or parts thereof that authorized the grant of allowances in favor of officials and employees occupying certain positions. Under Presidential Decree No. 985, allowances, honoraria, and other fringe benefits could only be granted to government employees upon approval of the President with the recommendation of the Commissioner of the Budget Commission.[28]

It is the distinct policy of Section 12, supra, to standardize salary rates among government personnel and to do away with multiple allowances and other incentive packages as well as the resulting differences in compensation among them. Thus, the general rule now is that all allowances are deemed included in the standardized salary, unless excluded by law or by an issuance by DBM. The integration of the benefits and allowances is by legal fiction.[29] Without the issuance by DBM, the enumerated non-integrated allowances in Section 12 remain exclusive.[30]

The following non-integrated allowances under Section 12 are the only allowances that government personnel may continue to receive in addition to their standardized salary rates, unless DBM shall add other items thereto, namely:

1. Representation and transportation allowances (RATA);
2. Clothing and laundry allowances;

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[27] *Further Rationalizing the System of Compensation and Position Classification in the National Budget.*

[28] *Maritime Industry Authority v. Commission on Audit,* G.R. No. 185812, January 13, 2015, 745 SCRA 300, 320.

[29] *Id.* at 321.

[30] *Id.* at 322.

3. Subsistence allowance of marine officers and crew on board government vessels;

4. Subsistence allowance of hospital personnel;

5. Hazard pay;

6. Allowances of foreign service personnel stationed abroad; and

7. Such other additional compensation not otherwise specified herein as may be determined by the DBM.

On February 15, 1999, DBM issued the Corporate Compensation Circular (DBM-CCC) No. 10 to initiate the rules and regulations implementing R.A. No. 6758 for the GOCCs and government financial institutions (GFIs). DBM-CCC No. 10 listed other non-integrated allowances allowed *only* to incumbents of positions authorized and actually receiving such allowances/benefits as of June 30, 1989.[31] Paragraph 5.4-5.6 of DBM-CCC No. 10 further provided:

5.4. The following allowances/fringe benefits which were authorized to GOCCs/GFIs under the standardized Position Classification and Compensation Plan x x x pursuant to P.D. No. 985, as amended by P.D. No. 1597, the Compensation Standardization Law in operation prior to R.A. No. 6758, and to other related issuances **are not to be integrated into the basic salary** and **allowed to be continued after June 30, 1989 only to incumbents of positions who are authorized and actually receiving such allowances/benefits as of said date** x x x:

5.4.1. Representation and Transportation Allowance (RATA)

x x x x x x x x x

5.5. The following allowances/fringe benefits authorized to GOCCs/GFIs pursuant to the aforementioned issuances **are not likewise to be integrated into the basic salary** and **allowed to be continued only for incumbents of positions as of June 30, 1989 who are authorized and actually receiving said allowances/benefits as of said date** x x x:

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[31] Paragraphs 5.4 and 5.5, DBM-CCC No. 10.

x x x x x x x x x

5.5.4. Medical/dental/optical allowances/benefits;

x x x x x x x x x

5.6. Payment of **other allowances/fringe benefits** and all other forms of compensation granted on top of basic salary, whether in cash or in kind, **not mentioned in Sub-Paragraphs 5.4 and 5.5 above** shall continue to be **not authorized**. Payment made for **such unauthorized allowances/fringe benefits shall be considered as illegal disbursement of public funds**. (Bold underscoring supplied for emphasis)

Accordingly, the disallowed benefits and allowances of MWSS's officials and employees, with the exception of the RATA and the medical allowance, were not excluded by R.A. No. 6758 or any issuance by DBM. It is understood that as a general rule such benefits and allowances were already included and given to the officials and employees when they received their basic salaries. Their receipt of the disallowed benefits and allowances was tantamount to double compensation. It is thus incumbent upon the MWSS to prove that the disallowed allowances were sanctioned by the Office of the President or DBM, as the laws required.

The MWSS relies primarily on Exhibit F of the Concession Agreement captioned "Existing MWSS Fringe Benefits" to support the Board of Trustees' grant of the questioned allowances. It must be noted, however, that it was not the 1997 Concession Agreement that authorized the release or grant of the allowances, as borne by the records, but the resolutions of the Board of Trustees, which were done contrary to the express mandate of R.A. No. 6758. We cannot subscribe to the MWSS's argument that the allowances already bore the imprimatur of the Office of the President through Secretary Vigilar of the DPWH on the basis of the latter's signing of the Concession Agreement because such part of the agreement contravened R.A. No. 6758; hence, the same was invalid. Under Section 16.13 of the Concession Agreement, any invalid or unenforceable portion or provision should be deemed severed from the agreement. Accordingly, Exhibit F of the Concession Agreement, being

contrary to R.A. No. 6758, could not be made a source of any right or authority to release the precluded allowances. Moreover, the law is clear that it should be DBM, not the DPWH, that must determine the other additional compensation not specified under the law.

Although it was the clear policy intent of R.A. No. 6758 to standardize salary rates among government personnel, Congress nonetheless saw, as made clear in Section 12 and Section 17 of the law, the need for equity and justice in adopting the policy of non-diminution of pay when it authorized incumbents as of July 1, 1989 to receive salaries and/or allowances over and above those authorized by R.A. No. 6758. In this regard, we held in *Aquino v. Philippine Ports Authority*[32] that no financial or non-financial incentive could be awarded to employees of the GOCCs aside from benefits being received by incumbent officials and employees as of July 1, 1989. This Court then observed:

> The consequential outcome, under sections 12 and 17, is that if the incumbent resigns or is promoted to a higher position, his successor is no longer entitled to his predecessors RATA privilege or to the transition allowance. After 1 July 1989 the additional financial incentives such as RATA may no longer be given by GOCCs with the exemption of those which were authorized to be continued under Section 12 of RA 6758.

In *Philippine International Trading Corporation v. Commission on Audit*,[33] we also held that incumbents as of July 1, 1989 should continue to receive the allowance mentioned in Section 12 even after R.A. No. 6758 took effect, *viz.*:

> First of all, we must mention that this Court has confirmed in *Philippine Ports Authority vs. Commission on Audit* the legislative intent to protect incumbents who are receiving salaries and/or allowances over and above those authorized by RA 6758 to continue to receive the same even after RA 6758 took effect. In reserving the

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[32] G.R. No. 181973, April 17, 2013, 696 SCRA 666, 682.

[33] *Supra* note 25, at 185.

benefit to incumbents, the legislature has manifested its intent to gradually phase out this privilege without upsetting the policy of non-diminution of pay and consistent with the rule that laws should only be applied prospectively in the spirit of fairness and justice. x x x

Clearly, the Court has been very consistent in construing the second sentence in the first paragraph of Section 12, supra, as prescribing July 1, 1989 as the qualifying date to determine whether or not an employee was an *incumbent* and *receiving* the non-integrated remuneration or benefit *for purposes of entitling the employee to its continued grant*. Stated differently, those allowances or fringe benefits (whether RATA or other benefits) that have not been integrated into the standardized salary are allowed to be continued only for *incumbents* of positions as of July 1, 1989 and who were actually *receiving* said allowances or fringe benefits as of said date.[34]

It is basic enough that the erroneous application and enforcement of the law by public officers do not estop the Government from subsequently making a correction of the errors. Practice, without more, no matter how long continued, cannot give rise to any vested right if it is contrary to law.[35] Accordingly, COA correctly held that only the following benefits could be granted to its officers and employees incumbent as of July 1, 1989: the medical allowance as authorized under LOI No. 97, the RATA equivalent to 40% of the basic salary, and the productivity incentive benefits to the extent of the ₱2,000.00 cap mandated by law.

In this respect, inasmuch as the MWSS did not substantiate the entitlement of its officers and employees to the mid-year and year-end financial assistance as well as the *bigay-pala* anniversary bonus, said benefits must be disallowed in full without any need to distinguish between employees hired before or after July 1, 1989.

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[34] *Supra* note 32, at 679.

[35] *Philippine Ports Authority v. Commission on Audit,* G.R. No. 159200, February 16, 2006, 482 SCRA 490, 495.

4.

COA did not commit grave abuse of discretion in issuing the NDs

In the discharge of its constitutional mandate, COA is endowed with enough latitude to determine, prevent and disallow irregular, unnecessary, excessive, extravagant, or unconscionable expenditures of government funds. It has the power to ascertain whether public funds were utilized for the purpose for which they had been intended.[36] The 1987 Constitution has expressly made COA the guardian of public funds, vesting it with broad powers over all accounts pertaining to government revenue and expenditures and the uses of public funds and property, including the exclusive authority to define the scope of its audit and examination, establish the techniques and methods for such review, and promulgate accounting and auditing rules and regulations.[37]

We find no grave abuse of discretion on the part of COA in issuing the assailed Decisions.

By *grave abuse of discretion* is meant such capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction. The abuse of discretion must be grave as where the power is exercised in an arbitrary or despotic manner by reason of passion or personal hostility and must be so patent and gross as to amount to an evasion of positive duty or to a virtual refusal to perform the duty enjoined by or to act at all in contemplation of law.[38] The burden is on the part of petitioner to prove not merely reversible error, but grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the public respondent issuing the impugned order. Mere abuse of discretion is not enough; it must be grave.[39]

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[36] *Sanchez v. Commission on Audit,* G.R. No. 127545, April 23, 2008, 552 SCRA 471, 487-488.

[37] *Yap v. Commission on Audit*, G.R. No. 158562, April 23, 2010, 619 SCRA 154, 167-168.

[38] *United Coconut Planters Bank v. Looyuko*, G.R. No. 156337, September 28, 2007, 534 SCRA 322, 331.

[39] *Tan v. Antazo,* G.R. No. 187208, February 23, 2011, 644 SCRA 337, 342.

We find no grave abuse of discretion on the part of COA in issuing the assailed Decisions. On the contrary, COA only thereby steadfastly complied with its duty under the 1987 Constitution to exercise its general audit power.

5.

Liability of the approving officials and obligation to return the disallowed benefits

Section 16 of the 2009 COA Rules and Regulations on Settlement of Accounts states:

Section 16. Determination of Persons Responsible/Liable.

Section 16.1 The liability of public officers and other persons for audit disallowances/charges shall be determined on the basis of (a) the nature of the disallowance/charge; (b) the duties and responsibilities or obligations of officers/employees concerned; (c) the extent of their participation in the disallowed/charged transaction; and (d) the amount of damage or loss to the government, thus:

x x x x x x x x x

16.1.3 Public officers who approve or authorize expenditures shall be held liable for losses arising out of their negligence or failure to exercise the diligence of a good father of a family.

On the other hand, the solidary liability is in accordance with Book VI, Chapter V, Section 43 of the *Administrative Code*, to wit:

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.

In *Blaquera v. Alcala*,[40] the Court did not require the officials and employees of the different government departments and

[40] G.R. No. 109406, September 11, 1998, 295 SCRA 366, 447-448.

agencies to refund the productivity incentive bonus they had received because of the absence of bad faith, and because the disbursement was made in the honest belief that the recipients deserved the amounts. The *Blaquera* ruling was modified in *Casal v. Commission on Audit*,[41] where the Court ruled that the approving officials were liable to refund the incentive award due to their patent disregard of the issuances of the President and the directives of COA. The officials' failure to observe the issuances amounted to gross negligence, which was inconsistent with the presumption of good faith. Applying both the *Blaquera* and the *Casal* rulings, we declared in *Velasco v. Commission on Audit*[42] that:

> Similarly in the present case, the blatant failure of the petitioners-approving officers to abide with the provisions of AO 103 and AO 161 overcame the presumption of good faith. The deliberate disregard of these issuances is equivalent to gross negligence amounting to bad faith. Therefore, the petitioners-approving officers are accountable for the refund of the subject incentives which they received.
>
> However, with regard to the employees who had no participation in the approval of the subject incentives, they were neither in bad faith nor were they grossly negligent for having received the benefits under the circumstances. The approving officers' allowance of the said awards certainly tended to give it a color of legality from the perspective of these employees. Being in good faith, they are therefore under no obligation to refund the subject benefits which they received.

Based on the evolving jurisprudence, and in view of Section 16 of the 2009 Rules and Regulations on Settlement of Accounts, the approving officers of the MWSS were personally liable for the amount of disallowed benefits. Despite the lack of authority for granting the benefits, they still approved the grant and release of the benefits in excess of the allowable amounts and extended the same benefits to its officials and employees not entitled thereto, patently contravening the letter and spirit of R.A. No. 6758 and related laws. They were very adamant in their stance

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[41] G.R. No. 149633, November 30, 2006, 509 SCRA 138, 149.

[42] G.R. No. 189774, September 18, 2012, 681 SCRA 102, 117.

that R.A. No. 6758 did not apply to them despite its clear provisions and the relevant issuances of DBM, thereby deliberately disregarding the basic principle of statutory construction that when the law was clear, there should be no room for interpretation but only application. Moreover, as we have earlier pointed out, institutional practice is not an excuse to allow disbursements that were otherwise contrary to law.

6.

Who are the MWSS approving officials liable to return the disallowed benefits?

The petitioners in G.R. No. 220729 contend that they should not be held liable to return the disallowed amounts. Although they held certain management positions in the MWSS, they neither possessed nor had custody of the government funds as to allow them to grant the release of certain allowances and benefits. Their respective positions at the time the disallowed benefits were initially approved are as follows:

PETITIONER	POSITION
Loida G. Ceguerra	Division/Branch Manager – Asset Management and General Services
Leonor C. Cleofas	Acting Manager – Engineering and Project Management Office
Ma. Lourdes R. Naz	Department Manager – Office of the Board of Trustees
Darlina T. Uy	Department Manager – Board Secretariat/ Legal Department
Jocelyn M. Toledo	OIC–Personnel/OIC– Administrative Services
Miriam S. Fulgueras	Chief, Controllership and Accounting Section

In its comment dated February 1, 2016, COA posited that the Board of Trustees of the MWSS should be held liable for the disallowed amounts, to wit:

As discussed in the Comment to the Petition filed by respondent before this Honorable Court, the Board failed to comply with proper requirements in granting the benefits.

Petitioner now argues that the Board members who approved the benefits are not at fault and they should not be held liable.

Suffice it to say that being officials of MWSS, it is incumbent upon them to know the rules and law relative to the granting of benefits. Failure to comply with said rules constitutes gross negligence.

x x x x x x x x x

The petitioners in G.R. No. 220727 counter that the Board of Trustees that had authorized and approved the grant of the benefits should be held liable for the amounts and not them.

We rule in favor of the petitioners in G.R. No. 220727. Although they were officers of the MWSS, they had nothing to do with policy-making or decision-making for the MWSS, and were merely involved in its day-to-day operations. In particular, petitioners Ceguerra, Cleofas, Naz, and Uy were department/division managers who had only certified that their subordinates whose names appeared in the payrolls had rendered actual service. Petitioner Toledo, being the one who had prepared the payroll forms, only certified that the payees had not been on AWOL on the dates specified. Lastly, petitioner Fulgueras, then the Chief Corporate Accountant, only checked the entries in the journal as against the payrolls and disbursement vouchers.[43]

The COA has not proved or shown that the petitioners, among others, were the approving officers contemplated by law to be personally liable to refund the illegal disbursements in the MWSS. While it is true that there was no distinct and specific definition as to who were the particular approving officers as well as the respective extent of their participation in the process of determining their liabilities for the refund of the disallowed amounts, we can conclude from the fiscal operation and administration of the MWSS how the process went when it granted and paid out benefits to its personnel.

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[43] *Rollo* (G.R. No. 220729), p. 625.

The Board of Trustees, in whom all the corporate powers and functions of the MWSS were vested, governed the agency. In turn, the Management of the MWSS was at the center of decision-making for the day-to-day affairs of the MWSS.[44] Nonetheless, it was the Board of Trustees, through board resolution, that issued the authority granting the benefits and allowances to the employees. The Management, acting by virtue of and pursuant to the resolution, implemented the same. In this connection, it is notable that the resolution approving the release of the mid-year financial assistance for CY 2000 facially indicated that the authority had emanated from the Board of Trustees.[45]

Under the circumstances, the petitioners in G.R. No. 220727, albeit officials of the MWSS, were not members of the Board of Trustees and, as such, could not be held personally liable for the disallowed benefits by virtue of their having had no part in the approval of the disallowed benefits. In turn, the recipients of the benefits — officials and employees alike — were not liable to refund the amounts received for having acted in good faith due to their honest belief that the grant of the benefits had legal basis.

WHEREFORE, the Court:

1. **DISMISSES** the petition in G.R. No. 195105 for its lack of merit;

2. **GRANTS** the petition in G.R. No. 220729**,** and, **ACCORDINGLY**, **SETS ASIDE** COA Order of Execution 2015-174 dated August 6, 2015; and

3. **DECLARES** petitioners **DARLINA T. UY, LEONOR C. CLEOFAS, MA. LOURDES R. NAZ, JECELYN M. TOLEDO, LOIDA G. CEGUERRA,** and **MIRIAM S. FULGUERAS** not personally liable to refund the disallowed amounts.

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[44] Section 21, MWSS Manual of Corporate Governance.

[45] See *rollo* (G.R. No. 220729), pp. 436-437.

No pronouncement on costs of suit.

SO ORDERED.

Carpio[*] *(Acting Chief Justice), Leonardo-de Castro, Peralta, del Castillo, Perlas-Bernabe, Leonen, Caguioa, Martires, Tijam,* and *Gesmundo, JJ.,* concur.

Jardeleza, J., no part.

Velasco, Jr. and *Reyes, Jr., JJ.,* on official leave.

Sereno, C.J., on leave.

EN BANC

[G.R. No. 205837. November 21, 2017]

PHILIPPINE INTERNATIONAL TRADING CORPORATION, *petitioner, vs.* **COMMISSION ON AUDIT,** *respondent.*

SYLLABUS

CIVIL LAW; EFFECT AND APPLICATION OF LAW; JUDICIAL DECISIONS; JUDICIAL DOCTRINE DOES NOT AMOUNT TO THE PASSAGE OF A NEW LAW BUT CONSISTS MERELY OF A CONSTRUCTION OR INTERPRETATION OF A PRE-EXISTING ONE, HENCE, A JUDICIAL INTERPRETATION BECOMES A PART OF THE LAW OF THE LAND AS OF THE DATE THAT LAW WAS ORIGINALLY PASSED, EXPLAINED.— Article 8 of the Civil Code declares that "[j]udicial decisions applying or interpreting the laws or the Constitution shall form a part of the legal system of the Philippines." While decisions of the Court are not laws pursuant to the doctrine of separation of powers, they evidence the laws' meaning, breadth, and scope and, therefore, have the same binding force as the laws

[*] Acting Chief Justice per Special Order No. 2483 dated September, 2017.

themselves. Article 4 of the Civil Code, on the other hand, enunciates the rule on non-retroactivity of laws, in that "(l)aws shall have no retroactive effect, unless the contrary is provided." x x x **The interpretation upon a law by this Court constitutes, in a way, a part of the law as of the date that law was originally passed, since this Court's construction merely establishes the contemporaneous legislative intent that the law thus construed intends to effectuate.** x x x Jurisprudence, in our system of government, cannot be considered as an independent source of law; it cannot create law. While it is true that judicial decisions which apply or interpret the Constitution or the laws are part of the legal system of the Philippines, still they are not laws. Judicial decisions, though not laws, are nonetheless evidence of what the laws mean, and it is for this reason that they are part of the legal system of the Philippines. Judicial decisions of the Supreme Court assume the same authority as the statute itself. x x x **Such judicial doctrine does not amount to the passage of a new law but consists merely of a construction or interpretation of a pre-existing one,** x x x. **It is consequently clear that a judicial interpretation becomes a part of the law as of the date that law was originally passed, subject only to the qualification that when a doctrine of this Court is overruled and a different view is adopted, and more so when there is a reversal thereof, the new doctrine should be applied prospectively and should not apply to parties who relied on the old doctrine and acted in good faith.** To hold otherwise would be to deprive the law of its quality of fairness and justice then, if there is no recognition of what had transpired prior to such adjudication.

APPEARANCES OF COUNSEL

Office of the Government Corporate Counsel for petitioner.
The Solicitor General for respondent.

D E C I S I O N

LEONARDO-DE CASTRO, *J.*:

This treats of the petition for *certiorari*[1] filed by Philippine International Trading Corporation (PITC), which seeks to annul

[1] *Rollo*, pp. 3-14.

and set aside the Decision[2] No. 2013-016 dated January 30, 2013 of the Commission on Audit (COA). In the assailed decision, the COA denied PITC's request for the amendment of certain provisions of the 2010 Annual Audit Report (AAR)[3] of PITC, which relate to the payment and accrual of liability for retirement benefits under Section 6 of Executive Order No. 756.

The Facts

PITC is a government-owned and controlled corporation that was created under Presidential Decree No. 252[4] issued by then President Ferdinand E. Marcos on July 21, 1973. Thereafter, said law was repealed by Presidential Decree No. 1071,[5] which was issued on January 25, 1977.

On December 28, 1981, President Marcos issued Executive Order No. 756,[6] which authorized the reorganization of PITC. Section 6 thereof states:

SECTION 6. *Exemption from OCPC*. — In recognition of the special nature of its operations, the Corporation shall continue to be exempt from the application of the rules and regulations of the Office of the Compensation and Position Classification or any other similar agencies that may be established hereafter as provided under Presidential Decree No. 1071. Likewise**, any officer or employee who retires, resigns, or is separated from the service shall be entitled to one month pay for every year of service computed at highest salary received including all allowances, in addition to the other benefits provided by law, regardless of any provision of law or regulations to the contrary**; *Provided*, That the employee shall have served in the Corporation continuously for at least two years: *Provided, further*, That in case of separated employees, the

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[2] *Id*. at 15-20; signed by Commissioners Ma. Gracia M. Pulido Tan, Juanito G. Espino, Jr., and Heidi L. Mendoza.

[3] *Id*. at 21-26.

[4] The Philippine International Trading Corporation Law.

[5] The Revised Charter of the Philippine International Trading Corporation.

[6] Authorizing the Reorganization of the Philippine International Trading Corporation.

separation or dismissal is not due to conviction for any offense the penalty for which includes forfeiture of benefits: and *Provided, finally*, That in the commutation of leave credits earned, the employees who resigned, retired or is separated shall be entitled to the full payment therefor computed with all the allowance then being enjoined at the time of resignation, retirement of separation regardless of any restriction or limitation provided for in other laws, rules or regulations. (Emphasis supplied.)

On February 18, 1983, President Marcos issued Executive Order No. 877 that further authorized the reorganization of PITC. Section 1 thereof reads:

1. *Reorganization.* — The Minister of Trade and Industry is hereby designated Chief Executive Officer of the Corporation with full powers to restructure and reorganize the Corporation and to determine or fix its staffing pattern, compensation structure and related organizational requirements. The Chairman shall complete such restructuring and reorganization **within six (6) months** from the date of this Executive Order. All personnel of the Corporation who are not reappointed by the Chairman under the new reorganized structure of the Corporation shall be deemed laid off; provided, **that personnel so laid off shall be entitled to the benefits accruing to separated employees under Executive Order No. 756 amending the Revised Charter of the Corporation**. (Emphasis supplied.)

Apparently, PITC continued to grant the benefits provided under Section 6 of Executive Order No. 756 to its qualified employees even after the lapse of the six-month period specified in Executive Order No. 877.

The legality of such policy was put in issue and directly resolved by this Court in the **Decision dated June 22, 2010 in G.R. No. 183517**, entitled *Philippine International Trading Corporation v. Commission on Audit*[7] (hereinafter, the Decision in G.R. No. 183517). In said case, the COA disapproved the claim of a retired PITC employee for the payment of retirement differentials based on Section 6 of Executive Order No. 756. PITC's bid to oppugn the COA's disallowance *via* a petition for *certiorari* was dismissed by the Court, ruling in this wise:

[7] 635 Phil. 447 (2010).

As an adjunct to the reorganization mandated under Executive Order No. 756, we find that [Section 6 of Executive Order No. 756] cannot be interpreted independent of the purpose or intent of the law. Rather than the permanent retirement law for its employees that [PITC] now characterizes it to be, we find that the provision of gratuities equivalent to "one month pay for every year of service computed at highest salary received including all allowances" was clearly meant as an incentive for employees who retire, resign or are separated from service during or as a consequence of the reorganization [PITC's] Board of Directors was tasked to implement. **As a temporary measure, it cannot be interpreted as an exception to the general prohibition against separate or supplementary insurance and/or retirement or pension plans under Section 28, Subsection (b) of Commonwealth Act No. 186, amended**. Pursuant to Section 10 of Republic Act No. 4968 which was approved on June 17, 1967, said latter provision was amended to read as follows:

> Section 10. Subsection (b) of Section twenty-eight of the same Act, as amended is hereby further amended to read as follows:
>
> (b) Hereafter no insurance or retirement plan for officers or employees shall be created by any employer. All supplementary retirement or pension plans heretofore in force in any government office, agency, or instrumentality or corporation owned or controlled by the government, are hereby declared inoperative or abolished: Provided, That the rights of those who are already eligible to retire thereunder shall not be affected.
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> x x x x x x x x x

The dearth of merit in [PITC's] position is rendered even more evident when it is borne in mind that Executive Order No. 756 was subsequently repealed by Executive Order No. 877 which was issued on February 18, 1983 to hasten the reorganization of [PITC], in light of changing circumstances and developments in the world market. x x x.

x x x x x x x x x

Specifically mandated to be accomplished within the limited timeframe of six months from the issuance of the law, the reorganization under Executive Order No. 877 clearly supplanted that which was provided under Executive Order No. 756. Nowhere is this more

evident than Section 4 of said latter law which provides that, "All provisions of Presidential Decree No. 1071 and Executive Order No. 756, as well as of other laws, decrees, executive orders or issuances, or parts thereof that are in conflict with this Executive Order, are hereby repealed or modified accordingly." **In utilizing the computation of the benefits provided under Section 6 of Executive Order No. 756 for employees considered laid off for not being reappointed under [PITC's] new reorganized structure, Executive Order No. 877 was correctly interpreted by [the COA] to evince an intent not to extend said gratuity beyond the six-month period within which the reorganization is to be accomplished**.

x x x x x x x x x

It doesn't help [PITC's] cause any that Section 6 of Executive Order No. 756, in relation to Section 3 of Executive Order No. 877, was further amended by Republic Act No. 6758, otherwise known as the *Compensation and Classification Act of 1989.* Mandated under Article IX B, Section 5 of the Constitution, Section 4 of Republic Act No. 6758 specifically extends its coverage to government owned and controlled corporations like [PITC]. With this Court's ruling in *Philippine International Trading Corporation v. Commission on Audit* to the effect that [PITC] is included in the coverage of Republic Act No. 6758, it is evidently no longer exempted from OCPC rules and regulations, in keeping with said law's intent to do away with multiple allowances and other incentive packages as well as the resultant differences in compensation among government personnel.[8] (Emphasis supplied, citations omitted.)

PITC moved for a reconsideration of the above ruling, but the same was denied in a Resolution dated August 10, 2010. The Decision in G.R. No. 183517 became final on **September 27, 2010**.

Pending the resolution of the above motion, PITC still allocated part of its Corporate Operating Budget for retirement benefits pursuant to Section 6 of Executive Order No. 756. The amount allocated therefor was ₱46.36 million.

On September 30, 2010, PITC resident COA Auditor Elizabeth Liberato informed PITC that the accrual of the retirement benefits

[8] *Id*. at 457-464.

under Section 6 of Executive Order No. 756 was bereft of legal basis, in accordance with the Decision in G.R. No. 183517. PITC was advised to stop the payment of such benefits or reverse the amount already accrued. PITC, on the other hand, argued that it could continue to allocate part of its budget for the aforesaid benefits while its motion for reconsideration was still pending. Should the Court deny its motion, PITC believed that the Decision in G.R. No. 183517 should be applied prospectively.

PITC filed a Motion to Admit Second Motion for Reconsideration (MR) with attached Second MR of the Decision in G.R. No. 183517, but the second MR was denied in the Court's Resolution dated November 23, 2010. It was only then that PITC allegedly stopped the monthly accrual of the retirement benefits under Section 6 of Executive Order No. 756.

On November 14, 2011, COA Director IV Jose R. Rocha, Jr., Cluster C, Corporate Government Sector, transmitted to PITC a copy of the 2010 AAR. Paragraphs 1 and 1.7 of the Comments and Observations portion state:

> 1. Estimated liability for employees' benefits account balance of ₱52.70 million was misstated by ₱46.36 million because management erroneously accrued retirement benefits provided under Section 6 of EO 756. Payments of such benefits to employees retiring after the 1983 reorganization were, likewise, without legal basis.
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> x x x x x x x x x
>
> 1.7 We did not agree with the view of Management on the matter and we reiterated our recommendation that management stop the payment and the accrual of liability for retirement benefits computed in accordance with Section 6 of EO 756 and de-recognize or reverse the amount already accrued, closing it to the Retained earnings account.[9] (Underscoring omitted.)

In a letter[10] dated June 22, 2012 to the COA Commission Proper, PITC sought the amendment of the 2010 AAR. PITC

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[9] *Rollo*, pp. 25-26.

[10] *Id.* at 27-30.

averred that the Decision in G.R. No. 183517 must be applied prospectively, such that all qualified PITC employees should be allowed to claim their vested rights to the benefits under Section 6 of Executive Order No. 756 upon retirement or resignation, and the computation thereof must be from the time of their employment until September 27, 2010 when the Decision became final.

The COA Commission Proper treated the above letter as an appeal from the decision of the COA Cluster Director approving the 2010 AAR. In the assailed Decision No. 2013-016 dated January 30, 2013, the COA decreed:

> **WHEREFORE**, premises considered, the request is **DENIED** and the assailed observation in the 2010 AAR of the PITC **STANDS**.[11]

PITC, thus, filed the present petition for *certiorari*.

The Arguments of PITC

According to PITC, the Decision in G.R. No. 183517 should be applied prospectively from the time it became final on September 27, 2010. To apply said decision retroactively would allegedly unjustly divest qualified PITC employees of their vested rights to receive the benefits under Section 6 of Executive Order No. 756. The six-month period in Executive Order No. 877 was only for the purpose of implementing reorganization, but not for the purpose of amending Section 6 of Executive Order No. 756.

PITC claims that the COA itself deemed Section 6 of Executive Order No. 756 as permanent in nature since the latter never issued any notice of suspension, notice of disallowance or audit observation memorandum against the grant of the retirement benefits in said provision during the years that PITC granted them to its retiring employees.

Prior to the finality of the Decision in G.R. No. 183517, the interpretation that Section 6 of Executive Order No. 756 was permanent in nature was allegedly an existing operative fact upon which PITC and its employees relied in good faith. As

[11] *Id.* at 19.

such, PITC argues that its employees' entitlement to the benefits under Section 6 of Executive Order No. 756 after two years of service in the company and the computation and allocation of said benefits in PITC's books should only end on September 27, 2010.

PITC prayed for the annulment of the assailed COA Decision No. 2013-016 and the amendment of the 2010 AAR to reflect the fact that PITC's estimated liability for employees' benefits account balance of ₱52.70 million was not misstated.

The Arguments of the COA

In praying for the dismissal of the petition, the COA asserts that when the Court renders a decision that merely interprets a particular provision of law — one that neither establishes a new doctrine nor supplants an old doctrine — the interpretation takes effect and becomes part of the law as of the date when the law was originally passed. The COA points out that the Decision in G.R. No. 183517 did not overrule an old doctrine nor adopt a new one. The Decision simply interpreted Section 6 of Executive Order No. 756 and clarified that the provision was effective in a temporary and limited application when it was correlated with other laws.

The COA also posits that no vested or acquired right can arise from acts or omissions that are against the law or which infringe upon the rights of others. In the Decision in G.R. No. 183517, the Court already declared the illegality of the disbursements and payments of the retirement benefits under Section 6 of Executive Order No. 756 that were granted beyond the period of the reorganization of PITC. The same were held to be contrary to Section 28(b) of Commonwealth Act No. 186, as amended by Section 10 of Republic Act No. 4968. Thus, the granting of the benefits, no matter how long practiced, cannot give rise to any vested right.

The Ruling of the Court

At the outset, it did not escape our notice that PITC did not first move for a reconsideration of the assailed COA decision before filing the instant petition. Moreover, this is not the first

time that PITC made such an omission. In another petition for *certiorari* filed by PITC against COA, which was docketed as G.R. No. 152688, the Court noted that PITC took a similar procedural shortcut. However, said technical issue was resolved as follows:

> We first address the failure of the PITC to file a motion for reconsideration of the assailed decision.
>
> As a general rule, a petition for *certiorari* before a higher court will not prosper unless the inferior court has been given, through a motion for reconsideration, a chance to correct the errors imputed to it. This rule, though, has certain exceptions: (1) w**hen the issue raised is purely of law**, (2) when public interest is involved, or (3) in case of urgency. **As a fourth exception, it was also held that the filing of a motion for reconsideration before availment of the remedy of *certiorari* is not a condition *sine qua non*, when the questions raised are the same as those that have already been squarely argued and exhaustively passed upon by the lower court**.
>
> In the case at bar, a motion for reconsideration may be dispensed with not only because the issue presented is purely of law, but also because the question raised has already been extensively discussed in the decisions of the Director, Corporate Audit Office II and the COA.[12] (Citation omitted; emphasis supplied.)

In the present case, the same situation is availing in that the issue presented in this case is purely of law, *i.e.*, whether the Decision in G.R. No. 183517 should be applied prospectively upon its finality, and the same had already been squarely addressed by the COA in its assailed ruling.

We proceed now to the merits of the case.

Article 8 of the Civil Code declares that "[j]udicial decisions applying or interpreting the laws or the Constitution shall form a part of the legal system of the Philippines." While decisions of the Court are not laws pursuant to the doctrine of separation of powers, they evidence the laws' meaning, breadth, and scope and, therefore, have the same binding force as the laws themselves.[13]

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[12] *Philippine International Trading Corporation v. Commission on Audit*, 461 Phil. 737, 745 (2003).

[13] *Philippine Long Distance Telephone Company v. Alvarez*, 728 Phil. 391, 416 (2014).

Article 4 of the Civil Code, on the other hand, enunciates the rule on non-retroactivity of laws, in that "(l)aws shall have no retroactive effect, unless the contrary is provided."

In respectively arguing for and against the prospective application of the Decision in G.R. No. 183517, both PITC and the COA invoke *Co v. Court of Appeals*[14] that cited, among others, the following ruling in *People v. Jabinal*[15]:

> Decisions of this Court, although in themselves not laws, are nevertheless evidence of what the laws mean, and this is the reason why under Article 8 of the New Civil Code, 'Judicial decisions applying or interpreting the laws or the Constitution shall form a part of the legal system x x x.' **The interpretation upon a law by this Court constitutes, in a way, a part of the law as of the date that law was originally passed, since this Court's construction merely establishes the contemporaneous legislative intent that the law thus construed intends to effectuate**. x x x. (Emphasis supplied.)

PITC argues, however, that the COA erred in relying on the second sentence in the above excerption from *Jabinal*, which PITC dismissed as a "simple statement" that was "just an *obiter dictum* or an incidental remark that this Honorable Court made in passing."[16]

PITC's misinformed argument deserves scant consideration.

It was in the **1956** case of *Senarillos v. Hermosisima*[17] that the above pronouncement first came to light. In said case, Senarillos was the Chief of Police of Sibonga, Cebu and he served as such until his suspension by the municipal mayor on January 2, 1952. Senarillos was investigated and tried by a "police committee" composed of three councilors of the municipal council. The committee then rendered an adverse

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[14] 298 Phil. 221, 228-229 (1993).

[15] 154 Phil. 565, 571 (1974).

[16] *Rollo*, p. 235.

[17] 100 Phil. 501 (1956).

decision on **April 15, 1952** that was approved by the municipal council. Upon Senarillos's petition, the Court of First Instance of Cebu ordered his reinstatement. The Court affirmed the judgment of the trial court, ruling that the committee had no jurisdiction to investigate Senarillos as the investigation of police officers under Republic Act No. 557[18] must be conducted by the municipal council itself as laid down in *Festejo v. Mayor of Nabua*[19] that was promulgated on **December 22, 1954**.

The Court declared in *Senarillos*:

> That the decision of the Municipal Council of Sibonga was issued before the decision in *Festejo v. Mayor of Nabua* was rendered, would be, at the most, proof of good faith on the part of the police committee, but can not sustain the validity of their action. **It is elementary that the interpretation placed by this Court upon Republic Act [No.] 557 constitutes part of the law as of the date it was originally passed, since this Court's construction merely establishes the contemporaneous legislative intent that the interpreted law carried into effect**.[20] (Emphasis supplied.)

The above ruling had since become the established doctrine on the matter of the effectivity of judicial interpretations of statutes.

In *Columbia Pictures, Inc. v. Court of Appeals*,[21] we expounded on the import of our ruling in *Senarillos* in relation to the rule of non-retroactivity of laws. Thus:

> Article 4 of the Civil Code provides that "(l)aws shall have no retroactive effect, unless the contrary is provided.["] Correlatively, Article 8 of the same Code declares that "(j)udicial decisions applying the laws or the Constitution shall form part of the legal system of the Philippines."

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[18] Entitled "An Act Providing for the Suspension or Removal of Members of the Provincial Guards, City Police and Municipal Police by the Provincial Governor, City Mayor or Municipal Mayor." Approved on June 17, 1950.

[19] 96 Phil. 286 (1954).

[20] *Senarillos v. Hermosisima*, *supra* note 17 at 504.

[21] 329 Phil. 875, 905-908 (1996).

Jurisprudence, in our system of government, cannot be considered as an independent source of law; it cannot create law. While it is true that judicial decisions which apply or interpret the Constitution or the laws are part of the legal system of the Philippines, still they are not laws. Judicial decisions, though not laws, are nonetheless evidence of what the laws mean, and it is for this reason that they are part of the legal system of the Philippines. Judicial decisions of the Supreme Court assume the same authority as the statute itself.

Interpreting the aforequoted correlated provisions of the Civil Code and in light of the above disquisition, this Court emphatically declared in *Co vs. Court of Appeals, et al*. that the principle of prospectivity applies not only to original amendatory statutes and administrative rulings and circulars, but also, and properly so, to judicial decisions. x x x.

x x x x x x x x x

The reasoning behind *Senarillos vs. Hermosisima* that judicial interpretation of a statute constitutes part of the law as of the date it was originally passed, since the Court's construction merely establishes the contemporaneous legislative intent that the interpreted law carried into effect, is all too familiar. **Such judicial doctrine does not amount to the passage of a new law but consists merely of a construction or interpretation of a pre-existing one,** x x x.

It is consequently clear that a judicial interpretation becomes a part of the law as of the date that law was originally passed, subject only to the qualification that when a doctrine of this Court is overruled and a different view is adopted, and more so when there is a reversal thereof, the new doctrine should be applied prospectively and should not apply to parties who relied on the old doctrine and acted in good faith. To hold otherwise would be to deprive the law of its quality of fairness and justice then, if there is no recognition of what had transpired prior to such adjudication. (Emphasis supplied, citations omitted.)

Applying the foregoing disquisition to the present case, the Court disagrees with PITC's position that the Decision in G.R. No. 183517 should be applied prospectively.

As the COA correctly argued, the Decision in G.R. No. 183517 neither reversed an old doctrine nor adopted a new one. The Court merely construed therein the meaning and application of Section 6 of Executive Order No. 756 by taking into consideration the rationale behind the provision, its interplay with pre-existing retirement laws, and the subsequent enactments and statutes that eventually repealed the same. Prior to the Decision in G.R. No. 183517, there was no other ruling from this Court that explained the nature of the retirement benefits under Section 6 of Executive Order No. 756. Thus, the Court's interpretation of the aforesaid provision embodied in the Decision in G.R. No. 183517 retroacts to the date when Executive Order No. 756 was enacted.

PITC's position cannot be legally supported by our decision in *Co.*[22] In *Co,* the Court gave prospective effect to its ruling in *Que v. People*[23] — that even checks to guarantee the performance of an obligation were covered by Batas Pambansa Blg. 22 — as the accused in *Co* relied on an official opinion of the Minister of Justice that such checks were not within the ambit of Batas Pambansa Blg. 22. In this instance, there is no previous administrative interpretation issued by a competent body that PITC could claim to have relied on in good faith.

There is likewise no merit in PITC's contention that the retroactive application of the Decision in G.R. No. 183517 would divest qualified PITC employees of their vested rights to receive the retirement benefits under Section 6 of Executive Order No. 756.

The fact that PITC continued to grant the retirement benefits under Section 6 of Executive Order No. 756 from the time of the issuance of said executive order until the Court's Decision in G.R. No. 183517 does not mean that said benefits ripened into a vested right. As held in *Kapisanan ng mga Manggagawa sa Government Service Insurance System (KMG) v. Commission on Audit*[24]:

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[22] *Co v. Court of Appeals*, *supra* note 14.

[23] 238 Phil. 155 (1987).

[24] 480 Phil. 861, 885-886 (2004), citing *Baybay Water District v. Commission on Audit*, 425 Phil. 326, 341-342 (2002).

The Court has previously held that practice, no matter how long continued, cannot give rise to any vested right if it is contrary to law. The erroneous application and enforcement of the law by public officers does not estop the Government from making a subsequent correction of such errors. Where the law expressly limits the grant of certain benefits to a specified class of persons, such limitation must be enforced even if it prejudices certain parties due to a previous mistake committed by public officials in granting such benefit. (Citations omitted.)

In this case, the Court already ruled in G.R. No. 183517 that the grant of the retirement benefits under Section 6 of Executive Order No. 756 was temporary and limited in nature and the same should have been restricted to the six-month period of the mandated reorganization of PITC.

All told, there is no grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the COA for refusing to amend the questioned provisions of the 2010 AAR.

WHEREFORE, the petition for *certiorari* is **DISMISSED**.

SO ORDERED.

Carpio[*] *(Acting Chief Justice), Peralta, Bersamin, del Castillo, Perlas-Bernabe, Leonen, Caguioa, Martires, Tijam,* and *Gesmundo, JJ.,* concur.

Jardeleza, J., no part.

Velasco, Jr. and *Reyes, Jr., JJ.,* on official leave.

Sereno, C.J., on leave.

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[*] Per Special Order No. 2519 dated November 21, 2017.

EN BANC

[G.R. No. 213525. November 21, 2017]

FORTUNE LIFE INSURANCE COMPANY, INC., *petitioner, vs.* **COMMISSION ON AUDIT (COA) PROPER; COA REGIONAL OFFICE NO. VI-WESTERN VISAYAS; AUDIT GROUP LGS-B, PROVINCE OF ANTIQUE; and PROVINCIAL GOVERNMENT OF ANTIQUE,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; CONTEMPT; A PARTY AND ITS COUNSEL WHO MAKE OFFENSIVE AND DISRESPECTFUL STATEMENTS IN THEIR MOTION FOR RECONSIDERATION MAY BE PROPERLY SANCTIONED FOR INDIRECT CONTEMPT OF COURT; CASE AT BAR.— A party and its counsel who make offensive and disrespectful statements in their motion for reconsideration may be properly sanctioned for indirect contempt of court. x x x Although the petitioner and Atty. Fortaleza are now apologizing for their offensive and disrespectful statements, they insist nonetheless that the statements arose from their honest belief of having complied with the rule on proof of service. They also attribute their procedural error to the supposed adoption by the MCPO of an electronic system in the processing of mail matter. The Court finds and declares the petitioner and Atty. Fortaleza guilty of indirect contempt of court. The administration of justice is an important function of the State. It is indispensable to the maintenance of order in the Society. It is a duty lodged in this Court, and in all inferior courts. For the Court and all other courts of the land to be able to administer and dispense evenhanded justice, they should be free from harassment and disrespect. The statements of the petitioner and Atty. Fortaleza unquestionably tended to attribute gross inefficiency and negligence to the Court and its staff. It is worse because the statements were uncalled for and unfounded. As such, the statements should be quickly deterred and gravely sanctioned for actually harming and degrading the administration of justice

by the Court itself. x x x Moreover, we cannot but view and consider the attempt to shift the blame to the postal system as the manifestation of the unwillingness of the petitioner and Atty. Fortaleza to take personal responsibility for their harsh and disrespectful statements. We must reject the attempt, firstly, because it reflected their lack of remorse for a grave contempt of court they committed, and, secondly, because their shifting of blame was not even proved reliably.

2. ID.; ID.; ID.; THE COURTS HAVE INHERENT POWER TO IMPOSE A PENALTY FOR CONTEMPT THAT IS REASONABLY COMMENSURATE WITH THE GRAVITY OF THE OFFENSE.— The courts have inherent power to impose a penalty for contempt that is reasonably commensurate with the gravity of the offense. The degree of punishment lies within the sound discretion of the courts. Ever mindful that the inherent power of contempt should be exercised on the preservative, not on the vindictive, principle, and that the penalty should be meted according to the corrective, not the retaliatory, idea of punishment, the Court must justly sanction the contempt of court committed by the petitioner and its counsel. Under Section 7, Rule 71 of the *Rules of Court*, the penalty of fine not exceeding ₱30,000.00, or imprisonment not exceeding six months, or both fine and imprisonment, may be meted as punishment for contemptuous conduct committed against a Regional Trial Court or a court of equivalent or higher rank. Upon considering all the circumstances, the Court imposes a fine of ₱15,000.00 on the petitioner and Atty. Fortaleza.

3. ID.; ID.; PETITION FOR *CERTIORARI*; MOTION FOR RECONSIDERATION; THE RULE PROHIBITS A SECOND MOTION FOR RECONSIDERATION BY THE SAME PARTY, EXCEPT IN THE HIGHER INTEREST OF JUSTICE; NOT PRESENT IN CASE AT BAR.— Section 2, Rule 52 of the *Rules of Court* prohibits a second motion for reconsideration by the same party. Section 3, Rule 15 of the *Internal Rules of the Supreme Court* echoes the prohibition. x x x A second motion for reconsideration, albeit prohibited, may be entertained in the higher interest of justice, such as when the assailed decision is not only legally erroneous but also patently unjust and potentially capable of causing unwarranted and irremediable injury or damage to the moving party. The showing of exceptional merit to justify the acceptance

of the petitioner's *Second Motion for Reconsideration* was not made herein. Hence, we deny the *Second Motion for Reconsideration*.

4. ID.; ID.; ID.; ID.; DISMISSAL OF PETITION FOR NON-COMPLIANCE WITH THE RULE ON PROOF OF SERVICE AND THE UNJUSTIFIED RELIANCE ON THE *FRESH PERIOD RULE* AS BASIS TO EXTEND THE PERIOD FOR FILING OF THE PETITION IS DEEMED PROPER; EXCEPTIONS, NOT APPLICABLE IN CASE AT BAR.— For sure, the petitioner's non-compliance with the rule on proof of service and the petitioner's unjustified reliance on the *Fresh Period Rule* as the basis to extend the period for filing of the special civil actions for *certiorari* under Rule 64 of the *Rules of Court* were already enough ground to dismiss the petition for *certiorari*. We need not remind that the *Fresh Period Rule* applies only to appeals in civil and criminal cases, and in special proceedings filed under Rule 40, Rule 41, Rule 42, Rule 43, Rule 45, and Rule 122. Hence, liberality could not be extended to the petitioner. According to *Ginete v. Court of Appeals*, only matters of life, liberty, honor or property may warrant the suspension of the rules of the most mandatory character. That is not the situation of the petitioner herein. It is also true that other justifications may be considered, like: (1) the existence of special or compelling circumstances; (2) the merits of the case; (3) a cause not entirely attributable to the fault or negligence of the party favored by the suspension of the rules; (4) a lack of any showing that the review sought is merely frivolous and dilatory; and (5) the other party will not be unjustly prejudiced thereby. But, again, the petitioner has not shown the attendance of any of such justifications for excepting its petition for *certiorari* from the stricture of timeliness of filing.

APPEARANCES OF COUNSEL

Eduardo Seguera Fortaleza and *Aquilio Q. Pimentel, Jr.* for petitioner.

The Solicitor General for respondents.

RESOLUTION

BERSAMIN, *J.*:

A party and its counsel who make offensive and disrespectful statements in their motion for reconsideration may be properly sanctioned for indirect contempt of court.

We hereby resolve the following submissions of the petitioner, namely: (*a*) *Joint Explanation*;[1] (*b*) *Manifestation with Motion for Leave to File Second Motion for Reconsideration*;[2] and (*c*) *Second Motion for Reconsideration*.[3]

To recall the antecedents, the Court issued a resolution on January 27, 2015 denying the petitioner's *Motion for Reconsideration*[4] on the following grounds, namely: (*a*) failure to comply with the rule on proof of service; (*b*) late filing; (*c*) failure to file a verified declaration under the *Efficient Use of Paper Rule*; and (*d*) failure to prove grave abuse of discretion on the part of respondent Commission on Audit (COA).

In the same resolution, however, the Court required the petitioner and its counsel, Atty. Eduardo S. Fortaleza, to show cause why they should not be punished for indirect contempt of court for using in the petitioner's *Motion for Reconsideration* dated October 1, 2014 harsh and disrespectful language towards the Court; and further required Atty. Fortaleza to explain why he should not be disbarred, disposing thusly:

> **WHEREFORE**, the Court **DENIES** the Motion for Reconsideration for its lack of merit; **ORDERS** the petitioner and its counsel, Atty. Eduardo S. Fortaleza, to show cause in writing within ten (10) days from notice why they should not be punished for indirect contempt of court; and **FURTHER DIRECTS** Atty. Fortaleza to show cause in the same period why he should not be disbarred.

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[1] *Rollo*, pp. 275-282.

[2] *Id*. at 294-304.

[3] *Id*. at 305-320.

[4] *Id*. at 265-272.

SO ORDERED.[5]

In the *Joint Explanation* dated March 9, 2015, the petitioner and Atty. Fortaleza, both now represented by former Senate President Aquilino Q. Pimentel, Jr., have apologized for the statements made in the *Motion for Reconsideration*, but have stated nonetheless that they had been constrained to attach cut print-outs of registry receipt numbers because the Makati City Central Post Office (MCPO) stopped issuing registry receipts and had adopted an electronic system instead;[6] that they thought that the Court, in mentioning proof of service, had been referring to the non-submission of the affidavit of service;[7] that Atty. Fortaleza had been only lacking in finesse in the formulation of his submissions; that the petitioner honestly believed that it had faithfully complied with the requirements of the *Rules of Court* on the service of pleadings;[8] and that because of time constraints Atty. Fortaleza had not been able to sufficiently go over the *Motion for Reconsideration*.[9]

Atty. Fortaleza has prayed that he be spared from disbarment, stressing his not being some wayward member of the Integrated Bar of the Philippines (IBP), but had in fact served the IBP by handling *pro bono* cases in his home province of Antique.[10]

Additionally, the petitioner has filed its so-called *Manifestation with Motion for Leave to file Second Motion for Reconsideration*, attaching therewith its *Second Motion for Reconsideration*. It has contended in the *Second Motion for Reconsideration* that the *final order* referred to in *Neypes v. Court of Appeals*[11] applied to the 30-day period mentioned in Section 3, Rule 64 of the

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[5] *Id*. at 272.

[6] *Id*. at 276-277.

[7] *Id*. at 277.

[8] *Id*. at 278.

[9] *Id*. at 279.

[10] *Id*. at 280.

[11] G.R. No. 141524, September 14, 2005, 469 SCRA 633.

Rules of Court as to make such period be reckoned from notice of the denial by the COA of its *Motion for Reconsideration*; and that the reckoning of the 30-day period ought to be from July 14, 2014, the date when it received the denial by the COA of its *Motion for Reconsideration*.[12]

On the substantive issue, the petitioner has maintained that whether or not the *Local Government Code* (LGC) allowed provincial governments to provide group insurance for *barangay* officials was a question of law; that the interpretation of Atty. Pimentel as the Senator who had authored the LGC had been unjustly ignored by the COA;[13] and that the COA had consequently gravely abused its discretion in interpreting the LGC during the pre-audit.[14]

The petitioner has further maintained that it had complied with the requirement of publication under the *Government Procurement Act*; that it did not furnish the proof of publication of the notice to bid to the COA because the term *bidding documents* in Republic Act No. 9184 did not include the proof of publication;[15] that the insurance program had been a laudable initiative of former Gov. Salvacion Zaldivar Perez that had been stopped by Auditor Yolanda TM Veñegas, a known ally of Gov. Exequiel B. Javier, the successor of Gov. Zaldivar; and that the Province of Negros Occidental had been implementing the same insurance program without any issue.[16]

In its comment,[17] the COA, through the Office of the Solicitor General (OSG), has countered that the *Second Motion for Reconsideration*, being a prohibited motion, should be denied;[18]

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[12] *Rollo*, pp. 296-300.

[13] *Id*. at 301.

[14] *Id*. at 315.

[15] *Id*. at 316.

[16] *Id*. at 316-317.

[17] *Id*. at 343-352.

[18] *Id*. at 344.

that the *Fresh Period Rule* enunciated in *Neypes* did not apply to petitions for *certiorari* filed under Rule 64 of the *Rules of Court*;[19] that the petitioner's interpretation of the term *final order* would contradict and render meaningless the last sentence of Section 3 of Rule 64;[20] that the distance between the petitioner's Makati office and its counsel's office in the Province of Antique was not sufficient to excuse the belated filing of the petition for *certiorari*;[21] that the petitioner did not submit proof of service of its petition for *certiorari* and the verified declaration required by the *Efficient Use of Paper Rule*;[22] that the supposed adoption by the MCPO of an electronic system in the processing of mail matter did not inspire belief because the explanation came from the petitioner's own staff who did not have personal knowledge of the supposed adoption of the new system of the MCPO;[23] that the Court affirmed the grounds cited by the COA for disallowing the money claim;[24] that the unchallenged giving of insurance coverage by the Provincial Government of Negros Occidental did not validate the petitioner's claim because a violation of law could not be excused by any practice to the contrary;[25] and that the petitioner should have presented the question of publication to the COA when it sought the reconsideration.[26]

Ruling of the Court

I

Petitioner and Atty. Fortaleza were guilty of indirect contempt of court

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[19] *Id*. at 345-347.

[20] *Id*. at 347.

[21] *Id*. at 374.

[22] *Id*. at 348.

[23] *Id*. at 348-349.

[24] *Id*. at 349.

[25] *Id*.

[26] *Id*.

The concept and objective of the power to punish contempt of court have been expounded in *Lorenzo Shipping Corporation v. Distribution Management Association of the Philippines*,[27] *viz.*:

> Contempt of court has been defined as a willful disregard or disobedience of a public authority. In its broad sense, contempt is a disregard of, or disobedience to, the rules or orders of a legislative or judicial body or an interruption of its proceedings by disorderly behavior or insolent language in its presence or so near thereto as to disturb its proceedings or to impair the respect due to such a body. In its restricted and more usual sense, contempt comprehends a despising of the authority, justice, or dignity of a court. The phrase *contempt of court* is generic, embracing within its legal signification a variety of different acts.
>
> **The power to punish for contempt is inherent in all courts, and need not be specifically granted by statute. It lies at the core of the administration of a judicial system. Indeed, there ought to be no question that courts have the power by virtue of their very creation to impose silence, respect, and decorum in their presence, submission to their lawful mandates, and to preserve themselves and their officers from the approach and insults of pollution. The power to punish for contempt essentially exists for the preservation of order in judicial proceedings and for the enforcement of judgments, orders, and mandates of the courts, and, consequently, for the due administration of justice. The reason behind the power to punish for contempt is that respect of the courts guarantees the stability of their institution; without such guarantee, the institution of the courts would be resting on a very shaky foundation.**[28] (Bold underscoring supplied for emphasis)

Bearing the foregoing exposition in mind, the Court felt impelled to require the petitioner and Atty. Fortaleza to show cause why they should not be punished for contempt of court for the offensive and disrespectful statements contained in their *Motion for Reconsideration* dated October 1, 2014,[29] to wit:

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[27] G.R. No. 155849, August 31, 2011, 656 SCRA 331.

[28] *Id.* at 342-344.

[29] *Rollo*, pp. 229-245.

x x x x x x x x x

24. Second, with regard to the PROOF OF SERVICE required under Section 2(c), Rule 56 in relation to Section 13, 1997 Rules of Civil Procedures, as amended, **even a perfunctory scrutiny** of the present PETITION and its annexes would have yielded the observation that the last document attached to the PETITION is the AFFIDAVIT OF SERVICE dated August 12, 2014, by Marcelino T. Pascua, Jr., xxx in compliance with Sections 5, 6, 7, 8, 11, & 13, RULE 13 of the 1997 REVISED RULES OF CIVIL PROCEDURE. A copy of the AFFIDAVIT OF SERVICE is attached hereto as **ANNEX "B",** and made an integral part hereof;

25. **Apparently, the staff of the Justice-in-charge failed to verify the PETITION and its annexes up to its last page, thus, the erroneous finding that there were non-submission of the proof of service;**

26. In turn, **the same omission was hoisted upon the other members of this Honorable Court who took the observation from the office of the Justice-in-charge, to be the obtaining fact, when in truth and in fact, it is not**;

27. There is therefore need for this Honorable Court to rectify its foregoing finding;[30] (Bold underscoring supplied for emphasis)

x x x x x x x x x

The Court subsequently observed in the resolution promulgated on January 27, 2015 as follows:

The petitioner and its counsel thereby exhibited their plain inability to accept the ill consequences of their own shortcomings, and instead showed an unabashed propensity to readily lay blame on others like the Court and its Members. **In doing so, they employed harsh and disrespectful language that accused the Court and its Members of ignorance and recklessness in the performance of their function of adjudication.**

We do not tolerate such harsh and disrespectful language being uttered against the Court and its Members. We consider the accusatory language particularly offensive because it was

[30] *Id*. at 238.

unfounded and undeserved. As this resolution earlier clarifies, the petition for *certiorari* did not contain a proper affidavit of service. We do not need to rehash the clarification. Had the petitioner and its counsel been humbler to accept their self-inflicted situation and more contrite, they would have desisted from their harshness and disrespect towards the Court and its Members. Although we are not beyond error, we assure the petitioner and its counsel that our resolutions and determinations are arrived at or reached with much care and caution, aware that the lives, properties and rights of the litigants are always at stake. If there be errors, they would be unintended, and would be the result of human oversight. But in this instance the Court and its Members committed no error. The petition bore only cut reproductions of the supposed registry receipts, which even a mere "perfunctory scrutiny" would not pass as the original registry receipts required by the *Rules of Court*.[31] (Bold underscoring supplied for emphasis)

Although the petitioner and Atty. Fortaleza are now apologizing for their offensive and disrespectful statements, they insist nonetheless that the statements arose from their honest belief of having complied with the rule on proof of service. They also attribute their procedural error to the supposed adoption by the MCPO of an electronic system in the processing of mail matter.

The Court finds and declares the petitioner and Atty. Fortaleza guilty of indirect contempt of court.

The administration of justice is an important function of the State. It is indispensable to the maintenance of order in the Society. It is a duty lodged in this Court, and in all inferior courts. For the Court and all other courts of the land to be able to administer and dispense evenhanded justice, they should be free from harassment and disrespect.

The statements of the petitioner and Atty. Fortaleza unquestionably tended to attribute gross inefficiency and negligence to the Court and its staff. It is worse because the statements were uncalled for and unfounded. As such, the

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[31] *Id.* at 271-272.

statements should be quickly deterred and gravely sanctioned for actually harming and degrading the administration of justice by the Court itself.[32] The wrong the statements wrought on the reputation and prestige of the Court and its operating staff must by all means be vindicated, and even undone if that was at all possible.

Moreover, we cannot but view and consider the attempt to shift the blame to the postal system as the manifestation of the unwillingness of the petitioner and Atty. Fortaleza to take personal responsibility for their harsh and disrespectful statements. We must reject the attempt, firstly, because it reflected their lack of remorse for a grave contempt of court they committed, and, secondly, because their shifting of blame was not even proved reliably. It appears, indeed, that they were content on relying solely on the self-serving affidavit of a member of the petitioner's own staff who could not at least profess having the personal knowledge about the change in the system by MCPO.[33]

The courts have inherent power to impose a penalty for contempt that is reasonably commensurate with the gravity of the offense. The degree of punishment lies within the sound discretion of the courts.[34] Ever mindful that the inherent power of contempt should be exercised on the preservative, not on

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[32] Section 3, Rule 71 of the *Rules of Court* pertinently provides:

Sec. 3. Indirect contempt to be published after charge and hearing, — After a charge in writing has been filed, and an opportunity given to the respondent to comment thereon within such period as may be fixed by the court and to be heard by himself or counsel, a person guilty of any of the following acts may be punished for indirect contempt:

x x x x x x x x x

(d) Any improper conduct tending, directly or indirectly, to impede, obstruct, or degrade the administration of justice;

x x x x x x x x x

[33] *Rollo*, pp. 348-349.

[34] *Mercado v. Security Bank Corporation*, G.R. No. 160445, February 16, 2006, 482 SCRA 501, 518.

the vindictive, principle,[35] and that the penalty should be meted according to the corrective, not the retaliatory, idea of punishment,[36] the Court must justly sanction the contempt of court committed by the petitioner and its counsel. Under Section 7, Rule 71 of the *Rules of Court*, the penalty of fine not exceeding ₱30,000.00, or imprisonment not exceeding six months, or both fine and imprisonment, may be meted as punishment for contemptuous conduct committed against a Regional Trial Court or a court of equivalent or higher rank. Upon considering all the circumstances, the Court imposes a fine of ₱15,000.00 on the petitioner and Atty. Fortaleza.

II

***Second Motion for Reconsideration*, being a prohibited motion, is denied**

Section 2, Rule 52 of the *Rules of Court* prohibits a second motion for reconsideration by the same party. Section 3, Rule 15 of the *Internal Rules of the Supreme Court* echoes the prohibition, providing thusly:

> Section 3. *Second motion for reconsideration*. — The Court shall not entertain a second motion for reconsideration, and any exception to this rule can only be granted in the higher interest of justice by the Court en banc upon a vote of at least two-thirds of its actual membership. There is reconsideration "in the higher interest of justice" when the assailed decision is not only legally erroneous, but is likewise patently unjust and potentially capable of causing unwarranted and irremediable injury or damage to the parties. A second motion for reconsideration can only be entertained before the ruling sought to be reconsidered becomes final by operation of law or by the Court's declaration.
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> In the Division, a vote of three Members shall be required to elevate a second motion for reconsideration to the Court En Banc.

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[35] *Limbona v. Lee,* G.R. No. 173290, November 20, 2006, 507 SCRA 452, 460-461; *Province of Camarines Norte v. Province of Quezon*, G.R. No. 80796, October 11, 2001, 367 SCRA 91, 106.

[36] *Rodriguez v. Blancaflor,* G.R. No. 190171, March 14, 2011, 645 SCRA 286, 292.

A second motion for reconsideration, albeit prohibited, may be entertained in the higher interest of justice, such as when the assailed decision is not only legally erroneous but also patently unjust and potentially capable of causing unwarranted and irremediable injury or damage to the moving party.

The showing of exceptional merit to justify the acceptance of the petitioner's *Second Motion for Reconsideration* was not made herein. Hence, we deny the *Second Motion for Reconsideration*.

For sure, the petitioner's non-compliance with the rule on proof of service and the petitioner's unjustified reliance on the *Fresh Period Rule* as the basis to extend the period for filing of the special civil actions for *certiorari* under Rule 64 of the *Rules of Court* were already enough ground to dismiss the petition for *certiorari*. We need not remind that the *Fresh Period Rule* applies only to appeals in civil and criminal cases, and in special proceedings filed under Rule 40, Rule 41, Rule 42, Rule 43, Rule 45,[37] and Rule 122.[38]

Hence, liberality could not be extended to the petitioner. According to *Ginete v. Court of Appeals*,[39] only matters of life, liberty, honor or property may warrant the suspension of the rules of the most mandatory character. That is not the situation of the petitioner herein. It is also true that other justifications may be considered, like: (1) the existence of special or compelling circumstances; (2) the merits of the case; (3) a cause not entirely attributable to the fault or negligence of the party favored by the suspension of the rules; (4) a lack of any showing that the review sought is merely frivolous and dilatory; and (5) the other party will not be unjustly prejudiced thereby.[40] But, again, the petitioner has not shown the attendance of any of such

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[37] *Panolino v. Tajala*, G.R. No. 183616, June 29, 2010, 622 SCRA 209, 315.

[38] *Yu v. Tatad*, G.R. No. 170979, February 9, 2011, 642 SCRA 421, 428.

[39] G.R. No. 127596, September 24, 1998, 296 SCRA 38.

[40] *Id*. at 53.

justifications for excepting its petition for *certiorari* from the stricture of timeliness of filing.

As earlier pointed out, the petition for *certiorari* was dismissed upon reasonable but still formidable grounds, namely: (*a*) noncompliance with the rule on proof of service; (*b*) noncompliance with the *Efficient Use of Paper Rule*; and (*c*) failure to establish the grave abuse of discretion committed by the COA. The plea for liberality was really unworthy of favorable consideration.

ACCORDINGLY, the Court:

(1) FINDS and **PRONOUNCES** the petitioner and its counsel, Atty. Eduardo S. Fortaleza, **GUILTY** of **INDIRECT CONTEMPT OF COURT**, and, accordingly, **SENTENCES** them to pay, **JOINTLY AND SEVERALLY**, a fine of **₱15,000.00**; and

(2) **DENIES** the *Motion for Leave to File Second Motion for Reconsideration* and the *Second Motion for Reconsideration*.

SO ORDERED.

Carpio,[*] *Leonardo-de Castro, Peralta, del Castillo, Perlas-Bernabe, Leonen, Jardeleza, Caguioa, Martires, Tijam,* and *Gesmundo, JJ.,* concur.

Velasco, Jr. and *Reyes, Jr., JJ.,* on official leave.

Sereno, C.J., on leave.

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[*] Acting Chief Justice per Special Order No. 2519 dated November 21, 2017.

SECOND DIVISION

[A.C. No. 11750. November 22, 2017]

REMEDIOS C. BALBIN, *complainant, vs.* **ATTY. WILFREDO R. CORTEZ,** *respondent.*

SYLLABUS

LEGAL ETHICS; ATTORNEYS; DISBARMENT COMPLAINT; DISMISSAL PROPER WHERE THERE IS NO COGENT REASON TO DEPART FROM THE FINDINGS AND RECOMMENDATION OF THE INTEGRATED BAR OF THE PHILIPPINES (IBP); CASE AT BAR.— The Court finds no cogent reason to depart from the findings and recommendation of the IBP that the extant administrative complaint must be dismissed. **WHEREFORE, IN VIEW OF THE FOREGOING,** the Court **DISMISSES** the instant Complaint against Atty. Wilfredo R. Cortez for lack of merit.

D E C I S I O N

PERALTA, *J.*:

The present case is brought about by a disbarment complaint which Atty. Remedios M. Balbin filed against Atty. Wilfredo R. Cortez, for purportedly violating Rule 8.02 and Canon 9 of the Code of Professional Responsibility (*CPR*).

The factual antecedents of the case are as follows:

On December 20, 2013, Pedrito Leal Layco, *et al*. filed an action against Federico Florendo Layco, *et al.* for Partition, Reconveyance and Annulment of Sale and Damages with Temporary Restraining Order and/or Writ of Preliminary Injunction before the Municipal Circuit Trial Court of Tagudin-Suyo, Ilocos Sur. Respondent Atty. Wilfredo R. Cortez acted as counsel for the plaintiffs, while complainant Atty. Remedios M. Balbin was the defendants' counsel. Balbin claimed that during a scheduled hearing in court and while she was absent,

Cortez took advantage of the same and discussed the settlement of the controversy with her clients, which resulted in the forging of an amicable settlement. Subsequently, Cortez submitted a copy of the compromise agreement to the court bearing his signature and those of the parties, but without the signature of Balbin as the counsel for the defendants. Balbin asserted that such acts constituted unethical conduct and gross ignorance of the law.

On the other hand, Cortez denied any transgression of the law on his part. He averred that the compromise agreement submitted to the court was the result of a tedious discussion among the parties and was sanctioned by the court. Balbin's clients made a commitment to bring the compromise agreement to her office in Manila to obtain her signature, and to submit said document to the court once her signature had been affixed. Without Balbin's signature, the compromise agreement was not acted upon.

On April 11, 2016, the Commission on Integrity and Bar Discipline of the Integrated Bar of the Philippines (*IBP*) recommended the dismissal of the administrative complaint against Cortez, to wit:[1]

> PREMISES CONSIDERED, [i]t is hereby recommended that the administrative charges against Respondent, **ATTY. WILFREDO R. CORTEZ** be **DISMISSED** for insufficiency of evidence.
>
> RESPECTFULLY SUBMITTED.

On August 26, 2016, the IBP Board of Governors passed Resolution No. XXII-2016-390,[2] which adopted the aforementioned recommendation, thus:

> *RESOLVED to ADOPT the findings of fact and recommendation of the Investigating Commissioner dismissing the complaint.*

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[1] Report and Recommendation submitted by Commissioner Jose Villanueva Cabrera; *rollo*, pp. 122-131.

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

The Court's Ruling

The Court finds no cogent reason to depart from the findings and recommendation of the IBP that the extant administrative complaint must be dismissed.

WHEREFORE, **IN VIEW OF THE FOREGOING**, the Court **DISMISSES** the instant Complaint against Atty. Wilfredo R. Cortez for lack of merit.

SO ORDERED.

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

Reyes, Jr., J., on wellness leave.

SECOND DIVISION

[A.C. No. 11822. November 22, 2017]

VICKA MARIE D. ISALOS, *complainant, vs.* **ATTY. ANA LUZ B. CRISTAL,** *respondent.*

SYLLABUS

1. LEGAL ETHICS; ATTORNEYS; MONEY ENTRUSTED TO A LAWYER FOR A SPECIFIC PURPOSE SHOULD BE IMMEDIATELY RETURNED, FAILURE TO RETURN UPON DEMAND GIVES RISE TO THE PRESUMPTION THAT THE LAWYER APPROPRIATED THE SAME FOR HIS OWN USE IN VIOLATION OF THE TRUST REPOSED TO HIM BY HIS CLIENT.— The practice of law is considered a privilege bestowed by the State on those who possess and continue to possess the legal qualifications for the profession. As such, lawyers are expected to maintain at all times a high standard of legal proficiency, morality, honesty, integrity and

fair dealing, and must perform their four-fold duty to society, the legal profession, the courts and their clients, in accordance with the values and norms embodied in the Code. "Lawyers may, thus, be disciplined for any conduct that is wanting of the above standards whether in their professional or in their private capacity." x x x Money entrusted to a lawyer for a specific purpose, such as for the processing of transfer of land title, but not used for the purpose, should be immediately returned. A lawyer's failure to return upon demand the funds held by him on behalf of his client gives rise to the presumption that he has appropriated the same for his own use in violation of the trust reposed to him by his client. Such act is a gross violation of general morality, as well as of professional ethics. It impairs public confidence in the legal profession and deserves punishment.

2. ID.; ID.; ID.; IMPOSABLE PENALTY FOR VIOLATION, SUSTAINED.— With regard to the proper penalty to be meted upon respondent, the Court has, in several similar cases, imposed the penalty of suspension for two (2) years against erring lawyers. In *Jinon v. Jiz,* the Court suspended the lawyer for a period of two (2) years for his failure to return the amount his client gave him for his legal services, which he never performed. Similarly, in *Agot v. Rivera*, the Court suspended respondent for the same period for his failure to handle the legal matter entrusted to him and to return the legal fees in connection therewith, among others. Considering, however, the return of the full amount of ₱1,200,000.00 to C Five, respondent is instead meted the penalty of suspension from the practice of law for one (1) year.

3. ID.; ID.; DISBARMENT AND SUSPENSION; A CASE OF SUSPENSION OR DISBARMENT MAY PROCEED REGARDLESS OF INTEREST OR LACK OF INTEREST OF THE COMPLAINANT SINCE THE REAL QUESTION FOR DETERMINATION IN THESE PROCEEDINGS IS WHETHER OR NOT THE ATTORNEY IS STILL A FIT PERSON TO BE ALLOWED THE PRIVILEGES OF A MEMBER OF THE BAR.— Respondent's assertion that the instant disbarment case should be dismissed, in view of the return of the full amount to complainant and the latter's withdrawal of the complaint against her is specious. Such are not ample grounds to completely exonerate the administrative liability of respondent. It is settled that a case of suspension or

> disbarment may proceed regardless of interest or lack of interest of the complainant, the latter not being a direct party to the case, but a witness who brought the matter to the attention of the Court. A proceeding for suspension or disbarment is not a civil action where the complainant is a plaintiff and the respondent-lawyer is a defendant. Disciplinary proceedings involve no private interest and afford no redress for private grievance. They are undertaken and prosecuted solely for the public welfare, and for the purpose of preserving courts of justice from the official ministration of persons unfit to practice. The attorney is called to answer to the court for his conduct as an officer of the court. "The complainant or the person who called the attention of the court to the attorney's alleged misconduct x x x has generally no interest in the outcome except as all good citizens may have in the proper administration of justice." The real question for determination in these proceedings is whether or not the attorney is still a fit person to be allowed the privileges of a member of the bar.

APPEARANCES OF COUNSEL

Anselmo P. Sinjian III for complainant.

R E S O L U T I O N

PERLAS-BERNABE, *J.*:

This administrative case arose from a verified complaint[1] for disbarment filed by complainant Vicka Marie D. Isalos (complainant) against respondent Atty. Ana Luz B. Cristal (respondent) for violation of Rule 1.01, Canon 1 and Rules 16.01, 16.02, and 16.03, Canon 16 of the Code of Professional Responsibility (CPR) arising from respondent's alleged failure to account for the money entrusted to her.

The Facts

Complainant alleged that she is the Director and Treasurer of C Five Holdings, Management & Consultancy, Inc. (C Five),

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[1] Dated September 11, 2014. *Rollo*, pp. 2-6.

a corporation duly organized and existing under the laws of the Philippines with principal office in Libis, Quezon City. Respondent was C Five's Corporate Secretary and Legal Counsel who handled its incorporation and registration with the Securities and Exchange Commission (SEC).[2]

Sometime in July 2011, when C Five was exploring investment options, respondent recommended the purchase of a resort in Laguna, with the assurances that the title covering the property was "clean" and the taxes were fully paid. Relying on respondent's recommendation, C Five agreed to acquire the property and completed the payment of the purchase price.[3]

Respondent volunteered and was entrusted to facilitate the transfer and registration of the title of the property in C Five's name. On September 5, 2011, complainant personally handed the sum of ₱1,200,000.00 to respondent at her office in Makati City, as evidenced by Official Receipt No. 1038[4] of even date. The said amount was intended to cover the expenses for the documentation, preparation, and notarization of the Final Deed of Sale, as well as payment of capital gains tax, documentary stamp tax, and other fees relative to the sale and transfer of the property.[5]

More than a year thereafter, however, no title was transferred in C Five's name. It was then discovered that the title covering the property is a Free Patent[6] issued on August 13, 2009, rendering any sale, assignment, or transfer thereof within a period of five (5) years from issuance of the title null and void. Thus, formal demand[7] was made upon respondent to return the ₱1,200,000.00

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[2] *Id*. at 2.

[3] *Id*.

[4] *Id*. at 7.

[5] See *id*. at 2-3.

[6] See *Katibayan ng Orihinal na Titulo* No. P-6403; *id.* at 8, including dorsal portion thereof.

[7] Dated November 14, 2012. *Id*. at 9.

entrusted to her for the expenses which remained unheeded, prompting C Five to file a criminal complaint for *Estafa* before the Makati City Prosecutor's Office, *i.e.*, NPS No. XV-05-INV-13D-1253,[8] as well as the present case for disbarment before the Integrated Bar of the Philippines, *i.e.*, CBD Case No. 14-4321.

In defense,[9] respondent claimed that she paid the Bureau of Internal Revenue (BIR) registration, Mayor's Permit, business licenses, documentation, and other expenses using the money entrusted to her by complainant,[10] as itemized in a Statement of Expenses[11] that she had prepared, and that she was ready to turn over the balance in the amount of ₱885,068.00. However, C Five refused to receive the said amount, insisting that the entire ₱1,200,000.00 should be returned.[12] Moreover, she pointed out that the criminal case for *Estafa* filed against her by C Five had already been dismissed[13] for lack of probable cause.[14] As such, she prayed that the disbarment case against her be likewise dismissed for lack of merit.[15]

The IBP's Report and Recommendation

After due proceedings, the Commission on Bar Discipline of the IBP (CBD-IBP) issued a Report and Recommendation[16] dated June 29, 2015, finding respondent administratively liable and thereby, recommending her suspension from the legal profession for a period of three (3) years.[17] The CBD-IBP found

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[8] See *id*. at 3 and 54.

[9] See Answer/Opposition dated February 16, 2015; *id*. at 38-42.

[10] *Id*. at 39.

[11] *Id*. at 53.

[12] *Id*. at 40.

[13] See Resolution dated September 11, 2013 issued by Assistant City Prosecutor Leilia R. Llanes; *id*. at 54-56.

[14] *Id*. at 40.

[15] *Id*.

[16] *Id*. at 139-140. Penned by Commissioner Eduardo R. Robles.

[17] *Id*. at 140.

that respondent actually received the amount of ₱1,200,000.00 from complainant, which amount was intended to cover the expenses and payment of taxes for the sale and transfer of the property to C Five's name. Likewise, it was undisputed that despite demands from the company to return the said amount, respondent failed to do so. Worse, she offered a Statement of Expenses with "feigned expenditures" in an attempt to prove that a portion of the money had already been spent. Thus, the CBD-IBP concluded that there was dishonesty on the part of respondent and accordingly, recommended the penalty of suspension.[18]

In a Resolution[19] dated June 30, 2015, the IBP Board of Governors resolved to adopt and approve *with modification* the CBD-IBP's Report and Recommendation dated June 29, 2015, meting upon respondent the penalty of suspension from the practice of law for one (1) year and directing the return of the amount of ₱1,200,000.00 to complainant.

In respondent's motion for reconsideration,[20] she maintained that there was no intention on her part to retain the money and that she was willing to return the amount of ₱885,068.00, as shown in her Statement of Expenses, which she claimed was accompanied by corresponding receipts. Moreover, she averred that on September 30, 2015, in order to buy peace, she delivered the amount of ₱1,200,000.00 to Atty. Anselmo Sinjian III, counsel for complainant,[21] as evidenced by an Acknowledgment Receipt[22] of even date. As a consequence, complainant filed a Withdrawal of Complaint for Disbarment[23] before the IBP.

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[18] See *id*. at 139-140.

[19] See Notice of Resolution in Resolution No. XXI-2015-627 issued by National Secretary Nasser A. Marohomsalic; *id*. at 138, including dorsal portion.

[20] *Id*. at 141-147.

[21] *Id*. at 144-145.

[22] *Id*. at 152.

[23] Dated October 6, 2015. *Id*. at 153-154.

In a Resolution[24] dated January 26, 2017, the IBP denied respondent's motion for reconsideration.

The Issue Before the Court

The sole issue for the Court's consideration is whether or not grounds exist to hold respondent administratively liable.

The Court's Ruling

After a punctilious review of the records, the Court concurs with the findings and conclusions of the IBP that respondent should be held administratively liable in this case.

The practice of law is considered a privilege bestowed by the State on those who possess and continue to possess the legal qualifications for the profession. As such, lawyers are expected to maintain at all times a high standard of legal proficiency, morality, honesty, integrity and fair dealing, and must perform their four-fold duty to society, the legal profession, the courts and their clients, in accordance with the values and norms embodied in the Code.[25] "Lawyers may, thus, be disciplined for any conduct that is wanting of the above standards whether in their professional or in their private capacity."[26]

The CPR, particularly Rules 16.01 and 16.03 of Canon 16, provides:

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.

RULE 16.03 — A lawyer shall deliver the funds and property of his client when due or upon demand. x x x.

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[24] See Notice of Resolution in Resolution No. XXII-2017-721 issued by Assistant National Secretary Camille Bianca M. Gatmaitan-Santos; *id*. at 160-161.

[25] See *Molina v. Magat*, 687 Phil. 1, 5 (2012).

[26] *Tumbokon v. Pefianco*, 692 Phil. 202, 207 (2012).

Money entrusted to a lawyer for a specific purpose, such as for the processing of transfer of land title, but not used for the purpose, should be immediately returned.[27] A lawyer's failure to return upon demand the funds held by him on behalf of his client gives rise to the presumption that he has appropriated the same for his own use in violation of the trust reposed to him by his client. Such act is a gross violation of general morality, as well as of professional ethics. It impairs public confidence in the legal profession and deserves punishment.[28]

In this case, it is indubitable that respondent received the amount of ₱1,200,000.00 from complainant to be used to cover the expenses for the transfer of title of the subject property under C Five's name. Respondent admitted having received the same, but claimed that she had spent a portion of it for various expenses, such as documentation, permits, and licenses, among others, as evidenced by the Statement of Expenses with attached receipts. However, it has been established that the registration of the property in C Five's name could not have materialized, as the subject property was covered by a Free Patent issued on August 13, 2009 which, consequently, bars it from being sold, assigned, or transferred within a period of five (5) years therefrom. Thus, and as the CBD-IBP had aptly opined,[29] there was no longer any reason for respondent to retain the money. Furthermore, the expenditures enumerated in the Statement of Expenses, except for the documentation and notarization fees for which no receipts were attached, do not relate to the purposes for which the money was given, *i.e.*, the documentation and registration of the subject property. As such, even if official receipts had been duly attached for the other purposes—which, the Court notes, respondent failed to do despite the opportunity given — the expenditures are not legitimate ones. Hence, the Court finds respondent to have violated the above-cited rules, to the detriment and prejudice of complainant.

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[27] See *Dhaliwal v. Dumaguing*, 692 Phil. 209, 213 (2012).

[28] *Id*. at 213, citing *Adrimisin v. Javier*, 532 Phil. 639, 645-646 (2006).

[29] See *rollo*, pp. 139-140.

Respondent's assertion that the instant disbarment case should be dismissed, in view of the return of the full amount to complainant and the latter's withdrawal of the complaint against her is specious. Such are not ample grounds to completely exonerate the administrative liability of respondent. It is settled that a case of suspension or disbarment may proceed regardless of interest or lack of interest of the complainant,[30] the latter not being a direct party to the case, but a witness who brought the matter to the attention of the Court.[31] A proceeding for suspension or disbarment is not a civil action where the complainant is a plaintiff and the respondent-lawyer is a defendant. Disciplinary proceedings involve no private interest and afford no redress for private grievance. They are undertaken and prosecuted solely for the public welfare, and for the purpose of preserving courts of justice from the official ministration of persons unfit to practice. The attorney is called to answer to the court for his conduct as an officer of the court. "The complainant or the person who called the attention of the court to the attorney's alleged misconduct x x x has generally no interest in the outcome except as all good citizens may have in the proper administration of justice."[32] The real question for determination in these proceedings is whether or not the attorney is still a fit person to be allowed the privileges of a member of the bar.[33]

With regard to the proper penalty to be meted upon respondent, the Court has, in several similar cases, imposed the penalty of suspension for two (2) years against erring lawyers. In *Jinon v. Jiz*,[34] the Court suspended the lawyer for a period of two (2) years for his failure to return the amount his client gave him

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[30] *Quiachon v. Ramos*, 735 Phil. 1, 6 (2014), citing *Rayos-Ombac v. Rayos*, 349 Phil. 7, 15 (1998).

[31] *Ylaya v. Gacott*, 702 Phil. 390, 407 (2013).

[32] *Bautista v. Bernabe*, 517 Phil. 236, 241 (2006).

[33] *Pena v. Aparicio*, 552 Phil. 512, 521 (2007), citing *In re Almacen*, 31 Phil. 562, 600-601 (1970).

[34] See 705 Phil. 321 (2013).

for his legal services, which he never performed. Similarly, in *Agot v. Rivera*,[35] the Court suspended respondent for the same period for his failure to handle the legal matter entrusted to him and to return the legal fees in connection therewith, among others. Considering, however, the return of the full amount of ₱1,200,000.00 to C Five, respondent is instead meted the penalty of suspension from the practice of law for one (1) year.

WHEREFORE, respondent Atty. Ana Luz B. Cristal is found guilty of violation of Rules 16.01 and 16.03, Canon 16 of the Code of Professional Responsibility. Accordingly, she is **SUSPENDED** from the practice of law for a period of one (1) year, and is **STERNLY WARNED** that a repetition of the same or similar acts will be dealt with more severely.

The suspension in the practice of law shall take effect immediately upon receipt by respondent. Respondent is **DIRECTED** to immediately file a Manifestation to the Court that her suspension has started, copy furnished all courts and quasi-judicial bodies where she has entered her appearance as counsel.

Let copies of this Resolution be furnished the Office of the Bar Confidant to be entered in respondent's personal records as a member of the Philippine Bar, the Integrated Bar of the Philippines for distribution to all its chapters, and the Office of the Court Administrator for circulation to all courts.

SO ORDERED.

Carpio (Chairperson), Peralta, and *Caguioa, JJ.*, concur.

Reyes, Jr., J., on official leave.

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[35] See 740 Phil. 393 (2014).

FIRST DIVISION

[A.C. No. 11828. November 22, 2017]

SPOUSES VICENTE and PRECYWINDA GIMENA, *complainants, vs*. **ATTY. JOJO S. VIJIGA,** *respondent.*

SYLLABUS

LEGAL ETHICS; ATTORNEYS; CODE OF PROFESSIONAL RESPONSIBILITY; CANONS 17 AND 18 THEREOF REQUIRING COMPETENT AND ZEALOUS LEGAL REPRESENTATION OF A CLIENT, VIOLATED IN CASE AT BAR.— The Code of Professional Responsibility (CPR) is clear. A lawyer owes his client competent and zealous legal representation. 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 Rule 18.03.— A lawyer shall not neglect a legal matter entrusted to him, and his negligence in connection therewith shall render him liable. Rule 18.04 — A lawyer shall keep the client informed of the status of his case and shall respond within a reasonable time to the client's request for information. Respondent's failure to submit the appellants' brief and update his clients, complainants herein, of the status of their appeal falls short of the ethical requirements set forth under the CPR. True, for respondent's failure to protect the interest of complainants, respondent indeed violalted Canon 17 and Canon 18 of the Code of Professional Responsibility. Respondent is reminded that the practice of law is a special privilege bestowed only upon those who are competent intellectually, academically and morally.

APPEARANCES OF COUNSEL

Steve Cudal for complainants.
Urmenita Urmenita & Associates Law Firm for respondent.

D E C I S I O N

TIJAM, *J.*:

The relationship between lawyers and clients is a professional relationship as well as a fiduciary and confidential one. One consequence of such professional relationship is the obligation of a lawyer to efficiently manage his cases and update his clients of the status of the same.

ANTECEDENTS

This administrative case stems from the complaint brought by the Spouses Vicente and Precywinda Gimena (complainants), against Atty. Jojo S. Vijiga (respondent) for the latter's failure to file the appellants' brief in their behalf, resulting in the dismissal of their appeal in the Court of Appeals (CA).

In their complaint, Spouses Gimena alleged that they hired the respondent to represent them in a civil case for nullity of foreclosure proceedings and voidance of loan documents filed against Metropolitan Bank and Trust Company, involving eight parcels of land (subject properties), docketed as Civil Case No. C-21053, assigned to the Regional Trial Court (RTC) of Caloocan City, Branch 126.

After trial on the merits, the RTC dismissed the action in its Decision dated June 6, 2011.

Aggrieved by the adverse decision, the complainants then brought the case to the appellate court, docketed as CA G.R. CV No. 98271.[1]

On June 7, 2012, the CA issued a notice requiring complainants, (appellants therein), to file the appellants' brief in accordance with Sec. 7, Rule 44 of the Rules of Court.

Respondent failed to file the brief. As a result, the CA issued a Resolution[2] dated September 21, 2012.

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[1] *Rollo,* p. 3.

[2] *Id.* at 10-11.

On October 11, 2012, respondent filed an Omnibus Motion seeking the reconsideration of the September 21, 2012 Resolution, citing illness and the damage to his law office due to monsoon rains, as reasons for his failure to file the appellants' brief.[3]

The CA granted the motion in its Resolution dated January 3, 2013, and reinstated complainants' appeal. Complainants were then given a period of fifteen (15) days within which to file the required brief.

Respondent failed to file the appellants' brief within the given period. Hence, the CA issued a Resolution[4] on March 15, 2013 dismissing the appeal. Complainants alleged that the March 15, 2013 Resolution became final and executory and was entered in the Book of Entries of Judgment of the CA on April 27, 2013.

Complainants alleged that throughout the proceedings in the CA, respondent did not apprise them of the status of their case. They were thus surprised when a bulldozer suddenly entered their properties. Complainants thereafter inquired on the status of their case, and it was then that they discovered that their appeal was dismissed.[5]

Complainants alleged that respondent violated Canon 17 and 18 of the Code of Professional Responsibility and his oath as a lawyer. They claimed that respondent's lapse is not excusable and is tantamount to gross ignorance, neligence and dereliction of duty.

For his part, respondent denied that he abandoned and neglected complainants' appeal. He averred that he was able to talk to complainant Vicente, via telephone, after the CA dismissed the appeal in its Resolution dated September 21, 2012. Complainant Vicente purportedly told respondent not to pursue

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[3] *Id*. at 4.

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

[5] *Id*. at 5.

the appeal considering that the subject properties are already in the possession of the bank.[6]

FINDINGS OF THE INTEGRATED BAR OF THE PHILIPPINES (IBP)

The dispute was set for mandatory conference on August 20, 2014. Only complainants and their counsel appeared during the conference, despite the notice being received by respondent.[7] Respondent filed an Ex-Parte and Urgent Motion to Reset the Scheduled Hearing[8] to October 1, 2014. Respondent again failed to appear, and instead, filed another motion[9] to reset the hearing to November 5, 2014. Respondent reasoned that he was set to attend hearings on the scheduled date and time.

Investigating Commissioner Arsenio Adriano recommended that respondent be suspended from the practice of law for six (6) months.

The IBP Board of Governors issued a Resolution[10] on June 6, 2015, adopting and approving the Report and Recommendation of the Investigating Commissioner.

> RESOLUTION NO. XXI-2015-408
> CBD Case No. 14-4217
> Sps. Vicente and Precywinda Gimena
> *vs.* Atty. Jojo S. Vijiga
>
> *RESOLVED to ADOPT and APPROVE, as it is hereby ADOPTED and APPROVED, the Report and Recommendation of the Investigating Commissioner in the above-entitled case, herein made part of this Resolution as Annex "A", finding the recommendation to be fully suported by the evidence on record and applicable laws. Thus, Respondent Atty. Jojo S. Vijiga is hereby found guilty of violation of Canon 18, Rule 18.03 of the Code of Professional*

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[6] *Id*. at 31.

[7] *Id*. at 28.

[8] *Id*. at 36-38.

[9] *Id*. at 71-74.

[10] *Id*. at 82.

Responsibility and ***SUSPENDED from the practice of law for six (6) months.***

Respondent filed a motion for reconsideration[11] on January 4, 2016. In a Resolution[12] dated January 27, 2017, the Board of Governors denied respondent's motion for reconsideration.

> **RESOLUTION NO. XXII-2017-788**
> **CBD Case No. 14-4217**
> **Sps. Vicente and Precywinda Gimena vs.**
> **Atty. Jojo S. Vijiga**
>
> *RESOLVED to DENY the Motion for Reconsideration there being no new reason and/or new argument adduced to reverse the previous findings and decision of the Board of Governors.*

ISSUE OF THE CASE

Did the respondent violate his ethical duties as a member of the Bar in his dealings with the complainants?

RULING OF THE COURT

We adopt the findings and recommendation of the IBP. The Court finds that the suspension of respondent from the practice of law is proper.

The Code of Professional Responsibility (CPR) is clear. A lawyer owes his client competent and zealous legal representation.

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

CANON 18 — A LAWYER SHALL SERVE HIS CLIENT WITH COMPETENCE AND DILIGENCE.

x x x x x x x x x

Rule 18.03.— A lawyer shall not neglect a legal matter entrusted to him, and his negligence in connection therewith shall render him liable.

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[11] *Id.* at 85-91.

[12] *Id.* at 98.

> Rule 18.04 — A lawyer shall keep the client informed of the status of his case and shall respond within a reasonable time to the client's request for information.

Respondent's failure to submit the appellants' brief and update his clients, complainants herein, of the status of their appeal falls short of the ethical requirements set forth under the CPR.

A lawyer is not required to represent anyone who consults him on legal matters.[13] Neither is an acceptance of a client or case, a guarantee of victory. However, being a service-oriented occupation, lawyers are expected to observe diligence and exhibit professional behavior in all their dealings with their clients. Lawyers should be mindful of the trust and confidence, not to mention the time and money, reposed in them by their clients.

When a lawyer agrees to act as a counsel, he guarantees that he will exercise that reasonable degree of care and skill demanded by the character of the business he undertakes to do, to protect the clients' interests and take all steps or do all acts necessary therefor.[14]

The necessity and repercussions of non-submission of an appellant's brief are provided for in the Rules of Court, to wit:

> RULE 44
> ORDINARY APPEALED CASES
>
> x x x x x x x x x
>
> Sec. 7. *Appellant's brief.*
>
> **It shall be the duty of the appellant to file with the court, within forty-five (45) days from receipt of the notice of the clerk** that all the evidence, oral and documentary, are attached to the record, seven (7) copies of his legibly **t**ypewritten, mimeographed or printed brief, with proof of service of two (2) copies thereof upon the appellee.

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[13] *Villaflores v. Atty. Limos*, 563 Phil. 453 (2007).

[14] See: *Uy v. Atty. Tansinsin*, 610 Phil. 709, 714 (2009).

RULE 50
DISMISSAL OF APPEAL

Section 1. *Grounds for dismissal of appeal.*

An **appeal may be dismissed** by the Court of Appeals, on its own motion or on that of the appellee, on the following grounds:

x x x x x x x x x

(e) **Failure of the appellant to serve and file the required number of copies of his brief** or memorandum within the time provided by these Rules; x x x (Emphasis supplied)

As a lawyer, respondent is presumed to be knowledgeable of the procedural rules in appellate practice. He is presumed to know that dismissal is an inevitable result from failure to file the requisite brief within the period stated in the Rules of Court. In this case, the fact that the appeal was twice dismissed further highlights respondent's indifference to his client's cause. Interestingly, respondent failed to offer any explanation as to why he failed to submit the appellants' brief within the 45-day period from his receipt of the notice to file the same, resulting to the dismissal of the appeal for the first time. To the mind of this Court, such failure is an unequivocal indication of his guilt in the administrative charge. Indeed, failure to file the required pleadings is *per se* a violation of Rule 18.03 of the Code of Professional Responsibility, as cited above.[15]

His failure to file the appellants' brief, despite the CA's grant of leniency in reconsidering its initial dismissal of the appeal further compounds respondent's inadequacies. In this case, respondent's neglect of his professional duties led to the loss of complainants' properties and has left them bereft of legal remedies. They lost their case not because of merits but because of technicalities, specifically the respondent's failure to file the required pleadings. Certainly, the situation in the case at bar, is one such evil that the CPR intended to avoid.

Worse, respondent's failure to inform complainants of the unfortunate fate of their appeal further amplifies his lack of

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[15] See: *Canoy v. Atty. Ortiz*, 493 Phil. 553, 558 (2005).

competence and diligence. As an officer of the court, it was respondent's duty to inform his client of whatever important information he may have acquired affecting his client's case. The purpose of informing the client is to minimize misunderstanding and loss of trust and confidence in the attorney. The lawyer should not leave the client in the dark on how the lawyer is defending the client's interests.[16]

This Court fails to find merit to respondent's claim that complainant Vicente directed him not to pursue the appeal. If that was true, candor and respect of the courts would have impelled respondent to file a motion to withdraw their appeal. Further, if indeed it was true that complainants lost interest in pursuing the appeal, they would not have secured the services of another counsel and file before the CA a motion to set aside the entry of judgment.

Apropos is this Court's ruling in *Reynaldo G. Ramirez v. Atty. Mercedes Buhayang-Margallo*[17]:

> A problem arises whenever agents, entrusted to manage the interests of another, use their authority or power for their benefit or fail to discharge their duties. In many agencies, there is information assymetry between the principal and the entrusted agent. That is, there are facts and events that the agent must attend to that may not be known by the principal.
>
> This information assymetry is even more pronounced in an attorney-client relationship. **Lawyers are expected not only to be familiar with the minute facts of their cases but also to see their relevance in relation to their causes of action or their defenses.** The salience of these facts is not usually patent to the client. It can only be seen through familiarity with the relevant legal provisions that are invoked with their jurisprudential interpretations. More so with the intricacies of the legal procedure. It is the lawyer that receives the notices and must decide the mode of appeal to protect the interest of his or her client.
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> Thus, the relationship between a lawyer and her client is regarded as highly fiduciary. **Between the lawyer and the client, it is the**

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[16] See: *Layos v. Atty. Villanueva,* 749 Phil. 1, 6 (2014).

[17] 752 Phil. 473 (2015).

lawyer that has the better knowledge of facts, events, and remedies. While it is true that the client chooses which lawyer to engage, he or she usually does so on the basis of reputation. It is only upon actual engagement that the client discovers the level of diligence, competence, and accountability of the counsel that he or she chooses. In some cases, such as this one, the discovery comes too late. Between the lawyer and the client, therefore, it is the lawyer that should bear the full costs of indifference or negligence.[18] (Emphasis supplied)

True, for respondent's failure to protect the interest of complainants, respondent indeed violated Canon 17 and Canon 18 of the Code of Professional Responsibility. Respondent is reminded that the practice of law is a special privilege bestowed only upon those who are competent intellectually, academically and morally.

The penalty to be meted to an erring lawyer rests on sound judicial discretion. In cases of similar nature, this Court imposed penalties ranging from a reprimand to suspension of three months or six months, and even disbarment in aggravated cases.[19] In *Rene B. Hermano v. Atty. Igmedio S. Prado, Jr.*,[20] this Court suspended Atty. Prado from the practice of law for six months for his failure to file an appellant's brief that could have resulted to the dismissal of the case had it not been for the intervention of another lawyer. In *Felicisima Mendoza Vda. De Robosa v. Mendoza and Navarro, Jr.*,[21] respondent therein was suspended for six months for a similar infraction. Also, in *Cesar Talento, et al. v. Atty. Agustin F. Paneda,*[22] one year of suspension from the practice of law was imposed to therein respondent for his failure to file the appeal brief for his client and for failure to return the money paid for legal services that were not performed. On the other hand, in *Fidela Vda. De Enriques v. Atty. Manuel*

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[18] *Id*. at 483.

[19] *Dumanlag v. Atty. Intong*, A.C. No. 8638, October 10, 2016; *Villaflores v. Atty. Limos, supra* note 13, at 463-464.

[20] A.C. No. 7447, April 18, 2016, 789 SCRA 441.

[21] A.C. No. 6056, September 9, 2015, 770 SCRA 141, 160.

[22] 623 Phil. 662 (2009).

G. San Jose,[23] therein respondent's negligence in handling his client's cause merited a suspension of six months from the practice of law.

In this case, the fact that the complaining parties now stand to lose eight parcels of land which they claim to own due to respondent's failure to perform his professional and ethical duties, We deemed justified the suspension of respondent from the practice of law for six months.

In affirming the recommendation of the IBP, this Court is mindful of its earlier ruling in *Ofelia R. Somosot v. Atty. Gerardo F. Lara*[24]:

> The general public must know that the legal profession is a closely regulated profession where transgressions merit swift but commensurate penalties; it is a profession that they can trust because we guard our ranks and our standards well. The Bar must sit up and take notice of what happened in this case to be able to guard against any repetition of the respondent's transgressions, particularly his failure to report the developments of an ongoing case to his clients. Unless the Bar takes a pro-active stance, we cannot really blame members of the public who are not very well disposed towards, and who may even distrust, the legal profession after hearing experiences similar to what the complainant suffered. The administration of justice is served well when we demonstrate that effective remedies exist to address the injustice and inequities that may result from transgressions by those acting in the dispensation of justice process.[25]

WHEREFORE, in view of the foregoing, respondent Atty. Jojo S. Vijiga is **SUSPENDED FOR SIX (6) MONTHS** from the practice of law with a warning that a repetition of the same or similar acts shall be dealt with more severely. He is **ADMONISHED** to exercise greater care and diligence in the performance of his duties.

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[23] 545 Phil. 379 (2007).

[24] 597 Phil. 149 (2009).

[25] *Id.* at 167-168.

This Decision shall take effect immediately upon receipt of Atty. Jojo S. Vijiga of a copy of this Decision. He shall inform this Court and the Office of the Bar Confidant in writing of the date he received a copy of this Decision. Copies of this Decision shall be furnished the Office of the Bar Confidant, to be appended to respondent's personal record, and the Integrated Bar of the Philippines. The Office of the Court Administrator is directed to circulate copies of this Decision to all courts concerned.

SO ORDERED.

Sereno, C.J. (Chairperson), Leonardo-de Castro, del Castillo, and *Jardeleza, JJ.,* concur.

SECOND DIVISION

[A.M. No. P-15-3379. November 22, 2017]
(Formerly A.M. No. 15-07-77-MeTC)

OFFICE OF THE COURT ADMINISTRATOR, *complainant, vs.* **MR. ALDEN P. COBARRUBIAS,[*] Clerk III; and MR. VLADIMIR[**] A. BRAVO, Court Interpreter II, both of Metropolitan Trial Court [MeTC], Branch 24, Manila**, *respondents.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; PUBLIC OFFICERS AND EMPLOYEES; COURT PERSONNEL; DISHONESTY IS CLASSIFIED AS A GRAVE OFFENSE PUNISHABLE BY DISMISSAL EVEN FOR THE FIRST VIOLATION; CASE AT BAR.— The OCA found Cobarrubias

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[*] Also referred to as Aldeen Cobbarubias in other parts of the *rollo*.

[**] Also spelled as Vlademir in other parts of the *rollo*.

guilty of dishonesty for making false entries in his DTR which differ from the entries in the logbook. The OCA cited Section 52(A)(1), Rule IV of the Uniform Rules on Administrative Cases in the Civil Service, which classifies dishonesty as a grave offense punishable by dismissal even for the first violation, with forfeiture of retirement benefits except accrued leave credits and perpetual disqualification from reemployment in government service. The OCA also cited Republic Act No. 6713 which declared the State's policy of promoting a high standard of ethics and utmost responsibility in the public service. The OCA stressed that the conduct of court personnel, from the presiding judge to the lowliest clerk, must always be beyond reproach and must be circumscribed with the heavy burden of responsibility as to free them from any suspicion that may taint the judiciary. However, the OCA noted that while the Court has the duty to discipline its employees, it also has the discretion to temper the harshness of judgment with mercy, as held in several cases. Thus, considering that Cobarrubias readily admitted his offense, apologized and promised to reform his ways, the OCA deemed that the penalty of three (3) months suspension without pay will suffice.

2. ID.; ID.; ID.; ID.; FREQUENT UNAUTHORIZED HABITUAL ABSENCES OR TARDINESS IS CLASSIFIED AS A GRAVE OFFENSE; PENALTY IN CASE AT BAR.— The OCA cited Memorandum Circular (MC) No. 04, series of 1991, of the Civil Service Commission which was quoted in OCA Circular No. 1-91 which defined habitual absenteeism and habitual tardiness and provided sanctions therefor. The same provides that those found guilty of habitual absenteeism and tardiness shall be meted the penalty of six (6) months and one (1) day to one (1) year suspension without pay for the first offense. The OCA also cited Supreme Court Administrative Circular No. 14-2002 which also quoted MC No. 04. The OCA further cited Section 23 (q), Rule XIV (Discipline) of the Omnibus Rules Implementing Book V of Executive Order No. 292, which classified frequent unauthorized absences or tardiness as a grave offense punishable by suspension for six (6) months and one (1) day to one (1) year for the first offense. Furthermore, the OCA cited Section 46(B)(5)(8), Rule 10 (Schedule of Penalties) of the Revised Rules on Administrative Cases in the Civil Service (RRACCS), which classified the two (2) offenses committed by Bravo (*i.e.*, frequent unauthorized absences or

tardiness, and conduct prejudicial to the best interest of the service) as grave offenses punishable by suspension of six (6) months and one (1) day to one (1) year for the first offense. Since Bravo committed two (2) offenses classified as less grave and thus punishable with the same penalty, the OCA applied Section 50 of the RRACCS and treated the penalty for the second offense as an aggravating circumstance. However, since Bravo already resigned effective August 23, 2013, the OCA imposed fine of Twenty Thousand Pesos (₱20,000.00) in lieu of suspension.

3. ID.; ID.; ID.; ID.; A CLERK OF COURT HAS THE DUTY TO VERIFY ENTRIES IN THE LOGBOOK AND DAILY TIME RECORD (DTR) BEFORE CERTIFYING TO ITS TRUTHFULNESS; CASE AT BAR.— Regarding the allegations against Balboa, the OCA found that, although she warned the concerned employees on their absences and tardiness, she still failed to prevent the falsification committed by Cobarrubias on several occasions. Citing *Duque v. Aspiras*, the OCA stressed that a clerk of court has the duty to verify the entries in the logbook and DTR before certifying to its truthfulness. The OCA emphasized that the clerk of court should have been more watchful over the employees' conduct, especially regarding attendance. Citing *Concerned Litigants v. Araya, Jr.* the OCA emphasized that her failure to live up to the standards of responsibility required warrants disciplinary action for this Court cannot countenance any conduct, act, or omission on the part of those involved in the administration of justice which will violate the norms of public accountability and diminish, or tend to diminish, the faith of the people in the judicial system. Nevertheless, the OCA took into consideration Balboa's forty-three (43) years of service in the government, having risen from the ranks, first as clerical aide and eventually as Clerk of Court III. She also received the following awards: Outstanding Clerk of Court, First Level Court, from Society for Judicial Excellence for 2007, and Loyalty Award from the City of Manila, and other plaques of recognition. The OCA averred that considering the above circumstances and in view of her unblemished record, she should not be punished for a minor lapse of duty. At most, had she still be in service, she would have been merely reminded to be more circumspect in the performance of her duties.

D E C I S I O N

CAGUIOA, *J.*:

An undated anonymous letter-complaint[1] was sent to the Office of the Court Administrator (OCA) against the following personnel of the Metropolitan Trial Court (MeTC), Branch 24, Manila: Alden Cobarrubias (Clerk III), Vladimir Bravo (Court Interpreter II), Teodora Balboa (Clerk of Court III), and Antonio Abad, Jr. (Clerk III).[2] Abad, Cobarrubias, and Bravo allegedly falsified their respective daily time record (DTR), while Balboa tolerated the same.[3] In an Indorsement[4] dated September 21, 2011, the OCA referred the said complaint to then Executive Judge Marlo A. Magdoza-Malagar of MeTC-Manila for discreet investigation and report.

Investigation Report of Executive Judge Magdoza-Malagar

In the Investigation Report[5] dated December 9, 2011, Executive Judge Magdoza-Malagar stated that the following findings were based on several interviews with Balboa, and on the entries in the logbook and DTR of Abad, Cobarrubias, and Bravo for the five-month period of June to October 2011 which were already on file with the Leave Division of the OCA.[6] In the case of Abad, there was no discrepancy in the entries in the logbook and DTR.[7] In the case of Cobarrubias, there were several discrepancies in the entries in the logbook and DTR (*i.e.*, in the logbook, he was marked as absent on two [2] occasions, but he indicated in his DTR that he was present; on several occasions, his "time-in" in the logbook is different from that

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[1] *Rollo*, p. 12.

[2] *Id*. at 1.

[3] *Id*.

[4] *Id*. at 13.

[5] *Id*. at 15-18. Denominated as Confidential Report.

[6] *Id*. at 16.

[7] *Id*.

indicated in the DTR).[8] In the case of Bravo, during the said five-month period, he incurred twenty-four (24) sick leaves, eighteen (18) vacation leaves, one (1) special privilege leave, and tardiness for thirty (30) days.[9] Based on informal inquiries, Executive Judge Magdoza-Malagar noted that Bravo's frequent absences and tardiness were allegedly due to drinking.[10] It was also noted in the Investigation Report that, as a court interpreter, Bravo is expected to be present during every trial, however, due to his frequent absences and tardiness, another court staff has to perform his work to the detriment of public service.[11] It was also stated in the Investigation Report that Balboa admitted that she had been lenient in allowing the court employees to record entries in the logbook.[12]

Based on the foregoing findings, Executive Judge Magdoza-Malagar recommended the following: (a) dismissal of the complaint against Abad for lack of evidence; (b) filing of administrative complaint against Cobarrubias for falsification of his DTR; (c) filing of administrative complaint against Bravo for absenteeism, tardiness and dereliction of duty; and (d) issuance of a warning to Balboa, directing her to ensure that all entries in the logbook are true and accurate.[13]

Acting on the above Investigation Report, the OCA Chief of Legal Office, Wilhelmina D. Geronga recommended the following actions in a Memorandum[14] dated January 4, 2013 addressed to the Court Administrator: (a) dismissal of the complaint against Abad for insufficiency of evidence; (b) directing Cobarrubias and Bravo to comment on the allegations in the complaint and on the findings in the Investigation Report,

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[8] *Id*. at 17-18.

[9] *Id*. at 16-17.

[10] *Id*. at 17.

[11] *Id*.

[12] *Id*. at 16, 18.

[13] *Id*. at 18.

[14] *Id*. at 88-92.

considering the seriousness of the charges which constitute serious misconduct and conduct prejudicial to the best interest of the service, respectively; and (c) directing Balboa to comment on the allegation in the complaint that she tolerated the conduct of Cobarrubias and Bravo.[15] Rather than issue a warning to Balboa as recommended in the Investigation Report, the OCA deemed it proper to require her to comment on the allegations in the complaint.[16]

Comments of Cobarrubias, Bravo, and Balboa

In his Comment[17] dated March 18, 2013, Bravo admitted his absences and tardiness but denied that the same were due to drinking.[18] He explained that he was experiencing severe recurring pain in his joints which made it difficult for him to walk, thus he incurred the said absences and tardiness.[19] He asserted that despite the pain, he tried to report to work in order to perform his tasks and not burden his officemates.[20] However, he acknowledged that his health problem does not justify his absences and tardiness and thus he apologized for his infractions and begged for the Court's understanding and compassion.[21]

In his Comment[22] dated April 5, 2013, Cobarrubias admitted making the alterations in his DTRs for fear of suspension for tardiness due to grave personal problems, and difficulty in traveling from his residence in Bulacan to the office which gave him great stress and affected his work performance.[23] He denied that Balboa tolerated his acts, and stated that Balboa

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[15] *Id*. at 91-92.

[16] *Id*. at 91.

[17] *Id*. at 107-108.

[18] *Id*. at 107.

[19] *Id*.

[20] *Id*.

[21] *Id*. at 108.

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

[23] *Id*. at 154.

even issued a memorandum warning him on his absences and tardiness.[24] He apologized and vowed to do his work to the best of his abilities and with utmost diligence and dedication.[25]

In her Comment[26] dated March 22, 2013, Balboa denied that she tolerated the acts of Cobarrubias and Bravo.[27] She asserted that she checks the entries in the logbook of attendance to determine who are absent.[28] However, she admitted that, due to heavy workload, there are instances when she would miss checking the attendance of staff who failed to report for work, such as in the case of Cobarrubias.[29] She also argued that she always reminded Cobarrubias of his tardiness and absences, and even issued a memorandum to him.[30] In the case of Bravo, Balboa stated that she sent a letter[31] dated December 11, 2012, informing the OCA-Leave Division of his absences without leave since September 19, 2012 up to the date of the said letter.[32]

Meanwhile, Bravo resigned on August 23, 2013[33] and Balboa compulsorily retired from the service on September 11, 2013.[34]

OCA Report and Recommendation

In a Report[35] dated June 26, 2015, the OCA recommended the following: (a) the anonymous complaint against Cobarrubias

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[24] *Id*. at 153.

[25] *Id*. at 154.

[26] *Id*. at 109-111.

[27] *Id*. at 110.

[28] *Id*.

[29] *Id*.

[30] *Id*. at 111.

[31] *Id*. at 112.

[32] See *id*. at 110.

[33] *Id*. at 9.

[34] *Id*. at 109.

[35] *Id*. at 1-10.

and Bravo be re-docketed as a regular administrative matter; (b) Cobarrubias be suspended for three (3) months without pay, effective immediately, for Dishonesty, with a stern warning that a repetition of the same or similar offense shall be dealt with more severely; (c) Bravo be fined in the amount of Twenty Thousand Pesos (₱20,000.00), in view of his resignation, for habitual absenteeism and conduct prejudicial to the best interest of the service; and (d) the anonymous complaint against Balboa and Abad be dismissed for lack of merit.[36]

The OCA found Cobarrubias guilty of dishonesty for making false entries in his DTR which differ from the entries in the logbook.[37] The OCA cited Section 52(A)(1), Rule IV of the Uniform Rules on Administrative Cases in the Civil Service,[38] which classifies dishonesty as a grave offense punishable by dismissal even for the first violation, with forfeiture of retirement benefits except accrued leave credits and perpetual disqualification from reemployment in government service.[39] The OCA also cited Republic Act No. 6713[40] which declared the State's policy of promoting a high standard of ethics and utmost responsibility in the public service.[41] The OCA stressed that the conduct of court personnel, from the presiding judge to the lowliest clerk, must always be beyond reproach and must be circumscribed with the heavy burden of responsibility as to free them from any suspicion that may taint the judiciary.[42] However, the OCA noted that while the Court has the duty to discipline its employees, it also has the discretion to temper the harshness of judgment

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[36] *Id*. at 10.

[37] *Id*. at 6.

[38] CSC Resolution No. 991936, August 31, 1999.

[39] *Rollo*, p. 6.

[40] CODE OF CONDUCT AND ETHICAL STANDARDS FOR PUBLIC OFFICIALS AND EMPLOYEES, February 20, 1989.

[41] *Rollo*, p. 6.

[42] *Id*.

with mercy, as held in several cases.[43] Thus, considering that Cobarrubias readily admitted his offense, apologized and promised to reform his ways, the OCA deemed that the penalty of three (3) months suspension without pay will suffice.[44]

In the case of Bravo, the OCA noted that he committed habitual absenteeism and tardiness[45] based on the findings in the Investigation Report which showed that during the five-month period of June to October 2011, he incurred twenty-four (24) sick leaves, eighteen (18) vacation leaves, one (1) special privilege leave, and tardiness for thirty (30) days.[46] Bravo also readily admitted the said findings, sought forgiveness therefor, and attributed his absences and tardiness to the alleged recurring and severe pain in his joints.[47] However, the OCA noted that he failed to present a single medical certificate, and to file his leave applications.[48] Moreover, the OCA found that his unauthorized absences exceeded the allowable 2.5 days monthly leave.[49] The OCA concluded that his unauthorized and habitual absences and tardiness constitute a grave offense tantamount to conduct prejudicial to the service.[50]

The OCA cited Memorandum Circular (MC) No. 04, series of 1991, of the Civil Service Commission which was quoted in OCA Circular No. 1-91[51] which defined habitual absenteeism[52]

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[43] *Id*.

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

[45] *Id*. at 7.

[46] *Id*. at 16-17.

[47] *Id*. at 7.

[48] *Id*.

[49] *Id*.

[50] *Id*. at 7-8.

[51] Re: Rules on Absenteeism and Tardiness, February 14, 1991.

[52] An officer or employee in the civil service shall be considered habitually absent if he incurs unauthorized absences exceeding the allowable 2.5 days monthly leave credit under the leave law for at least three (3) months in a semester or at least three (3) consecutive months during the year[.]

and habitual tardiness[53] and provided sanctions[54] therefor.[55] The same provides that those found guilty of habitual absenteeism and tardiness shall be meted the penalty of six (6) months and one (1) day to one (1) year suspension without pay for the first offense. The OCA also cited Supreme Court Administrative Circular No. 14-2002[56] which also quoted MC No. 04. The OCA further cited Section 23 (q),[57] Rule XIV (Discipline) of the Omnibus Rules Implementing Book V of Executive Order

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[53] Any employee shall be considered habitually tardy if he incurs tardiness, regardless of the number of minutes, ten (10) times a month for at least two (2) months in a semester or at least two (2) consecutive months during the year.

[54] The following sanctions shall be imposed for violation of the above guidelines:

a) for the first violation, the employee, after due proceedings, shall be meted the penalty of 6 months and 1 day to 1 year suspension without pay;

b) for the second violation, and after due proceedings, he shall be dismissed from service.

[55] See *rollo,* p. 7.

[56] Reiterating the Civil Service Commission's Policy on Habitual Absenteeism, March 18, 2002.

[57] SECTION 23. Administrative offenses with its corresponding penalties are classified into grave, less grave, and light, depending on the gravity of its nature and effects of said acts on the government service.

The following are grave offenses with its corresponding penalties:

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(q) Frequent unauthorized absences or tardiness in reporting for duty, loafing or frequent unauthorized absences from duty during regular office hours

1st Offense — Suspension for six (6) months and one (1) day to one (1) year;

2nd Offense — Dismissal

An officer or employee in the civil service shall be considered habitually absent if he incurs unauthorized absences exceeding the allowable 2.5 days monthly leave credit under the Leave Law for at least three (3) months in a semester or at least three (3) consecutive months during the year.

Any employee shall be considered habitually tardy if he incurs tardiness, regardless of the number of minutes, ten (10) times a month for at least two (2) months in a semester or at least two (2) consecutive months during the year.

No. 292,[58] which classified frequent unauthorized absences or tardiness as a grave offense punishable by suspension for six (6) months and one (1) day to one (1) year for the first offense.[59] Furthermore, the OCA cited Section 46(B)(5)(8),[60] Rule 10 (Schedule of Penalties) of the Revised Rules on Administrative Cases in the Civil Service (RRACCS),[61] which classified the two (2) offenses committed by Bravo (*i.e.*, frequent unauthorized absences or tardiness, and conduct prejudicial to the best interest of the service) as grave offenses punishable by suspension of six (6) months and one (1) day to one (1) year for the first offense.[62] Since Bravo committed two (2) offenses classified as less grave and thus punishable with the same penalty, the OCA applied Section 50[63] of the RRACCS and treated the penalty

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In case of claim of ill-health, heads of department of agencies are encouraged to verify the validity of such claim and, if not satisfied with the reason given, should disapprove the application for sick leave. On the other hand, cases of employees who absent themselves from work before approval of the application should be disapproved outright.

[58] Rules Implementing Book V of Executive Order No. 292 and Other Pertinent Civil Service Laws, CSC Resolution No. 91-1631, December 27, 1991.

[59] See *rollo,* p. 7.

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

x x x x x x x x x

B. The following grave offenses shall be punishable by suspension of six (6) months and one (1) day to one (1) year for the first offense and dismissal from the service for the second offense:

x x x x x x x x x

5. Frequent unauthorized absences, or tardiness in reporting for duty, loafing from duty during regular office hours;

x x x x x x x x x

8. Conduct prejudicial to the best interest of the service[.]

[61] CSC Resolution No. 1101502, November 8, 2011.

[62] *Rollo*, p. 8.

[63] **Section 50.** ***Penalty for the Most Serious Offense.*** — If the respondent is found guilty of two (2) or more charges or counts, the penalty to be imposed should be that corresponding to the most serious charge and the rest shall be considered as aggravating circumstances.

for the second offense as an aggravating circumstance.[64] However, since Bravo already resigned effective August 23, 2013, the OCA imposed fine of Twenty Thousand Pesos (₱20,000.00) in lieu of suspension.[65]

Regarding the allegations against Balboa, the OCA found that, although she warned the concerned employees on their absences and tardiness, she still failed to prevent the falsification committed by Cobarrubias on several occasions.[66] Citing *Duque v. Aspiras*,[67] the OCA stressed that a clerk of court has the duty to verify the entries in the logbook and DTR before certifying to its truthfulness.[68] The OCA emphasized that the clerk of court should have been more watchful over the employees' conduct, especially regarding attendance.[69] Citing *Concerned Litigants v. Araya, Jr.*,[70] the OCA emphasized that her failure to live up to the standards of responsibility required warrants disciplinary action for this Court cannot countenance any conduct, act, or omission on the part of those involved in the administration of justice which will violate the norms of public accountability and diminish, or tend to diminish, the faith of the people in the judicial system.[71]

Nevertheless, the OCA took into consideration Balboa's forty-three (43) years of service in the government, having risen from the ranks, first as clerical aide and eventually as Clerk of Court III.[72] She also received the following awards: Outstanding Clerk of Court, First Level Court, from Society for Judicial

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[64] *Rollo,* p. 9.

[65] *Id*.

[66] See *id*.

[67] 502 Phil. 15, 24 (2005).

[68] *Rollo,* p. 9.

[69] *Id*.

[70] 542 Phil. 8, 20 (2007).

[71] *Rollo*, p. 9.

[72] *Id*.

Excellence for 2007, and Loyalty Award from the City of Manila, and other plaques of recognition.[73] The OCA averred that considering the above circumstances and in view of her unblemished record, she should not be punished for a minor lapse of duty.[74] At most, had she still be in service, she would have been merely reminded to be more circumspect in the performance of her duties.[75]

After a careful consideration of the foregoing, the Court hereby adopts and affirms the findings and recommendations in the above OCA Report.

WHEREFORE, the Court hereby **ORDERS** the following:

1. Respondent Alden P. Cobarrubias (Clerk III) be **SUSPENDED** for three (3) months without pay, effective immediately, for dishonesty, with a **STERN WARNING** that a repetition of the same or similar offense shall be dealt with more severely;

2. Respondent Vladimir A. Bravo (Court Interpreter II) be **FINED** in the amount of Twenty Thousand Pesos (₱20,000.00) to be deducted from his retirement benefits; otherwise, if the same is not sufficient, the fine shall be paid directly to the Court within thirty (30) days after receipt of notice by respondent Bravo;

3. The anonymous complaint against Teodora R. Balboa (Clerk of Court III) and Antonio Abad, Jr. (Clerk III) be **DISMISSED** for lack of merit.

SO ORDERED.

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

Reyes, Jr., J., on leave.

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[73] *Id*.

[74] *Id*.

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

SECOND DIVISION

[A.M. No. RTJ-15-2407. November 22, 2017]
(Formerly OCA IPI No. 12-3834-RTJ)

EDGAR R. ERICE, *complainant, vs.* **PRESIDING JUDGE DIONISIO C. SISON, REGIONAL TRIAL COURT, BRANCH 125, CALOOCAN CITY,** *respondent.*

SYLLABUS

1. **REMEDIAL LAW; CHARGES AGAINST JUDGES; A JUDGE BECOMES LIABLE FOR GROSS IGNORANCE OF THE LAW WHEN THERE IS A PATENT DISREGARD OF WELL-KNOWN RULES SO AS TO PRODUCE AN INFERENCE OF BAD FAITH, DISHONESTY AND CORRUPTION.—** Gross ignorance of the law is a serious charge under Section 8, Rule 140 of the Rules of Court as amended by A.M. No. 01-8-10-SC. It requires the judge to perform his/her duty to be acquainted with the basic legal command of law and rules. Consequently, a judge becomes liable for gross ignorance of the law when there is a patent disregard for well-known rules so as to produce an inference of bad faith, dishonesty and corruption. Against these parameters, Judge Sison failed to perform his basic duty to be acquainted with the fundamentals of the very law he was tasked to uphold, and this conclusion remains unchanged notwithstanding the Court's supervening Decision in *Carpio Morales v. Court of Appeals*.

2. **ID.; JUDGMENTS; EXECUTION OF JUDGMENT; PURSUANT TO THE PRINCIPLE OF JUDICIAL STABILITY OR NON-INTERFERENCE, WHEN THE DECISIONS OF CERTAIN ADMINISTRATIVE BODIES ARE APPEALABLE TO THE COURT OF APPEALS, THESE ADJUDICATIVE BODIES ARE CO-EQUAL WITH THE REGIONAL TRIAL COURTS AND THEIR ACTIONS ARE LOGICALLY BEYOND THE CONTROL OF THE RTC; THUS, THE RTC HAS NO JURISDICTION TO INTERFERE WITH OR RESTRAIN THE EXECUTION OF THE OMBUDSMAN'S DECISIONS IN DISCIPLINARY CASES WHICH ARE APPEALABLE TO THE CA.—** [T]he

subsequent declaration of the policy in Section 14(1) of RA 6770 as ineffective and of Section 14(2) as invalid, does not serve to exonerate Judge Sison from administrative liability because he failed to consider and act in accordance with the basic principle of judicial stability or non-interference. Pursuant to this principle, where decisions of certain administrative bodies are appealable to the CA, these adjudicative bodies are co-equal with the RTCs and their actions are logically *beyond* the control of the RTC. Notably, the Ombudsman's decisions in disciplinary cases are appealable to the CA under Rule 43 of the Rules of Court. Consequently, the RTC had no jurisdiction to interfere with or restrain the execution of the Ombudsman's decisions in disciplinary cases, ***more so***, because at the time Judge Sison issued the TRO on January 10, 2012 and proceeded with the writ of preliminary injunction on January 17, 2012 against the enforcement of the Ombudsman *Order of Suspension*, the CA had already **affirmed** that very same *Order of Suspension* in its *Decision* dated January 2, 2012.

3. **ID.; ID.; ID.; ID.; A JUDGMENT RENDERED BY A COURT OR A QUASI-JUDICIAL BODY IS CONCLUSIVE ON THE PARTIES, SUBJECT ONLY TO APPELLATE AUTHORITY, AND THE LOSING PARTY CANNOT MODIFY OR ESCAPE THE EFFECTS OF JUDGMENT UNDER THE GUISE OF AN ACTION FOR DECLARATORY RELIEF.—** Judge Sison should have, at the very least, been aware that court orders or decisions **cannot** be the subject matter of a petition for declaratory relief. They are not included within the purview of the words "*other written instrument*" in Rule 63 of the Rules of Court governing petitions for declaratory relief. The same principle applies to **orders**, resolutions, or decisions of quasi-judicial bodies, and this is anchored on the principle of *res judicata*. Consequently, a judgment rendered by a court or a quasi-judicial body is conclusive on the parties, subject only to appellate authority. The losing party cannot modify or escape the effects of judgment under the guise of an action for declaratory relief.

4. **ID.; CHARGES AGAINST JUDGES; RESPONDENT JUDGE FOUND GUILTY OF GROSS IGNORANCE OF THE LAW; PENALTY OF FINE IMPOSED.—** Here, Echiverri, *et al.'s Petition for Declaratory Relief* specifically prayed that the RTC "make a definite judicial declaration on the rights and obligations

of the parties asserting adverse legal interests with respect to the implementation of the [order of] preventive suspension," effectively putting into question the CA-affirmed Ombudsman *Order of Suspension* — a matter clearly beyond the ambit of the RTCs jurisdiction. This, coupled with the deference to the basic precepts of jurisdiction required of judges, leads to no other conclusion than that Judge Sison acted in gross ignorance of the law in proceeding with the issuance of the writ of preliminary injunction. As a serious charge under Rule 140 of the Rules of Court as amended by A.M. No. 01-8-10-SC, the penalty for gross ignorance of the law or procedure ranges from a fine of more than ₱20,000.00 but not exceeding ₱40,000.00 to dismissal. Inasmuch as Judge Sison had already retired on December 9, 2014, the imposition of the penalty of suspension is no longer feasible. In lieu of suspension, a fine may still be imposed. Considering that this is not Judge Sison's first offense, the Court finds that the fine of Forty Thousand Pesos (₱40,000.00) is justified under the circumstances. In light of this Court's Resolution dated August 5, 2015, the fine shall be charged against the retained amounts from Judge Sison.

D E C I S I O N

CAGUIOA, *J.*:

This is an administrative matter[1] filed by Edgar R. Erice (Erice) against the now-retired Judge Dionisio C. Sison (Judge Sison) of the Regional Trial Court (RTC), Branch 125, Caloocan City, for violation of Section 8, paragraphs 3, 4 and 9 of A.M. No. 01-8-10-SC,[2] in particular: (i) gross misconduct constituting violations of the Code of Judicial Conduct, (ii) knowingly rendering an unjust judgment or order as determined by a competent court in an appropriate proceeding, and (iii) gross ignorance of the law or procedure.[3]

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[1] See Complaint, *rollo*, pp. 1-20.

[2] Re: Proposed Amendment to Rule 140 of the Rules of Court Re Discipline of Justices and Judges, September 11, 2001.

[3] *Rollo*, p. 292.

BACKGROUND

The facts leading to the filing of the complaint are as follows:

Complainant Erice, then Vice Mayor of Caloocan City, filed a complaint against then Mayor Enrico R. Echiverri, City Treasurer Evelina Garma, Budget Officer Jesusa Garcia and City Accountant Edna Centeno (Echiverri, *et al.*) before the Office of the Ombudsman, for alleged violation of the Government Service Insurance System Act.[4] Acting on the complaint, the Ombudsman issued an *Order*[5] *of Preventive Suspension* (*Order of Suspension*) on July 18, 2011 against Echiverri, *et al.*, to last until the administrative adjudication is completed but not to exceed six (6) months.[6]

Aggrieved by the *Order of Suspension*, Echiverri, *et al.* elevated the matter to the Court of Appeals (CA). While Echiverri, *et al.* were able to obtain a temporary restraining order (TRO) and a writ of preliminary injunction from the CA Special 14th Division, nevertheless, in its *Decision*[7] dated January 2, 2012, the CA **affirmed** the *Order of Suspension* of the Ombudsman and lifted and set aside the TRO. The decretal portion of the CA *Decision* of January 2, 2012 provides:

> **WHEREFORE**, premises considered, the Writ of Preliminary Injunction issued by this Court is hereby **LIFTED** and **SET ASIDE.** Accordingly, the assailed Order dated July 18, 2011 issued by the Office of the Ombudsman in OMB-C-A-11-0401-G is hereby **AFFIRMED.**
>
> **SO ORDERED.**[8]

A week later, or on January 9, 2012, Echiverri, *et al.* filed a *Petition for Declaratory Relief with Prayer for TRO and/or*

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[4] See *id*. at 4, 33-34, 292.

[5] *Id*. at 21-28.

[6] *Id*. at 5, 26.

[7] *Id*. at 30-69. Penned by Associate Justice Agnes Reyes-Carpio, with Associate Justices Rebecca De Guia-Salvador and Stephen C. Cruz concurring.

[8] *Id*. at 68.

Writ of Preliminary Injunction[9] with the RTC of Caloocan City, which was docketed as Special Civil Action No. C-1060 (2012).[10] Named as Respondents in the *Petition for Declaratory Relief* were Erice (Complainant in the present administrative matter) and the Department of Interior and Local Government (DILG). Echiverri, *et al.* prayed that the RTC "make a definite judicial declaration on the rights and obligations of the parties asserting adverse legal interests with respect to the implementation of [their] suspension."[11]

On even date, RTC Executive Judge Eleanor R. Kwong issued a 72-hour *ex-parte Order* to enjoin the DILG and Erice from implementing the *Order of Suspension*. Subsequently, the case was raffled and assigned to Judge Lorenza R. Bordios.[12]

In the summary hearing held on January 10, 2012, Erice and the DILG questioned the jurisdiction of the RTC to hear the matter, considering that the object of the *Petition for Declaratory Relief* were the CA *Decision* and the *Order of Suspension* of the Ombudsman. They also raised the matter of forum shopping, with Erice and the DILG pointing out that Echiverri, *et al.* had a pending *Motion for Reconsideration*[13] filed with the CA and a *Motion to Hold in Abeyance the Implementation of the Order of Preventive Suspension*[14] with the Office of the Ombudsman.[15]

However, Judge Bordios inhibited herself from proceeding with the case on January 11, 2012. The case was subsequently re-raffled to herein Respondent Judge Sison.[16]

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[9] *Id*. at 70-80.

[10] Also referred to as Special Civil Action No. C-1060 and Special Civil Action No. 1060 in other parts of the *rollo*.

[11] *Rollo*, pp. 79, 292.

[12] *Id*. at 6, 292.

[13] *Id*. at 148-171.

[14] *Id*. at 172-175.

[15] *Id*. at 6.

[16] *Id*. at 7, 293.

On the same day, January 11, 2012, with the case now pending before Judge Sison, Erice and the DILG reiterated their *Motion to Dismiss* and *Motion to Dissolve*. That afternoon, Judge Sison noted that the 72-hour TRO of the *Order of Suspension* would be expiring the next day, on January 12, 2012, and that the parties ought to finish with the presentation of evidence before noon of January 12, 2012. Counsel for the DILG informed Judge Sison that the OSG was not informed that the summary hearing would proceed at 2:00 p.m. of January 11, 2012 before Branch 125. Nevertheless, Judge Sison proceeded with the hearing and allowed Echiverri, *et al.* to present their evidence until 5:00 p.m. that day.[17]

The next day, at 8:00 a.m., the summary hearing continued. The OSG invoked its right to cross-examine the witnesses earlier presented by Echiverri, *et al.* but Judge Sison denied the same, allegedly without consulting the records from Branch 126 that would indicate that the OSG had made reservations to this effect on January 10, 2012. At 9:15 a.m., Judge Sison issued an *Order*[18] extending the TRO to 20 days, inclusive of the 72-hour TRO earlier granted by Judge Kwong.[19]

On the day scheduled for the hearing on the *Motion to Dismiss*, January 17, 2012, Judge Sison stated that he would hear evidence in support of the application for a writ of preliminary injunction. This compelled Erice to file an *Urgent Motion to Inhibit*.[20] Without ruling on the *Motion to Inhibit,* Judge Sison issued the *Order*[21] granting the writ of preliminary injunction.[22]

For his part, in refuting the charges against him, Judge Sison denied any allegations of the violation of the right to due process

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[17] *Id*.

[18] *Id*. at 176-178.

[19] *Id*. at 7-8, 293.

[20] *Id*. at 179-190.

[21] *Id*. at 198-199.

[22] *Id*. at 9, 12, 293-294.

of Erice and the DILG in allowing the summary hearing to proceed and Echiverri, *et al.* to present evidence even though the OSG was not informed of said hearing.[23] Judge Sison submitted that:

1. There is no basis for the claim of bias and partiality because the reason for the extension of the 72-hour TRO to a 20-day TRO was to accord Echiverri, *et al.* due process in allowing them to file their written comment and to argue against the Motion to Dissolve.[24]
2. There was no "deplorable haste" in issuing the TRO and writ of preliminary injunction because "of the limited time provided by the Rules of Court," in particular, Rule 58, Section 5; and that Erice's counsel, "knowing this time constraint x x x should have made himself always ready to go to trial and to present his testimonial and documentary evidences *(sic)*."[25]
3. While admitting that the DILG's counsel appeared before him and that he denied the OSG's claim of the right to cross-examine, Judge Sison claims that Erice failed to produce evidence that he made such rulings and therefore "should not be believed."[26]

The Office of the Court Administrator (OCA) Report dated November 4, 2014

In its *Report*[27] dated November 4, 2014, the OCA recommended that:

x x x [R]espondent Judge be found **GUILTY** of Gross Ignorance of the Law and **FINED** in the amount equivalent to his one (1) month

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[23] See *id*. at 205.

[24] *Id*. at 204.

[25] *Id*. at 205.

[26] *Id*.

[27] *Id*. at 292-299.

salary with a warning that a repetition of the same or similar act shall be dealt with more severely.[28]

The basis for the OCA's recommendation are as follows:

First, insofar as the alleged haste is concerned, indeed, this Court had ruled in *Leviste v. Alameda*[29] that "the pace in resolving incidents of the case is not *per se* an indication of bias."[30] Nevertheless, Judge Sison's act of issuing a TRO and writ of preliminary injunction against Erice and the DILG to enjoin the latter from enforcing the Ombudsman's *Order of Suspension* constitutes a violation of Section 14 of Republic Act No. (RA) 6770,[31] which provides:

> SEC. 14. *Restrictions.* — No writ of injunction shall be issued by any court to delay an investigation being conducted by the Ombudsman under this Act, unless there is a *prima facie* evidence that the subject matter of the investigation is outside the jurisdiction of the Office of the Ombudsman.
>
> No court shall hear any appeal or application for remedy against the decision or findings of the Ombudsman, except the Supreme Court, on pure question of law.

Second, in a similar case, *Ogka Benito v. Balindong*,[32] therein Respondent Judge Balindong issued a 72-hour TRO and extended the same for 20 days, against the enforcement of a DILG Department Order implementing a decision to suspend an official for nine months. This Court found that Judge Balindong's act constituted gross ignorance of the law for violating Section 14 of RA 6770. Judge Balindong was fined ₱30,000.00.[33]

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[28] *Id*. at 299.

[29] 640 Phil. 620, 645 (2010).

[30] *Rollo*, p. 296.

[31] AN ACT PROVIDING FOR THE FUNCTIONAL AND STRUCTURAL ORGANIZATION OF THE OFFICE OF THE OMBUDSMAN, AND FOR OTHER PURPOSES, otherwise known as "The Ombudsman Act of 1989."

[32] 599 Phil. 196 (2009).

[33] *Rollo*, p. 297.

Third, the OCA observed that although denominated as a *Petition for Declaratory Relief*, it was clear that Echiverri, *et al.* merely sought the injunction to prevent the implementation of the Ombudsman's *Order of Suspension*. In this regard, it is the CA that has appellate jurisdiction over the administrative cases resolved by the Ombudsman. Thus, Judge Sison cannot relax the rules, take cognizance of the case, and issue a TRO and writ of injunction which are beyond his authority.[34]

The OCA noted that this is Judge Sison's **second** offense. In A.M. No. RTJ-07-2050, he was found guilty of Gross Ignorance of the Law and was fined ₱10,000.00. Considering that this is Judge Sison's second offense, the penalty of suspension should have been imposed on him; however, since he was due for compulsory retirement on December 9, 2014, the OCA recommended that in lieu of suspension, Judge Sison should be meted a penalty of fine equivalent to one (1) month's salary.[35]

This Court's Resolutions

In a *Resolution* dated February 23, 2015, this Court **noted** the OCA Report dated November 4, 2014 recommending that Judge Sison be found guilty of gross ignorance of the law and be fined an amount equivalent to one (1) month's salary, with a warning that repetition of the same or similar act will be dealt with more severely.[36]

Subsequently, in a *Resolution* dated August 5, 2015, this Court, acting on Judge Sison's request for the payment of his terminal leave, resolved the same in his favor, and released the terminal leave benefits after retaining the amount equivalent to his two (2) months' salary, to answer for whatever penalty the Court may impose against him in his pending administrative cases.[37]

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[34] *Id.* at 297-298, citing *Fabian v. Desierto*, 356 Phil. 787 (1998).

[35] *Id.* at 295, 299.

[36] See *id.* at 307.

[37] *Id.* at 314.

DISCUSSION

The Court agrees with the findings of the OCA, with a modification on the penalty imposed on Judge Sison.

Gross ignorance of the law is a serious charge under Section 8, Rule 140 of the Rules of Court as amended by A.M. No. 01-8-10-SC. It requires the judge to perform his/her duty to be acquainted with the basic legal command of law and rules.[38] Consequently, a judge becomes liable for gross ignorance of the law when there is a patent disregard for well-known rules so as to produce an inference of bad faith, dishonesty and corruption.[39]

Against these parameters, Judge Sison failed to perform his basic duty to be acquainted with the fundamentals of the very law he was tasked to uphold, and this conclusion remains unchanged notwithstanding the Court's supervening Decision in *Carpio Morales v. Court of Appeals.*[40] In *Carpio Morales,* the Court: (1) declared as unconstitutional Section 14(2)[41] of RA 6770, and (2) declared as ineffective the policy in Section 14(1)[42] of RA 6770 against the issuance of a provisional injunctive writ by courts other than the Supreme Court to enjoin an investigation conducted by the Office of the Ombudsman until the Court adopts the same as part of the rules of procedure through an administrative circular duly issued therefor.[43]

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[38] *Perfecto v. Desales-Esidera*, A.M. No. RTJ-11-2258, September 10, 2012 (Unsigned Resolution).

[39] *Id.*; see *Gacad v. Clapis, Jr.*, 691 Phil. 126, 140 (2012).

[40] 772 Phil. 672 (2015).

[41] SEC. 14. *Restrictions*. – x x x

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

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

[43] *Supra* note 40, at 781.

Be that as it may, the subsequent declaration of the policy in Section 14(1) of RA 6770 as ineffective and of Section 14(2) as invalid, does not serve to exonerate Judge Sison from administrative liability because he failed to consider and act in accordance with the basic principle of judicial stability or non-interference.[44] Pursuant to this principle, where decisions of certain administrative bodies are appealable to the CA, these adjudicative bodies are co-equal with the RTCs and their actions are logically *beyond* the control of the RTC.[45]

Notably, the Ombudsman's decisions in disciplinary cases are appealable to the CA under Rule 43 of the Rules of Court. Consequently, the RTC had no jurisdiction to interfere with or restrain the execution of the Ombudsman's decisions in disciplinary cases,[46] ***more so,*** because at the time Judge Sison issued the TRO on January 10, 2012 and proceeded with the writ of preliminary injunction on January 17, 2012 against the enforcement of the Ombudsman *Order of Suspension*, the CA had already **affirmed** that very same *Order of Suspension* in its *Decision* dated January 2, 2012.

In any event, Judge Sison should have, at the very least, been aware that court orders or decisions **cannot** be the subject matter of a petition for declaratory relief.[47] They are not included within the purview of the words *"other written instrument"*[48]

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[44] See *Tan v. Cinco*, G.R. No. 213054, June 15, 2016, 793 SCRA 610, 618-619.

[45] *Department of the Interior and Local Government (DILG) v. Gatuz*, 771 Phil. 153, 159 (2015), citing *Springfield Dev't. Corp. Inc. v. Hon. Presiding Judge of RTC, Misamis Oriental, Br. 40, Cagayan De Oro City*, 543 Phil. 298, 311 (2007); *Board of Commissioners v. Dela Rosa*, 274 Phil. 1156, 1191 (1991); *The Presidential Anti-Dollar Salting Task Force v. Court of Appeals*, 253 Phil. 344, 355 (1989).

[46] *Id*. at 160.

[47] *Id*. at 158, citing *Reyes v. Ortiz*, 642 Phil. 158, 171 (2010); *Natalia Realty, Inc. v. Court of Appeals*, 440 Phil. 1, 19 (2002); *Tanda v. Aldaya*, 98 Phil. 244, 247 (1956).

[48] *Id*., citing *Tanda v. Aldaya*, *id*. at 247.

in Rule 63[49] of the Rules of Court governing petitions for declaratory relief. The same principle applies to **orders**, resolutions, or decisions of quasi-judicial bodies,[50] and this is anchored on the principle of *res judicata*.[51] Consequently, a judgment rendered by a court or a quasi-judicial body is conclusive on the parties, subject only to appellate authority.[52] The losing party cannot modify or escape the effects of judgment under the guise of an action for declaratory relief.[53]

Here, Echiverri, *et al.*'s *Petition for Declaratory Relief* specifically prayed that the RTC "make a definite judicial declaration on the rights and obligations of the parties asserting adverse legal interests with respect to the implementation of the [order of] preventive suspension,"[54] effectively putting into question the CA-affirmed Ombudsman *Order of Suspension* — a matter clearly beyond the ambit of the RTC's jurisdiction. This, coupled with the deference to the basic precepts of jurisdiction required of judges, leads to no other conclusion than that Judge Sison acted in gross ignorance of the law in proceeding with the issuance of the writ of preliminary injunction.

As a serious charge under Rule 140 of the Rules of Court as amended by A.M. No. 01-8-10-SC, the penalty for gross ignorance of the law or procedure ranges from a fine of more than ₱20,000.00 but not exceeding ₱40,000.00 to dismissal.[55]

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[49] RULES OF COURT, Rule 63, Section 1. *Who may file petition.* — Any person interested under a deed, will, contract or other written instrument, whose rights are affected by a statute, executive order or regulation, ordinance, or any other governmental regulation may, before breach or violation thereof, bring an action in the appropriate Regional Trial Court to determine any question of construction or validity arising, and for a declaration of his rights or duties, thereunder.

[50] *Department of the Interior and Local Government (DILG) v. Gatuz*, *supra* note 45, at 158-159.

[51] *Id.* at 159.

[52] *Id.*

[53] *Id.*

[54] *Rollo*, p. 79.

[55] RULES OF COURT, Rule 140, Section 11, as amended by A.M. No. 01-8-10-SC provides:

Inasmuch as Judge Sison had already retired on December 9, 2014, the imposition of the penalty of suspension is no longer feasible. In lieu of suspension, a fine may still be imposed.[56] Considering that this is not Judge Sison's first offense, the Court finds that the fine of Forty Thousand Pesos (₱40,000.00) is justified under the circumstances.[57] In light of this Court's Resolution dated August 5, 2015, the fine shall be charged against the retained amounts from Judge Sison.

WHEREFORE, the Court hereby finds retired Judge Dionisio C. Sison **GUILTY** of gross ignorance of the law under Section 8, Rule 140 of the Rules of Court as amended by A.M. No. 01-8-10-SC, and is hereby ordered to **PAY A FINE** of Forty Thousand Pesos (₱40,000.00), to be deducted from his terminal leave benefits earlier retained pursuant to this Court's Resolution dated August 5, 2015, with the remaining amount to be released to Judge Sison immediately.

SO ORDERED.

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

Reyes, Jr., J., on leave.

SEC. 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.

[56] *OCA v. Judge Leonida*, 654 Phil. 668, 679 (2011); *Bautista v. Causapin, Jr.*, 667 Phil. 574, 593 (2011); *Fernandez v. Vasquez*, 669 Phil. 619, 637 (2011); *Pleyto v. Philippine National Police-Criminal Investigation & Detection Group*, 563 Phil. 842, 918 (2007).

[57] See *Alconera v. Majaducon*, 496 Phil. 833, 842 (2005) and *Manalastas v. Flores*, 466 Phil. 925, 938 (2004) cited in *Enriquez v. Caminade*, 519 Phil. 781, 789-790 (2006).

SECOND DIVISION

[G.R. No. 180845. November 22, 2017]

GOV. AURORA E. CERILLES, *petitioner, vs.* **CIVIL SERVICE COMMISSION, ANITA JANGAD-CHUA, MA. EDEN S. TAGAYUNA, MERIAM CAMPOMANES,[*] BERNADETTE P. QUIRANTE, MA. DELORA P. FLORES AND EDGAR PARAN,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; THE EXTRAORDINARY REMEDY OF *CERTIORARI* IS A PREROGATIVE WRIT AND NEVER ISSUES AS A MATTER OF RIGHT, HENCE, WHERE AN APPEAL IS AVAILABLE, *CERTIORARI* WILL NOT PROSPER, EVEN IF THE GROUND THEREFOR IS GRAVE ABUSE OF DISCRETION.— It is well-established that as a condition for the filing of a petition for *certiorari*, there must be no appeal, nor any plain, speedy, and adequate remedy available in the ordinary course of law. In this case, the CA correctly observed that a Rule 43 petition for review was then an available mode of appeal from the above CSC resolutions. Rule 43, which specifically applies to resolutions issued by the CSC, is clear: x x x It bears reiterating that the extraordinary remedy of *certiorari* is a prerogative writ and never issues as a matter of right. Given its extraordinary nature, the party availing thereof must strictly observe the rules laid down and non-observance thereof may not be brushed aside as mere technicality. Hence, where an appeal is available, *certiorari* will not prosper, even if the ground therefor is grave abuse of discretion.

2. POLITICAL LAW; CONSTITUTIONAL COMMISSIONS; CIVIL SERVICE COMMISSION (CSC); REPUBLIC ACT NO. 6656 WAS ENACTED TO IMPLEMENT THE STATE'S POLICY OF PROTECTING THE SECURITY OF TENURE OF OFFICERS AND EMPLOYEES IN THE CIVIL SERVICE DURING THE REORGANIZATION OF GOVERNMENT AGENCIES; EFFECT THEREOF.— RA

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[*] Also referred to as Meriam Campones in other parts of the *rollo*.

6656 was enacted to implement the State's policy of protecting the security of tenure of officers and employees in the civil service during the reorganization of government agencies. x x x The following may be derived from Sections 2, 3 and 4 of RA 6656 — **First**, an officer or employee may be validly removed from service pursuant to a *bona fide* reorganization; in such case, there is no violation of security of tenure and the aggrieved employee has no cause of action against the appointing authority. **Second**, if, on the other hand, the reorganization is done in bad faith, as when the enumerated circumstances in Section 2 are present, the aggrieved employee, having been removed *without* valid cause, may demand for his reinstatement or reappointment. **Third**, officers and employees holding permanent appointments in the old staffing pattern shall be given preference for appointment to the new positions in the approved staffing pattern, which shall be comparable to their former position or in case there are not enough comparable positions, to positions next lower in rank. **Lastly**, no new employees shall be taken in until all permanent officers and employees have been appointed unless such positions are policy-determining, primarily confidential, or highly technical in nature.

3. ID.; ID.; ID.; THE ONLY FUNCTION OF THE CIVIL SERVICE COMMISSION IS MERELY TO ASCERTAIN WHETHER THE APPOINTEE POSSESSES THE MINIMUM REQUIREMENTS UNDER THE LAW, IF IT IS SO, THEN THE CSC HAS NO CHOICE BUT TO ATTEST TO SUCH APPOINTMENT.— Appointment, by its very nature, is a highly discretionary act. As an exercise of political discretion, the appointing authority is afforded a wide latitude in the selection of personnel in his department or agency and seldom questioned, the same being a matter of wisdom and personal preference. In certain occasions, however, the selection of the appointing authority is subject to review by respondent CSC as the central personnel agency of the Government. In this regard, while there appears to be a conflict between the two interests, *i.e.*, the discretion of the appointing authority and the reviewing authority of the CSC, this issue is hardly a novel one. In countless occasions, the Court has ruled that the only function of the CSC is merely to ascertain whether the appointee possesses the minimum requirements under the law; if it is so, then the CSC has no choice but to attest to such appointment.

4. ID.; REPUBLIC ACT NO. 6656 (AN ACT TO PROTECT THE SECURITY OF TENURE OF CIVIL SERVICE OFFICERS AND EMPLOYEES IN THE IMPLEMENTATION OF GOVERNMENT REORGANIZATION, JUNE 10,1988); TO SUCCESSFULLY IMPUGN THE VALIDITY OF A REORGANIZATION AND CORRESPONDINGLY DEMAND FOR REINSTATEMENT OR REAPPOINTMENT, THE AGGRIEVED OFFICER OR EMPLOYEE HAS THE BURDEN TO PROVE THE EXISTENCE OF BAD FAITH; ESTABLISHED IN CASE AT BAR.— In *Blaquera v. Civil Service Commission*, citing *Dario v. Mison*, the Court had the occasion to define good faith in the context of reorganization: x x x "*Reorganization is a recognized valid ground for separation of civil service employees, subject only to the condition that it be done in good faith*. No less than the Constitution itself in Section 16 of the Transitory Provisions, together with Sections 33 and 34 of Executive Order No. 81 and Section 9 of Republic Act No. 6656, support this conclusion with the declaration that all those not so appointed in the implementation of said reorganization shall be deemed separated from the service with the concomitant recognition of their entitlement to appropriate separation benefits and/or retirement plans of the reorganized government agency." x x x A reorganization in good faith is one designed to trim the fat off the bureaucracy and institute economy and greater efficiency in its operation. It is not a mere tool of the spoils system to change the face of the bureaucracy and destroy the livelihood of hordes of career employees in the civil service so that the new-powers-that-be may put their own people in control of the machinery of government. x x x Good faith is always presumed. Thus, to successfully impugn the validity of a reorganization — and correspondingly demand for reinstatement or reappointment — the aggrieved officer or employee has the burden to prove the existence of bad faith. x x x Applying the foregoing to the facts of this case, the Court finds that Respondents were able to prove bad faith in the reorganization of the Province of Zamboanga del Sur. The Court explains. At the outset, it must be stressed that the existence or non-existence of bad faith is a factual inquiry. Its determination necessarily requires a scrutiny of the evidence adduced in each individual case and only then can the circumstance of bad faith be inferred. In this respect, the Petition is infirm for raising a question of fact, which is outside the scope of the Court's

discretionary power of review in Rule 45 petitions. While questions of fact have been entertained by the Court in justifiable circumstances, the Petition is bereft of any allegation to show that the case is within the allowable exceptions. Be that as it may, after a judicious scrutiny of the records and the submissions of the parties, the Court finds no cogent reason to vacate the CA Decision, as well as the relevant rulings of the CSC and CSCRO. x x x Moreover, the Court notes that the positions of Respondents were not even abolished. However, instead of giving life to the clear mandate of RA 6656 on preference, Gov. Cerilles terminated Respondents from the service and forthwith appointed other employees in their stead. Neither did Gov. Cerilles, at the very least, demote them to lesser positions if indeed there was a reduction in the number of positions corresponding to Respondents' previous positions. This is clear indication of bad faith, as the Court similarly found in *Dytiapco v. Civil Service Commission*: Petitioner's dismissal was not for a valid cause, thereby violating his right to security of tenure. The reason given for his termination, that there is a "limited number of positions in the approved new staffing pattern" necessitating his separation on January 31, 1988, is simply not true.

5. REMEDIAL LAW; EVIDENCE; FACTUAL FINDINGS OF ADMINISTRATIVE AGENCIES; THE COURT ACCORDS RESPECT, IF NOT FINALITY, TO FACTUAL FINDINGS OF ADMINISTRATIVE AGENCIES BECAUSE OF THEIR SPECIAL KNOWLEDGE AND EXPERTISE OVER MATTERS FALLING UNDER THEIR JURISDICTION; CASE AT BAR.— It is settled doctrine that the Court accords respect, if not finality, to factual findings of administrative agencies because of their special knowledge and expertise over matters falling under their jurisdiction. No compelling reason is extant in the records to have this Court rule otherwise. All told, the Court finds that the **totality** of the circumstances gathered from the records reasonably lead to the conclusion that the reorganization of the Province of Zamboanga del Sur was tainted with bad faith. For this reason, following the ruling in *Larin*, Respondents are entitled to no less than reinstatement to their former positions without loss of seniority rights and shall be entitled to full backwages from the time of their separation until actual reinstatement; or, in the alternative, in case they have already compulsorily retired during the pendency

of this case, they shall be awarded the corresponding retirement benefits during the period for which they have been retired.

APPEARANCES OF COUNSEL

Frederico M. Gapuz for private respondents.

D E C I S I O N

CAGUIOA, *J.*:

Before the Court is an appeal by *certiorari*[1] (Petition) under Rule 45 of the Rules of Court (Rules) assailing the Decision[2] dated June 8, 2007 (CA Decision) and Resolution[3] dated November 28, 2007 of the Court of Appeals — Twenty First Division (CA) in CA-G.R. SP No. 86627. The CA affirmed public respondent Civil Service Commission (CSC)'s Resolution No. 031239[4] dated December 10, 2003, which upheld the CSC Regional Office No. IX (CSCRO)'s invalidation of ninety-six (96) appointments made by petitioner Governor Aurora E. Cerilles (Gov. Cerilles) while sitting as Provincial Governor of Zamboanga del Sur.

The subject appointments were made in connection with the reorganization of the provincial government of Zamboanga del Sur, which reduced the number of *plantilla* positions in the staffing pattern.[5] Herein private respondents Anita Jangad-Chua, Ma. Eden S. Tagayuna, Meriam Campomanes, Bernadette P. Quirante, Ma. Delora P. Flores, and Edgar Paran (collectively, "Respondents") were among those permanent employees terminated in relation to the subject appointments.

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[1] *Rollo*, pp. 10-49.

[2] *Id*. at 51-62. Penned by Associate Justice Rodrigo F. Lim, Jr., with Associate Justices Teresita Dy-Liacco Flores and Jane Aurora C. Lantion concurring.

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

[4] Also referred to as Resolution No. 03-1239 in other parts of the *rollo*.

[5] See *id*. at 311.

The Facts

The CA summarized the material antecedents as follows:

On November 7, 2000, Republic Act No. 8973 entitled "An Act creating the Province of Zamboanga Sibugay from the Province of Zamboanga del Sur and for other purposes" was passed. As a consequence thereof, the Internal Revenue Allotment (IRA) of the province of Zamboanga del Sur (province, for brevity) was reduced by thirty-six percent (36%). Because of such reduction, petitioner [Gov. Cerilles], sought the opinion of public respondent [CSC] on the possibility of reducing the workforce of the provincial government.

In response, public respondent issued on August 8, 2001 Opinion No. 07 series of 2001, the pertinent portions of which are as follows:

> "Please be advised also that in the event reorganization is carried out in that province, the same must be authorized by appropriate Sangguniang Panlalawigan (SP) resolution, so that necessary funds may be correspondingly released, among other purposes, to aid the provincial government in the implementation thereof.
>
> Should you have further queries on the matter, please feel free to coordinate with our Civil Service Commission Regional Office (CSCRO) No. IX, Cabantangan, Zamboanga City."

Subsequently on August 21, 2001, the Sangguniang Panlalawigan of Zamboanga del Sur passed Resolution No. 2K1-27 approving the new staffing pattern of the provincial government consisting only of 727 positions and Resolution No. 2K1-038 which authorized petitioner to undertake the reorganization of the provincial government and to implement the new staffing pattern.

Pursuant to said authority, petitioner appointed employees to the new positions in the provincial government. The private respondents were among those who were occupying permanent positions in the old plantilla and have allegedly been in the service for a long time but were not given placement preference and were instead terminated without valid cause and against their will. On various dates, private respondents filed their respective letters of appeal respecting their termination with petitioner. However, no action was taken on the appeals made; hence, private respondents brought the matter to public respondent's Regional Office No. IX (Regional Office, for brevity). In the meantime, the province submitted its Report on Personnel

Actions (ROPA) for January 1, 2002 to the Regional Office No. IX for attestation. x x x[6]

Ruling of the CSC Regional Office IX

Upon review of the ROPA submitted by the provincial government, the CSCRO, in a Letter dated June 3, 2002, found that the subject appointments violated Republic Act No. (RA) 6656[7] for allegedly failing to grant preference in appointment to employees previously occupying permanent positions in the old *plantilla*. As a result, the CSCRO invalidated a total of ninety-six (96) appointments made by Gov. Cerilles after the reorganization.[8]

The CSCRO likewise took cognizance of the appeals directly lodged before it by Respondents, allegedly due to Gov. Cerilles' failure to act thereon. Thus, on June 24, 2002, the CSCRO issued an Omnibus Order directing the reinstatement of Respondents to their former positions.[9] Dismayed, Gov. Cerilles sought reconsideration with the CSCRO through a Letter dated July 13, 2002.[10] Therein, Gov. Cerilles claimed that it was not within the prerogative of the CSCRO to revoke an appointment as the same was within her exclusive discretion.[11]

Thereafter, the CSC informed Gov. Cerilles that her Letter dated July 13, 2002 was treated as an appeal and was forwarded to it by the CSCRO.[12] Thus, in an Order dated October 22, 2002, Gov. Cerilles was required to comply with the requirements

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[6] *Id*. at 52-53.

[7] AN ACT TO PROTECT THE SECURITY OF TENURE OF CIVIL SERVICE OFFICERS AND EMPLOYEES IN THE IMPLEMENTATION OF GOVERNMENT REORGANIZATION, June 10, 1988.

[8] See *rollo*, p. 53.

[9] *Id*. at 53-54.

[10] *Id*. at 54.

[11] See *id*.

[12] *Id*. at 54-55.

for perfecting an appeal pursuant to CSC Resolution No. 02-319 dated February 28, 2002.[13]

Ruling of the CSC

In its Resolution No. 030028 dated January 13, 2003, the CSC dismissed the appeal of Gov. Cerilles for her failure to comply with its Order dated October 22, 2002.[14] Aggrieved, Gov. Cerilles filed a motion for reconsideration of the said Resolution.

In its Resolution No. 031239 dated December 10, 2003, the CSC granted the motion for reconsideration and forthwith reinstated the appeal.[15] However, in the same resolution, the CSC dismissed the appeal just the same and upheld the CSCRO's invalidation of the subject appointments.[16]

Gov. Cerilles then filed a motion for reconsideration of Resolution No. 031239, which was eventually denied by the CSC in its Resolution No. 040995[17] dated September 7, 2004.[18]

Unfazed, Gov. Cerilles elevated the matter to the CA through a petition for *certiorari* under Rule 65 on the following grounds, *inter alia*: (i) that the CSC is without original jurisdiction over protests made by an aggrieved officer or employee during government reorganization, pursuant to RA 6656, and (ii) that the CSC committed grave abuse of discretion in affirming the invalidation of the subject appointments.[19]

Ruling of the CA

In the CA Decision, the CA observed that Gov. Cerilles resorted to the wrong mode of review, the proper remedy being

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[13] *Id*.

[14] *Id*. at 55.

[15] *Id*.

[16] *Id*.

[17] Also referred to as Resolution No. 04-0995 in other parts of the *rollo*.

[18] *Id*.

[19] *Id*. at 19.

an appeal under Rule 43 of the Rules, which governs appeals from judgments, final orders, or resolutions of the CSC.[20] Nevertheless, the CA proceeded to resolve the petition and upheld the CSCRO's jurisdiction to entertain the appeals of Respondents. Notably, however, no discussion was made on the CSC's power to invalidate the subject appointments.

A Motion for Reconsideration[21] dated August 3, 2007 was filed by Gov. Cerilles, which was denied by the CA in its Resolution dated November 28, 2007.

Hence, this Petition.

On May 5, 2008, Respondents jointly filed their Comment dated May 3, 2008.[22] Likewise, on August 15, 2008, the CSC filed its Comment dated August 14, 2008.[23] On December 9, 2008, Gov. Cerilles accordingly filed her Reply.[24]

Issuance of the Temporary Restraining Order (TRO)

In the interim, Respondents filed a Motion for Execution dated January 31, 2008 with the CSC,[25] seeking the immediate execution of its Resolution No. 031239 pending appeal, citing Section 47(4),[26] Chapter 6, Subtitle A, Title I, Book V of the Administrative Code of 1987.[27] In its Resolution

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[20] *Id*. at 56.

[21] *Id*. at 66-87.

[22] *Id*. at 99-114.

[23] *Id*. at 124-137.

[24] *Id*. at 160-183.

[25] *Id*. at 204.

[26] SEC. 47. Disciplinary Jurisdiction. – x x x

x x x x x x x x x

(4) An appeal shall not stop the decision from being executory, and in case the penalty is suspension or removal, the respondent shall be considered as having been under preventive suspension during the pendency of the appeal in the event he wins an appeal.

[27] See *rollo*, p. 205.

No. 080712[28] dated April 21, 2008, the CSC granted Respondents' motion as follows:

> **WHEREFORE**, the Motion for Execution of Judgment filed by Anita N. Jangad-Chua, *et al*. is hereby **GRANTED**. Accordingly, the Provincial Government of Zamboanga del Sur is hereby directed to reinstate Anita N. Jangad-Chua, Ma. Eden Saldariega-Tagayuna, Meriam A. Campomanes, Bernarda P. Quirante, Ma. Delora D. Flores and Edgar A. Paran to their respective former positions with payment of back salaries and other benefits due them without further delay.[29]

Alarmed, Gov. Cerilles filed a Motion for Issuance of a Temporary Restraining Order (TRO) dated February 24, 2009 with the Court.[30] In support thereof, Gov. Cerilles claimed that the execution of Resolution No. 031239 would be detrimental to the operations of the provincial government of Zamboanga del Sur and would render inutile a favorable ruling from the Court.[31]

In a Resolution[32] dated March 17, 2009, the Court granted the motion of Gov. Cerilles and issued a TRO directing CSC to cease and desist from executing the following issuances: (i) Resolution No. 031239 dated December 10, 2003, (ii) Resolution No. 040995 dated September 7, 2004, (iii) CSC Resolution No. 080712 dated April 21, 2008, and (iv) Resolution No. 090102[33] dated January 20, 2009.

Issues

The Petition questions the CA Decision on the following grounds:

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[28] *Id*. at 203-206. Also referred to as Resolution No. 08-0712 in other parts of the *rollo*.

[29] *Id*. at 206.

[30] *Id*. at 190-201.

[31] *Id*. at 187-188.

[32] *Id*. at 217-218.

[33] *Id*. at 208-212. Also referred to as Resolution No. 09-0102 in other parts of the *rollo*.

(i) Whether Gov. Cerilles correctly availed of the remedy of *certiorari* under Rule 65 of the Rules when she filed her petition before the CA questioning the invalidation of the subject appointments, there being no appeal, nor any plain, speedy and adequate remedy in the ordinary course of law;[34]

(ii) Whether the CA misapplied Section 9 of Presidential Decree No. 807 (Powers and Functions of the CSC to Approve and Disapprove Appointments) in ruling that an aggrieved applicant for a position due to reorganization does not need to seek recourse first before the appointing authority (*i.e.*, Gov. Cerilles as Provincial Governor of Zamboanga del Sur);[35]

(iii) Whether the CA deliberately misapplied Section 7 of RA 6656 in favor of Respondents in order to evade discussion on the validity of the subject appointments;[36] and

(iv) Whether the CA misinterpreted the jurisdiction of CSCROs, as contained in Section 6[B1] of CSC Memorandum Circular No. 19-99.[37]

The Court's Ruling

The Petition is denied.

Preliminary issue: propriety of filing a Rule 65 petition for certiorari with the CA

In her Petition, Gov. Cerilles questions the CA Decision insofar as it considered her petition for *certiorari* an improper remedy — the proper remedy being a petition for review under Rule 43 of the Rules. Gov. Cerilles claims that Resolution No. 031239

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

[35] See *id.* at 28.

[36] *Id.*

[37] *Id.*

and Resolution No. 040995 were non-appealable as the CSC rendered them in its "non-disciplinary" jurisdiction; thus, she insists that the correct remedy was a petition for *certiorari* under Rule 65.

The Court is not impressed.

The Rules and prevailing jurisprudence are settled on this matter. It is well-established that as a condition for the filing of a petition for *certiorari*, there must be no appeal, nor any plain, speedy, and adequate remedy available in the ordinary course of law.[38] In this case, the CA correctly observed that a Rule 43 petition for review was then an available mode of appeal from the above CSC resolutions. Rule 43, which specifically applies to resolutions issued by the CSC, is clear:

> SECTION 1. *Scope*. — **This Rule shall apply to** appeals from judgments or final orders of the Court of Tax Appeals and from **awards, judgments, final orders or resolutions of or authorized by any quasi-judicial agency in the exercise of its quasi-judicial functions. Among these agencies are the Civil Service Commission**, Central Board of Assessment Appeals, Securities and Exchange Commission, Office of the President, x x x.
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> x x x x x x x x x
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> SEC. 5. *How appeal taken*. — **Appeal shall be taken by filing a verified petition for review** in seven (7) legible copies **with the Court of Appeals**, with proof of service of a copy thereof on the adverse party and on the court or agency *a quo*. The original copy of the petition intended for the Court of Appeals shall be indicated as such by the petitioner. (Emphasis and underscoring supplied)

It bears reiterating that the extraordinary remedy of *certiorari* is a prerogative writ and never issues as a matter of right.[39] Given its extraordinary nature, the party availing thereof must strictly observe the rules laid down and non-observance thereof

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[38] *Balindong v. Dacalos*, 484 Phil. 574, 580 (2004); RULES OF COURT, Rule 65, Sec. 1.

[39] *Balindong v. Dacalos*, *id.* at 579.

may not be brushed aside as mere technicality.[40] Hence, where an appeal is available, *certiorari* will not prosper, even if the ground therefor is grave abuse of discretion.[41]

Applying the foregoing, the Court thus finds Gov. Cerilles' failure to abide by the elementary requirements of the Rules inexcusable. That she repeatedly invoked "grave abuse of discretion" on the part of the CSC was of no moment; the records failed to demonstrate how an appeal to the CA via Rule 43 was not a plain, speedy, and adequate remedy as would allow a relaxation of the rules of procedure.

Non-observance of procedure under Sections 7 and 8 of RA 6656

Gov. Cerilles also faults the CA for upholding the CSCRO's jurisdiction over the appeals directly lodged before it by Respondents.[42] Gov. Cerilles anchors her claim on Sections 7 and 8 of RA 6656, which provide the appeal procedure for aggrieved applicants to new positions resulting from a reorganization:

> SEC. 7. A list of the personnel appointed to the authorized positions in the approved staffing pattern shall be made known to all the officers and employees of the department or agency. **Any of such officers and employees aggrieved by the appointments made may file an appeal with the appointing authority** who shall make a decision within thirty (30) days from the filing thereof.
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> SEC. 8. An officer or employee who is still not satisfied with the decision of the appointing authority may further appeal within ten (10) days from receipt thereof to the Civil Service Commission which shall render a decision thereon within thirty (30) days and whose decision shall be final and executory. (Emphasis and underscoring supplied)

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[40] *Garcia, Jr. v. Court of Appeals*, 570 Phil. 188, 193 (2008).

[41] See *Career Executive Service Board v. Civil Service Commission*, G.R. No. 197762, March 7, 2017, pp. 13-14.

[42] See *rollo*, p. 33.

On the basis of the cited provision, Gov. Cerilles claims that it was erroneous for the CSCRO to have taken cognizance of the appeals of Respondents as the same should have first been filed before her as the appointing authority.[43] Specifically, Gov. Cerilles posits that the foregoing provisions conferred "original jurisdiction" to the appointing authority over appeals of aggrieved officers and employees and only "appellate jurisdiction" to the CSCRO.[44] Thus, she claims that Respondents' failure to observe the proper procedure deprived the CSCRO of jurisdiction over their appeals.

The Court disagrees.

The records indicate that Respondents **did in fact** file letters of appeal with Gov. Cerilles on various dates after their separation.[45] Said appeals, however, were not acted upon despite the lapse of time, which prompted Respondents to instead seek relief before the CSCRO.[46] While Gov. Cerilles disputes this fact,[47] the Court, being a trier of law and not of facts, must necessarily rely on the factual findings of the CA.[48] In Rule 45 petitions, the Court cannot re-weigh evidence already duly considered by the lower courts. In this regard, it was held by the CA:

> Even assuming that petitioner correctly relied on Sections 7 and 8 of R.A. 6656, We still find that private respondents fully complied with the requirements of the said provisions.
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> Contrary to petitioner's claim, private respondents indeed filed letters of appeal on various dates after their termination. Said appeals however, were unacted despite the lapse of time given the appointing authority to resolve the same which prompted private respondents to seek redress before public respondent's Regional Office. We, thus,

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[43] See *id*. at 34.

[44] *Id*. at 20.

[45] *Id*. at 60.

[46] *Id*.

[47] *Id*. at 37.

[48] See *Medina v. Court of Appeals*, 693 Phil. 356, 366 (2012).

cannot give credence to petitioner's claim that no appeal was filed before her as the appointing authority. As what petitioner would have private respondents do, the latter indeed went through the motions of first attempting to ventilate their protest before the appointing authority. However, since the appointing authority failed to take any action on the appeal, private respondents elevated the same to the Regional Office and correctly did so. x x x[49]

While no decision on the appeals was ever rendered by Gov. Cerilles, it would be unjust to require Respondents to first await an issuance before elevating the matter to the CSC, given Gov. Cerilles' delay in resolving the same. In such case, an appointing authority could easily eliminate all opportunities of appeal by the aggrieved employees by mere inaction. It is well-settled that procedural rules must not be applied with unreasonable rigidity if substantial rights stand to be marginalized; here, no less than Respondents' means of livelihood are at stake.

Proceeding therefrom, the Court cannot therefore ascribe any fault to the CSCRO in resolving the appeals of Respondents due to Gov. Cerilles' refusal to act, especially since the CSC is, in any case, vested with jurisdiction to review the decision of the appointing authority.[50]

The foregoing issues resolved, the Court now confronts the principal issue in this case: whether the CSC, in affirming the CSCRO, erred in invalidating the appointments made by Gov. Cerilles. Otherwise stated, can the CSC revoke an appointment for violating the provisions of RA 6656?

RA 6656 vis-à-vis the Power of Appointment

RA 6656 was enacted to implement the State's policy of protecting the security of tenure of officers and employees in the civil service during the reorganization of government agencies.[51] The pertinent provisions of RA 6656 provide, thus:

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[49] *Rollo*, p. 60.

[50] RA 6656, Sec. 8.

[51] RA 6656, Sec. 1.

SEC. 2. No officer or employee in the career service shall be removed except for a valid cause and after due notice and hearing. **A valid cause for removal exists when, pursuant to a *bona fide* reorganization, a position has been abolished or rendered redundant or there is a need to merge, divide, or consolidate positions in order to meet the exigencies of the service**, or other lawful causes allowed by the Civil Service Law. **The existence of any or some of the following circumstances may be considered as evidence of bad faith in the removals made as a result of reorganization, giving rise to a claim for reinstatement or reappointment by an aggrieved party**:

(a) Where there is a significant increase in the number of positions in the new staffing pattern of the department or agency concerned;

(b) Where an office is abolished and another performing substantially the same functions is created;

(c) Where incumbents are replaced by those less qualified in terms of status of appointment, performance and merit;

(d) Where there is a reclassification of offices in the department or agency concerned and the reclassified offices perform substantially the same functions as the original offices;

(e) Where the removal violates the order of separation provided in Section 3 hereof.

SEC. 3. In the separation of personnel pursuant to reorganization, the following order of removal shall be followed:

(a) Casual employees with less than five (5) years of government service;

(b) Casual employees with five (5) years or more of government service;

(c) Employees holding temporary appointments; and

(d) Employees holding permanent appointments: *Provided*, That those in the same category as enumerated above, who are least qualified in terms of performance and merit shall be laid off first, length of service notwithstanding.

SEC. 4. **Officers and employees holding permanent appointments shall be given preference for appointment to the new positions in the approved staffing pattern** comparable to their

former positions or in case there are not enough comparable positions, to positions next lower in rank.

No new employees shall be taken in until all permanent officers and employees have been appointed, including temporary and casual employees who possess the necessary qualification requirements, among which is the appropriate civil service eligibility, for permanent appointment to positions in the approved staffing pattern, in case there are still positions to be filled, unless such positions are policy-determining, primarily confidential or highly technical in nature. (Emphasis supplied)

The following may be derived from the cited provisions — **First**, an officer or employee may be validly removed from service pursuant to a *bona fide* reorganization; in such case, there is no violation of security of tenure and the aggrieved employee has no cause of action against the appointing authority. **Second**, if, on the other hand, the reorganization is done in bad faith, as when the enumerated circumstances in Section 2 are present, the aggrieved employee, having been removed *without* valid cause, may demand for his reinstatement or reappointment. **Third**, officers and employees holding permanent appointments in the old staffing pattern shall be given preference for appointment to the new positions in the approved staffing pattern, which shall be comparable to their former position or in case there are not enough comparable positions, to positions next lower in rank. **Lastly**, no new employees shall be taken in until all permanent officers and employees have been appointed unless such positions are policy-determining, primarily confidential, or highly technical in nature.

Bearing the foregoing in mind, the Court now discusses the matter of appointment.

Appointment, by its very nature, is a highly discretionary act. As an exercise of political discretion, the appointing authority is afforded a wide latitude in the selection of personnel in his department or agency and seldom questioned, the same being a matter of wisdom and personal preference.[52] In certain

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[52] See *Lapinid v. Civil Service Commission*, 274 Phil. 381, 385 and 387 (1991).

occasions, however, the selection of the appointing authority is subject to review by respondent CSC as the central personnel agency of the Government. In this regard, while there appears to be a conflict between the two interests, *i.e.*, the discretion of the appointing authority and the reviewing authority of the CSC, this issue is hardly a novel one.

In countless occasions, the Court has ruled that the only function of the CSC is merely to ascertain whether the appointee possesses the minimum requirements under the law; if it is so, then the CSC has no choice but to attest to such appointment.[53] The Court recalls its ruling in *Lapinid v. Civil Service Commission*,[54] citing *Luego v. Civil Service Commission*,[55] wherein the CSC was faulted for revoking an appointment on the ground that another candidate scored a higher grade based on comparative evaluation sheets:

> We declare once again, and let us hope for the last time, that the Civil Service Commission has no power of appointment except over its own personnel. Neither does it have the authority to review the appointments made by other offices except only to ascertain if the appointee possesses the required qualifications. The determination of who among aspirants with the minimum statutory qualifications should be preferred belongs to the appointing authority and not the Civil Service Commission. It cannot disallow an appointment because it believes another person is better qualified and much less can it direct the appointment of its own choice.
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> x x x x x x x x x

Commenting on the limits of the powers of the public respondent, *Luego* declared:

> It is understandable if one is likely to be misled by the language of Section 9(h) of Article V of the Civil Service Decree because it says the Commission has the power to "approve" and "disapprove" appointments. Thus, it is provided therein that the Commission shall have *inter alia* the power to:

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[53] See *id*. at 387-388.

[54] *Supra* note 52.

[55] 227 Phil. 303, 308-309 (1986).

> "9(h) *Approve all appointments, whether original or promotional, to positions in the civil service*, except those presidential appointees, members of the Armed Forces of the Philippines, police forces, firemen, and jailguards, and *disapprove those where the appointees do not possess appropriate eligibility or required qualifications*." (Italics supplied)
>
> However, a full reading of the provision, especially of the underscored parts, will make it clear that all the Commission is actually allowed to do is check whether or not the appointee possesses the appropriate civil service eligibility or the required qualifications. If he does, his appointment is approved; if not, it is disapproved. No other criterion is permitted by law to be employed by the Commission when it acts on — or as the Decree says, "approves" or "disapproves" — an appointment made by the proper authorities.
>
> The Court believes it has stated the foregoing doctrine clearly enough, and often enough, for the Civil Service Commission not to understand them. The bench does; the bar does; and we see no reason why the Civil Service Commission does not. If it *will* not, then that is an entirely different matter and shall be treated accordingly.
>
> We note with stern disapproval that the Civil Service Commission has once again *directed* the appointment of its own choice in the case at bar. We must therefore make the following injunctions which the Commission must note well and follow strictly.[56] (Italics in the original)

The foregoing doctrine remains good law.[57] However, in light of the circumstances unique to a government reorganization, such pronouncements must be reconciled with the provisions of RA 6656.

To be sure, this is not the first time that the Court has grappled with this issue. As early as *Gayatao v. Civil Service Commission*,[58] which is analogous to this case, the Court already ruled that in

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[56] *Supra* note 52, at 387-388.

[57] See *Guieb v. Civil Service Commission*, 299 Phil. 829, 836-839 (1994).

[58] 285 Phil. 652 (1992).

instances of reorganization, **there is no encroachment on the discretion of the appointing authority when the CSC revokes an appointment on the ground that the removal of the employee was done in bad faith**. **In such instance, the CSC is not actually directing the appointment of another but simply ordering the reinstatement of the illegally removed employee**:

The focal issue raised for resolution in this petition is **whether respondent commission committed grave abuse of discretion in revoking the appointment of petitioner and ordering the appointment of private respondent in her place.**

Petitioner takes the position that public respondent has no authority to revoke her appointment on the ground that another person is more qualified, for that would constitute an encroachment on the discretion vested solely in the appointing authority. In support of said contention, petitioner cites the case of *Central Bank of the Philippines, et al. vs. Civil Service Commission, et al.* x x x.

x x x x x x x x x

The doctrine laid down in the cited case finds no determinant application in the case at bar. **A reading of the questioned resolution of respondent commission readily shows that the revocation of the appointment of petitioner was based primarily on its finding that the said appointment was null and void by reason of the fact that it resulted in the demotion of private respondent without lawful cause in violation of the latter's security of tenure.** The advertence of the CSC to the fact that private respondent is better support to its stand that the removal of private respondent was unlawful and tainted with bad faith and that his reinstatement to his former position is imperative and justified.

x x x x x x x x x

Clearly, therefore, in the said resolution the CSC is not actually directing the appointment of private respondent but simply ordering his reinstatement to the contested position being the first appointee thereto. Further, private respondent was already holding said position when he was unlawfully demoted. The CSC, after finding that the demotion was patently illegal, is merely restoring private respondent to his former position, just as it must restore other employees similarly affected to their positions before the reorganization.

It is within the power of public respondent to order the reinstatement of government employees who have been unlawfully dismissed. The CSC, as the central personnel agency, has the obligation to implement and safeguard the constitutional provisions on security of tenure and due process. In the present case, the issuance by the CSC of the questioned resolutions, for the reasons clearly explained therein, is undubitably (*sic*) in the performance of its constitutional task of protecting and strengthening the civil service.[59] (Emphasis and underscoring supplied)

The reorganization of the Province of Zamboanga del Sur was tainted with bad faith

Following the discussion above, the resolution of the Petition simply hinges on whether the reorganization of the Province of Zamboanga Del Sur was done in good faith. The Court rules in the negative.

In *Blaquera v. Civil Service Commission*,[60] citing *Dario v. Mison*,[61] the Court had the occasion to define good faith in the context of reorganization:

> x x x Good faith, we ruled in *Dario vs. Mison* is a basic ingredient for the validity of any government reorganization. It is the golden thread that holds together the fabric of the reorganization. Without it, the cloth would disintegrate.
>
> "*Reorganization is a recognized valid ground for separation of civil service employees, subject only to the condition that it be done in good faith.* No less than the Constitution itself in Section 16 of the Transitory Provisions, together with Sections 33 and 34 of Executive Order No. 81 and Section 9 of Republic Act No. 6656, support this conclusion with the declaration that all those not so appointed in the implementation of said reorganization shall be deemed separated from the service with the concomitant recognition of their entitlement to appropriate separation benefits and/or retirement plans of the reorganized government agency." x x x

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[59] *Id.* at 657-660.

[60] 297 Phil. 308 (1993).

[61] 257 Phil. 84 (1989).

A reorganization in good faith is one designed to trim the fat off the bureaucracy and institute economy and greater efficiency in its operation. It is not a mere tool of the spoils system to change the face of the bureaucracy and destroy the livelihood of hordes of career employees in the civil service so that the new-powers-that-be may put their own people in control of the machinery of government.[62] (Citation omitted)

Again, citing *Dario v. Mison*,[63] the Court in *Larin v. Executive Secretary*[64] (*Larin*) held:

As a general rule, a reorganization is carried out in "good faith" if it is for the purpose of economy or to make bureaucracy more efficient. In that event no dismissal or separation actually occurs because the position itself ceases to exist. And in that case the security of tenure would not be a Chinese wall. Be that as it may, if the abolition which is nothing else but a separation or removal, is done for political reason or purposely to defeat security of tenure, or otherwise not in good faith, no valid abolition takes place and whatever abolition is done is void *ab initio*. There is an invalid abolition as where there is merely a change of nomenclature of positions or where claims of economy are belied by the existence of ample funds.[65]

Good faith is always presumed. Thus, to successfully impugn the validity of a reorganization — and correspondingly demand for reinstatement or reappointment — the aggrieved officer or employee has the burden to prove the existence of bad faith.[66] In *Cotiangco v. The Province of Biliran*,[67] which involved the reorganization of the Province of Biliran, the Court upheld the validity of the reorganization due to the failure of the aggrieved employees to adduce evidence showing bad faith, as provided in Section 2 of RA 6656.

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[62] *Blaquera v. Civil Service Commission*, *supra* note 60, at 321.

[63] *Supra* note 61, at 130.

[64] 345 Phil. 962 (1997).

[65] *Id.* at 980-981.

[66] See *Cotiangco v. The Province of Biliran*, 675 Phil. 211, 219 (2011).

[67] *Id.* at 219-220.

On the other hand, in the case of *Pan v. Peña*,[68] (*Pan*) the Court found that the reorganization of the Municipality of Goa was tainted with bad faith based on its appreciation of circumstances indicative of an intent to circumvent the security of tenure of the employees. The Court therein upheld the invalidation of the subject appointments notwithstanding the claim that there was a reduction of *plantilla* positions in the new staffing pattern:

> In the case at bar, petitioner claims that there has been a drastic reduction of *plantilla* positions in the new staffing pattern in order to address the LGU's gaping budgetary deficit. Thus, he states that in the municipal treasurer's office and waterworks operations unit where respondents were previously assigned, only 11 new positions were created out of the previous 35 which had been abolished; and that the new staffing pattern had 98 positions only, as compared with the old which had 129.
>
> The CSC, however, highlighted the recreation of six (6) *casual* positions for clerk II and utility worker I, which positions were previously held by respondents Marivic, Cantor, Asor and Enciso. Petitioner inexplicably never disputed this finding nor proffered any proof that the new positions do not perform the same or substantially the same functions as those of the abolished. And nowhere in the records does it appear that these *recreated* positions were first offered to respondents.
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> x x x x x x x x x
>
> While the CSC never found the new appointees to be unqualified, and never disapproved nor recalled their appointments as they presumably met all the minimum requirements therefor, there is nothing contradictory in the CSC's course of action as it is limited only to the *non-discretionary* authority of determining whether the personnel appointed meet all the required conditions laid down by law.
>
> Congruently, the CSC can very well order petitioner to reinstate respondents to their former positions (as these were never actually abolished) or to appoint them to comparable positions in the new staffing pattern.

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[68] 598 Phil. 781 (2009).

In fine, the reorganization of the government of the Municipality of Goa was not entirely undertaken in the interest of efficiency and austerity but appears to have been marred by other considerations in order to circumvent the constitutional security of tenure of civil service employees like respondents.[69]

Applying the foregoing to the facts of this case, the Court finds that Respondents were able to prove bad faith in the reorganization of the Province of Zamboanga del Sur. The Court explains.

At the outset, it must be stressed that the existence or non-existence of bad faith is a factual inquiry.[70] Its determination necessarily requires a scrutiny of the evidence adduced in each individual case and only then can the circumstance of bad faith be inferred.[71] In this respect, the Petition is infirm for raising a question of fact, which is outside the scope of the Court's discretionary power of review in Rule 45 petitions.[72] While questions of fact have been entertained by the Court in justifiable circumstances, the Petition is bereft of any allegation to show that the case is within the allowable exceptions.

Be that as it may, after a judicious scrutiny of the records and the submissions of the parties, the Court finds no cogent reason to vacate the CA Decision, as well as the relevant rulings of the CSC and CSCRO.

First, the sheer number of appointments found to be violative of RA 6656 is astounding. As initially observed by the CSCRO, no less than **ninety-six (96)** of the appointments made by Gov. Cerilles violated the rule on preference and non-hiring of new employees embodied in Sections 4 and 5 of the said law. While the relative scale of invalidated appointments does not conclusively rule out good faith, there is, at the very least, a

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[69] *Id.* at 791-793.

[70] See *Tabangao Shell Refinery Employees Association v. Pilipinas Shell Petroleum Corp.*, 731 Phil. 373, 393 (2014).

[71] See *id.*

[72] See *Miro v. Vda. de Erederos*, 721 Phil. 772, 785 (2013).

strong indication that the reorganization was motivated not solely by the interest of economy and efficiency, but as a systematic means to circumvent the security of tenure of the ninety-six (96) employees affected.

Second, Respondents were replaced by either new employees or those holding lower positions in the old staffing pattern — circumstances that may be properly appreciated as evidence of bad faith pursuant to Section 2 and Section 4 of RA 6656. Significantly, Gov. Cerilles plainly admitted that new employees were indeed hired after the reorganization.[73]

On this matter, the Court's ruling in *Larin* is instructive. In that case, a new employee was appointed to the position of Assistant Commissioner of the Bureau of Internal Revenue, notwithstanding the fact that there were other officers holding permanent positions that were available for appointment. Thus, for violating Section 4 of RA 6656, the Court ordered the reinstatement of the petitioner, who was the previous occupant of the position of Assistant Commissioner prior to the reorganization:

> A reading of some of the provisions of the questioned E.O. No. 132 clearly leads us to an inescapable conclusion that there are circumstances considered as evidences of bad faith in the reorganization of the BIR.
>
> x x x x x x x x x
>
> x x x i**t is perceivable that the non-reappointment of the petitioner as Assistant Commissioner violates Section 4 of R.A. 6656.** Under said provision, officers holding permanent appointments are given preference for appointment to the new positions in the approved staffing pattern comparable to their former positions or in case there are not enough comparable positions to positions next lower in rank. It is undeniable that petitioner is a career executive officer who is holding a permanent position. Hence, he should have been given preference for appointment in the position of Assistant Commissioner. **As claimed by petitioner, Antonio Pangilinan who was one of those appointed as Assistant Commissioner, "is an**

[73] See *rollo*, p. 301.

outsider of sorts to the bureau, not having been an incumbent officer of the bureau at the time of the reorganization." We should not lose sight of the second paragraph of Section 4 of R.A. No. 6656 which explicitly states that no new employees shall be taken in until all permanent officers shall have been appointed for permanent position.

IN VIEW OF THE FOREGOING, the petition is granted, and **petitioner is hereby reinstated to his position as Assistant Commissioner without loss of seniority rights and shall be entitled to full backwages** from the time of his separation from service until actual reinstatement unless, in the meanwhile, he would have reached the compulsory retirement age of sixty-five years in which case, he shall be deemed to have retired at such age and entitled thereafter to the corresponding retirement benefits.[74] (Emphasis and underscoring supplied)

Further, in the case of *Pan*, the Court once again found that the appointment of new employees despite the availability of permanent officers and employees indicated that there was no *bona fide* reorganization by the appointing authority:

The appointment of casuals to these *recreated* positions violates R.A. 6656, as Section 4 thereof instructs that:

> Sec. 4. Officers and employees holding **permanent** appointments shall be **given preference** for appointment to the new positions in the approved staffing pattern **comparable to** their former positions **or** in case there are not enough comparable positions, to **positions next lower in rank**.
>
> **No new employees shall be taken until all permanent officers and employees have been appointed**, including temporary and casual employees who possess the necessary qualification requirement, among which is the appropriate civil service eligibility, for permanent appointment to positions in the approved staffing pattern, in case there are still positions to be filled, unless such positions are policy-determining, primarily confidential or highly technical in nature. x x x

In the case of respondent Peña, petitioner claims that the position of waterworks supervisor had been abolished during the reorganization.

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[74] *Larin v. Executive Secretary*, *supra* note 64, at 981-983.

Yet, petitioner appointed an officer-in-charge in 1999 for its waterworks operations even after a supposed new staffing pattern had been effected in 1998. Notably, this position of waterworks supervisor does not appear in the new staffing pattern of the LGU. Apparently, the Municipality of Goa never intended to do away with such position wholly and permanently as it appointed another person to act as officer-in-charge vested with similar functions.[75] (Emphasis and underscoring in the original)

Moreover, the Court notes that the positions of Respondents were not even abolished.[76] However, instead of giving life to the clear mandate of RA 6656 on preference, Gov. Cerilles terminated Respondents from the service and forthwith appointed other employees in their stead. Neither did Gov. Cerilles, at the very least, demote them to lesser positions if indeed there was a reduction in the number of positions corresponding to Respondents' previous positions. This is clear indication of bad faith, as the Court similarly found in *Dytiapco v. Civil Service Commission*[77]:

Petitioner's dismissal was not for a valid cause, thereby violating his right to security of tenure. The reason given for his termination, that there is a "limited number of positions in the approved new staffing pattern" necessitating his separation on January 31, 1988, is simply not true. **There is no evidence that his position as senior newscaster has been abolished, rendered redundant or merged and/or divided or consolidated with other positions. According to petitioner, respondent Bureau of Broadcast had accepted applicants to the position he vacated. He was conveniently eased out of the service** which he served with distinction for thirteen (13) years to accommodate the proteges of the "new power brokers."

x x x x x x x x x

WHEREFORE, the petition for *certiorari* is given due course and the Resolutions of the CSC of June 28, 1989 and November 27, 1989 are hereby annulled and set aside. **Respondents Press Secretary**

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[75] *Pan v. Peña*, *supra* note 68, at 792.

[76] *Rollo*, pp. 247-248, 254-A.

[77] 286 Phil. 174 (1992).

and Director of the Bureau of Broadcasts are hereby ordered to reinstate petitioner Edgardo Dytiapco to the position he was holding immediately before his dismissal without loss of seniority with full pay for the period of his separation. Petitioner is likewise ordered to return to respondent Bureau of Broadcast the separation pay and terminal leave benefits he received in the amount of ₱26,779.72 and ₱19,028.86 respectively. No costs.[78] (Emphasis supplied)

In view of the foregoing, the Court quotes with approval the following findings of the CSCRO in its Decision dated June 3, 2002:

"*Moreover,* ***in our post audit of the Report on Personnel Actions (ROPA) of the province relative to the implementation of its reorganization we invalidated one hundred (100) appointments***[79] ***mainly for violation of RA 6656 and because of other CSC Law and Rules. This leads us to the inevitable conclusion that the reorganization in the province was not done in good faith****. This Office quite understands the necessity of the province to retrench employees holding redundant positions as it can no longer sustain the payment of their salaries. But* ***we cannot understand the need to terminate qualified incumbents of retained positions and replace them with either new employees or those previously holding lower positions.*** *We do not question the power of the province as an autonomous local government unit (LGU) to reorganize nor the discretion of the appointing authority to appoint. However, such power is not absolute and does not give the LGU the blanket authority to remove permanent employees under the pretext of reorganization (CSC Resolution No. 94-4582 dated August 18, 1994, Dionisio F. Rhodora, et. al.). Reorganization as a guise for illegal removal of career civil service employees is violative of the latter's constitutional right to security of tenure (Yulo vs. CSC 219 SCRA 470). Reorganization must be done in good faith (Dytiapco vs. CSC, 211 SCRA 88).*"

x x x x x x x x x

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[78] *Id*. at 179, 181.

[79] Consisting of ninety-six (96) appointments made by Gov. Cerilles and four (4) appointments made by then Vice-Governor Ariosa; *rollo*, p. 247.

"***First, the appellants are all qualified for their respective positions. Second, they are all permanent employees. Third, their positions have not been abolished. And fourth, they were either replaced by those holding lower positions prior to reorganization or worse by new employees. In fine, a valid cause for removal does not exist in any of their cases***."[80] (Emphasis supplied; italics in the original)

The foregoing findings, as affirmed by the CSC, are entitled to great weight, being factual in nature. It is settled doctrine that the Court accords respect, if not finality, to factual findings of administrative agencies because of their special knowledge and expertise over matters falling under their jurisdiction.[81] No compelling reason is extant in the records to have this Court rule otherwise.

All told, the Court finds that the **totality** of the circumstances gathered from the records reasonably lead to the conclusion that the reorganization of the Province of Zamboanga del Sur was tainted with bad faith. For this reason, following the ruling in *Larin*, Respondents are entitled to no less than reinstatement to their former positions without loss of seniority rights and shall be entitled to full backwages from the time of their separation until actual reinstatement; or, in the alternative, in case they have already compulsorily retired during the pendency of this case, they shall be awarded the corresponding retirement benefits during the period for which they have been retired.

A final note. The Court is not unmindful of the plight of the incumbents who were appointed after the reorganization in place of Respondents. However, as a result of the illegal termination of Respondents, there was technically no vacancy to which the incumbents could have been appointed. As succinctly held in *Gayatao v. Civil Service Commission*[82]:

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[80] *Rollo*, pp. 247-248, 254-A.

[81] *Miro v. Vda. de Erederos*, *supra* note 72, at 784; see *Gannapao v. Civil Service Commission*, 665 Phil. 60, 77-78 (2011).

[82] *Supra* note 58.

The argument of petitioner that the questioned resolution of respondent CSC will have the effect of her dismissal without cause from government service, since she is already an appointee to the position which private respondent claims, is devoid of legal support and logical basis.

In the first place, **petitioner cannot claim any right to the contested position. No vacancy having legally been created by the illegal dismissal, no appointment may be validly made to that position and the new appointee has no right whatsoever to that office.** She should be returned to where she came from or be given another equivalent item. **No person, no matter how qualified and eligible for a certain position, may be appointed to an office which is not yet vacant.** The incumbent must have been lawfully removed or his appointment validly terminated, since an appointment to an office which is not vacant is null and void *ab initio*.[83] (Emphasis supplied)

WHEREFORE, premises considered, the Petition is **DENIED** and the temporary restraining order issued on March 17, 2009 is deemed **LIFTED**. Resolution No. 031239 dated December 10, 2003 issued by respondent Civil Service Commission is hereby ordered executed without delay.

SO ORDERED.

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

Reyes, Jr., J., on leave.

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[83] *Id.* at 662-663.

FIRST DIVISION

[G.R. No. 194001. November 22, 2017]

MARIA VILMA G. DOCTOR and JAIME LAO, JR., *petitioners, vs.* **NII ENTERPRISES and/or MRS. NILDA C. IGNACIO,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; 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 GREAT RESPECT BUT EVEN FINALITY; EXCEPTIONS.—** [T]he Court reiterates that in a petition for review on *certiorari* under Rule 45 of the Rules of Court, its jurisdiction is generally limited to reviewing errors of law. The Court is not a trier of facts, and this applies with greater force in labor cases. 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 great respect but even finality. They are binding upon this Court unless there is a showing of grave abuse of discretion or where it is clearly shown that they were arrived at arbitrarily or in utter disregard of the evidence on record. However, it is equally settled that one of the exceptions to this rule is when the factual findings of the quasi-judicial agencies concerned are conflicting or contrary with those of the Court of Appeals, as in the present case. Thus, the Court proceeds with its own factual determination herein based on the evidence of the parties.

2. **LABOR AND SOCIAL LEGISLATION; THE LABOR CODE OF THE PHILIPPINES, AS AMENDED; TERMINATION OF EMPLOYMENT; THE DISMISSAL MUST BE FOR A JUST OR AUTHORIZED CAUSE AND MUST COMPLY WITH THE RUDIMENTARY DUE PROCESS OF NOTICE AND HEARING.—** Article 294 of Presidential Decree No. 442, also known as the Labor Code of the Philippines, as amended and renumbered, protects the employee's security of tenure by

mandating that "[i]n cases of regular employment, the employer shall not terminate the services of an employee except for a just cause or when authorized by this Title." A lawful dismissal must meet both substantive and procedural requirements; in fine, the dismissal must be for a just or authorized cause and must comply with the rudimentary due process of notice and hearing.

3. ID.; ID.; ID.; IN ILLEGAL DISMISSAL CASES, THE EMPLOYER BEARS THE BURDEN OF PROVING THAT THE TERMINATION WAS FOR A VALID OR AUTHORIZED CAUSE, BUT THE EMPLOYEE MUST FIRST ESTABLISH BY SUBSTANTIAL EVIDENCE THE FACT OF HIS DISMISSAL FROM SERVICE, FOR IF THERE IS NO DISMISSAL, THEN THERE CAN BE NO QUESTION AS TO THE LEGALITY OR ILLEGALITY THEREOF.— In labor cases, as in other administrative and quasi-judicial proceedings, the quantum of proof required is substantial evidence, defined as "that amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion." The burden of proof rests upon the party who asserts the affirmative of an issue. The Court recognizes the rule that in illegal dismissal cases, the employer bears the burden of proving that the termination was for a valid or authorized cause. However, there are cases wherein the facts and the evidence do not establish *prima facie* that the employee was dismissed from employment. Before the employer must bear the burden of proving that the dismissal was legal, the employee must first establish by substantial evidence the fact of his dismissal from service. If there is no dismissal, then there can be no question as to the legality or illegality thereof.

4. ID.; ID.; ID.; THE EVIDENCE TO PROVE THE FACT OF THE EMPLOYEE'S TERMINATION FROM EMPLOYMENT MUST BE CLEAR, POSITIVE, AND CONVINCING, FOR ABSENT ANY SHOWING OF AN OVERT OR POSITIVE ACT PROVING THAT THE EMPLOYER HAD DISMISSED THE EMPLOYEES, THE LATTER'S CLAIM OF ILLEGAL DISMISSAL CANNOT BE SUSTAINED — AS THE SAME WOULD BE SELF-SERVING, CONJECTURAL, AND OF NO PROBATIVE VALUE.— Petitioners' bare allegation that they were dismissed from employment by respondents, unsubstantiated by impartial

and independent evidence, is insufficient to establish such fact of dismissal. Petitioners' general claims that they were barred by respondents from entering the work premises and that respondents did not heed petitioners' efforts to continue their employment lacked substantial details to be credible. The Court reiterates the basic rule of evidence that each party must prove his affirmative allegation, that mere allegation is not evidence. The Court also stresses that the evidence to prove the fact of the employee's termination from employment must be clear, positive, and convincing. Absent any showing of an overt or positive act proving that respondents had dismissed petitioners, the latter's claim of illegal dismissal cannot be sustained — as the same would be self-serving, conjectural, and of no probative value.

5. ID.; ID.; ID.; CONSTRUCTIVE DISMISSAL; DEFINED; WHEN IT EXISTS.—[R]espondents' arguments on constructive dismissal are misplaced and superfluous given the circumstances in this case. x x x. Constructive dismissal is defined as follows: Constructive dismissal has often been defined as a "dismissal in disguise" or "an act amounting to dismissal but made to appear as if it were not." It exists where there is cessation of work because continued employment is rendered impossible, unreasonable or unlikely, as an offer involving a demotion in rank and a diminution in pay. In some cases, while no demotion in rank or diminution in pay may be attendant, constructive dismissal may still exist when continued employment has become so unbearable because of acts of clear discrimination, insensibility or disdain by the employer, that the employee has no choice but to resign. Under these two definitions, what is essentially lacking is the voluntariness in the employee's separation from employment. Without petitioners alleging their demotion in rank, diminution in pay, or involuntary resignation due to unbearable working conditions caused by the respondents as employers, there is no need to belabor the issue of constructive dismissal herein. Any discussion on constructive dismissal will be merely speculative and/or academic.

6. ID.; ID.; ID.; ABANDONMENT; REQUISITES TO EXIST; THE EMPLOYEES' FILING OF A COMPLAINT FOR ILLEGAL DISMISSAL IS INCONSISTENT WITH THE CHARGE OF ABANDONMENT. — [P]etitioners cannot be deemed to have abandoned their work simply because they had

been absent the days following February 10, 2004. Settled is the rule that mere absence or failure to report for work is not tantamount to abandonment of work. For abandonment to exist, the following requisites must be present: (1) that the employee must have failed to report for work or must have been absent without valid or justifiable reason; and (2) that there must have been a clear intention to sever the employer-employee relationship manifested by some overt acts. Absence must be accompanied by overt acts unerringly pointing to the fact that the employee simply does not want to work anymore. And the burden of proof to show that there was unjustified refusal to go back to work rests on the employer. Respondents herein failed to present any proof of petitioners' overt acts which manifest the latter's clear intention to terminate their employment. In addition, petitioners' filing of a complaint for illegal dismissal is inconsistent with the charge of abandonment, for employees who take steps to protest their dismissal cannot, by logic, be said to have abandoned their work.

7. ID.; ID.; ID.; WHERE AN EMPLOYEE WAS NEITHER FOUND TO HAVE BEEN DISMISSED NOR TO HAVE ABANDONED HIS/HER WORK, HE/SHE MUST BE REINSTATED WITHOUT BACKWAGES, OR MUST BE PAID SEPARATION PAY, IN LIEU OF REINSTATEMENT, WHEN REINSTATEMENT IS NO LONGER POSSIBLE AND REASONABLE.— There being no dismissal and no abandonment, the appropriate course of action is to reinstate the employee/s but without the payment of backwages. Yet, in *Dee Jay's Inn and Cafe v. Rañeses*, the Court ordered therein employers to pay the employee separation pay instead when reinstatement was no longer possible and reasonable. The Court pronounced in *Dee Jay's Inn* that: In a case where the employee was neither found to have been dismissed nor to have abandoned his/her work, the general course of action is for the Court to dismiss the complaint, direct the employee to return to work, and order the employer to accept the employee. However, the Court recognized in *Nightowl* that when a considerable length of time had already passed rendering it impossible for the employee to return to work, the award of separation pay is proper. x x x. In the instant case, petitioners' reinstatement is similarly rendered impossible and unreasonable given the length of time that had passed since the controversy started on February 10, 2004, as well as respondents' own allegations that they already

reduced their workforce and that petitioners "[have] no more place in the business" of respondents. Therefore, respondents are ordered to pay petitioners separation pay, equivalent to one (1) month salary for every year of service, in lieu of reinstatement.

APPEARANCES OF COUNSEL

Public Attorney's Office for petitioners.

D E C I S I O N

LEONARDO-DE CASTRO, *J.*:

Before this Court is a Petition for Review on *Certiorari* filed by petitioners Maria Vilma G. Doctor (Doctor) and Jaime Lao, Jr. (Lao) assailing the (a) Decision[1] dated April 23, 2010 of the Court of Appeals in CA-G.R. SP No. 107497, which reversed and set aside the Decision[2] dated February 1, 2008 of the National Labor Relations Commission (NLRC) in NLRC NCR CA No. 045354-05 and dismissed petitioners' complaint for illegal dismissal against respondents NII Enterprises and/or Mrs. Nilda C. Ignacio (Ignacio); and (b) Resolution[3] dated September 28, 2010 of the appellate court in the same case, which denied petitioners' Motion for Reconsideration. The NLRC had previously affirmed with modification the Labor Arbiter's Decision[4] dated March 5, 2005 in NLRC-NCR Case No. 00-02-02670-04, finding that petitioners were illegally dismissed and ordering respondents to pay petitioners backwages and separation pay.

The following events gave rise to the instant Petition:

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[1] *Rollo*, pp. 139-148; penned by Associate Justice Rosmari D. Carandang with Associate Justices Ramon R. Garcia and Manuel M. Barrios concurring.

[2] *Id.* at 77-86; penned by Commissioner Angelita A. Gacutan with Presiding Commissioner Raul T. Aquino and Commissioner Victoriano R. Calaycay concurring.

[3] *Id*. at 161-162.

[4] *Id*. at 40-44; penned by Labor Arbiter Ramon Valentin C. Reyes.

Respondent NII Enterprises is a sole proprietorship engaged in the business of providing car air-conditioning (aircon) services, which is owned by respondent Ignacio. Petitioners had been employed by respondents, particularly, petitioner Doctor as a clerk since April 3, 1995 and petitioner Lao as an aircon technician since December 5, 1995.

On February 10, 2004, respondent Ignacio and petitioner Doctor had a serious argument, which prompted petitioner Doctor to file a complaint for slander and threat against respondent Ignacio at *Barangay* San Antonio, Makati City. Per the minutes of the *barangay* proceedings, petitioner Doctor complained of respondent Ignacio committing the following acts:

> "Dinuduro niya ako at minura nya ako ng leche at inambahan niya ako na ipupukpok sa akin ang telepono at dinerty finger nya ako. Inakusahan niya ako ng mga bagay na hindi ko ginawa at sinabi pa niya na kung ano ang gusto niya siya ang masusunod."
>
> In her prayer, [petitioner] Vilma Doctor prayed:
>
> "Ang gusto ko lang naman ay makapag-usap kami ng malaya. Sana ay maging maayos ang lahat at matapos na."[5]

Since efforts to amicably resolve the dispute between respondent Ignacio and petitioner Doctor failed, the *barangay* issued a Certification to File Action[6] dated February 20, 2004.

On February 24, 2004, petitioner Doctor filed a complaint for illegal dismissal against respondents before the NLRC, docketed as NLRC-NCR Case No. 00-02-02670-04.

Petitioner Lao, who accompanied petitioner Doctor at the *barangay* proceedings, also joined the complaint for illegal dismissal before the NLRC as a party-complainant.

In their Position Paper,[7] petitioners alleged that:

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[5] *Id*. at 51.

[6] *Id*. at 113.

[7] *Id*. at 97-103.

[Petitioners] MA. VILMA G. DOCTOR and MR. JAIME S. LAO, JR. were arbitrarily and illegally dismissed on February 10, 2004 by the above-said company. They were barred from reporting to their former positions or employment respectively without any valid reason under the law despite their willingness to report and continue their works. Surprisingly, the company continued to refuse and give the two [petitioners] the opportunity to be heard and to explain their side. This arbitrary decision of summary termination of services is tantamount to denial of due process of law and failure to respect their substantive rights under the Labor Code. Moreover, granting et arguendo that they have violated any policy of the company yet there was no formal accusation made against them nor were they informed beforehand of any valid reasons invoked by the company in support of their illegal dismissal. Hence, it is very clear and conclusive that as they belonged to the category of regular employees they cannot just be summarily and capriciously dismissed from their employment without any valid reasons under the law.[8]

Petitioners prayed that respondents be ordered to pay them backwages, holiday pay, bonus pay, 13th/14th month pay, moral and exemplary damages, and attorney's fees.

Respondents countered that after respondent Ignacio and petitioner Doctor had a heated altercation sometime in February 2004, petitioner Doctor no longer reported for work. Petitioner Lao similarly absented himself from work without prior leave. To respondent Ignacio's surprise, petitioner Doctor instituted a complaint for slander and threat against her before the *barangay*, but the parties did not reach an amicable settlement. Respondents intimated that petitioner Doctor, who was then engaged to be married to petitioner Lao, filed the complaint for illegal dismissal against respondents in an attempt to mulct them for money to finance petitioners' forthcoming wedding. Respondents denied that petitioners were ever told not to report for work and averred that it was petitioners who abandoned their jobs. Thus, respondents sought that petitioners' complaint for illegal dismissal against them be dismissed.[9]

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[8] *Id*. at 99.

[9] *Id*. at 104-110.

The Labor Arbiter, in his Decision dated March 5, 2005, found that respondents failed to prove just and valid cause and observance of due process in petitioners' dismissal. As to respondents' allegation that petitioners abandoned their jobs, the Labor Arbiter held the same to be bereft of merit as respondents also failed to prove the requisites for a valid defense of abandonment. The Labor Arbiter, moreover, pointed out that the petitioners' timely filing of the complaint for illegal dismissal negated respondents' defense of abandonment. The Labor Arbiter reminded that extreme caution should be exercised in terminating the services of a worker for his/her job might be the only lifeline on which his/her family depended for survival in difficult times. Although petitioners were entitled to reinstatement as a consequence of their illegal dismissal, the Labor Arbiter ordered payment of separation pay in lieu of reinstatement due to the strained relationship between the parties. The Labor Arbiter did not grant petitioners' money claims given the lack of substantiation. The Labor Arbiter, ultimately, adjudged:

WHEREFORE, premises all considered, judgment is hereby issued finding the dismissal illegal and ordering respondents to pay [petitioners] backwages and separation pay as follows:

VILMA DOCTOR:

Backwages - (₱7,500.00 x 12 mos = (₱80,000.00)	₱80,000.00
Separation Pay - (₱7,500.00 x 9 = ₱67,500.00)	₱67,500.00

JAIME LAO, JR.:

Backwages - (₱7,500.00 x 12 mos = (₱80,000.00)	₱80,000.00
Separation Pay - (₱7,500.00 x 9 = ₱67,500.00)	₱67,500.00

All other claims are dismissed for lack of merit.[10]

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[10] *Id.* at 44.

Respondents filed before the NLRC an appeal of the foregoing judgment of the Labor Arbiter, which was docketed as NLRC NCR CA No. 045354-05. Respondents asserted that there had been no illegal dismissal as petitioners were never issued notices of termination. Respondents reiterated that petitioner Doctor did not report for work after her altercation with respondent Ignacio, and instead filed a complaint for threat and slander against respondent Ignacio before the *barangay*. Only when no amicable settlement was reached before the *barangay* did petitioner Doctor proceed to file her complaint for illegal dismissal against respondents before the NLRC. Respondents further argued that they had no reason to terminate petitioner Lao's services and that the latter simply joined the complaint for illegal dismissal before the NLRC even though he was not involved in the dispute between respondent Ignacio and petitioner Doctor. Respondents contended that petitioners were not entitled to separation pay since they were not terminated from employment. Nevertheless, assuming that petitioners were illegally dismissed, respondents maintained that the Labor Arbiter's award of separation pay in petitioners' favor was excessive because such pay should be computed at only one-half (½)-month pay, not one (1)-month pay, for every year of service and petitioner Lao worked for respondents for eight (8) years, not nine (9) years.

In its Decision dated February 1, 2008, the NLRC ruled:

> **WHEREFORE**, premises considered, respondents' appeal is partially granted. Accordingly, the appealed Decision is hereby **MODIFIED** to the extent that the award of separation pay to Jaime Lao shall cover only a total of eight (8) years. All other dispositions are hereby **AFFIRMED**.[11]

Respondents filed a Motion for Reconsideration,[12] which the NLRC denied in a Resolution[13] dated November 27, 2008.

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[11] *Id*. at 85.

[12] *Id*. at 87-93.

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

Respondents filed before the Court of Appeals a Petition for *Certiorari* under Rule 65 of the Rules of Court, which was docketed as CA-G.R. SP No. 107497, averring grave abuse of discretion, tantamount to lack or excess of jurisdiction, on the part of the NLRC in issuing its Decision dated February 1, 2008 and Resolution dated November 27, 2008.

The Court of Appeals rendered its Decision on April 23, 2010 finding respondents' Petition meritorious. The appellate court stressed that while the employer has the burden in illegal dismissal cases of proving that the termination was for valid or authorized cause, the employee must first establish by substantial evidence the fact of dismissal from service, and this, petitioners failed to do. Pertinent findings of the Court of Appeals are quoted below:

> It should be noted that [petitioner Doctor] brought a case for threat and slander against [respondent Ignacio] before the Barangay but amicable settlement failed as further bitter arguments between the parties ensued. Thus, a Certification to File Action was issued on February 20, 2004. On February 24, 2004, the complaint for illegal dismissal was filed by [petitioners] against [respondents].
>
> In [petitioners'] position paper filed below, not even a passing mention was made of the previous heated argument between [petitioner Doctor] and [respondent Ignacio], but simply stating that both [petitioners] were barred from the work premises, despite their willingness to do so. [Petitioners] were not candid, not mentioning the incident in order not to highlight the fact that they absented themselves from work after the altercation. This is as much as [petitioners] admitted in their Comment to the petition that "*both [petitioners] went on absence right after the argument*", and arguing that their absence should not justify the employer in dismissing them. They even justified their absence by explaining in their comment, "*If Doctor truly failed to report for work on days following their argument, it was only because she felt that it was no longer conducive for her [to] continue her employment as the emotional strain created thereby entailed an unbearable and stressful work environment for her. The same holds true with respect to [petitioner] Lao. Being the significant other of Doctor, he was also aware of the possible retaliation that the [respondents] may have against him. As it became impossible for [petitioners] to return for work, it was, therefore, correct for them to claim for separation pay instead.*"

With that admission, coupled with the immediate filing of the complaint for illegal dismissal on February 24, 2004 after the barangay conciliation on February 20, 2004 failed, We are convinced that no actual dismissal ever happened. [Petitioners] simply stopped working and thereafter immediately filed the illegal dismissal case. There is no constructive dismissal either, which contemplates an unbearable situation created by the employer or any act done manifesting a case of discrimination, disdain, or resulting in employee's demotion in rank, diminution in pay, or subjecting him to unbearable working conditions, leaving no option to the employee but to forego his continued employment. None was shown in this case. The situation in the present case is clear that both the employer and employee were involved in the incident. The employer did not alone create the situation, which [petitioner Doctor] considers as an unpleasant and hostile working environment, her apprehension prompting her to quit from her work.

The immediate filing of the case for illegal dismissal did not give the employer the opportunity to even send show cause notices to [petitioners'] absences. Rather than undergo the normal process of disciplining [petitioners] for repeated absences, [respondent Ignacio] had no other option but to defend her case. Hence, there is no violation of due process to speak of.

As far as [petitioner Lao] is concerned, [respondent Ignacio] has no cause to terminate him. It is more likely that since his sweetheart [petitioner Doctor] opted to quit, he joined her, fearing the possible retaliation against him as admitted in his Comment. Further, it would be too foolhardy for [respondent Ignacio] to terminate him for no reason at all and be held liable for illegal dismissal without even a semblance of good defense.

All in all, the circumstances surrounding this case do not permit Us to apply the principle that filing an illegal dismissal case is not consistent with abandonment. This is not an ironclad rule. What we see here is [petitioners'] decision to quit from their employment because of the unnerving thought of working in a hostile environment, resulting from the heated argument between [petitioner Doctor] and [respondent Ignacio].[14]

The Court of Appeals explicitly declared that in finding that petitioners were illegally dismissed, the NLRC committed grave

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[14] *Id.* at 143-146.

abuse of discretion and clearly misappreciated the facts of the case resulting in a wrong conclusion.

The dispositive portion of the Court of Appeals Decision reads:

> ***WHEREFORE***, the instant petition is **GRANTED**. The February 01, 2008 Decision of the National Labor Relations Commission which affirmed with slight modification the Decision dated March 5, 2005 of the Labor Arbiter declaring [petitioners] illegally dismissed and ordering [respondents] to pay [petitioners] their backwages and separation pay, and the NLRC Resolution dated November 27, 2008 denying the motion for reconsideration, are **NULLIFIED** and **SET ASIDE**. The complaint for illegal dismissal is **DISMISSED** for lack of merit.[15]

Petitioners filed a Motion for Reconsideration but the appellate court denied the same in a Resolution dated September 28, 2010.

Hence, petitioners come before this Court via the instant Petition for Review on *Certiorari*, raising the sole issue of:

> WHETHER THE HONORABLE COURT OF APPEALS ERRED IN REVERSING THE DECISION OF THE NATIONAL LABOR RELATIONS COMMISSION FINDING THAT THE PETITIONERS WERE NOT ILLEGALLY DISMISSED.[16]

Petitioners question the scant consideration given by the Court of Appeals to their version of events just because of their failure to mention in their Position Paper before the NLRC the altercation between respondent Ignacio and petitioner Doctor. Petitioners explain that "their alleged failure to include in their pleadings filed before the NLRC the altercation incident cannot in anyway be construed as a strategy to deter this Honorable Court's attention from the main issue. For whether the incident was alleged or not is of no consequence."[17]

Petitioners also call attention to the fact that both the Labor Arbiter and the NLRC found that petitioners were actually

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[15] *Id*. at 147.

[16] *Id*. at 13.

[17] *Id*. at 14.

dismissed when they were expressly told not to report for work on February 10, 2004 and prohibited from entering the premises of respondent NII Enterprises. It was respondents who first mentioned and argued in their Petition for *Certiorari* filed before the Court of Appeals that there was no constructive dismissal of petitioners, hence, petitioners were constrained to refute respondents' argument. Petitioners, without admitting that they were constructively dismissed, acknowledged that their case could also constitute constructive dismissal as petitioner Doctor filed the complaint for illegal dismissal before the NLRC because she felt that it was already difficult, if not impossible, to continue working for respondent Ignacio; and petitioner Lao joined Doctor in filing said complaint because he feared that respondent Ignacio might also vent her ire on him. The appellate court, unfortunately, took petitioners' statements on constructive dismissal out of context and dismissed their complaint for illegal dismissal based thereon.

Petitioners maintain that they did not abandon their work. According to petitioners, it is highly unbelievable that after working for respondents for a long time, they would simply stop working for no apparent reason. As proof that petitioner Doctor had no intention of severing her employment with respondents, petitioner Doctor even attempted to settle her dispute with respondent Ignacio at the *barangay*.

Moreover, petitioners allege that from February 10, 2004 (when they were prevented from returning to work) to March 11, 2004 (when respondent Ignacio received the summons regarding the scheduled mandatory conference before the Labor Arbiter), respondents did not issue any notice nor impose any disciplinary measure against petitioners for their continued absences. Petitioners aver that respondents' aforedescribed apathy was an indication that the latter were bent on terminating petitioners' employment without due process of law.

Since they were illegally terminated from employment, petitioners claim that they are entitled to backwages and separation pay, in lieu of reinstatement, as awarded by the Labor Arbiter and the NLRC.

At the outset, the Court reiterates that in a petition for review on *certiorari* under Rule 45 of the Rules of Court, its jurisdiction is generally limited to reviewing errors of law. The Court is not a trier of facts, and this applies with greater force in labor cases. 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 great respect but even finality. They are binding upon this Court unless there is a showing of grave abuse of discretion or where it is clearly shown that they were arrived at arbitrarily or in utter disregard of the evidence on record. However, it is equally settled that one of the exceptions to this rule is when the factual findings of the quasi-judicial agencies concerned are conflicting or contrary with those of the Court of Appeals,[18] as in the present case. Thus, the Court proceeds with its own factual determination herein based on the evidence of the parties.

Article 294[19] of Presidential Decree No. 442, also known as the Labor Code of the Philippines, as amended and renumbered, protects the employee's security of tenure by mandating that "[i]n cases of regular employment, the employer shall not terminate the services of an employee except for a just cause or when authorized by this Title." A lawful dismissal must meet both substantive and procedural requirements; in fine, the dismissal must be for a just or authorized cause and must comply with the rudimentary due process of notice and hearing.[20]

In labor cases, as in other administrative and quasi-judicial proceedings, the quantum of proof required is substantial evidence, defined as "that amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion."[21] The

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[18] *Marlow Navigation Philippines, Inc./Marlow Navigation Co., Ltd. v. Heirs of Ricardo S. Ganal*, G.R. No. 220168, June 7, 2017.

[19] Formerly Article 279.

[20] *Venzon v. ZAMECO II Electric Cooperative, Inc.*, G.R. No. 213934, November 9, 2016.

[21] Rules of Court, Rule 133, Section 5.

burden of proof rests upon the party who asserts the affirmative of an issue.[22]

The Court recognizes the rule that in illegal dismissal cases, the employer bears the burden of proving that the termination was for a valid or authorized cause. However, there are cases wherein the facts and the evidence do not establish *prima facie* that the employee was dismissed from employment. Before the employer must bear the burden of proving that the dismissal was legal, the employee must first establish by substantial evidence the fact of his dismissal from service. If there is no dismissal, then there can be no question as to the legality or illegality thereof.[23]

In this case, petitioners, on one hand, allege that on February 10, 2004, they were suddenly prohibited from entering the premises of respondent NII Enterprises and expressly told not to report for work anymore; and their efforts to continue their employment with respondents remained unheeded. Respondents, on the other hand, deny that petitioners were dismissed at all and aver that petitioners simply stopped reporting for work after a heated altercation between respondent Ignacio and petitioner Doctor on February 10, 2004.

Petitioners' bare allegation that they were dismissed from employment by respondents, unsubstantiated by impartial and independent evidence, is insufficient to establish such fact of dismissal. Petitioners' general claims that they were barred by respondents from entering the work premises and that respondents did not heed petitioners' efforts to continue their employment lacked substantial details to be credible. The Court reiterates the basic rule of evidence that each party must prove his affirmative allegation, that mere allegation is not evidence.[24] The Court also stresses that the evidence to prove the fact of

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[22] *Tenazas v. R. Villegas Taxi Transport*, 731 Phil. 217, 229 (2014).

[23] *MZR Industries v. Colambot*, 716 Phil. 617, 624 (2013).

[24] *Lopez v. Bodega City (Video-Disco Kitchen of the Philippines)*, 558 Phil. 666, 679 (2007).

the employee's termination from employment must be clear, positive, and convincing.[25] Absent any showing of an overt or positive act proving that respondents had dismissed petitioners, the latter's claim of illegal dismissal cannot be sustained — as the same would be self-serving, conjectural, and of no probative value.[26]

Petitioners did not provide any explanation for completely failing to mention in their pleadings before the Labor Arbiter the heated argument between respondent Ignacio and petitioner Doctor on February 10, 2004, except only to say that whether they alleged said incident or not is of no consequence. It is readily apparent that said altercation between respondent Ignacio and petitioner Doctor sparked this entire controversy, so it escapes the Court how petitioners could view the same as inconsequential. Consideration by the Court of the said incident will not deter the attention of the Court from the main issue of the case. In fact, said incident sheds light on the parties' actuations on and after February 10, 2004. The Court of Appeals very aptly observed that "[petitioners] were not candid, not mentioning the incident in order not to highlight the fact that they absented themselves from work after the altercation."[27] Petitioners initially made it appear that respondents just arbitrarily barred them from reporting for work. The fact that a serious argument took place between respondent Ignacio and petitioner Doctor on February 10, 2004 would have given more credence to respondents' averment that petitioners, after immediately filing a complaint for slander and threat against respondent Ignacio at the *barangay*, already willfully absented themselves from work.

Respondents' failure to take any disciplinary action against petitioners between February 10, 2004 (the day of the argument between respondent Ignacio and petitioner Doctor) and March 11, 2004 (the day respondents received the Labor Arbiter's summons as regards the illegal dismissal case filed against them

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[25] *Machica v. Roosevelt Services Center, Inc.*, 523 Phil. 199, 209-210 (2006).

[26] *MZR Industries v. Colambot*, *supra* note 23 at 624.

[27] *Rollo*, p. 143.

by petitioners) does not constitute clear, positive, and convincing evidence that respondents had already dismissed petitioners from employment. Respondents have satisfactorily explained that they had no opportunity to commence any disciplinary proceedings against petitioners under the circumstances. It should be noted that during said one-month period, petitioners had instituted two successive complaints against respondents, one for slander and threat before the *barangay*, and one for illegal dismissal before the NLRC. During the several conferences held before the *barangay*, the parties were still trying to reach an amicable settlement of the dispute between them; and when the parties' efforts on amicable settlement failed, petitioners, shortly thereafter, already filed the illegal dismissal case against respondents before the NLRC. As the Court of Appeals opined, "[t]he immediate filing of the case for illegal dismissal did not give the employer the opportunity to even send show cause notices to [petitioners'] absences. Rather than undergo the normal process of disciplining [petitioners] for repeated absences, [respondent Ignacio] had no other option but to defend her case."[28]

Nevertheless, respondents' arguments on constructive dismissal are misplaced and superfluous given the circumstances in this case. Petitioners have always maintained that they were actually dismissed from employment when they were barred by respondents from entering the work premises and from reporting for work; and respondents have persistently denied that they dismissed petitioners from employment, claiming that petitioners simply stopped reporting for work after the altercation between respondent Ignacio and petitioner Doctor on February 10, 2004.

Constructive dismissal is defined as follows:

> Constructive dismissal has often been defined as a "dismissal in disguise" or "an act amounting to dismissal but made to appear as if it were not." It exists where there is cessation of work because continued employment is rendered impossible, unreasonable or unlikely, as an offer involving a demotion in rank and a diminution in pay. In some cases, while no demotion in rank or diminution in

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[28] *Id*. at 145.

pay may be attendant, constructive dismissal may still exist when continued employment has become so unbearable because of acts of clear discrimination, insensibility or disdain by the employer, that the employee has no choice but to resign. Under these two definitions, what is essentially lacking is the voluntariness in the employee's separation from employment.[29]

Without petitioners alleging their demotion in rank, diminution in pay, or involuntary resignation due to unbearable working conditions caused by the respondents as employers, there is no need to belabor the issue of constructive dismissal herein. Any discussion on constructive dismissal will be merely speculative and/or academic.

Also contrary to respondents' contention, petitioners cannot be deemed to have abandoned their work simply because they had been absent the days following February 10, 2004. Settled is the rule that mere absence or failure to report for work is not tantamount to abandonment of work.[30]

For abandonment to exist, the following requisites must be present: (1) that the employee must have failed to report for work or must have been absent without valid or justifiable reason; and (2) that there must have been a clear intention to sever the employer-employee relationship manifested by some overt acts. Absence must be accompanied by overt acts unerringly pointing to the fact that the employee simply does not want to work anymore. And the burden of proof to show that there was unjustified refusal to go back to work rests on the employer. Respondents herein failed to present any proof of petitioners' overt acts which manifest the latter's clear intention to terminate their employment. In addition, petitioners' filing of a complaint for illegal dismissal is inconsistent with the charge of abandonment, for employees who take steps to protest their dismissal cannot, by logic, be said to have abandoned their work.[31]

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[29] *Galang v. Boie Takeda Chemicals, Inc.*, G.R. No. 183934, July 20, 2016, 797 SCRA 501.

[30] *Samarca v. Arc-Men Industries, Inc.,* 459 Phil. 506, 516 (2003).

[31] *Id*. at 515.

In sum, petitioners failed to discharge the burden of proving with substantial evidence that they were actually dismissed from work by respondents. Since the fact of dismissal had not been satisfactorily established by petitioners, then the burden of proving that the dismissal was legal, *i.e.*, that it was for just and authorized cause/s and in accordance with due process, did not shift to the respondents. Also, petitioners could not be deemed to have abandoned their work by merely being absent and without clear intention of severing the employer-employee relationship.

There being no dismissal and no abandonment, the appropriate course of action is to reinstate the employee/s but without the payment of backwages.[32] Yet, in *Dee Jay's Inn and Café v. Rañeses*,[33] the Court ordered therein employers to pay the employee separation pay instead when reinstatement was no longer possible and reasonable. The Court pronounced in *Dee Jay's Inn* that:

> In a case where the employee was neither found to have been dismissed nor to have abandoned his/her work, the general course of action is for the Court to dismiss the complaint, direct the employee to return to work, and order the employer to accept the employee. However, the Court recognized in *Nightowl* that when a considerable length of time had already passed rendering it impossible for the employee to return to work, the award of separation pay is proper. Considering that more than ten (10) years had passed since respondent stopped reporting for work on February 5, 2005, up to the date of this judgment, it is no longer possible and reasonable for the Court to direct respondent to return to work and order petitioners to accept her. Under the circumstances, it is just and equitable for the Court instead to award respondent separation pay in an amount equivalent to one (1) month salary for every year of service, computed up to the time she stopped working, or until February 4, 2005. (Citation omitted.)

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[32] *Exodus International Construction Corporation v. Biscocho*, 659 Phil. 142, 159 (2011).

[33] G.R. No. 191823, October 5, 2016, citing *Nightowl Watchman & Security Agency, Inc. v. Lumahan*, 771 Phil. 391, 409 (2015).

In the instant case, petitioners' reinstatement is similarly rendered impossible and unreasonable given the length of time that had passed since the controversy started on February 10, 2004, as well as respondents' own allegations that they already reduced their workforce and that petitioners "[have] no more place in the business" of respondents.[34] Therefore, respondents are ordered to pay petitioners separation pay, equivalent to one (1) month salary for every year of service, in lieu of reinstatement.

Accordingly, petitioners Doctor and Lao are entitled to the following amounts of separation pay:

Petitioner	One (1) Month Salary	No. of Years Employed	Total Separation Pay
Doctor	₱7,500.00	Nine (9) Years	₱67,500.00
Lao	₱7,500.00	Eight (8) Years	₱60,000.00

WHEREFORE, premises considered, the instant Petition for Review on *Certiorari* is **PARTIALLY GRANTED**. The Decision dated April 23, 2010 and Resolution dated September 28, 2010 of the Court of Appeals in CA-G.R. SP No. 107497 is **AFFIRMED with MODIFICATION**. The complaint for illegal dismissal of petitioners Maria Vilma G. Doctor and Jaime Lao, Jr. against respondents NII Enterprises and/or Mrs. Nilda C. Ignacio is **DISMISSED** for lack of merit. Although petitioners are entitled to reinstatement to their former positions without payment of backwages, petitioners' reinstatement is already impossible and unreasonable under the particular circumstances of this case. Respondents are, therefore, **ORDERED** to pay petitioners Doctor and Lao separation pay in lieu of reinstatement in the amounts of ₱67,500.00 and ₱60,000.00, respectively.

SO ORDERED.

Sereno, C.J. (Chairperson), del Castillo, Jardeleza, and *Tijam, JJ.,* concur.

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[34] *Rollo*, p. 107.

THIRD DIVISION

[G.R. No. 195248. November 22, 2017]

JOHN DENNIS G. CHUA, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES and CRISTINA YAO,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; CRIMINAL PROCEDURE; APPEAL, NOT *CERTIORARI,* IS THE PROPER REMEDY TO QUESTION THE DECISION OF THE METROPOLITAN TRIAL COURT.—** [P]etitioner availed of the wrong remedy when he sought to assail the MeTC decision. *First*, it has been consistently held that where appeal is available to the aggrieved party, the special civil action of certiorari will not be entertained — remedies of appeal and certiorari are mutually exclusive, not alternative or successive. The proper remedy to obtain a reversal of judgment on the merits, final order or resolution is appeal. This holds true even if the error ascribed to the court rendering the judgment is its lack of jurisdiction over the subject matter, or the exercise of power in excess thereof, or grave abuse of discretion in the findings of fact or of law set out in the decision, order or resolution. The existence and availability of the right of appeal prohibits the resort to certiorari because one of the requirements for the latter remedy is the unavailability of appeal. x x x [T]here was no hint of whimsicality, nor of gross and patent abuse of discretion as would amount to an evasion of a positive duty or a virtual refusal to perform a duty enjoined by law or to act at all in contemplation of law on the part of Judge Santos. He was clothed with authority to decide the criminal cases filed against petitioner.

2. **ID.; SUPREME COURT; CIRCULAR NO. 5-98; MANDATES THE ACTING JUDGE TO DECIDE CASES WHICH ARE ALREADY SUBMITTED FOR DECISION EVEN AFTER THE ASSUMPTION TO DUTY OF A REGULAR JUDGE OR THE DESIGNATION OF AN ACTING JUDGE; CASE AT BAR.—** Both circulars are applicable in the case at bar in that Circular No. 5-98 complements Circular No. 19-98. Undoubtedly, the judge of the paired court serves as acting judge only until the appointment and assumption to duty of

the regular judge or the designation of an acting presiding judge. Clearly, the acting judge may no longer promulgate decisions when the regular judge has already assumed the position. Circular No. 5-98, however, provides an exception, i.e., the acting judge, despite the assumption to duty of the regular judge or the designation of an acting presiding judge, shall decide cases which are already submitted for decision at the time of the latter's assumption or designation. In this case, Judge Santos, as judge of the paired court, presided over the trial of the cases which commenced with the presentation of the prosecution's first witness on 7 June 2006. On 25 July 2007, Judge Labastida was appointed Presiding Judge of Branch 58 and he took over the trial of the cases. The promulgation of judgment was tentatively set on 30 September 2008. Unfortunately, sometime in December 2008, Judge Labastida died. Hence, it was incumbent upon Judge Santos to serve as acting judge of Branch 58 as a result of Judge Labastida's untimely death. When Judge Caldona assumed the position of Acting Presiding Judge on 1 April 2009, the cases already passed the trial stage as they were in fact submitted for decision. Further, it is worthy to note that Judge Santos presided over a significant portion of the proceedings as compared to Judge Caldona who assumed office long after the cases were submitted for decision. Finally, the use of the word "shall" in Circular No. 5-98 makes it mandatory for Judge Santos to decide the criminal cases against petitioner. Clearly, Judge Santos had the authority to render the assailed decision on 15 April 2009 notwithstanding Judge Caldona's assumption to office.

3. **CRIMINAL LAW; BATAS PAMBANSA BLG. 22; ELEMENTS; EVIDENCE OF KNOWLEDGE OF INSUFFICIENT FUNDS, NOT ESTABLISHED IN CASE AT BAR.—** To be liable for violation of B.P. Blg. 22, the following essential elements must be present: (1) the making, drawing, and issuance of any check to apply for account or for value; (2) the knowledge of the maker, drawer, or issuer that at the time of issue he does not have sufficient funds in or credit with the drawee bank for the payment of the check in full upon its presentment; and (3) the subsequent dishonor of the check by the drawee bank for insufficiency of funds or credit or dishonor for the same reason had not the drawer, without any valid cause, ordered the bank to stop payment. Here, the existence of the second element is in dispute. In *Yu Oh v. CA*, the Court explained that

since the second element involves a state of mind which is difficult to establish, Section 2 of B.P. Blg. 22 created a *prima facie* presumption of such knowledge x x x. Based on this section, the presumption that the issuer had knowledge of the insufficiency of funds is brought into existence only after it is proved that the issuer had received a notice of dishonor and that within five days from receipt thereof, he failed to pay the amount of the check or to make arrangement for its payment. ***The presumption or prima facie evidence as provided in this section cannot arise, if such notice of non-payment by the drawee bank is not sent to the maker or drawer, or if there is no proof as to when such notice was received by the drawer, since there would simply be no way of reckoning the crucial 5-day period.*** x x x The Court finds that the second element was not sufficiently established. Yao testified that the personal secretary of petitioner received the demand letter, yet, said personal secretary was never presented to testify whether she in fact handed the demand letter to petitioner who, from the onset, denies having received such letter. It must be borne in mind that it is not enough for the prosecution to prove that a notice of dishonor was sent to the accused. The prosecution must also prove *actual receipt* of said notice, because the fact of service provided for in the law is reckoned from receipt of such notice of dishonor by the accused. In this case, there is no way to ascertain when the five-day period under Section 22 of B.P. Blg. 22 would start and end since there is no showing when petitioner actually received the demand letter.

4. ID.; REVISED PENAL CODE; EXTINCTION OF CRIMINAL LIABILITY DOES NOT NECESSARILY CARRY WITH IT THE EXTINCTION OF CIVIL LIABILITY; CASE AT BAR.— Nonetheless, petitioner's acquittal for failure of the prosecution to prove all elements of the offense beyond reasonable doubt does not extinguish his civil liability for the dishonored checks. The extinction of the penal action does not carry with it the extinction of the civil action where: (a) the acquittal is based on reasonable doubt as only preponderance of evidence is required; (b) the court declares that the liability of the accused is only civil; and (c) the civil liability of the accused does not arise from or is not based upon the crime of which the accused was acquitted.

APPEARANCES OF COUNSEL

B.J. Cong and Associates for petitioner.
Office of the Solicitor General for public respondent.

D E C I S I O N

MARTIRES, *J.*:

This is a petition for review on certiorari assailing the Orders,[1] dated 15 June 2010 and 28 December 2010 of the Regional Trial Court, Branch 160, Pasig City *(RTC),* in SCA No. 3338, which affirmed the Decision,[2] dated 15 April 2009, of the Metropolitan Trial Court, Branch 58, San Juan City *(MeTC),* in Criminal Case No. 80165-68 finding petitioner John Dennis G. Chua *(petitioner)* guilty of four (4) counts of violation of Batas Pambansa Bilang 22 *(B.P. Blg. 22)*.

THE FACTS

Respondent Cristina Yao *(Yao)* alleged that she became acquainted with petitioner through the latter's mother. Sometime in the year 2000, petitioner's mother mentioned that her son would be reviving their sugar mill business in Bacolod City and asked whether Yao could lend them money. Yao acceded and loaned petitioner ₱1 million on 3 January 2001; ₱1 million on 7 January 2001; and ₱1.5 million on 16 February 2001. She also lent petitioner an additional ₱2.5 million in June 2001. As payment, petitioner issued four (4) checks in these amounts but which were dishonored for having been drawn against a closed account. Upon dishonor of the checks, Yao personally delivered her demand letter to the office of the petitioner which was received by his secretary.[3]

Petitioner was thus charged with four (4) counts of violation of B.P. Blg. 22. The cases were raffled to Branch 58, then presided

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[1] *Rollo*, pp. 21-23. Penned by Judge Myrna V. Lim-Verano.

[2] *Id*. at 24-35. Penned by Judge Marianito C. Santos.

[3] *Id*. at 27-30.

by Judge Elvira DC Castro *(Judge Castro)*. On 16 September 2004, petitioner pleaded "not guilty." After mediation and pre-trial conference, trial ensued before Pairing Judge Marianito C. Santos *(Judge Santos)* as Judge Castro was promoted to the RTC of Quezon City.[4] On 25 July 2007, Judge Philip Labastida *(Judge Labastida)* was appointed Presiding Judge of Branch 58 and took over trial proceedings.[5] Since petitioner failed to present evidence, the cases were submitted for decision and promulgation of judgment was set on 30 September 2008.[6] Sometime in December 2008, Judge Labastida died.[7] On 20 February 2009, Judge Mary George T. Cajandab-Caldona *(Judge Caldona)* was designated Acting Presiding Judge of Branch 58[8] and she assumed office on 1 April 2009.[9]

The MeTC Ruling

In a decision, dated 15 April 2009, signed by Judge Santos as the pairing judge, the MeTC found petitioner guilty beyond reasonable doubt of four (4) counts of violation of B.P. Blg. 22, and sentenced him to pay a fine of ₱200,000.00 for each count.

The MeTC ruled that the prosecution was able to establish that the checks issued by petitioner were payments for a loan; and that upon dishonor of the checks, demand was made upon petitioner through his personal secretary. The *fallo* reads:

> WHEREFORE, premises considered, judgment is hereby rendered as follows:
>
> 1. FINDING the accused JOHN DENNIS CHUA GUILTY beyond reasonable doubt [of] having violated the crime of Batas Pambansa Blg. 22 for which he is hereby sentenced to pay a FINE of TWO

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[4] *Id*. at 27.

[5] *Id*. at 21.

[6] *Id*. at 31.

[7] *Id*. at 21.

[8] *Id*. at 38.

[9] *Id*. at 37.

HUNDRED THOUSAND PESOS (₱200,000.00) for each count, with subsidiary imprisonment not to exceed SIX (6) MONTHS for each count in case of insolvency;

2. HOLDING the accused civilly liable to the extent of the value of the four (4) subject checks or in the total amount of ₱6,082,000.00 with twelve (12%) interest per annum reckoned from date of extrajudicial demand which was made on April 2002 until the whole obligation shall have been fully paid and satisfied;

3. ORDERING the accused to pay the costs of suit.

SO ORDERED.[10]

Aggrieved, petitioner filed a petition for certiorari with the RTC assailing Judge Santos' authority to render the decision.

The RTC Ruling

In an Order, dated 15 June 2010, the RTC affirmed the conviction of petitioner. It held that the expanded authority of pairing courts under Supreme Court Circular No. 19-98, dated 18 February 1998, clearly gave Judge Santos authority to resolve the criminal cases which were submitted for decision when he was still the pairing judge. The RTC added that Judge Santos was in a better position to resolve and decide the cases because these were heard and submitted for decision prior to the appointment of Judge Caldona as acting presiding judge on 20 February 2009 and her assumption to office on 1 April 2009. It observed that the promulgation of judgment was delayed merely because a motion for reconsideration was filed which was later denied. The RTC disposed the case thus:

WHEREFORE, the petition for certiorari is hereby DENIED for lack of merit.

SO ORDERED.[11]

Unconvinced, petitioner moved for reconsideration, but the same was denied by the RTC in an Order, dated 28 December 2010.

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

[11] *Id.* at 22.

Hence, this petition.

ISSUES

I.

WHETHER OR NOT A DECISION PROMULGATED AND EXECUTED BY A PAIRING JUDGE, DESPITE THE APPOINTMENT OF A PERMANENT JUDGE TO A COURT, IS VALID;

II.

WHETHER OR NOT A DECISION ADMITTING THE PROSECUTION'S FAILURE TO PROVE ALL THE ELEMENTS OF A CRIME, BUT STILL CONVICTING AN ACCUSED IN A CRIMINAL CASE IS AN ACT TANTAMOUNT TO GRAVE ABUSE OF DISCRETION AMOUNTING TO A LACK OR EXCESS OF JURISDICTION;

III.

WHETHER OR NOT A PETITION FOR CERTIORARI UNDER RULE 65 OF THE REVISED RULES OF COURT IS THE PROPER REMEDY FOR ACTS DONE BY A PRESIDING JUDGE SHOWING GRAVE ABUSE OF DISCRETION AMOUNTING TO A LACK OR EXCESS OF JURISDICTION.[12]

Petitioner argues that pursuant to Circular No. 19-98, decisions rendered by pairing judges are valid only when the same are promulgated at the time when no presiding judge has been appointed, thus, the authority of pairing judges automatically ceases upon the appointment and assumption to duty of the new presiding judge; that Judge Caldona assumed office on 1 April 2009; that on 15 April 2009, when the assailed decision was promulgated, only Judge Caldona had the authority to promulgate a decision on the case; and that the prosecution failed to prove that a notice of dishonor was properly served upon petitioner.

In its comment,[13] respondent People of the Philippines, through the Office of the Solicitor General *(OSG),* avers that the cases

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[12] *Id*. at 7.

[13] *Id*. at 68-82.

were submitted for decision as early as 30 September 2008 and that Judge Caldona had not presided in a single hearing; that in view of these circumstances, Judge Caldona was not familiar enough with the facts of the case to enable her to competently render a decision; that Judge Caldona did not raise any opposition to the promulgation of the 15 April 2009 decision; that Circular No. 5-98 provides that "cases submitted for decision and those that passed the trial stage, i.e., where all the parties have finished presenting their evidence before such Acting/ Assisting Judge at the time of the assumption of the Presiding Judge or the designated Acting Presiding Judge shall be decided by the former", that from the time of the untimely demise of Judge Labastida, Judge Santos was tasked to take over the cases as the designated pairing judge of Branch 58; and that Judge Santos was clothed with authority to promulgate the assailed 15 April 2009 decision.

In his reply,[14] petitioner counters that Circular No. 5-98 is not applicable to the case as Circular No. 19-98 provides that "the judge of the paired court shall take cognizance of all the cases thereat as acting judge therein until the appointment and assumption to duty of the regular judge or the designation of an acting presiding judge", that the authority of Judge Santos was derived as a pairing judge, not as acting or assisting judge, of Branch 58; and that his authority automatically ceased on 20 February 2009, when Judge Caldona was designated as Acting Presiding Judge of Branch 58.

THE COURT'S RULING

Appeal, not certiorari, is the proper remedy to question the MeTC decision.

At the outset, petitioner availed of the wrong remedy when he sought to assail the MeTC decision. *First*, it has been consistently held that where appeal is available to the aggrieved party, the special civil action of certiorari will not be entertained

[14] *Id.* at 88-94.

— remedies of appeal and certiorari are mutually exclusive, not alternative or successive. The proper remedy to obtain a reversal of judgment on the merits, final order or resolution is appeal. This holds true even if the error ascribed to the court rendering the judgment is its lack of jurisdiction over the subject matter, or the exercise of power in excess thereof, or grave abuse of discretion in the findings of fact or of law set out in the decision, order or resolution. The existence and availability of the right of appeal prohibits the resort to certiorari because one of the requirements for the latter remedy is the unavailability of appeal.[15]

Second, even if a petition for certiorari is the correct remedy, petitioner failed to comply with the requirement of a prior motion for reconsideration. As a general rule, a motion for reconsideration is a prerequisite for the availment of a petition for certiorari under Rule 65.[16] The filing of a motion for reconsideration before resort to certiorari will lie is intended to afford the public respondent an opportunity to correct any actual or fancied error attributed to it by way of reexamination of the legal and factual aspects of the case.[17]

Third, petitioner was not able to establish his allegation of grave abuse of discretion on the part of the MeTC. Where a petition for certiorari under Rule 65 of the Rules of Court alleges grave abuse of discretion, the petitioner should establish that the respondent court or tribunal acted in a capricious, whimsical, arbitrary or despotic manner in the exercise of its jurisdiction as to be equivalent to lack of jurisdiction.[18] In *Yu v. Judge Reyes-Carpio,*[19] the Court explained:

The term "grave abuse of discretion" has a specific meaning. An act of a court or tribunal can only be considered as with grave abuse of

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[15] *Cuevas v. Macatangay,* G.R. No. 208506, 22 February 2017.

[16] *Romy's Freight Service v. Castro*, 523 Phil. 540, 545 (2006).

[17] *Villena v. Rupisan*, 549 Phil. 146, 158 (2007).

[18] *Abedes v. CA*, 562 Phil. 262, 276 (2007).

[19] 667 Phil. 474 (2011).

discretion when such act is done in a "capricious or whimsical exercise of judgment as is equivalent to lack of jurisdiction." The abuse of discretion must be so patent and gross as to amount to an "evasion of a positive duty or to a virtual refusal to perform a duty enjoined by law, or to act at all in contemplation of law, as where the power is exercised in an arbitrary and despotic manner by reason of passion and hostility." Furthermore, the use of a petition for certiorari is restricted only to "truly extraordinary cases wherein the act of the lower court or quasi-judicial body is wholly void." From the foregoing definition, it is clear that the special civil action of certiorari under Rule 65 can only strike an act down for having been done with grave abuse of discretion if the petitioner could manifestly show that such act was patent and gross x x x.[20]

As will be discussed, there was no hint of whimsicality, nor of gross and patent abuse of discretion as would amount to an evasion of a positive duty or a virtual refusal to perform a duty enjoined by law or to act at all in contemplation of law on the part of Judge Santos.[21] He was clothed with authority to decide the criminal cases filed against petitioner.

In addition, considering that petitioner filed with the RTC a petition for certiorari which is an original action, the proper remedy after denial thereof is to appeal to the Court of Appeals *(CA)* by way of notice of appeal.[22] Hence, when petitioner filed a petition for review before this Court, not only did he disregard the time-honored principle of hierarchy of courts, he also availed of the wrong remedy for the second time.

Notwithstanding the foregoing procedural lapses committed by petitioner, in the interest of prompt dispensation of justice and to prevent further prolonging the proceedings in this case, the Court resolves to give due course to his petition and rule on the merits thereof.

Judge Santos had authority to render the assailed decision even

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[20] *Id.* at 481-482.

[21] *Baltazar v. People*, 582 Phil. 275, 291 (2008).

[22] *BF Citiland Corporation v. Otake*, 640 Phil. 261, 270 (2010).

after the assumption to office of the designated presiding judge of Branch 58.

Petitioner cites Circular No. 19-98 to support his contention that Judge Santos no longer had the authority to render the assailed decision at the time of its promulgation on 15 April 2009. The circular reads:

> In the interest of efficient administration of justice, the authority of the pairing judge under Circular No. 7 dated September 23, 1974 (Pairing System for Multiple Sala Stations) to act on incidental or interlocutory matters and those urgent matters requiring immediate action on cases pertaining to the paired court shall henceforth be expanded to include all other matters. Thus, whenever a vacancy occurs by reason of resignation, dismissal, suspension, retirement, death, or prolonged absence of the presiding judge in a multi-sala station, ***the judge of the paired court shall take cognizance of all the cases thereat as acting judge therein until the appointment and assumption to duty of the regular judge or the designation of an acting presiding judge*** or the return of the regular incumbent judge, or until further orders from this Court. (emphasis supplied)

On the other hand, the OSG avers that Judge Santos was in due exercise of his authority as provided by Circular No. 5-98, *viz:*

> 1. Unless otherwise ordered by the Court, an Acting/Assisting Judge shall cease to continue hearing cases in the court where he is detailed and shall return to his official station upon the assumption of the appointed Presiding Judge or the newly designated Acting Presiding Judge thereat. Cases left by the former shall be tried and decided by the appointed Presiding Judge or the designated Acting Presiding Judge.
>
> 2. ***However, cases submitted for decision and those that passed the trial stage, i.e. where all the parties have finished presenting their evidence before such Acting/Assisting Judge at the time of the assumption of the Presiding Judge or the designated Acting Presiding Judge shall be decided by the former.*** This authority shall include resolutions of motions for reconsideration and motions for new trial thereafter filed. But if a new trial is granted, the Presiding Judge thereafter

appointed or designated shall preside over the new trial until it is terminated and shall decide the same.

3. If the Acting/Assisting Judge is appointed to another branch but in the same station, cases heard by him shall be transferred to the branch where he is appointed and he shall continue to try them. He shall be credited for these cases by exempting him from receiving an equal number during the raffle of newly filed cases. x x x (emphasis supplied)

Both circulars are applicable in the case at bar in that Circular No. 5-98 complements Circular No. 19-98. Undoubtedly, the judge of the paired court serves as acting judge only until the appointment and assumption to duty of the regular judge or the designation of an acting presiding judge. Clearly, the acting judge may no longer promulgate decisions when the regular judge has already assumed the position. Circular No. 5-98, however, provides an exception, i.e., the acting judge, despite the assumption to duty of the regular judge or the designation of an acting presiding judge, shall decide cases which are already submitted for decision at the time of the latter's assumption or designation.

In this case, Judge Santos, as judge of the paired court, presided over the trial of the cases which commenced with the presentation of the prosecution's first witness on 7 June 2006.[23] On 25 July 2007, Judge Labastida was appointed Presiding Judge of Branch 58 and he took over the trial of the cases.[24] The promulgation of judgment was tentatively set on 30 September 2008.[25] Unfortunately, sometime in December 2008, Judge Labastida died.[26] Hence, it was incumbent upon Judge Santos to serve as acting judge of Branch 58 as a result of Judge Labastida's untimely death. When Judge Caldona assumed the position of Acting Presiding Judge on 1 April 2009,[27] the cases already

[23] *Rollo*, p. 27

[24] *Id.* at 21.

[25] *Id.* at 31.

[26] *Id.* at 21.

[27] *Id.* at 36.

passed the trial stage as they were in fact submitted for decision. Further, it is worthy to note that Judge Santos presided over a significant portion of the proceedings as compared to Judge Caldona who assumed office long after the cases were submitted for decision. Finally, the use of the word "shall" in Circular No. 5-98 makes it mandatory for Judge Santos to decide the criminal cases against petitioner. Clearly, Judge Santos had the authority to render the assailed decision on 15 April 2009 notwithstanding Judge Caldona's assumption to office.

Failure to prove petitioner's receipt of notice of dishonor warrants his acquittal.

To be liable for violation of B.P. Blg. 22, the following essential elements must be present: (1) the making, drawing, and issuance of any check to apply for account or for value; (2) the knowledge of the maker, drawer, or issuer that at the time of issue he does not have sufficient funds in or credit with the drawee bank for the payment of the check in full upon its presentment; and (3) the subsequent dishonor of the check by the drawee bank for insufficiency of funds or credit or dishonor for the same reason had not the drawer, without any valid cause, ordered the bank to stop payment.[28]

Here, the existence of the second element is in dispute. In *Yu Oh v. CA*,[29] the Court explained that since the second element involves a state of mind which is difficult to establish, Section 2 of B.P. Blg. 22 created a *prima facie* presumption of such knowledge, as follows:

> SEC. 2. Evidence of knowledge of insufficient funds. — The making, drawing and issuance of a check payment of which is refused by the drawee because of insufficient funds in or credit with such bank, when presented within ninety (90) days from the date of the check, shall be *prima facie* evidence of knowledge of such insufficiency of funds or credit unless such maker or drawer pays the holder thereof

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[28] *Alferez v. People*, 656 Phil. 116, 122 (2011).

[29] 451 Phil. 380 (2003).

the amount due thereon, or makes arrangements for payment in full by the drawee of such check within five (5) banking days after receiving notice that such check has not been paid by the drawee.

Based on this section, the presumption that the issuer had knowledge of the insufficiency of funds is brought into existence only after it is proved that the issuer had received a notice of dishonor and that within five days from receipt thereof, he failed to pay the amount of the check or to make arrangement for its payment. ***The presumption or prima facie evidence as provided in this section cannot arise, if such notice of non-payment by the drawee bank is not sent to the maker or drawer, or if there is no proof as to when such notice was received by the drawer, since there would simply be no way of reckoning the crucial 5-day period.***

x x x x x x x x x

Indeed, this requirement [on proof of receipt of notice of dishonor] cannot be taken lightly because Section 2 provides for an opportunity for the drawer to effect full payment of the amount appearing on the check, within five banking days from notice of dishonor. The absence of said notice therefore deprives an accused of an opportunity to preclude criminal prosecution. In other words, procedural due process demands that a notice of dishonor be actually served on petitioner.[30] (emphasis supplied and citations omitted)

The Court finds that the second element was not sufficiently established. Yao testified that the personal secretary of petitioner received the demand letter,[31] yet, said personal secretary was never presented to testify whether she in fact handed the demand letter to petitioner who, from the onset, denies having received such letter. It must be borne in mind that it is not enough for the prosecution to prove that a notice of dishonor was sent to the accused. The prosecution must also prove *actual receipt* of said notice, because the fact of service provided for in the law is reckoned from receipt of such notice of dishonor by the accused.[32]

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[30] *Id.* at 392-393 and 395.

[31] *Rollo*, p. 29.

[32] *San Mateo v. People*, 705 Phil. 630, 638-639 (2013).

In this case, there is no way to ascertain when the five-day period under Section 22 of B.P. Blg. 22 would start and end since there is no showing when petitioner actually received the demand letter. The MeTC, in its decision, merely said that such requirement was fully complied with without any sufficient discussion. Indeed, it is not impossible that petitioner's secretary had truly handed him the demand letter. Possibilities, however, cannot replace proof beyond reasonable doubt.[33] The absence of a notice of dishonor necessarily deprives the accused an opportunity to preclude a criminal prosecution.[34] As there is insufficient proof that petitioner received the notice of dishonor, the presumption that he had knowledge of insufficiency of funds cannot arise.[35]

Nonetheless, petitioner's acquittal for failure of the prosecution to prove all elements of the offense beyond reasonable doubt does not extinguish his civil liability for the dishonored checks. The extinction of the penal action does not carry with it the extinction of the civil action where: (a) the acquittal is based on reasonable doubt as only preponderance of evidence is required; (b) the court declares that the liability of the accused is only civil; and (c) the civil liability of the accused does not arise from or is not based upon the crime of which the accused was acquitted.[36]

WHEREFORE, the petition is **GRANTED.** The 15 June 2010 and 28 December 2010 Orders of the Regional Trial Court in SCA No. 3338 are **REVERSED** and **SET ASIDE**. Petitioner John Dennis G. Chua is **ACQUITTED** of the crime of violation of Batas Pambansa Bilang 22 on four (4) counts on the ground that his guilt was not established beyond reasonable doubt. He is, nonetheless, ordered to pay complainant Cristina Yao the face value of the subject checks in the aggregate amount of ₱6,082,000.00,

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[33] *Moster v. People*, 569 Phil. 616, 627 (2008).

[34] *Ambito v. People*, 598 Phil. 546, 570 (2009).

[35] *Suarez v. People*, 578 Phil. 228, 237 (2008).

[36] *Daluraya v. Oliva*, 749 Phil. 531, 537 (2014).

plus legal interest of 12% per annum from the time the said sum became due and demandable until 30 June 2013, and 6% per annum from 1 July 2013 until fully paid.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 197613. November 22, 2017]

PUBLIC ATTORNEY'S OFFICE, *petitioner, vs.* **OFFICE OF THE OMBUDSMAN and ATTY. TERENCIA S. ERNI-RIVERA,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; GRAVE ABUSE OF DISCRETION, NOT A CASE OF; PETITIONER FAILED TO SHOW THAT THE ASSAILED RESOLUTION AND ORDER OF THE OMBUDSMAN HAD BEEN ISSUED WITH GRAVE ABUSE OF DISCRETION. — [T]he plenary nature of the Ombudsman's powers does not place it beyond the scope of the Court's power of review. Under its expanded jurisdiction, the Court may strike down the act of any branch or instrumentality of the government, including the Ombudsman, on the ground of grave abuse of discretion. However, for the extraordinary writ of *certiorari* to issue against the actions of the Ombudsman, the petitioner must show that the latter's exercise of power had been done in an arbitrary or despotic manner. Such abuse of power must be so patent and gross as to amount to an evasion of a positive duty or a virtual refusal to perform the duty enjoined or to act at all in contemplation of law. The allegations in the Petition failed to show that the Assailed Resolution and Order had been issued in the foregoing manner.

2. ID.; CRIMINAL PROCEDURE; PRELIMINARY INVESTIGATION; PROBABLE CAUSE, DEFINED; PROBABLE CAUSE CANNOT EXIST WHERE THE ACTS WHICH CONSTITUTE THE OFFENSES CHARGED ARE NOT PROVEN TO HAVE BEEN COMMITTED.— Probable cause, for the purpose of filing a criminal information, has been defined to constitute such facts as are sufficient to engender a well-founded belief that a crime has been committed and that respondent is probably guilty thereof, x x x **It is enough that it is believed that the act or omission complained of constitutes the offense charged.** x x x Contrary to PAO's assertions, the Ombudsman did not impose a higher quantum of proof. The dismissal of the Criminal Complaints was not prompted by PAO's failure to present evidence to establish Atty. Rivera's criminal liability beyond reasonable doubt, but rather, on its failure to establish, by substantial evidence, that Atty. Rivera committed the acts subject of the Criminal Complaints. **Evidently, probable cause cannot exist where the acts which constitute the offenses charged are not proven to have been committed by the respondent.**

APPEARANCES OF COUNSEL

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

D E C I S I O N

CAGUIOA, *J.*:

The Case

This is a Petition for *Certiorari*[1] (Petition) filed under Rule 65 of the Rules of Court which seeks to annul the Resolution[2] (Assailed Resolution) dated September 1, 2010 and Order[3] (Assailed Order) dated November 30, 2010 issued by the Office of the Ombudsman (Ombudsman) in OMB: C-C-08-0419-I.

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[1] *Rollo,* pp. 2-36.

[2] *Id*. at 37-50.

[3] *Id*. at 80-90.

The Assailed Resolution and Order dismissed, for lack of probable cause, the separate criminal complaints (Criminal Complaints) filed against Atty. Terencia S. Erni-Rivera (Atty. Rivera) for violation of the following:

(i) Section 7(b)(2) and (d)[4] of Republic Act No. (RA) 6713,[5] which prohibits public officers from engaging in the private practice of their profession while in the public service;

(ii) Section 3(e)[6] of RA 3019[7] as amended, which prohibits public officers from causing any undue injury to any

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[4] RA 6713, Sec. 7(b)(2) and (d) provides:

SEC. 7. *Prohibited Acts and Transactions.*— In addition to acts and omissions of public officials and employees now prescribed in the Constitution and existing laws, the following shall constitute prohibited acts and transactions of any public official and employee and are hereby declared to be unlawful:

x x x x x x x x x

(b) *Outside employment and other activities related thereto.* — Public officials and employees during their incumbency shall not:

x x x x x x x x x

(2) Engage in the private practice of their profession unless authorized by the Constitution or law, provided that such practice will not conflict or tend to conflict with their official functions[.]

x x x x x x x x x

(d) *Solicitation or acceptance of gifts.* — Public officials and employees shall not solicit or accept, directly or indirectly, any gift, gratuity, favor, entertainment, loan or anything of monetary value from any person in the course of their official duties or in connection with any operation being regulated by, or any transaction which may be affected by the functions of their office.

[5] CODE OF CONDUCT AND ETHICAL STANDARDS FOR PUBLIC OFFICIALS AND EMPLOYEES.

[6] RA 3019, Sec. 3(e) provides:

SEC. 3. *Corrupt practices of public officers.* — In addition to acts or omissions of public officers already penalized by existing law, the following shall constitute corrupt practices of any public officer and are hereby declared to be unlawful:

x x x x x x x x x

(e) Causing any undue injury to any party, including the Government, or giving any private party any unwarranted benefits, advantage or preference in the discharge of his official administrative or judicial functions through manifest partiality, evident bad faith or gross inexcusable negligence. This provision shall apply to officers and employees of offices or government corporations charged with the grant of licenses or permits or other concessions.

[7] ANTI-GRAFT AND CORRUPT PRACTICES ACT.

party, including the Government, or giving any private party any unwarranted benefits, advantage or preference in the discharge of his official administrative or judicial functions through manifest partiality, evident bad faith or gross inexcusable negligence; and

(iii) Article 171(4)[8] of Act No. 3815, otherwise known as the Revised Penal Code (RPC), which treats the crime of falsification by a public officer.

The Facts

Atty. Rivera is a Career Service Employee who joined the government service on July 18, 1978 as Trial Attorney II.[9] Since then, Atty. Rivera had been promoted to several permanent positions, until she was appointed to the position of Public Attorney V (PA5) for PAO Regional Office No. III by virtue of a presidential appointment dated March 8, 2004.[10]

Violation of RA 3019 (causing undue injury and/or giving unwarranted benefits/advantage to private parties) and RA 6713 (engaging in private practice)

After Atty. Rivera assumed her duties as PA5, PAO received a Letter and Affidavit dated August 13, 2004 and August 17, 2004, respectively, both by a certain Hazel F. Magabo (Magabo).[11]

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[8] RPC, ART. 171(4) provides:

ART. 171. *Falsification by public officer, employee or notary or ecclesiastic minister.* – The penalty of *prision mayor* and a fine not to exceed 5,000 pesos shall be imposed upon any public officer, employee, or notary who, taking advantage of his official position, shall falsify a document by committing any of the following acts:

x x x x x x x x x

4. Making untruthful statements in a narration of facts[.]

[9] *Rollo*, p. 121.

[10] *Id*.

[11] *Id*. at 40, 95.

Magabo alleged that **contrary to PAO's internal rules, Atty. Rivera agreed to handle the annulment case sought to be filed by her brother Isidro Fayloga (Fayloga), and received staggered payments therefor in the total amount of Ninety-Three Thousand Pesos (₱93,000.00)**.[12] Such amount consists of money sent by Fayloga from abroad, as well as money personally advanced by Magabo upon Atty. Rivera's promise that these advances would expedite Fayloga's annulment.[13] However, Magabo later discovered that Atty. Rivera did not file any petition on Fayloga's behalf.[14]

To support her claims, Magabo presented copies of bank slips showing that she made several deposits in varying amounts to Atty. Rivera's account. Magabo also presented a summary of payments showing that Atty. Rivera and her secretary also received cash on different dates.[15]

In response, Atty. Rivera averred that while she did receive the amount of Ninety-Three Thousand Pesos (₱93,000.00) as alleged, such amount was merely entrusted to her. Atty. Rivera explained that Magabo, her longtime friend, asked for her help in finding a private practitioner to take on Fayloga's case, and that the money she received was meant to cover the professional fees and litigation expenses that would be incurred in this connection.[16] Atty. Rivera further averred that she returned the money entrusted to her as soon as it became apparent that Fayloga would no longer return to the Philippines to pursue the annulment case.[17]

As Atty. Rivera subsequently assumed the position of Regional Public Attorney, PAO referred the letter to the Department of Justice (DOJ) for proper disposition.[18]

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[12] *Id*. at 38, 95 and 109.

[13] *Id*. at 43.

[14] See *id*. at 95.

[15] *Id*.

[16] See *id*. at 110.

[17] *Id*.

[18] *Id*. at 95.

Thereafter, the allegations in Magabo's Letter and Affidavit became subject of a formal administrative complaint filed on September 28, 2005 against Atty. Rivera for Grave Misconduct and violation of Civil Service Rules and Regulations (DOJ Proceeding).[19]

After two (2) hearing dates, Magabo submitted an Affidavit of Desistance stating that she is no longer interested in pursuing the case, as it merely resulted from a misunderstanding between her and her siblings.[20]

Nevertheless, on March 27, 2007, the DOJ issued a Resolution[21] (DOJ Resolution) finding Atty. Rivera liable for conduct prejudicial to the best interest of the service, a lesser offense treated under Section 22(t) of Rule XIV of the Omnibus Rules Implementing Book V of Executive Order No. 292. She was meted with the penalty of suspension for a period of six (6) months and one (1) day without pay.[22]

Falsification

On December 4, 2006 (during the pendency of the DOJ Proceeding), Atty. Rivera submitted a Certificate of Service anent her attendance for November 2006, which states in part:

> I, TERENCIA S. ERNI-RIVERA, do hereby certify that I reported for work and performed my duties and functions as Regional Public Attorney for PAO, Region IV-B, **for the month of November 2006**.[23] (Emphasis supplied)

District Public Attorney Emilio G. Aclan (DPA Aclan) submitted a subsequent Certification dated December 19, 2006 which states:

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[19] *Id*. at 96.

[20] *Id*. at 111.

[21] *Id*. at 109-115.

[22] *Id*. at 114-115.

[23] *Id*. at 98.

This is to certify that ATTY. TERENCIA E. RIVERA, Regional Director, Region IV-B (MIMAROPA), reported for work in this Office from **November 13, 2006 up to November 24, 2006**. x x x[24] (Emphasis in the original; underscoring omitted.)

Thereafter, Deputy Chief Public Attorney Silvestre Mosing issued a Memorandum dated December 22, 2006 requiring Atty. Rivera to explain why she should not be held administratively and criminally liable for the "discrepancies" between her Certificate of Service and the Certification issued by DPA Aclan.[25]

On December 27, 2006, Atty. Rivera submitted her Comment/ Explanation which states, in part:

With due respect, there is no irregularity in [my Certificate of Service], as shown hereunder:

November 1, 2006	All Saints Day
November 2 & 3, 2006	On leave
November 4 & 5, 2006	Saturday & Sunday
November 6-10, 2006	PAO-convention, Manila Hotel
November 13-24, 2006	PAO-District Office, Batangas City
November 25 & 26, 2006	Saturday & Sunday
November 27-30, 2006	On leave

I do not see any need to attach a Certificate of Appearance or approved Travel Order when I am on leave.[26]

After consideration, the PAO Legal Research Division issued its Report and Recommendation dated January 5, 2007 recommending that Atty. Rivera be held administratively liable for violation of: (i) Civil Service (CSC) Omnibus Rules on Leave; (ii) PAO Memorandum Circular No. 18, series of 2002 on reasonable office rules and regulations; (iii) Falsification of Official Documents treated under Section 52(A)(6), Rule IV of the Uniform Rules on Administrative Cases in the Civil Service (URACCS); and (iv) Dishonesty treated under Section

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[24] *Id.* at 97.

[25] *Id.* at 98.

[26] *Id.*

52(A)(1) of the URACCS.[27] The Report and Recommendation was forwarded to the Presidential Anti-Graft Commission (PAGC) for action, Atty. Rivera being a presidential appointee.[28]

Acting on the Report and Recommendation, Executive Secretary Eduardo Ermita issued an Order dated June 12, 2007, placing Atty. Rivera under preventive suspension for a period not exceeding ninety (90) days.[29]

Report of the PAO Designated Resident Ombudsman

Later, on August 31, 2007, Atty. Melita S. Recto (Atty. Recto), the PAO Designated Resident Ombudsman, issued a Report[30] recommending that Atty. Rivera be held administratively and criminally liable for the above-detailed acts committed during her incumbency as Public Attorney. In essence, the Report lent credence to the findings of the DOJ and PAO Legal Research Division. The penultimate portion of the Report states:

RECOMMENDATION

x x x In view of the above-stated disquisitions, the undersigned most respectfully recommends that [Atty. Rivera] be criminally charged for:

a. Violation of [Section] 7 (D) of [RA 6713]

b. Falsification of Official Document

Atty. Rivera should likewise be administratively charged for:

c. Four (4) counts of Neglect of Duty [as] defined under Section 52 A (2), Rule IV of the [URACCS] in relation to Section 5 (B) of [RA 6713].

[d.] Simple Misconduct under Section 52 (B) (4) Rule IV of the [URACCS] in relation to violation of PAO Memorandum Circular No. 18, Series of 2002.[31]

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[27] *Id*. at 99-100.

[28] *Id*. at 100.

[29] *Id*.

[30] *Id*. at 94-105.

[31] *Id*. at 103-104.

On the basis of the findings in said Report, Atty. Recto (as PAO Designated Resident Ombudsman), together with the National Bureau of Investigation (NBI), filed the Criminal Complaints against Atty. Rivera.

On September 1, 2010, the Ombudsman issued the Assailed Resolution dismissing the Criminal Complaints, thus:

> **PREMISES CONSIDERED**, the separate complaints for alleged violation of Section 7, paragraph (b), subparagraph (2), and paragraph (d) of [RA 6713]; Section 3, paragraph (e), of [RA 3019], as amended; and Article 171, paragraph (4) of [the RPC], as amended; filed by [Atty. Recto] and the [NBI] against respondent [Atty. Rivera] are hereby **DISMISSED** for lack of probable cause.
>
> **SO ORDERED.**[32]

PAO filed a Motion for Reconsideration[33] and subsequent Supplemental Motion for Reconsideration[34] dated September 24, 2010 and October 26, 2010, respectively. Both motions were denied by the Ombudsman for lack of merit in the Assailed Order dated November 30, 2010.[35]

PAO received a copy of the Assailed Order on June 1, 2011.[36] Hence, PAO filed the present Petition on July 29, 2011.

The Issue

The sole issue for this Court's resolution is whether the Ombudsman acted in grave abuse of discretion when it directed the dismissal of the Criminal Complaints against Atty. Rivera for lack of probable cause.

The Court's Ruling

Time and again, this Court has consistently stressed that a petition for *certiorari* is a special civil action that may be resorted

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[32] *Id*. at 50.

[33] *Id*. at 51-60.

[34] *Id*. at 61-67.

[35] *Id*. at 80-90.

[36] *Id*. at 3.

to only for the limited purpose of correcting errors of jurisdiction, and not errors of judgment.[37] In turn, errors of jurisdiction proceed from grave abuse of discretion, or such capricious and whimsical exercise of judgment tantamount to lack of jurisdiction.[38] In this Petition, such grave abuse of discretion is imputed to the Ombudsman.

Under the 1987 Constitution, the Ombudsman is mandated to investigate acts or omissions of public officials or employees which appear to be illegal, unjust, improper, or inefficient.[39] Accordingly, the Ombudsman is vested with investigatory and prosecutorial powers to fulfill its constitutional mandate.[40] The Ombudsman's powers are plenary in nature, designed to insulate it from outside pressure and influence.[41]

Nevertheless, the plenary nature of the Ombudsman's powers does not place it beyond the scope of the Court's power of review. Under its expanded jurisdiction, the Court may strike down the act of any branch or instrumentality of the government, including the Ombudsman, on the ground of grave abuse of discretion.[42] However, for the extraordinary writ of *certiorari* to issue against the actions of the Ombudsman, the petitioner must show that the latter's exercise of power had been done in an arbitrary or despotic manner. Such abuse of power must be so patent and gross as to amount to an evasion of a positive duty or a virtual refusal to perform the duty enjoined or to act at all in contemplation of law.[43]

The allegations in the Petition failed to show that the Assailed Resolution and Order had been issued in the foregoing manner.

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[37] See *Angeles v. Gutierrez,* 685 Phil. 183, 193 (2012).

[38] *Presidential Commission on Good Government v. Desierto,* 563 Phil. 517, 526 (2007).

[39] 1987 CONSTITUTION, Art. XI, Sec. 13(1).

[40] See *Soriano v. Marcelo,* 597 Phil. 308, 316 (2009).

[41] See *Angeles v. Gutierrez, supra* note 37, at 195.

[42] 1987 CONSTITUTION, Art. VIII, Sec. 1(2).

[43] *Philippine Deposit Insurance Corp. v. Casimiro,* 768 Phil. 429, 436 (2015).

Accordingly, the Court resolves to deny the instant Petition on this ground.

The Assailed Resolution and Order were issued within the bounds of the Ombudsman's investigatory and prosecutorial powers.

PAO asserts that the Ombudsman "overzealously exceeded its mandate by requiring more than the quantum of evidence needed to support a finding of probable cause." PAO claims that the Ombudsman effectively demanded it to present evidence sufficient to establish Atty. Rivera's guilt for the offenses charged, instead of merely requiring such evidence necessary to sustain a finding of probable cause to file a criminal information against her.[44]

These assertions lack basis.

Probable cause, for the purpose of filing a criminal information, has been defined to constitute such facts as are sufficient to engender a well-founded belief that a crime has been committed and that respondent is probably guilty thereof,[45] thus:

> x x x [Probable cause] does not mean "actual or positive cause" nor does it import absolute certainty. It is merely based on opinion and reasonable belief. Probable cause does not require an inquiry into whether there is sufficient evidence to procure a conviction. **It is enough that it is believed that the act or omission complained of constitutes the offense charged**.
>
> x x x In determining probable cause, the average man weighs facts and circumstances without resorting to the calibrations of the rules of evidence of which he has no technical knowledge. **He relies on common sense**. What is determined is whether there is sufficient ground to engender a well-founded belief that a crime has been committed, and that the accused is probably guilty thereof and should be held for trial. x x x[46] (Emphasis in the original omitted; emphasis and underscoring supplied.)

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[44] See *rollo*, p. 19.

[45] *Philippine Deposit Insurance Corp. v. Casimiro, supra* note 43, at 437.

[46] *Id*.

Indeed, the determination of probable cause does not require an inquiry as to whether there is sufficient evidence to secure a conviction.[47] However, there is nothing in the Assailed Resolution and Order which suggests that the Ombudsman dismissed the Criminal Complaints due to PAO's failure to offer such higher quantum of evidence. The Court quotes the relevant portions of the Assailed Resolution, thus:

> After a careful evaluation of the different pleadings of the parties herein, together with the various pieces of documentary evidence attached thereto, [the Ombudsman] finds that **there is no sufficient ground to engender a well-founded belief that the charged offenses have been committed and that public respondent is probably guilty thereof, and should be held for trial**. This is so for **the evidence on record failed to establish that Atty. Rivera indeed solicited, took, or accepted money from [Magabo] in the course of her official duties** as Chief of the Legal Research Division of the [PAO], or in connection with any operation being regulated by, or any transaction which may be affected by the functions of her office. x x x [I]nasmuch as the purported receipt of [the money] had no connection whatsoever to the official duties of Atty. Rivera at the [PAO] x x x no case for the supposed violation of [Section 7(d)] of [RA 6713] and [Section 3(e)] of [RA 3019] x x x could be maintained against her. x x x
>
> Similarly, it cannot be maintained that [Atty. Rivera] transgressed the provisions of [Section 7(b)(2)] of [RA 6713], considering that **no satisfactory proof was even adduced to the effect that Atty. Rivera has been habitually or customarily holding herself to the public as a lawyer**. Furthermore, the **Affidavit of Desistance executed by [Magabo] x x x expressing x x x that [her administrative complaint] was merely the result of a miscommunication between her and her siblings** Edna Villoria and [Fayloga] likewise made the finding of probable cause vis-à-vis (sic) [Atty. Rivera] for the abovementioned offenses difficult, considering that the [Criminal Complaints] against the latter for the supposed violation of [RA 3019], as amended, and [RA] 6713, are evidently based on the administrative suit previously filed by [Magabo] x x x.
>
> Finally, the [Ombudsman] also finds **no sufficient evidence to indict [Atty. Rivera] for the supposed violation of [Article 171(4)]**

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[47] *Id*.

of [the RPC], as amended, since the latter never stated in her Cerification x x x that she rendered full time service for the month of November 2006. x x x[48] (Emphasis and underscoring supplied.)

Contrary to PAO's assertions, the Ombudsman did not impose a higher quantum of proof. The dismissal of the Criminal Complaints was not prompted by PAO's failure to present evidence to establish Atty. Rivera's criminal liability beyond reasonable doubt, but rather, on its failure to establish, by substantial evidence, that Atty. Rivera committed the acts subject of the Criminal Complaints. **Evidently, probable cause cannot exist where the acts which constitute the offenses charged are not proven to have been committed by the respondent.**

The Ombudsman did not act in grave abuse of its discretion when it found no probable cause to charge Atty. Rivera with violation of RA 6713 and RA 3019. The Court's ruling in Ramos v. Imbang does not apply.

Anent the charge of violation of Section 7(b)(2) and (d) of RA 6713 and Section 3(e) of RA 3019, PAO maintains that the Court's ruling in *Ramos v. Imbang*[49] *(Imbang)* precludes the dismissal of the Criminal Complaints, as the factual antecedents therein are similar to this case.[50]

Again, this is error.

In *Imbang,* the Court found respondent therein (a PAO lawyer) guilty of violating the lawyer's oath, as well as Canons 1 and 18 of the Code of Professional Responsibility for engaging in private practice and receiving the amount of Five Thousand Pesos (₱5,000.00) in attorney's and appearance fees. In said case, respondent led the private complainant to believe that he had been attending hearings in connection with the case

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[48] *Rollo*, pp. 46-49.

[49] 557 Phil. 507 (2007).

[50] *Rollo,* pp. 25-26.

respondent filed on the latter's behalf, only to discover later on that no such case had been filed.[51] Thus, the respondent was disbarred from the practice of law.

Thus, in *Imbang*, the evidence on record established that respondent received appearance fees for attending hearings that never took place. Hence, the acts which constitute the administrative offenses charged therein were proven to have been committed by the respondent. As stated at the outset, such is not the case here.

As correctly observed by the Ombudsman, the Criminal Complaints rest heavily on the findings of the DOJ and PAO Legal Division. These findings, are, in turn, based on Magabo's allegations which, as she admitted in her Affidavit of Desistance,[52] merely arose from a family misunderstanding. In fact, in the same affidavit, Magabo acknowledged that the entire amount she had entrusted to Atty. Rivera had already been returned.

The Ombudsman did not act in grave abuse of its discretion when it found no probable cause to charge Atty. Rivera with Falsification under the RPC.

Anent the charge of Falsification under the RPC, PAO insists, as it did before the Ombudsman, that Atty. Rivera untruthfully declared that she reported for work for the *entire* month of November 2006, contrary to DPA Aclan's findings that she only reported for work on November 13 to 24 of the same year.

A careful reading of the certifications in question belies PAO's allegation. Notably, Atty. Rivera's Certificate of Service states that "[she] reported for work and performed [her] duties as Regional Public Attorney x x x for the month of November 2006."[53] On the other hand, DPA Aclan's Certification states that Atty. Rivera "**reported for work <u>in [the PAO Region IV-B office]</u> from**

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[51] *Supra* note 49, at 510, 517.

[52] *Rollo*, pp. 226-227.

[53] *Id.* at 98.

November 13, 2006 up to November 24, 2006."[54] Hence, while Atty. Rivera's Certificate of Service attests to the **performance of her duties** as Regional Public Attorney for the entire month of November, DPA Aclan's Certification merely certifies the dates when Atty. Rivera **physically** reported to the PAO Region IV-B office to perform said duties.

In fact, in her Comment/Explanation, Atty. Rivera was able to account for all the other days in November on which she allegedly did not report to work. Such days were either holidays, weekends, filed leave days, or days set aside for official business.[55] The supposed discrepancies between said certificates are thus more apparent than real.

Proceeding from the foregoing, PAO's imputation of grave abuse of discretion on the part of the Ombudsman fails. Consequently, the findings in the Assailed Resolution and Order must be respected, in accordance with the Court's pronouncement in *Presidential Commission on Good Government v. Desierto*:[56]

> Case law has it that the determination of probable cause against those in public office during a preliminary investigation is a function that belongs to the Office of the Ombudsman. The Ombudsman has the discretion to determine whether a criminal case, given its attendant facts and circumstances, should be filed or not. It is basically his call. He may dismiss the complaint forthwith should he find it to be insufficient in form or substance, or he may proceed with the investigation if, in his view, the complaint is in due and proper form and substance. We have consistently refrained from interfering with the constitutionally mandated investigatory and prosecutorial powers of the Ombudsman. Thus, **if the Ombudsman, using professional judgment, finds the case dismissible, the Court shall respect such findings, unless the exercise of such discretionary powers is tainted by grave abuse of discretion**.[57] (Emphasis supplied)

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[54] *Id*. at 97.

[55] See *id*. at 98-99.

[56] *Supra* note 38.

[57] *Id*. at 525-526.

WHEREFORE, premises considered, the Petition for *Certiorari* is **DISMISSED.** The Assailed Resolution dated September 1, 2010 and Order dated November 30, 2010 issued by the Ombudsman in OMB: C-C-08-0419-I are hereby **AFFIRMED**.

SO ORDERED.

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

Reyes, Jr., J., on leave.

SECOND DIVISION

[G.R. No. 202872. November 22, 2017]

LOURDES M. PADAYHAG (or HEIRS OF LOURDES M. PADAYHAG), *petitioner, vs.* **DIRECTOR OF LANDS and SOUTHERN MINDANAO COLLEGES, represented by its President,** *respondents.*

[G.R. No. 206062. November 22, 2017]

SOUTHERN MINDANAO COLLEGES (SMC), represented by its President DR. ROMEO C. HOFILEÑA, JR., *petitioner, vs.* **THE HON. COURT OF APPEALS, TWENTY-THIRD DIVISION, Mindanao Station, Cagayan de Oro City, and HEIRS OF LOURDES M. PADAYHAG,** *respondents.*

SYLLABUS

1. CIVIL LAW; LAND TITLES AND DEEDS; ACT 2259 (THE CADASTRAL ACT) AND ACT 496 (THE LAND REGISTRATION ACT); LAND REGISTRATION; NOTICE

OF INITIAL HEARING OF APPLICATION FOR LAND REGISTRATION IS REQUIRED TO BE PUBLISHED TWICE IN SUCCESSIVE ISSUES OF THE OFFICIAL GAZETTE; CASE AT BAR.— Given that the initial hearing based on the published notice was scheduled on January 16, 1967, the applicable laws were Act 496 and Act 2259 which required **only** the notice of initial hearing to be **published twice, in successive issues of the Official Gazette**. Thus, it was erroneous for the CA to have required an additional publication of the said notice in a newspaper of general circulation. Such requirement was imposed only with the passage of PD 1529. x x x Given that Cadastral Case No. N-17, LRC Cad. Rec. No. N-468 does not only cover the six lots in dispute in this case, but around 1,409 lots, the copies of the issues of the Official Gazette where the Notice of the Order for Initial Hearing was published could have been included in the records of the cadastral proceedings of the other lots included therein. Thus, it was imprudent for the CA to rule that the Decision rendered by the RTC is void *ab initio* for having been rendered without jurisdiction. The repercussion of such pronouncement by the CA is far-reaching as it would cast doubt on the validity of the cadastral proceedings of the 1,409 lots in the then Municipality of Pagadian. At the very least, the CA should have required the parties to present proof of the publication of the Order for Initial Hearing in the pertinent issues of the Official Gazette.

2. REMEDIAL LAW; EVIDENCE; JUDICIAL NOTICE; THE COURT CAN TAKE JUDICIAL NOTICE OF THE PUBLICATION OF THE NOTICE OF INITIAL HEARING OF CADASTRAL PROCEEDINGS IN THE ISSUES OF THE OFFICIAL GAZETTE, THE LATTER BEING AN OFFICIAL PUBLICATION OF THE GOVERNMENT; CASE AT BAR.— Given that the Official Gazette is the official publication of the government, the Court can take judicial notice thereof pursuant to Section 2 of Rule 129, Rules of Court, which provides: SEC. 2. *Judicial notice, when discretionary*. — A court may take judicial notice of matters which are of public knowledge, or are capable of unquestionable demonstration, or ought to be known to judges because of their judicial functions. Thus, the Court takes judicial notice of the publication of the Notice of Initial Hearing for Cadastral Case No. N-17, LRC Cadastral Record No. N-468 in the issues of the Official Gazette

on October 24 and 31, 1966, Volume 62, Number 43, pages 8044 to 8047, and Number 44, pages 8312 to 8315.

3. POLITICAL LAW; CONSTITUTIONAL LAW; BILL OF RIGHTS; DUE PROCESS; THE STATE'S RIGHT TO DUE PROCESS WAS NOT VIOLATED IN CASE AT BAR.— As to the alleged failure by the RTC to notify the OSG of the cadastral proceedings and the orders therein which purportedly deprived the State of due process and would render the RTC Decision and Resolution void, the Court finds it hard to reconcile the position taken by the OSG in this case with the nature of cadastral proceedings. x x x [T]he herein cadastral proceedings were supposed to have been instituted by the then Director of Lands represented by the Solicitor General. For the OSG to now deny that it had no involvement in or that it had not been notified of the proceedings is not in keeping with the nature of cadastral proceedings. The Court is not prepared to nullify the cadastral proceedings involving the then municipality of Pagadian without due process being accorded to all the claimants involved therein and without the OSG going thoroughly over the records of the entire cadastral proceedings to verify whether it participated therein. It must be noted that in these petitions, the RTC Decision was finally rendered on May 30, 2006 after 40 years from June 2, 1966, the date of the Notice of Initial Hearing. To summarily nullify the cadastral proceedings at this juncture would be unjust. Suffice it say that for purposes of these cases, the Court is relying on the presumption that official duty has been regularly performed pursuant to Section 3(m), Rule 131 of the Rules of Court.

4. REMEDIAL LAW; CIVIL PROCEDURE; PETITION FOR REVIEW ON *CERTIORARI*; THE SUPREME COURT ADDRESSES ONLY QUESTIONS OF LAW, NOT OF FACTS.— Regarding the third and fourth issues, these involve questions of fact and the CA should be given the opportunity to rule on them as the reviewer of facts. In reviews on *certiorari,* the Court, not being a trier of facts, addresses only questions of law; and since the CA has not resolved the cases on the merits, remand to the CA is in order. The consolidated cases are being remanded to the CA to enable the CA to rule on the factual issues of the consolidated cases.

5. ID.; ID.; ID.; PETITION FOR REVIEW ON *CERTIORARI* BEFORE THE SUPREME COURT IS THE PROPER

REMEDY OF A PARTY DESIRING TO APPEAL BY *CERTIORARI* A JUDGMENT, FINAL ORDER OR RESOLUTION OF THE COURT OF APPEALS; CASE AT BAR.— As to the fifth and last issue, both the Padayhags and the OSG are correct that SMC availed of the wrong remedy. A petition for review on *certiorari* before the Supreme Court under Rule 45 is the proper remedy of a party desiring to appeal by *certiorari* a judgment, final order or resolution of the CA. Also, SMC is not justified to avail itself of a Rule 65 *certiorari* petition after its earlier attempt to avail of a Rule 45 *certiorari* petition had failed. SMC, prior to the filing of the SMC Petition, attempted to comply with a Rule 45 *certiorari* petition when on February 5, 2013, it filed an "Urgent Motion for Extension of Time to File Petition for Review on Certiorari under Rule 45 of the Rules of Court" in UDK 14834. However, in its Resolution dated August 12, 2013, the Court resolved to deny SMC's motion for extension for lack of payment of docket fees pursuant to Sections 2 and 3, Rule 45 in relation to Section 5(c), Rule 56 of the 1997 Rules of Civil Procedure. Thereafter, an Entry of Judgment was issued certifying that the said Resolution had become final and executory on November 8, 2013. Given that SMC resorted to successive Rule 45 and Rule 65 *certiorari* petitions to question the CA Decision and Resolution and that the Rule 45 *certiorari* petition had already been denied, the denial of the SMC Petition is in order because *certiorari* is not and cannot be made a substitute for an appeal where the latter remedy is available but was lost through fault or negligence as in this case where the appeal was lost due to non-payment of docket fees.

APPEARANCES OF COUNSEL

Mark Anthony S. Padayhag for petitioner.
Manileño Apiag for Southern Mindanao Colleges.
The Solicitor General for public respondents.

D E C I S I O N

CAGUIOA, *J.*:

G.R. No. 202872 is a Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Court while G.R. No. 206062 is a Petition[2] for *Certiorari* under Rule 65. Both Petitions assail the Decision[3] of the Court of Appeals[4] (CA) dated July 31, 2012 in CA-G.R. CV No. 01642.[5]

In G.R. No. 202872 (Padayhag Petition), petitioner Lourdes M. Padayhag (or heirs of Lourdes M. Padayhag)[6] did not file a motion for reconsideration of the CA Decision and went directly to the Court. In G.R. No. 206062 (SMC Petition), petitioner Southern Mindanao Colleges (SMC) also assails the CA Resolution[7] dated January 10, 2013 denying the motion for reconsideration filed by SMC. The CA Decision dismissed SMC's appeal of the Decision[8] dated May 30, 2006 of the Regional Trial Court, 9th Judicial Region, Multi-Sala Station, Pagadian City (RTC) in Cadastral Case No. N-17 and ruled that the RTC Decision is void *ab initio* for having been rendered without jurisdiction.[9]

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[1] *Rollo* (G.R. No. 202872), pp. 10-40.

[2] *Rollo* (G.R. No. 206062), pp. 5-26.

[3] *Rollo* (G.R. No. 202872), pp. 42-49; *rollo* (G.R. No. 206062), pp. 28-35. Penned by Associate Justice Edgardo T. Lloren, with Associate Justices Maria Elisa Sempio Diy and Jhosep Y. Lopez concurring.

[4] Twenty Third Division.

[5] Also referred to as CA-G.R. No. 01642-MIN in other parts of the *rollo*.

[6] Hereinafter referred to as Padayhags.

[7] *Rollo* (G.R. No. 206062), pp. 37-39. Penned by Associate Justice Edgardo T. Lloren, with Associate Justices Jhosep Y. Lopez and Henri Jean Paul B. Inting concurring.

[8] *Rollo* (G.R. No. 202872), pp. 52-65. Penned by Executive Judge Harun Bagis Ismael.

[9] *Id*. at 48, 49; *rollo* (G.R. No. 206062), pp. 34, 35.

Facts and Antecedent Proceedings

The CA Decision states the following facts as culled from the records:

This case involves six (6) parcels of land identified as Lot Nos. 2883, 2888, 2921, 2922, 2102, and 2104. These lots are claimed by two (2) parties, namely: the Heirs of Lourdes Padayhag, and Southern Mindanao Colleges (SMC).

The first two lots (Lot Nos. 2102 and 2104 [Santa Lucia Lots]) are located at Jamisola Street, Santa Lucia District, Pagadian City. The other four lots (Lot Nos. 2883, 2888, 2921, and 2922 [Lumbia Lots]) are located at Lumbia District, Pagadian City.

The Director of Lands, acting for and in behalf of the Government, instituted with the then Court of First Instance of Zamboanga del Sur (now RTC of Pagadian City) Cadastral Case No. N-17, GLRO CAD Rec. No. N-468 pursuant to the government's initiative to place all lands under the Cadastral System.

On January 4, 1967, Lourdes Padayhag filed her Answer in Cadastral Case No. N-17.

On January 18, 1967, SMC filed its Answer in Cadastral Case No. N-17.

The Heirs of Lourdes Padayhag [Padayhags] claim that the Spouses Federico and Lourdes Padayhag are the original owners of [the Lumbia] Lots [(Lot Nos. 2883, 2888, 2921, and 2922)]. These lots are part of the 5-hectare landholding of their father, Federico Padayhag. On August 31, 1948, Spouses Federico and Lourdes Padayhag and Southern Mindanao Institute ([SMI,] now Southern Mindanao Colleges) entered into an Agreement Referring to Real Property conveying the possession of these lots to SMI in consideration of 30 shares of stock of SMI. When x x x [SMC] succeeded x x x SMI, x x x Lourdes Padayhag wanted to return the shares of stock issued to them so that the Padayhags could get back the land subject of the contract.

As for [the Sta. Lucia Lots (Lot Nos. 2102 and 2104)], the Padayhags [claim] that since 1927 they occupied 300 square meters of Lot [No.] 2102 and 412 square meters of Lot [No.] 2104. However, when a cadastral survey was made on [L]ot [N]os. 2102 and 2104, they were not able to object as they were not informed of such survey. They

protested with the Bureau of Lands asserting that there was error in the survey of the boundaries.

On the other hand, x x x SMC argued that it bought [L]ot [N]o. 2102 from Mangacop Ampato evidenced by a Deed of Conveyance of Real Estate executed on January 22, 1960; and [L]ot [N]o. 2104 from Adriano Arang evidenced by a Deed of Absolute Sale executed on January 31, 1964. Likewise, the said conveyance was reflected in the Status Book of the Bureau of Lands.

On May 30, 2006, the RTC, sitting as Land Registration Court, rendered a Decision in favor of SMC, the dispositive portion of which reads as follows:

> "WHEREFORE, this court sitting as cadastral court, adjudicates, as it hereby adjudicate and award Lot [N]os. 2102 [and] 2104, situated at corners Jamisola and Aquino Streets, Santa Lucia District, Pagadian City, and Lot [N]os. 2883, 2888, 2921 and 2922, all situated at Pagadian City, together with all the improvements thereon, to [c]laimant Southern Mindanao Colleges, thru its President, with principal office at Pagadian City.
>
> SO ORDERED."[10]

On July 19, 2006, the Padayhags filed a motion for reconsideration which was granted in a Resolution[11] dated December 27, 2007, the dispositive portion of which is quoted [below:][12]

> "WHEREFORE, PREMISES CONSIDERED, judgment is hereby rendered granting the Motion for Reconsideration of the [c]laimant Heirs of Lourdes Padayhag and
>
> 1. REVERSING the previous decision of this Court dated May 30, 2006 over subject Lot Nos. 2102, 2104, 2883, 2888, 2921, and 2922, Pls-119 awarding said lots to [c]laimant SMC, and awarding portions of Cadastral Lot Nos. 2102 and 2104, or Lot No. 2102-A and 2104-A, and Cadastral Lot Nos. 2883, 2888, 2921, and 2922 to the [c]laimants-Heirs of Lourdes Padayhag;

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[10] *Id*. at 45, 65; *id*. at 31.

[11] *Id*. at 66-82. Penned by Presiding Judge Reinerio (Abraham) B. Ramas.

[12] *Id*. at 43-45; *id*. at 29-31.

2. Return of what has been receive[d], proceeding from the void Agreement Regarding Real Property, namely Cadastral Lot Nos. 2883, 2888, 2921, and 2922 to the [c]laimants-Heirs of Lourdes Padayhag, and the thirty shares of [stock] to [c]laimant SMC; and

3. Declaring the remaining portions of Cadastral Lot Nos. 2102 and 2104, namely Lot Nos. 2102-B and 2104-B as alienable lands of the public domain.

SO ORDERED."[13]

Aggrieved by the RTC Decision, SMC appealed to the CA. The CA dismissed the appeal for lack of merit and ruled that:

In the present case, there being no indication at all from the records that notice of the Order for Initial Hearing was published in the *Official Gazette* and in a newspaper of general circulation, the decision rendered by the RTC of Pagadian City is void *ab initio* for having been rendered without jurisdiction.[14]

The dispositive portion of the CA Decision states:

WHEREFORE, the appeal is hereby DISMISSED for lack of merit.

SO ORDERED.[15]

SMC filed a Motion for Reconsideration,[16] which was denied by the CA in its Resolution dated January 10, 2013 while the Padayhags filed their Petition with the Court.

On February 5, 2013, SMC filed an "Urgent Motion for Extension of Time to File Petition for Review on Certiorari under Rule 45 of the Rules of Court" in UDK 14834.[17] In a Resolution dated August 12, 2013, the Court resolved to deny SMC's motion for extension for lack of payment of docket fees pursuant to

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[13] *Id*. at 82; see also *id*. at 42-43 and *id*. at 28-29.

[14] *Id*. at 48; *id*. at 34.

[15] *Id*. at 49; *id*. at 35.

[16] *Rollo* (G.R. No. 206062), pp. 40-46.

[17] *Rollo* (UDK 14834), pp. 2-5.

Sections 2 and 3, Rule 45 in relation to Section 5(c), Rule 56 of the 1997 Rules of Civil Procedure, as amended.[18] Thereafter, an Entry of Judgment was issued certifying that the said Resolution had become final and executory on November 8, 2013.[19]

On March 8, 2013, SMC filed a Petition for *Certiorari* (under Rule 65 of the Rules of Court).

Anent the Padayhag Petition, SMC filed a Comment[20] dated February 14, 2013. The Padayhags filed a Reply[21] dated February 18, 2013. Public respondent Director of Lands, through the Office of the Solicitor General (OSG), filed a Comment[22] dated April 15, 2013. The OSG argued that the CA did not err in setting aside the May 30, 2006 Decision and December 27, 2007 Resolution of the RTC for having been rendered without jurisdiction and pointed to the lack of publication in the Official Gazette of the notice of the initial hearing as required by Act No. (Act) 2259, the Cadastral Act.[23] The OSG cited as additional ground the deprivation of the State of its day in court because the OSG was allegedly not furnished with copies of the court orders, notices and decisions in the cadastral case.[24]

The Padayhags filed a Reply[25] dated May 16, 2013. They argued that the requirement of publication of the notice of initial hearing was complied with. They mentioned that they have attached the certified copies of the pertinent pages of the Official Gazette in their previous submissions[26] with the Court.

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[18] *Id*. (unnumbered); *rollo* (G.R. No. 206062), p. 178.

[19] *Id*. (unnumbered); *id*. at 179.

[20] *Rollo* (G.R. No. 202872), pp. 120-126.

[21] *Id.* at 128-139.

[22] *Id*. at 152-164.

[23] *Id*. at 156-159.

[24] *Id*. at 159-162.

[25] *Id*. at 165-169.

[26] See *id*. at 166. Certified copy of the first publication in the Official Gazette (OG) was attached as Annex "E" (*id*. at 83-86) to the Padayhag

The Court in its Resolution[27] dated June 19, 2013 resolved to consolidate G.R. No. 206062 with G.R. No. 202872 to avoid conflicting decisions on related cases and to save the time and resources of the Court, both petitions involving the same parties, the same facts and issues and assail the same CA Decision.

The OSG on behalf of the public respondents filed a Comment[28] dated September 24, 2013 to the consolidated petitions. In the Comment, the OSG argued that SMC availed of the wrong remedy. SMC should have filed a Rule 45 petition instead of a Rule 65 *certiorari* petition,[29] and the assailed CA Decision and Resolution are not tainted with grave abuse of discretion.[30] The OSG also reiterated the lack of jurisdiction of the RTC due to the lack of publication of the notice of initial hearing.[31] Further, the OSG argued that it was not furnished with copies of the court orders, notices and decisions in the cadastral case and, thus, the State was deprived its day in court, rendering the RTC Decision void.[32]

In their Supplemental Comment[33] dated October 25, 2013, the Padayhags alleged that the filing by SMC of its Rule 65 *certiorari* petition did not cure the jurisdictional defect of the earlier denial of SMC's "Urgent Motion for Extension of Time to File Petition for Review on Certiorari under Rule 45 of the Rules of Court" for failure to pay the appeal fee.[34]

Petition and of the second publication in the OG was attached as Sub-Annex "E-1" (*id*. at 103-106) to their Manifestation with Motion to Substitute Heirs dated October 13, 2012 (*id*. at 97-102).

[27] *Rollo* (G.R. No. 206062), pp. 70-71.

[28] *Id*. at 80-96.

[29] See *id.* at 85.

[30] *Id*. at 86.

[31] *Id*. at 86-89.

[32] *Id*. at 90-93.

[33] *Id*. at 107-111.

[34] *Id*. at 108.

SMC filed a Reply[35] dated May 19, 2014 to the Padayhags' Supplemental Comment wherein it explained the delay in the filing thereof, the choice of the remedy that it availed of, and the grave abuse of discretion amounting to lack of jurisdiction that CA committed.[36] SMC also filed a Reply[37] dated October 7, 2014 to the OSG's Comment, reiterating essentially the arguments that it raised in its earlier Reply.

The Padayhags filed their Reply[38] dated March 25, 2015. They stated therein that they agreed with the OSG that the remedy of *certiorari* under Rule 65 is not a substitute for lapsed appeal by *certiorari* under Rule 45.[39] Further, they argued that they complied with the publication of the notice of initial hearing requirement.[40]

The Padayhags filed their Memorandum[41] dated November 12, 2015. The OSG filed a Memorandum[42] dated December 28, 2015. SMC filed its Memorandum[43] dated November 24, 2015. The Padayhags subsequently filed on December 3, 2015 a Motion for Leave to File Amended Memorandum[44] dated December 2, 2015 and an Amended Memorandum[45] dated November 12, 2015.

Issues

The pertinent issues raised in the consolidated Petitions are the following:

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[35] *Id*. at 116-125.

[36] *Id*. at 117-124.

[37] *Id*. at 140-150.

[38] *Id*. at 164-177.

[39] *Id*. at 166-167.

[40] *Id*. at 168-176.

[41] *Id*. at 265-312.

[42] *Id*. at 327-342.

[43] *Id*. at 359-383.

[44] *Id*. at 423-426.

[45] *Id*. at 427-476.

(1) whether the CA erred in setting aside the RTC Decision and Resolution for want of jurisdiction;

(2) whether the RTC's failure to notify the OSG of the cadastral proceedings and the orders therein deprived the State of due process and rendered the RTC Decision and Resolution void;

(3) whether the CA erred in failing to decide on the nature of the "Agreement Referring to Real Property" which covers Lot Nos. 2883, 2888, 2921 and 2922;

(4) whether there remain mixed questions of law and facts as to Lot Nos. 2102 and 2104 that should be remanded to the CA for its resolution; and

(5) whether SMC's *certiorari* petition under Rule 65 is the proper remedy to assail the CA Decision.

The Court's Ruling

To recall, the CA in the assailed Decision epigrammatically justified the dismissal of the appeal for lack of merit in this wise:

> In the present case, there being no indication at all from the records that notice of the Order for Initial Hearing was published in the *Official Gazette* and in a newspaper of general circulation, the decision rendered by the RTC of Pagadian City is void *ab initio* for having been rendered without jurisdiction.[46]

The Padayhags counter the CA's finding of lack of publication and assert that:

> x x x the *Notice of Initial Hearing* for **Cadastral Case No. N-17, LRC Cadastral Record No. N-468** was published in successive issues of the Official Gazette on October 24 and 31, 1966. In particular, it was published in the **Official Gazette Volume 62, Number 43 and 44**. x x x The name of one of the Heirs of Lourdes Padayhag, Federico Padayhag, Jr. was even mentioned in **O.G. Vol. 62, No. 44** in *page 8314* thereto as one of the known claimants. The *Notice of Initial Hearing* was published in **OG Vol. No. 62[**,**] No. 43** *pages 8044* to

[46] *Id*. at 34; *rollo* (G.R. No. 202872), p. 48.

8047 (***Sub-Annexes E-1 and E-2***, attached to the *Motion for Leave to File Manifestation with Motion for Substitution of Heirs*) and **O.G. Vol. 62, No. 44**, *pages 8312* to *8315* (**Annex "E,"** attached to the *Petition for Review on Certiorari* under Rule 45).[47]

A verification of the documents adverted to by the Padayhags, which bear a certification by the University of the Philippines Library, Media Service Section, Diliman, Quezon City that they are microfilm print-outs of the Official Gazette issues concerned, reveals the presence of a Notice of Initial Hearing in Cadastral Case No. N-17, LRC Cadastral Record No. N-468 before the then Court of First Instance of Zamboanga del Sur addressed to the Solicitor General, Adriano Arang, Mangacap Ampato, and Federico Padayhag, Jr. among others, stating that:

> Whereas, a petition has been presented to said Court by the Director of Lands, praying that the titles to the following described lands or the various parcels thereof, be settled and adjudicated:
>
> A parcel of land with the buildings and improvements thereon, containing an area of 236,6925 hectares, more or less, divided into 1,409 lots, situated in the Municipality of Pagadian, Province of Zamboanga del Sur, the same being designated as Pagadian Public Lands Subdivision Pls-119, Case 1 x x x.
>
> You are hereby cited to appear at the Court of First Instance of Zamboanga del Sur, at its session to be held in the Municipality of Pagadian, Province of Zamboanga del Sur, Philippines, on the 16th day of January, 1967, at 8:00 o'clock in the forenoon, to present such claims as you may have to said lands or any portion thereof, and to present evidence if any you [may] have, in support of such claims.
>
> And unless you appear at the time and place aforesaid, your default will be recorded and the title to the lands will be adjudicated and determined in accordance with the prayer of the petition and upon the evidence before the Court, and you will be forever barred from contesting said application or any decree entered thereon.
>
> Witness the Hon. Antonio Montilla, Judge of said Court, the 2nd day of June, in the year 1966.[48]

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[47] *Id*. at 502.

[48] *Rollo* (G.R. No. 202872), pp. 86, 106.

The Notice was attested to by Antonio H. Noblejas, then Commissioner of Land Registration and issued at Manila on September 12, 1966.[49]

Act 2259 (The Cadastral Act, enacted on February 11, 1913) provides:

> SEC. 7. Upon the receipt of the order of the court setting the time for initial hearing of the petition the Chief of the General Land Registration Office shall cause notice thereof to be **published twice, in successive issues of the Official Gazette**, in the English language. The notice shall be issued by order of the court, attested by the Chief of the General Land Registration Office, and shall be in form substantially as follows:
>
> x x x x x x x x x
>
> (Emphasis and underscoring supplied)

On the other hand, Act 496 (The Land Registration Act, approved on November 6, 1902) provides:

> SEC. 31. Upon receipt of the order of the court setting the time for initial hearing of the application from the clerk of Court of First Instance, the Chief of the General Land Registration Office shall cause a notice thereof to be **published twice, in successive issues of the *Official Gazette***, in the English language. The notice shall be issued by order of the court, attested by the Chief of the General Land Registration Office, and shall be in form substantially as follows:
>
> x x x x x x x x x
>
> (Emphasis and underscoring supplied)

The above quoted provisions of The Cadastral Act and The Land Registration Act are amended by Republic Act No. (RA) 96, which took effect upon its approval on March 24, 1947.

Presidential Decree No. (PD) 1529 (the Property Registration Decree, done/approved on June 11, 1978) provides:

> SEC. 23. *Notice of initial hearing, publication, etc.* — x x x

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[49] *Id.*

The public shall be given notice of the initial hearing of the application for land registration by means of (1) publication; (2) mailing; and (3) posting.

1. By publication. —

Upon receipt of the order of the court setting the time for initial hearing, the Commissioner of Land Registration shall cause a notice of initial hearing to be published once in the Official Gazette and once in a newspaper of general circulation in the Philippines: Provided, however, that the publication in the Official Gazette shall be sufficient to confer jurisdiction upon the court. Said notice shall be addressed to all persons appearing to have an interest in the land involved including the adjoining owners so far as known, and "to all whom it may concern". Said notice shall also require all persons concerned to appear in court at a certain date and time to show cause why the prayer of said application shall not be granted.

2. By mailing. —

(a) Mailing of notice to persons named in the application. — The Commissioner of Land Registration shall also, within seven days after publication of said notice in the Official Gazette, as hereinbefore provided, cause a copy of the notice of initial hearing to be mailed to every person named in the notice whose address is known.

(b) Mailing of notice to the Secretary of Public Highways, the Provincial Governor and the Mayor. — If the applicant requests to have the line of a public way or road determined, the Commissioner of Land Registration shall cause a copy of said notice of initial hearing to be mailed to the Secretary of Public Highways, to the Provincial Governor, and to the Mayor of the municipality or city, as the case may be, in which the land lies.

(c) Mailing of notice to the Secretary of Agrarian Reform, the Solicitor General, the Director of Lands, the Director of Public Works, the Director of Forest Development, the Director of Mines and the Director of Fisheries and Aquatic Resources. — If the land borders on a river, navigable stream or shore, or on an arm of the sea where a river or harbor line has been established, or on a lake, or if it otherwise appears from the application or the proceedings that a tenant-farmer or the national government may have a claim adverse to that of the applicant, notice of the initial hearing shall be given in the same manner to the Secretary of Agrarian Reform, the Solicitor General, the Director of Lands, the Director of Mines and/or the Director of Fisheries and Aquatic Resources, as may be appropriate.

3. By posting. —

The Commissioner of Land Registration shall also cause a duly attested copy of the notice of initial hearing to be posted by the sheriff of the province or city, as the case may be, or by his deputy, in a conspicuous place on each parcel of land included in the application and also in a conspicuous place on the bulletin board of the municipal building of the municipality or city in which the land or portion thereof is situated, fourteen days at least before the date of initial hearing.

The court may also cause notice to be served to such other persons and in such manner as it may deem proper.

The notice of initial hearing shall, in form, be substantially as follows:

x x x x x x x x x

Given that the initial hearing based on the published notice was scheduled on January 16, 1967, the applicable laws were Act 496 and Act 2259 which required **only** the notice of initial hearing to be **published twice, in successive issues of the Official Gazette**. Thus, it was erroneous for the CA to have required an additional publication of the said notice in a newspaper of general circulation. Such requirement was imposed only with the passage of PD 1529.

As proof of the publication in two successive issues of the Official Gazette of the Notice of Initial Hearing for Cadastral Case No. N-17, LRC Cadastral Record No. N-468, the Padayhags submitted to the Court microfilm print-outs of the issues of the Official Gazette on October 24 and 31, 1966, Volume 62, Number 43, pages 8044 to 8047, and Number 44, pages 8312 to 8315 certified by the University of the Philippines Library, Media Service Section, Diliman, Quezon City. Adriano Arang, Mangacap Ampato, and Federico Padayhag, Jr. appear in the said issues among the many claimants of the 1,409 lots with a combined area of 236,6925 hectares situated in the then Municipality of Pagadian, Province of Zamboanga del Sur and designated as Pagadian Public Lands Subdivision Pls-119, Case 1. Mangacap Ampato or "Mangacop Ampato" and Adriano Arang are allegedly predecessors-in-interest of SMC. The case in the RTC is docketed as "CADASTRAL CASE NO. N-17 LRC CAD. REC. NO. N-468

LOTS NOS. 2102, 2104, and 2883, 2888, 2921 and 2922, Pls-119."[50]

Given that Cadastral Case No. N-17, LRC Cad. Rec. No. N-468 does not only cover the six lots in dispute in this case, but around 1,409 lots, the copies of the issues of the Official Gazette where the Notice of the Order for Initial Hearing was published could have been included in the records of the cadastral proceedings of the other lots included therein. Thus, it was imprudent for the CA to rule that the Decision rendered by the RTC is void *ab initio* for having been rendered without jurisdiction. The repercussion of such pronouncement by the CA is far-reaching as it would cast doubt on the validity of the cadastral proceedings of the 1,409 lots in the then Municipality of Pagadian. At the very least, the CA should have required the parties to present proof of the publication of the Order for Initial Hearing in the pertinent issues of the Official Gazette.

In *Republic v. CA*,[51] the Court noted that anent the publication requirement in reconstitution proceedings under Section 13,[52] RA 26, mere submission of the subject Official Gazette issues would evidence *only* the first element — publication in two consecutive issues of the Official Gazette, and what must be proved is *not* the content of the Order published in the Official Gazette but the fact of two-time publication in successive issues at least 30 days before the hearing date.[53] The Court further

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[50] *Rollo* (G.R. No. 202872), p. 52.

[51] 317 Phil. 653 (1995).

[52] SEC. 13. The court shall cause a notice of the petition, filed under the preceding section, to be published, at the expense of the petitioner, twice in successive issues of the *Official Gazette*, and to be posted on the main entrance of the municipality or city in which the land is situated, at the provincial building and of the municipal building at least thirty days prior to the date of hearing. The court shall likewise cause a copy of the notice to be sent, by registered mail or otherwise, at the expense of the petitioner, to every person named therein whose address is known, at least thirty days prior to the date of hearing. x x x The petitioner shall, at the hearing, submit proof of the publication, posting and service of the notice as directed by the court.

[53] *Republic v. CA*, *supra* note 51, at 660-661.

stated therein that it has consistently accepted the probative value of certifications of the Director of the National Printing Office in reconstitution cases.[54] The Court even quoted therein the lower court's observation that the Official Gazette is an official publication of the government and consequently, the Court can take judicial notice of its contents.[55]

In this case, no certification from the Director of the National Printing Office was presented. The certification alone without the copy of the Notice of Initial Hearing may not suffice. There is a need to verify the contents of the said Notice to ensure that the subject properties (6 lots) and parties/claimants are covered thereby. The Notice of Initial Hearing was not only for subject properties and parties/claimants, but for 1,409 lots and numerous claimants. If the Notice of Initial Hearing pertained to a specific registered property, as in the case of the reconstitution of a title, then a certification of publication from the Director of the National Printing Office in this wise would suffice:

> Order relative to LRC No. F-504-84 In Re: Petition for Judicial Reconstitution of the Burned/Destroyed Original Copy of Transfer Certificate of Title No. T-304198, SPS. FERNANDO DAYAO and REMEDIOS NICODEMUS, x x x was published in the Official Gazette, to wit:
>
> | VOLUME | NUMBER | PAGES | DATE OF ISSUE |
> |---|---|---|---|
> | 85 | 24 | | June 12, 1989 |
> | | 25 | | June 19, 1989 |
>
> June 19, 1989 issue was released for publication on June 28, 1989.[56]

It will be recalled that the Official Gazette was created by decree of Act 453, "An Act providing for the publication by the Insular Government of an Official Gazette, under the general direction of the Department of Public Instruction," which was enacted by the Philippine Commission on September 2, 1902,

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[54] *Id*. at 661.

[55] *Id*. at 658.

[56] *Id*. at 657.

by authority of the United States of America. Vol. 1, No. 1 of the Official Gazette came out on September 10, 1902.[57] In March 5, 1903, Act 664 amended Act 453 to provide for publication of the Official Gazette weekly in two parts, one part in English and the other in Spanish, with each part issued separately and containing, among others, all legislative Acts and resolutions of a public nature of the Insular Legislature, all executive orders, such as decisions of the Supreme Court, the Court of Customs Appeals, and the Court of Land Registration.[58] Subsequently, Commonwealth Act No. 638, "An Act to provide for the uniform publication and distribution of the Official Gazette," was passed by the Third Session of the Second National Assembly on May 22, 1941 and subsequently approved by President Manuel L. Quezon on June 10, 1941.[59] The Administrative Code of 1987 requires publication of laws in the Official Gazette to take effect.[60]

Given that the Official Gazette is the official publication of the government, the Court can take judicial notice thereof pursuant to Section 2 of Rule 129, Rules of Court, which provides:

> SEC. 2. *Judicial notice, when discretionary*. — A court may take judicial notice of matters which are of public knowledge, or are capable of unquestionable demonstration, or ought to be known to judges because of their judicial functions.

Thus, the Court takes judicial notice of the publication of the Notice of Initial Hearing for Cadastral Case No. N-17, LRC Cadastral Record No. N-468 in the issues of the Official Gazette on October 24 and 31, 1966, Volume 62, Number 43, pages 8044 to 8047, and Number 44, pages 8312 to 8315.

As to the alleged failure by the RTC to notify the OSG of the cadastral proceedings and the orders therein which purportedly

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[57] <www.officialgazette.gov.ph/history-of-the-official-gazette>, last accessed on October 26, 2017.

[58] *Id*.

[59] *Id*.

[60] *Id*.

deprived the State of due process and would render the RTC Decision and Resolution void, the Court finds it hard to reconcile the position taken by the OSG in this case with the nature of cadastral proceedings.

Sections 1 and 5 of the Cadastral Act (Act 2259) provides:

SECTION 1. When, in the opinion of the Governor-General (now the President), the public interests require that the title to any lands be settled and adjudicated, he may to this end order the Director of Lands to make a survey and plan thereof.

The Director of Lands shall, thereupon, give notice to persons claiming an interest in the lands, and to the general public, of the day on which such survey will begin, giving as full and accurate description as possible of the lands to be surveyed. Such notice shall be published in two successive issues of the Official Gazette, and a copy of the notice in the English and Spanish languages shall be posted in a conspicuous place on the chief municipal building of the municipality, township or settlement in which the lands, or any portion thereof, are situated. A copy of the notice shall also be sent to the president of such municipality, township, or settlement, and to the provincial board.

x x x x x x x x x

SECTION 5. When the lands have been surveyed and platted, the Director of Lands represented by the Attorney-General (now Solicitor General), shall institute registration proceedings, by petition against the holders, claimants, possessors, or occupants of such lands or any part thereof, stating in substance that the public interests require that the titles to such lands be settled and adjudicated, and praying that such titles be so settled and adjudicated.

x x x x x x x x x

Evidently, the herein cadastral proceedings were supposed to have been instituted by the then Director of Lands represented by the Solicitor General. For the OSG to now deny that it had no involvement in or that it had not been notified of the proceedings is not in keeping with the nature of cadastral proceedings. The Court is not prepared to nullify the cadastral proceedings involving the then municipality of Pagadian without due process being accorded to all the claimants involved therein

and without the OSG going thoroughly over the records of the entire cadastral proceedings to verify whether it participated therein. It must be noted that in these petitions, the RTC Decision was finally rendered on May 30, 2006 after 40 years from June 2, 1966, the date of the Notice of Initial Hearing. To summarily nullify the cadastral proceedings at this juncture would be unjust. Suffice it say that for purposes of these cases, the Court is relying on the presumption that official duty has been regularly performed pursuant to Section 3(m), Rule 131 of the Rules of Court.

Regarding the third and fourth issues, these involve questions of fact and the CA should be given the opportunity to rule on them as the reviewer of facts.[61] In reviews on *certiorari,* the Court, not being a trier of facts, addresses only questions of law;[62] and since the CA has not resolved the cases on the merits, remand to the CA is in order. The consolidated cases are being remanded to the CA to enable the CA to rule on the factual issues of the consolidated cases.

As to the fifth and last issue, both the Padayhags and the OSG are correct that SMC availed of the wrong remedy. A petition for review on *certiorari* before the Supreme Court under Rule 45 is the proper remedy of a party desiring to appeal by *certiorari* a judgment, final order or resolution of the CA.[63]

Also, SMC is not justified to avail itself of a Rule 65 *certiorari* petition after its earlier attempt to avail of a Rule 45 *certiorari* petition had failed. SMC, prior to the filing of the SMC Petition, attempted to comply with a Rule 45 *certiorari* petition when on February 5, 2013, it filed an "Urgent Motion for Extension of Time to File Petition for Review on Certiorari under Rule 45 of the Rules of Court" in UDK 14834.[64] However, in its

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[61] See *Far Eastern Surety and Insurance Co., Inc. v. People*, 721 Phil. 760, 769 (2013).

[62] *Id*.

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

[64] *Rollo* (UDK 14834), pp. 2-5.

Resolution dated August 12, 2013, the Court resolved to deny SMC's motion for extension for lack of payment of docket fees pursuant to Sections 2 and 3, Rule 45 in relation to Section 5(c), Rule 56 of the 1997 Rules of Civil Procedure.[65] Thereafter, an Entry of Judgment was issued certifying that the said Resolution had become final and executory on November 8, 2013.[66]

Given that SMC resorted to successive Rule 45 and Rule 65 *certiorari* petitions to question the CA Decision and Resolution and that the Rule 45 *certiorari* petition had already been denied, the denial of the SMC Petition is in order because *certiorari* is not and cannot be made a substitute for an appeal where the latter remedy is available but was lost through fault or negligence as in this case where the appeal was lost due to non-payment of docket fees.[67]

The denial of the SMC Petition is, however, of no moment since the instant cases are being remanded to the CA and the CA will have to pass upon the respective claims of the Padayhags and SMC on the lots in question in the resolution of the appeals before the CA on the merits.

WHEREFORE, the Petition in G.R. No. 202872 is hereby **GRANTED**. The Court of Appeals Decision dated July 31, 2012 and, consequently, Resolution dated January 10, 2013 in CA-G.R. CV No. 01642 are hereby **REVERSED** and **SET ASIDE**. The consolidated cases are **REMANDED** to the Court of Appeals for the resolution of the appeals on the merits.

SO ORDERED.

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

Reyes, Jr., J., on leave.

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[65] *Id.* (unnumbered); *rollo* (G.R. No. 206062), p. 178.

[66] *Id.* (unnumbered); *id.* at 179.

[67] See *Spouses Dycoco v. Court of Appeals*, 715 Phil. 550, 562 (2013).

FIRST DIVISION

[G.R. No. 204289. November 22, 2017]

FERNANDO MANCOL, JR., *petitioner, vs.* **DEVELOPMENT BANK OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; ADMISSIBILITY; DOCUMENTARY EVIDENCE; PAROL EVIDENCE RULE; PAROL EVIDENCE; MAY BE ENTERTAINED WHEN A PARTY FAILS TO TIMELY OBJECT TO THE ADMISSION THEREOF AND THE OBJECTION IS DEEMED WAIVED.— "The parol evidence rule forbids any addition to, or contradiction of, the terms of a written agreement by testimony or other evidence purporting to show that different terms were agreed upon by the parties, varying the purport of the written contract." This, however, is merely a general rule. Provided that a party puts in issue in its pleading any of the exceptions in the second paragraph of Rule 130, Section 9 of the Revised Rules on Evidence, a party may present evidence to modify, explain or add to the terms of the agreement. "Moreover, as with all possible objections to the admission of evidence, a party's failure to timely object is deemed a waiver, and parol evidence may then be entertained. x x x Here, in order to prove the verbal agreement allegedly made by DBP, petitioner invoked the fourth exception under the parol evidence rule, *i.e.*, the existence of other terms agreed to by the parties or their successors-in-interest after the execution of the written agreement, by offering the testimonies of Villanueva and Mancol, Sr. The bank, however, failed to make a timely objection against the said testimonies during the trial since DBP was declared in default. Thus, DBP waived the protection of the parol evidence rule.

2. ID.; ID.; ID.; SHOULD NOT BE CONFOUNDED WITH PROBATIVE VALUE; ADMISSIBILITY OF EVIDENCE AND WEIGHT OF EVIDENCE, DISTINGUISHED.— [T]he admissibility of the testimonial evidence as an exception to the parol evidence rule does not necessarily mean that it has weight. Admissibility of evidence should not be confounded with its probative value. "The admissibility of evidence depends

on its relevance and competence, while the weight of evidence pertains to evidence already admitted and its tendency to convince and persuade." The admissibility of a particular item of evidence has to do with whether it meets various tests by which its reliability is to be determined, so as to be considered with other evidence admitted in the case in arriving at a decision as to the truth. The weight of evidence is not determined mathematically by the numerical superiority of the witnesses testifying to a given fact, but depends upon its practical effect in inducing belief on the part of the judge trying the case. "Admissibility refers to the question of whether certain pieces of evidence are to be considered at all, while probative value refers to the question of whether the admitted evidence proves an issue." "Thus, a particular item of evidence may be admissible, but its evidentiary weight depends on judicial evaluation within the guidelines provided by the rules of evidence."

3. **ID.; ID.; ID.; TESTIMONIAL EVIDENCE; HEARSAY RULE; HEARSAY EVIDENCE; REFERS TO EVIDENCE, NOT OF WHAT THE WITNESS KNOWS HIMSELF BUT, OF WHAT HE HAS HEARD FROM OTHERS AND IT IS NOT ONLY LIMITED TO ORAL TESTIMONY BUT LIKEWISE APPLIES TO WRITTEN STATEMENTS.—** It is a basic rule in evidence that a witness can testify only on the facts that he knows of his own personal knowledge, *i.e.*, those which are derived from his own perception. A witness may not testify on what he merely learned, read or heard from others because such testimony is considered hearsay and may not be received as proof of the truth of what he has learned, read or heard. Hearsay evidence is evidence, not of what the witness knows himself but, of what he has heard from others; it is not only limited to oral testimony or statements but likewise applies to written statements. The personal knowledge of a witness is a substantive prerequisite for accepting testimonial evidence that establishes the truth of a disputed fact. A witness bereft of personal knowledge of the disputed fact cannot be called upon for that purpose because his testimony derives its value not from the credit accorded to him as a witness presently testifying but from the veracity and competency of the extrajudicial source of his information.

4. **CIVIL LAW; CIVIL CODE; OBLIGATIONS AND CONTRACTS; AGENCY; SPECIAL POWER OF ATTORNEY; WHERE POWERS AND DUTIES ARE SPECIFIED AND DEFINED IN AN INSTRUMENT, ALL SUCH POWERS AND DUTIES**

ARE LIMITED AND ARE CONFINED TO THOSE SPECIFIED AND DEFINED, AND ALL OTHER POWERS AND DUTIES ARE EXCLUDED.— [T]he act of entering into a verbal agreement was not stipulated in the SPA. The authority given to Mancol, Sr. was limited to representing and negotiating, on petitioner's behalf, the invitation to bid on the sale of the subject lot x x x. There is nothing in the language of the SPA from which We could deduce the intention of petitioner to authorize Mancol, Sr. to enter into a verbal agreement with DBP. Indeed, it has been held that "[w]here powers and duties are specified and defined in an instrument, all such powers and duties are limited and are confined to those which are specified and defined, and all other powers and duties are excluded." Clearly, the power to enter into a verbal agreement with DBP is conspicuously inexistent in the SPA. To adopt the intent theory advanced by petitioner, in the absence of clear and convincing evidence to that effect, would run afoul of the express tenor of the SPA. It would likewise be contrary to "the rule that a power of attorney must be strictly construed and pursued. The instrument will be held to grant only those powers which are specified therein, and the agent may neither go beyond nor deviate from the power of attorney."

APPEARANCES OF COUNSEL

Buenaflor & Mancol Law Offices for petitioner.
Wilma Donna Anquilo-Garcia for respondent.

D E C I S I O N

TIJAM, *J.*:

Assailed in this Petition for Review on *Certiorari*[1] is the Decision[2] dated February 22, 2012 and Resolution[3] dated

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[1] *Rollo*, pp. 8-33.

[2] Penned by Associate Justice Ramon Paul L. Hernando, with Associate Justices Edgardo L. Delos Santos and Victoria Isabel A. Paredes concurring; *id*. at 36-49.

[3] *Id*. at 51-51A.

September 27, 2012 of the Court of Appeals (CA), Visayas Station in CA-G.R. CEB-CV No. 03030, affirming the Orders dated June 13, 2008,[4] November 4, 2008[5] and April 17, 2009[6] of the Regional Trial Court (RTC) of Calbayog City, Branch 31 in Civil Case No. 923.

Factual Antecedents

Respondent Development Bank of the Philippines (DBP), scheduled an Invitation to Bid for Negotiated Sale on October 13, 2004 at the Mezzanine Floor, over a residential lot with a two-storey building (subject property) covered by TCT No. 2041 located at Navarro Street, Calbayog City, and with Tax Declaration (TD) Nos. 990100600931[7] and 990100600479[8] with a purchase price of ₱1,326,000.[9]

In line with this, Fernando Mancol, Jr. (petitioner) executed a Special Power of Attorney (SPA)[10] appointing his father, Fernando Mancol, Sr. (Mancol, Sr.), to represent and negotiate, on his behalf, the sale of the subject property. Pursuant to the SPA, Mancol, Sr. signed the Negotiated Offer to Purchase[11] and Negotiated Sale Rules and Procedures/Disposition of Assets on a First-Come First Served Basis.[12] DBP then issued an Official Receipt (O.R.) No. 3440018[13] dated October 13, 2004, in the name of Fernando R. Mancol, Jr., paid by Fernando M. Mancol, Sr., in the amount of ₱265,200, as initial payment for the purchase

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[4] Penned by Judge Reynaldo B. Clemens; *id*. at 183-184.

[5] *Id*. at 218-221.

[6] *Id*. at 235-236.

[7] *Id*. at 56.

[8] *Id*. at 57.

[9] *Id*. at 52, 79.

[10] *Id*. at 79.

[11] *Id*. at 55.

[12] *Id*. at 58-60.

[13] *Id*. at 61.

price of the subject property. During the negotiations, DBP officials allegedly agreed, albeit verbally, to: (1) arrange and effect the transfer of title of the lot in petitioner's name, including the payment of capital gains tax (CGT); and (2) to get rid of the occupants of the subject property.[14]

Petitioner paid the balance in the amount of ₱1,060,800, as evidenced by O.R. No. 3440451[15] dated December 10, 2004. Thereafter, DBP, through its Branch Manager Jorge B. Albarillo, executed a Deed of Absolute Sale,[16] in petitioner's favor.

On December 21, 2004, petitioner made a deposit with DBP for the payment of the CGT and documentary stamp tax (DST) in the amount of ₱99,450. DBP acknowledged the deposit and issued O.R. No. 3440537.[17]

Sometime in 2006, DBP reneged on its undertaking based on the oral agreement. DBP returned to the petitioner all the pertinent documents of the sale and issued a Manager's Check (MC) No. 0000956475[18] in the amount of ₱99,450.[19]

In a Letter[20] dated February 21, 2006, petitioner through its counsel demanded from DBP to comply with its verbal undertaking. He returned the MC and all pertinent documents affecting the sale of the subject property to DBP.

DBP, through its Letter[21] dated April 22, 2006, disregarded the subsequent oral agreement and reminded petitioner that DBP has no obligation to eject the occupants and to cause the transfer of title of the lot in petitioner's name.

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[14] *Id*. at 14, 53.

[15] *Id*. at 62.

[16] *Id*. at 63-64.

[17] *Id*. at 65.

[18] *Id*. at 73.

[19] *Id*. at 53.

[20] *Id*. at 74.

[21] *Id*. at 75.

Meanwhile, Mancol, Sr. wrote a Letter[22] dated May 15, 2006 to the Bureau of Internal Revenue (BIR) requesting for a detailed computation of the CGT and DST with penalties and surcharges thereof affecting the sale of the subject property. The BIR, through its Letter[23] dated May 24, 2006 came out with a detailed computation in the total of ₱160,700.88.

In a Letter[24] dated June 2, 2006, petitioner proposed to DBP that he will facilitate the payment of the CGT and DST but DBP should shoulder the penalties and surcharges. The proposal, however, was turned down. As of March 7, 2007, the total amount to be paid which is necessary for the transfer of the title in petitioner's name ballooned to ₱183,553.61 and counting.[25]

On August 24, 2006, petitioner filed a Complaint[26] for damages for breach of contract against DBP before the RTC of Calbayog City, Branch 31. He prayed that DBP be found to have breached its obligation with petitioner; that DBP be held liable to pay the aggregate amount of ₱160,700.88 and surcharges which may be imposed by the BIR at the time of payment; that DBP be ordered to pay damages and attorney's fees; and that DBP be ordered to return the MC dated February 8, 2006 for ₱99,450.

In its Answer with Counter-Claim,[27] DBP alleged that the terms of the Deed of Absolute Sale stated no condition that DBP will work on the document of transfer and to eject the occupants thereon.[28] Assuming that DBP's officials made such a promise, DBP alleged that the same would not be possible since the petitioner did not give any money to DBP for other expenses in going to and from Calbayog City. DBP likewise

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[22] *Id.* at 76.

[23] *Id.* at 77.

[24] *Id.* at 78.

[25] *Id.* at 80.

[26] *Id.* at 52-54.

[27] *Id.* at 81-84.

[28] *Id.* at 81.

alleged that it is not the bank's policy to work for the registration of the instrument of sale of properties.[29] DBP further claimed that petitioner's unilateral act in issuing a check to DBP does not constitute as evidence to prove that DBP assumed the responsibility of registering the instrument of sale. By way of counterclaim, DBP averred that petitioner grossly violated the terms and conditions of the agreement of sale.[30] Petitioner failed to pay, reimburse or assume the financial obligation consequent to the initiation and filing of the writ of possession by DBP against the occupants. Petitioner's failure was contrary to his promise and assurance that he will pay. Petitioner did not comply with the clear and express provisions of the Deed of Absolute Sale and of the rules and procedures of sale on negotiation. DBP, thus, prayed that the complaint be dismissed for lack of jurisdiction and that petitioner be ordered to assume the burden of initiating the ejectment suit and to pay DBP damages, attorney's fees and cost of suit amounting to ₱200,000.

On February 20, 2007, the RTC issued an Order[31] declaring DBP in default by reason of its counsel's failure to appear during the pre-trial and to file its pre-trial brief.

Trial ensued.

During the trial, Rodel Villanueva testified[32] that he was the one commissioned or ordered by a certain Atty. Mar De Asis (Atty. De Asis) of DBP, to go to BIR-Catbalogan, and to bring the following documents: a check worth PhP99,450.00, the amount for the CGT, the title, the TD, and the deed of sale.[33]

Mancol, Sr. testified[34] that he signed the Negotiated Offer to Purchase and Negotiated Sale Rules and Procedures/ Disposition of Assets on a First-Come First Served Basis on

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[29] *Id.* at 82.

[30] *Id.*

[31] *Id.* at 92.

[32] *Id.* at 93-101.

[33] *Id.* at 23-24, 97-98, 100.

[34] *Id.* at 101-131.

behalf of his son, by virtue of the SPA.[35] He stated that after the execution and delivery of the Deed of Absolute Sale, DBP verbally agreed to facilitate the transfer of the title, the payment of the CGT, and to cause the vacation of the occupants of the house and lot. Although he admitted that the verbal agreement contradicted the negotiated rules and agreement.[36] He stated that DBP undertook to get rid of the occupants, when its lawyer filed an *Ex-Parte* Motion for Issuance of a Writ of Possession[37] dated January 11, 2005, which is pending in the RTC.[38]

On April 14, 2008, the RTC Decision[39] ruled in favor of the petitioner, and ordered DBP to return to petitioner the amount of ₱99,450 deposited to it for payment of the CGT and DST; to pay the surcharges and/or interests on the CGT and DST as may be determined by the BIR from June 12, 2005 up to the date of payment; and to pay the petitioner attorney's fees in the amount of ₱15,000. The RTC likewise dismissed DBP's counterclaim.[40]

Thereafter, DBP moved for the reconsideration[41] of the RTC's Decision. DBP alleged, among others, that the testimonies of Villanueva and Mancol, Sr. were hearsay because their statements were based on facts relayed to them by other people and not based on their personal knowledge.

On June 13, 2008, the RTC Order[42] granted DBP's motion and dismissed petitioner's complaint.

Petitioner moved for the reconsideration[43] of the June 13, 2008 Order. For the first time, petitioner alleged that through

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[35] *Id*. at 104-106.

[36] *Id*. at 113-114.

[37] *Id*. at 66-72.

[38] *Id*. at 117.

[39] *Id*. at 161-172.

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

[41] *Id*. at 178-182.

[42] *Id*. at 183-184.

[43] *Id*. at 185-200.

his father, Mancol, Sr., he entered into a contemporaneous verbal agreement with DBP. He argued that since his father was his attorney-in-fact, then his father had personal knowledge of all transactions involving the sale of the subject property. The motion, however, was denied in the RTC Order[44] dated November 4, 2008. The RTC affirmed with modification its June 13, 2008 Order, to read thus:

> **WHEREFORE**, this court finds no reason to disturb its order dated June 13, 2008, subject only to a modification that [DBP] is directed to return to the [petitioner], the total amount of ₱99,450.00 deposited to it for the payment of the [CGT] and [DST], with interest of six percent (6%) *per annum* from December 21, 2004 until its return to the [petitioner].
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> SO ORDERED.[45]

DBP sought reconsideration[46] of the RTC Order dated November 4, 2008, which however, was denied by the RTC in its Order[47] dated April 17, 2009. The RTC ruled that DBP has waived its right to question the return of ₱99,450 to the petitioner since DBP failed to refute such an issue in the RTC Decision dated April 14, 2008.

Both petitioner[48] and DBP[49] appealed the RTC Order dated June 13, 2008 and November 4, 2008, respectively, with the CA.

On February 22, 2012, the CA in its Decision,[50] denied both appeals, the dispositive portion of which reads, thus:

> **WHEREFORE**, in view of the foregoing premises, the appeals filed in this case are hereby **DENIED**. The assailed Orders dated

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[44] *Id*. at 218-221.

[45] *Id*. at 221.

[46] *Id*. at 222-233.

[47] *Id*. at 235-236.

[48] *Id*. at 241-268.

[49] *Id*. at 272-283.

[50] *Id*. at 36-49.

June 13, 2008, November 4, 2008 and April 17, 2009 of the [RTC], Branch 31 of Calbayog City in Civil Case No. 923 are **AFFIRMED**. Costs to be shouldered equally by both parties.

SO ORDERED.[51]

Thereafter, petitioner filed a Motion for Partial Reconsideration,[52] while DBP filed a Motion for Reconsideration,[53] seeking the reversal of the CA Decision dated February 22, 2012. Both motions, however, were denied in the CA Resolution[54] dated September 27, 2012.

Henceforth, only the petitioner filed the instant appeal anchored on the following arguments:

I. THE TESTIMONIES OF [PETITIONER'S] WITNESSES, [VILLANUEVA] AND [MANCOL, SR.] ARE BASED ON PERSONAL KNOWLEDGE AND NOT HEARSAY EVIDENCE, AND THAT THEY SUFFICIENTLY ESTABLISHED THE EXISTENCE AND VALIDITY OF A SUBSEQUENT ORAL AGREEMENT BETWEEN [PETITIONER] AND DBP TO (1) ARRANGE AND EFFECT THE TRANSFER OF THE TORRENS TITLE IN THE NAME OF [PETITIONER], INCLUDING PAYMENT OF [CGT] AND [DSTs], AND (2) TO GET RID OF THE OCCUPANTS IN THE SUBJECT PROPERTY[;]

II. UNDISPUTED RELEVANT AND MATERIAL EVIDENCE ON RECORD ESTABLISHED THE EXISTENCE AND VALIDITY OF THE SUBSEQUENT ORAL AGREEMENT BETWEEN MANCOL, JR. AND DBP, AND THAT TO IGNORE THEM IS TO SANCTION VIOLATION OF MANCOL. JR.'S DUE PROCESS RIGHTS[; AND]

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[51] *Id*. at 49.

[32] *Id*. at 309-324.

[53] *Id*. at 326-331.

[54] *Id*. at 51-51A.

III. [PETITIONER] IS ENTITLED TO THE PAYMENT OF MORAL AND EXEMPLARY DAMAGES, ATTORNEY'S FEES AND COSTS OF SUIT.[55]

The petition fails.

The above assignment of errors make it evident that the only issue involved in this appeal is one of fact: whether or not the testimonies of petitioner's witnesses, Villanueva and Mancol, Sr., should be given probative value to establish the alleged contemporaneous verbal agreement in the sale contract, *i.e.*, that DBP bound itself to arrange and effect the transfer of title of the lot in petitioner's name; and, get rid of the occupants of the subject property.

We answer in the negative.

"The parol evidence rule forbids any addition to, or contradiction of, the terms of a written agreement by testimony or other evidence purporting to show that different terms were agreed upon by the parties, varying the purport of the written contract."[56]

This, however, is merely a general rule. Provided that a party puts in issue in its pleading any of the exceptions in the second paragraph of Rule 130, Section 9[57] of the Revised Rules on

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[55] *Id.* at 21.

[56] *Seaoil Petroleum Corp. v. Autocorp Group, et al.*, 590 Phil. 410, 418 (2008).

[57] Sec. 9. *Evidence of written agreements*. — When the terms of an agreement have been reduced to writing, it is considered as containing all the terms agreed upon and there can be, between the parties and their successors-in-interest, no evidence of such terms other than the contents of the written agreement.

However, a party may present evidence to modify, explain or add to the terms of the written agreement if he puts in issue in his pleading:

(a) An intrinsic ambiguity, mistake or imperfection in the written agreement;

(b) The failure of the written agreement to express the true intent and agreement of the parties thereto;

Evidence, a party may present evidence to modify, explain or add to the terms of the agreement. "Moreover, as with all possible objections to the admission of evidence, a party's failure to timely object is deemed a waiver, and parol evidence may then be entertained.[58]

In the case of *Maunlad Savings & Loan Assoc., Inc. v. CA*,[59] the Court held that:

> The rule is that objections to evidence must be made as soon as the grounds therefor become reasonably apparent. In the case of testimonial evidence, the objection must be made when the objectionable question is asked or after the answer is given if the objectionable features become apparent only by reason of such answer, otherwise the objection is waived and such evidence will form part of the records of the case as competent and complete evidence and all parties are thus amenable to any favorable or unfavorable effects resulting from the evidence.[60] (Citations omitted)

Here, in order to prove the verbal agreement allegedly made by DBP, petitioner invoked the fourth exception under the parol evidence rule, *i.e.*, the existence of other terms agreed to by the parties or their successors-in-interest after the execution of the written agreement, by offering the testimonies of Villanueva and Mancol, Sr.

The bank, however, failed to make a timely objection against the said testimonies during the trial since DBP was declared in default. Thus, DBP waived the protection of the parol evidence rule.

This notwithstanding, We stress that the admissibility of the testimonial evidence as an exception to the parol evidence rule

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(c) The validity of the written agreement; or

(d) The existence of other terms agreed to by the parties or their successors[-]in[-]interest after the execution of the written agreement.

x x x x x x x x x

[58] *Spouses Paras v. Kimwa Construction and Development Corp.*, 757 Phil. 582, 591 (2015).

[59] 399 Phil. 590 (2000).

[60] *Id*. at 600.

does not necessarily mean that it has weight. Admissibility of evidence should not be confounded with its probative value.

"The admissibility of evidence depends on its relevance and competence, while the weight of evidence pertains to evidence already admitted and its tendency to convince and persuade."[61] The admissibility of a particular item of evidence has to do with whether it meets various tests by which its reliability is to be determined, so as to be considered with other evidence admitted in the case in arriving at a decision as to the truth.[62] The weight of evidence is not determined mathematically by the numerical superiority of the witnesses testifying to a given fact, but depends upon its practical effect in inducing belief on the part of the judge trying the case.[63] "Admissibility refers to the question of whether certain pieces of evidence are to be considered at all, while probative value refers to the question of whether the admitted evidence proves an issue."[64] "Thus, a particular item of evidence may be admissible, but its evidentiary weight depends on judicial evaluation within the guidelines provided by the rules of evidence."[65]

It is a basic rule in evidence that a witness can testify only on the facts that he knows of his own personal knowledge, *i.e.*, those which are derived from his own perception.[66] A witness may not testify on what he merely learned, read or heard from others because such testimony is considered hearsay and may not be received as proof of the truth of what he has learned,

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[61] *Dra. Dela Llana v. Biong,* 722 Phil. 743, 759 (2013).

[62] Justice Ricardo J. Francisco, "*Evidence, Rules of Court in the Philippines Rules 128-134*," pp. 10-11, Rex Printing Company, Inc. (3rd Edition, 1996), citing *Evidence Handbook* by Donigan, Fisher, Reeder and Williams, pp. 6-7.

[63] *Id*.

[64] *Lepanto Consolidated Mining Co. v. Dumapis, et al.*, 584 Phil. 100, 110 (2008).

[65] *De Guzman v. Tumolva,* 675 Phil. 808, 819 (2011) citing *Tating v. Marcella*, 548 Phil. 19, 28 (2007).

[66] Section 36, Rule 130 of the Rules of Court.

read or heard.[67] Hearsay evidence is evidence, not of what the witness knows himself but, of what he has heard from others; it is not only limited to oral testimony or statements but likewise applies to written statements.[68]

The personal knowledge of a witness is a substantive prerequisite for accepting testimonial evidence that establishes the truth of a disputed fact.[69] A witness bereft of personal knowledge of the disputed fact cannot be called upon for that purpose because his testimony derives its value not from the credit accorded to him as a witness presently testifying but from the veracity and competency of the extrajudicial source of his information.[70]

Guided by these precepts, Villanueva's testimony falls within the category of hearsay evidence. Contrary to petitioner's claim, Villanueva had no personal inkling as to the contemporaneous verbal agreement between petitioner and DBP. In fact, there was no such verbal agreement. As admitted by the petitioner, the alleged verbal agreement was entered into between DBP and Mancol, Sr., by virtue of the SPA. Villanueva has no personal knowledge of such fact. His testimony related only to the fact that Atty. De Asis ordered him to go to BIR-Catbalogan, and bring the following documents: a check worth ₱99,450, the amount for the CGT, title, TD, and the deed of sale. None of Villanueva's acts would suggest, even remotely, that he personally knew about the verbal agreement.

As correctly pointed out by the CA:

> [Villanueva] did not personally witness the perfection of the alleged contemporaneous agreement between Mancol, Jr. and DBP. Furthermore, he had no personal knowledge of its existence. His testimony merely touched on the alleged denial by the Revenue Office

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[67] *Gulam v. Spouses Santos*, 532 Phil. 168, 178 (2006).

[68] *Miro v. Vda. de Erederos*, 721 Phil. 772, 790 (2013).

[69] *Da. Jose, et al. v. Angeles, et al.*, 720 Phil. 451, 465 (2013).

[70] *Patula v. People*, 685 Phil. 376, 393 (2012).

of the payment of the [CGT] on the subject property and the subsequent execution of a new deed of conveyance by the DBP. It is clear then that his testimony did not bolster [petitioner's] allegation to any degree.[71]

The same conclusion can be drawn from Mancol, Sr.'s testimony. Although the records show that by virtue of an SPA executed by the petitioner, Mancol, Sr. signed the Negotiated Offer to Purchase, including the Negotiated Sale Rules and Procedures/Disposition of Assets on a First-Come First Served Basis, and that he made the initial payment for the sale, there is dearth of evidence to prove that indeed, he personally entered into a verbal agreement with DBP. Upon being asked what transpired after the delivery of the Deed of Absolute Sale, Mancol, Sr. simply answered that DBP agreed to undertake the transfer of title of the lot, and to oust the occupants. There was no mention as to who actually and personally appeared before DBP or any of its officials in order to forge the alleged verbal agreement. Thus:

> (DIRECT EXAMINATION by Atty. Elino Chin, counsel for Witness: [Mancol, Sr.])
>
> x x x x x x x x x
>
> ATTY. CHIN
>
> Q After the delivery of this Exh. "H", what transpired?
> A The bank agreed to facilitate the transfer of the title and the payment of the [CGT] to get rid of the present occupants of the house and lot.
>
> Q You said that the bank agreed, is that in writing?
> A Only verbal.
>
> Q That does not contradict the negotiated rules and agreement?
> A Yes, but there was a verbal undertaking for them to do what was agreed upon.
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> x x x x x x x x x.[72]

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[71] *Rollo*, p. 45.

[72] *Id.* at 113-114.

Additionally, the RTC aptly observed that:

> [N]owhere in the records would also reveal that the agreement to arrange and effect the transfer of title over the subject lot was entered into between [DBP] and [Mancol, Sr.], for and on behalf of the [petitioner].
>
> x x x The [SPA] authorizes [Mancol, Sr.] to represent the [petitioner] and negotiate before the DBP, Catarman Branch on the invitation to bid on he sale of the lot covered by TCT No. 2041 scheduled on October 13, 2004, as well as to sign or execute and receive any paper or document necessary for said purposes. This explains why it was Mancol, Sr. who signed the Negotiated Offer to Purchase and the Negotiated Sale Rules and Procedure, and who paid to DBP the initial payment of the purchase price on October 13, 2004 in [petitioner's] behalf. It was not established however whether the subsequent payments and other transactions, including the act of entering into an oral agreement with [DBP] that it will effect the transfer of the subject title, were also carried out by Fernando Mancol, Sr. in behalf of [petitioner].
>
> The [petitioner] fails [sic] to show with whom the [DBP] agreed to arrange and effect the transfer of the title in his name. Thus, as there is no showing that it was [Mancol, Sr.] who entered into such agreement with [DBP] or that he was personally present during the perfection of the agreement and witnessed the same, any statement from the latter as to the circumstances relative to the perfection of such oral agreement would indeed be hearsay.[73]

Assuming for argument's sake that Mancol, Sr., on behalf of petitioner, entered into a verbal agreement with DBP, such agreement would remain unenforceable. Despite petitioner's insistence, the act of entering into a verbal agreement was not stipulated in the SPA. The authority given to Mancol, Sr. was limited to representing and negotiating, on petitioner's behalf, the invitation to bid on the sale of the subject lot, which is specifically worded as follows:

> I, FERNANDO R. MANCOL, JR., xxx by these presents do hereby name, constitute and appoint my father Fernando M. Manco, Sr., as

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[73] *Id*. at 184.

true and lawful attorney-in-fact, for me, in my name, place and to do and perform the following:

> 1. To represent and negotiate before the DBP Catarman Branch regarding the INVITATION TO BID FOR NEGOTIATED SALE scheduled on October 13, 2004 at the Mezzanine Floor, the subject Residential Lot with two storey building (TCT No. 2041) located at Navarro Street, Calbayog City; and
>
> 2. To sign, or execute and receive any paper or document necessary for the above purpose.
>
> x x x x x x x x x.[74]

There is nothing in the language of the SPA from which We could deduce the intention of petitioner to authorize Mancol, Sr. to enter into a verbal agreement with DBP. Indeed, it has been held that "[w]here powers and duties are specified and defined in an instrument, all such powers and duties are limited and are confined to those which are specified and defined, and all other powers and duties are excluded."[75] Clearly, the power to enter into a verbal agreement with DBP is conspicuously inexistent in the SPA.

To adopt the intent theory advanced by petitioner, in the absence of clear and convincing evidence to that effect, would run afoul of the express tenor of the SPA. It would likewise be contrary to "the rule that a power of attorney must be strictly construed and pursued. The instrument will be held to grant only those powers which are specified therein, and the agent may neither go beyond nor deviate from the power of attorney."[76]

It is axiomatic that this Court will not review, much less reverse, the factual findings of the CA, especially where, as in this case, such findings coincide with those of the trial court, since this Court is not a trier of facts.

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[74] *Id.* at 79.

[75] *Mercado v. Allied Banking Corporation*, 555 Phil. 411, 423 (2007).

[76] *Id.*

All told, therefore, the Court finds no reason or basis to grant the petition.

WHEREFORE, the petition is **DENIED**. The Decision dated February 22, 2012 and Resolution dated September 27, 2012 of the Court of Appeals, Visayas Station in CA-G.R. CEB-CV No. 03030 are **AFFIRMED**.

SO ORDERED.

Sereno, C.J. (Chairperson), Leonardo-de Castro, del Castillo, and *Jardeleza, JJ.*, concur.

THIRD DIVISION

[G.R. No. 205787. November 22, 2017]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **PABLO ARPOSEPLE *y* SANCHEZ and JHUNREL SULOGAOL *y* DATU,** *accused-appellants.*

SYLLABUS

1. POLITICAL LAW; CONSTITUTIONAL LAW; BILL OF RIGHTS; PRESUMPTION OF INNOCENCE; IN ALL CRIMINAL PROSECUTIONS; THE ACCUSED IS PRESUMED INNOCENT UNTIL PROVEN GUILTY BEYOND REASONABLE DOUBT.— In all criminal cases, the presumption of innocence of an accused is a fundamental constitutional right that should be upheld at all times x x x. In consonance with this constitutional provision, the burden of proof rests upon the prosecution and the accused must then be acquitted and set free should the prosecution not overcome the presumption of innocence in his favor. Conversely, in convicting the accused all the elements of the crime charged must be proven beyond reasonable doubt. x x x Settled in our jurisprudence is the rule that the conviction of the accused must rest, not on the

weakness of the defense, but on the strength of the prosecution. The burden is not on the accused to prove his innocence.

2. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; GENERALLY, FINDINGS AND CONCLUSION OF THE TRIAL COURT ON THE CREDIBILITY OF WITNESSES ARE ENTITLED TO GREAT RESPECT BY THE REVIEWING COURT.— [U]nless some facts or circumstances of weight and influence have been overlooked or the significance of which has been misinterpreted, the findings and conclusion of the trial court on the credibility of witnesses are entitled to great respect and will not be disturbed because it has the advantage of hearing the witnesses and observing their deportment and manner of testifying. This rule however is not set in stone as not to admit recognized exceptions considering that "an appeal in criminal cases opens the entire case for review, and it is the duty of the reviewing tribunal to correct, cite, and appreciate errors in the appealed judgment whether they are assigned or unassigned. The appeal confers the appellate court full jurisdiction over the case and renders such court competent to examine records, revise the judgment appealed from, increase the penalty, and cite the proper provision of the penal law."

3. CRIMINAL LAW; REPUBLIC ACT 9165 (COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002); THE EXISTENCE OF THE *CORPUS DELICTI*, THE DANGEROUS DRUG ITSELF, MUST BE PROVEN BEYOND MORAL CERTAINTY.— In *People v. Jaafar* we declared that in all prosecutions for violations of R.A. No. 9165, the *corpus delicti* is the dangerous drug itself, the existence of which is essential to a judgment of conviction; thus, its identity must be clearly established. x x x Equally significant therefore as establishing all the elements of violations of R.A. No. 9165 is proving that there was no hiatus in the chain of custody of the dangerous drugs and paraphernalia. It would be useless to still proceed to determine the existence of the elements of the crime if the *corpus delicti* had not been proven beyond moral certainty. Irrefragably, the prosecution cannot prove its case for violation of the provisions of R.A. No. 9165 when the seized items could not be accounted for or when there were significant breaks in their chain of custody that would cast doubt as to whether those items presented in court were actually those that were seized.

4. ID.; ID.; ID.; LINKS THAT MUST BE ESTABLISHED IN THE CHAIN OF CUSTODY IN A BUY-BUST SITUATION; CASE AT BAR.— Jurisprudence dictates the links that must be established in the chain of custody in a buy-bust situation: *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. x x x De Guzman admitted that she had no knowledge as to who made the markings on the evidence. Even Ruiz's testimony never made mention of the marking. True, there were already markings on the seized items when these were submitted to the laboratory for examination but not one of the prosecution witnesses testified as to who had made the markings, how and when the items were marked, and the meaning of these markings. Conspicuously, the uncertainty exceedingly pervades that the items presented as evidence against the appellants were exactly those seized during the buy-bust operation. x x x The first link in the chain of custody was undoubtedly inherently weak which caused the other links to miserably fail. The first link, it is emphasized, primarily deals on the preservation of the identity and integrity of the confiscated items, the burden of which lies with the prosecution. The marking has a twin purpose, viz: **first,** to give the succeeding handlers of the specimen a reference, and **second,** to separate the marked evidence from the *corpus* of all other similar or related evidence from the moment of seizure until their disposition at the end of criminal proceedings, thereby obviating switching, "planting," or contamination of evidence. Absent therefore the certainty that the items that were marked, subjected to laboratory examination, and presented as evidence in court were exactly those that were allegedly seized from Arposeple, there would be no need to proceed to evaluate the succeeding links or to determine the existence of the other elements of the charges against the appellants. Clearly, the cases for the prosecution had been irreversibly lost as a result of the weak first link irretrievably breaking away from the main chain.

5. REMEDIAL LAW; EVIDENCE; PRESUMPTIONS; PRESUMPTION OF REGULARITY IN THE PERFORMANCE OF OFFICIAL DUTY; CANNOT

PREVAIL OVER PRESUMPTION OF INNOCENCE, WHICH IS CONSTITUTIONALLY ENSHRINED.— Even the presumption as to regularity in the performance by police officers of their official duties easily disappeared before it could find significance in these cases. Continuing accretions of case law reiterate that a high premium is accorded the presumption of innocence over the presumption of regularity in the performance of official duty. x x x The presumption of regularity of performance of official duty stands only when no reason exists in the records by which to doubt the regularity of the performance of official duty. And even in that instance the presumption of regularity will not be stronger than the presumption of innocence in favor of the accused. Otherwise, a mere rule of evidence will defeat the constitutionally enshrined right to be presumed innocent.

6. **CRIMINAL LAW; REPUBLIC ACT 9165 (COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002); VIOLATIONS OF SECTIONS 5, 11 AND 12, ARTICLE II THEREOF WERE NOT PROVEN BEYOND REASONABLE DOUBT; CASE AT BAR.—** Under the principle that penal laws are strictly construed against the government, stringent compliance with Sec. 21, R.A. No. 9165 and its IRR is fully justified. The breaches in the procedure provided in Sec. 21, R.A. No. 9165 committed by the police officers, and left unacknowledged and unexplained by the State, militate against a finding of guilt beyond reasonable doubt against the appellants as the integrity and evidentiary value of the *corpus delicti* had been compromised. To recapitulate, the records of these cases were bereft of any showing that the prosecution had discharged its burden to: (1) overcome the presumption of innocence which appellants enjoy; (2) prove the *corpus delicti* of the crime; (3) establish an unbroken chain of custody of the seized drugs; and (4) offer any explanation why the provisions of Sec. 21, R.A. No. 9165 were not complied with. This Court is thus constrained to acquit the appellants based on reasonable doubt.

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 resolves the appeal of Pablo Arposeple y Sanchez (*Arposeple*) and Jhunrel Sulogaol y Datu[1] *(Sulogaol)* from the 3 October 2011 Decision[2] of the Court of Appeals *(CA),* in CA G.R. CR-HC No. 00865 which affirmed, but with modification as to the fine imposed in Criminal Case No. 12853, the 20 November 2007 Omnibus Decision[3] of the Regional Trial Court *(RTC)* in Criminal Case Nos. 12852 to 12854.

THE FACTS

Arposeple and Sulogaol were both charged with three counts of violation of certain provisions of R.A. No. 9165 before the RTC of Tagbilaran City, Bohol, viz:

CRIM. CASE NO. 12852
(Viol. of Sec. 5, Art. II, R.A. 9165)

That on or about the 21st day of September 2005, in the City of Tagbilaran, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating together, and mutually helping one another, did then and there wilfully, unlawfully, feloniously, and knowingly, without any legal purpose, sell, transfer, deliver and give away One (1) transparent cellophane sachet containing small amount of white powdered substance commonly known as shabu powder which could no longer be measured in terms of weight, but could not be more than 0.01 gram, for and in consideration of the amount of Five Hundred Pesos (₱500.00) Philippine currency, the accused knowing fully well that the above-mentioned substance which contains METHAMPHETAMINE HYDROCHLORIDE is a dangerous drug and that they did not have any lawful authority, permit or license to sell the same, to the damage and prejudice of the Republic of the Philippines.

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[1] Variably referred as "Jhunrel Sulogaol *y* Dato" in some parts of the *rollo*.

[2] *Rollo*, pp. 3-16. Penned by Associate Justice Edgardo L. Delos Santos and concurred in by Associate Justices Ramon Paul L. Hernando and Victoria Isabel A. Paredes.

[3] Records (Crim. Case No. 12852), pp. 155-164.

Acts committed contrary to the provisions of Section 5, Article II of Republic Act No. 9165 or the Comprehensive Dangerous Drugs Act of 2002, repealing R.A. 6425, as amended.[4]

CRIM. CASE NO. 12853
(Viol. of Sec. 11, Art. II, R.A. 9165)

That on or about the 21st day of September 2005, in the City of Tagbilaran, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating together, and mutually helping one another, did then and there wilfully, unlawfully, feloniously, and knowingly have in their possession, custody, and control two (2) pcs. empty transparent cellophane sachets containing suspected shabu leftover which could no longer be measured in terms of weight, but could not be more than 0.01 gram, the accused knowing fully well that the above-mentioned substance which contains Methamphetamine Hydrochloride is a dangerous drug and that they did not have any lawful authority, permit or license to possess the same, to the damage and prejudice of the Republic of the Philippines.

Acts committed contrary to the provisions of Section 11, Article II of Republic Act No. 9165 or the Comprehensive Dangerous Drugs Act of 2002, repealing R.A. 6425, as amended.[5]

CRIM. CASE NO. 12854
(Viol. of Sec. 12, Art. II, R.A. 9165)

That on or about the 21st day of September 2005, in the City of Tagbilaran, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating together, and mutually helping one another, did then and there wilfully, unlawfully, feloniously and knowingly have in their possession, custody and control to wit: two (2) pcs. rolled aluminum foil used as tooter; two (2) pcs. folded aluminum foil; two (2) pcs. disposable lighters; one (1) pc. bamboo clip; and one (1) pc. half blade, the accused knowing fully well that the above-mentioned items are the instruments, apparatus or paraphernalia fit or intended for smoking, consuming, administering, injecting, ingesting or introducing dangerous drug into the body, and that he did not have any lawful authority, permit or license to possess the same, to the damage and prejudice of the Republic of the Philippines.

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[4] Records (Crim. Case No. 12852), pp. 1-2.

[5] Records (Crim. Case No. 12853), pp. 1-2.

Acts committed contrary to the provisions of Section 12, Article II of Republic Act No. 9165 or the Comprehensive Dangerous Drugs Act of 2002, repealing R.A. No. 6425, as amended.[6]

When arraigned, both appellants pleaded not guilty; thus, the consolidated trial of these cases took place.

The Version of the Prosecution

To prove its cases, the prosecution presented the testimonies of the following: Police Superintendent *(P/Supt.)* Victoria C. de Guzman *(De Guzman),* Police Officer 2 *(PO2)* Jay E. Ramos (*Ramos*), Police Officer I *(PO1)* Earl U. Tabuelog *(Tabuelog),* Police Inspector *(P/Insp.)* Miguel Jimenez *(Jimenez),* and Barangay Kagawad Mary Jane Ruiz *(Ruiz).*

At around 3:00 a.m. on 21 September 2005, Jimenez, who was the Assistant City Drug Enforcement Officer, held a briefing at his office on a buy-bust operation to be carried out at Ubujan District, Tagbilaran City. The briefing, with the appellants as the subjects of the buy-bust operation, was attended by the buy-bust team *(team)* composed of PO3 Rolando Bagotchay *(Bagotchay)*, PO3 Jonathan Bañocia, PO3 Rodante Sanchez, PO3 Norman Brunidor *(Brunidor),* PO2 Jay Tizon, Ramos, Tabuelog, PO2 Ruben Baculi, who was the representative of the Criminal Investigation and Detection Group, and the informant. Jimenez gave ₱500.00[7] to Ramos, the poseur-buyer, while Bagotchay would be the recorder and property custodian. Jimenez instructed Ramos to take off his cap as the pre-arranged signal that the transaction had been consummated.[8]

After the briefing, the team proceeded to their designated area, i.e., the Monastery of the Holy Spirit *(monastery)* located at CPG North Avenue, Ubujan District, Tagbilaran City. Ramos and the informant proceeded in front of the monastery while the rest of the team positioned themselves at the nearby GH Motors.[9]

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[6] Records (Crim. Case No. 12854), pp. 1-2.

[7] Exh. "N". (TSN, 6 June 2006), p. 7.

[8] TSN, 6 June 2006, pp. 5-8 and 10.

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

Ramos instructed the asset to inform the appellants that he had a friend who wanted to buy shabu. After the asset returned from a house in front of the monastery, the appellants arrived. The asset introduced Ramos to the appellants who at first were hesitant to sell him shabu. Sulogaol told Arposeple, "Ato lang ni hatagan bay,"[10] to which the latter replied "sige hatagan na lang nato."[11] With the agreement to sell shabu, Ramos gave the ₱500.00 marked money to Arposeple, while Sulogaol took one transparent sachet from his pocket and handed this to Arposeple who in turn gave it to Ramos. With the sale consummated, Ramos took off his cap but, as the team approached, the appellants ran in opposite directions.[12]

Ramos chased Arposeple until they reached a house fronting the monastery. Ramos got hold of Arposeple's shirt but as they grappled they found themselves inside the house. With the aid of Brunidor and Bagotchay, Ramos was able to handcuff Arposeple. A body search on Arposeple yielded a playing card case[13] containing the following: one piece sachet with suspected shabu leftover;[14] a hundred peso bill;[15] two pieces empty transparent cellophane sachets containing suspected shabu leftover;[16] two pieces of aluminum foil used as tooters; [17] two pieces folded aluminum foil;[18] two pieces disposable lighters;[19] one piece bamboo clip;[20] and one piece

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[10] Records (Crim. Case No. 12852), p. 158; English translation: "Let us just give him Bay."

[11] *Id.*; English translation: "Ok, let us just give."

[12] TSN, 9 May 2006, pp. 12-15.

[13] Exh. "L".

[14] Exh. "M".

[15] Exh. "O".

[16] Exhs. "P" and "P-1".

[17] Exhs. "Q" and "Q-1".

[18] Exhs. "R" and "R-1".

[19] Exh. "S".

[20] Exh. "T".

half-blade.[21] The marked five-hundred-peso[22] bill was found in Arposeple's left pocket. Ramos informed Arposeple of his constitutional rights.[23]

Tabuelog caught Sulogaol after a brief chase. The body search on Sulogaol yielded negative. Tabuelog likewise informed Sulogaol of his constitutional rights.[24]

Ramos turned over the seized items to Bagotchay who filled out the certificate of inventory.[25] The inventory was witnessed by the appellants and by Barangay Kagawads Ruiz and Felixia Ligue, and Zacarias Castro and Willy Maestrado, who acted as representatives of the Department of Justice *(DOJ)* and the media, respectively.[26] Except for the appellants who refused to sign the certificate of inventory, the other witnesses did.[27]

The appellants were brought to the Tagbilaran Police Station for proper disposition[28] while Ramos and Tabuelog executed their respective affidavits[29] in relation to what had happened during the buy-bust operation.[30]

At 3:05 p.m. on the same day, the Philippine Provincial Crime Laboratory Office of Camp Francisco Dagohoy, Tagbilaran City *(laboratory),* received a request[31] for the laboratory examination of the following: one piece transparent cellophane sachet (labelled

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[21] Exh. "U".

[22] Exh. "N".

[23] TSN, 9 May 2006, pp.15-29.

[24] TSN, 25 May 2006, pp. 14-16.

[25] Record of Documentary Evidence, p. 5; Exh. "C".

[26] TSN, 9 May 2006, pp. 30-31.

[27] TSN, 4 July 2006, p. 16.

[28] TSN, 25 May 2006, p. 17.

[29] Record of Documentary Evidence, pp. 1-4; Exhs. "A" and "B".

[30] TSN, 9 May 2006, p. 32; TSN, 25 May 2006, p. 17.

[31] Record of Documentary Evidence, p. 6; Exh. "G".

PA/JS-09-21-01 YB); two pieces empty transparent cellophane sachets (labelled PA/JS-09-21-05-02 YB and PA/JS-09-21-05-03 YB); two pieces aluminum foil used as tooters (labelled PA/JS-09-21-05-04 YB and PA/JS-09-21-05-05); and two pieces aluminum foil (labelled PA/JS-09-21-05-06 YB and PA/JS 09-21-05-07 YB). These were marked by De Guzman, the forensic chemical officer of the laboratory, as specimens "A," "B" and "B-1"; "C" and "C-1"; "D" and "E," respectively. On 22 September 2005, after the laboratory examination, De Guzman came up with Chemistry Report No. D-117-2005[32] stating that, except for specimen "E" labelled as PA/JS 09-21-05-06 YB, all the specimens were positive for the presence of methamphetamine hydrochloride.[33]

It was also on 21 September 2005 that the laboratory received the request[34] for drug/urine test on the appellants to determine whether they had used any prohibited drugs. The screening laboratory test and the confirmatory examination conducted the following day were done in the presence of the appellants. The screening tests on both appellants yielded positive results for the presence of methamphetamine hydrochloride and negative for marijuana. De Guzman's findings were contained in Chemistry Report Nos. DT-242-2005[35] and DT-243-2005[36] for Arposeple and Sulogaol, respectively. The confirmatory tests on the urine samples of the appellants likewise gave positive results for the presence of methamphetamine hydrochloride as evinced in Chemistry Report Nos. DT-242A-2005[37] and DT-243A-2005[38] for Arposeple and Sulogaol, respectively.[39]

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[32] *Id*. at 7; Exh. "H".

[33] TSN, 18 April 2006, pp. 6-9.

[34] Record of Documentary Evidence, p. 8; Exh. "I".

[35] *Id*. at 9; Exh. "J".

[36] *Id*. at 11; Exh. "K".

[37] *Id*. at 9; Exh. "J-1".

[38] *Id*. at 11; Exh. "K-1".

[39] TSN, 18 April 2006, pp. 16-26.

The Version of the Defense

The defense presented their version of what happened in the morning of 21 September 2005 through Myra Tara *(Tara),* Joan Cortes Bohol *(Bohol),* Arposeple and Sulogaol.

Tara testified that at about 4:30 a.m. on 21 September 2005, while she was sleeping at the house she was renting with Cory Jane Rama *(Rama),* she was awakened by the appellants who wanted to borrow ₱200.00 to pay for the van that they hired to come back from Tubigon, Bohol. She handed the ₱200.00 to Sulogaol, and while peeping from the window, she saw Sulogaol hand the ₱200.00 to the driver of the van parked in front of the house.[40]

Arposeple and Sulogaol proceeded to the room the former used to rent but since its present occupant, Ondoy, had a visitor, Arposeple and Sulogaol went back to Tara's place and requested that she allow them to play *tong-its* inside her house while waiting for daylight. She acceded and allowed them to use her playing cards.[41]

While Tara, together with Rama, Jessa, and Susan, was sleeping inside the room, she was awakened by the sound of a strong kick to the door of the house. Two persons barged in saying, "We are policemen! Do not move!" while pointing their guns at Arposeple and Sulogaol. The two men grabbed Arposeple and Sulogaol, dragged them out of the house, and handcuffed them. Arposeple and Sulogaol protested while they were being frisked but to no avail. Two other policemen outside the house boarded Arposeple and Sulogaol into a parked police vehicle.[42]

Bohol, Tara's landlady, testified that she knew Arposeple, he being her former boarder. Before Arposeple's stay at her house, he stayed at an adjacent room which was occupied thereafter by Ondoy Belly. At about 2:00 a.m. on 21 September

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[40] TSN, 17 October 2006, pp. 4-7.

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

[42] *Id.* at 9-13.

2005, she observed a passenger van parked outside the house and saw Sulogaol hand money to its driver. At about 3:00 a.m., she heard banging on the door of the other house. Thinking nothing of the commotion, she went back to sleep.[43]

When Bohol woke up at about 6:00 a.m., she saw a vehicle and four uniformed policemen outside. She saw Arposeple and Sulogaol who, while resisting the policemen's arrest, claimed that they did not commit any crime. The policemen told Arposeple and Sulogaol to explain themselves at the police station. Arposeple, who was in handcuffs, and Sulogaol were made to board a vehicle.[44]

After the vehicle had gone, Bohol went to Tara's house and saw Tara, Jessa, Mylene Amora, and Tara's visitor seated on the bed and trembling. The house was in disarray and Tara's playing cards were scattered on the floor and on the bed. They told her that Arposeple and Sulogaol were playing cards with them when the policemen came; that Arposeple had refused to go with the policemen claiming he did not commit any crime.[45]

In his defense, Arposeple testified that in the early dawn of 21 September 2005, he went to Tara's house to borrow money to pay for the car rental. He and Sulogaol had come from Cebu and were on their way to Tubigon-Tagbilaran, Bohol, when they rented the van. He chose to pass by Tara to borrow ₱100.00 because she was his friend. After paying for the rental, he and Sulogaol stayed at Tara's place and played with her cards. Tara took care of her child while Susan, Jessa, and Cory were sleeping.[46]

At about 3:00 a.m., three men kicked the door, entered the house, and pointed their guns at him and Sulogaol. He asked what crime they had committed but Ramos told him to produce

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[43] TSN, 10 May 2007, pp. 4-5 and 9-11.

[44] *Id.* at 12-15.

[45] *Id.* at 16-20.

[46] TSN, 22 May 2007, pp. 3-10.

the shabu. He told PO2 Ramos he had nothing to show because he had no shabu. Ramos frisked him and Sulogaol while Ramos' companions searched around. Ramos found nothing on him and on Sulogaol.[47]

After a while, other policemen arrived and, together with Ramos, frisked him and Sulogaol. While he was in handcuffs, Ramos frisked him again. [48]

Ramos and his two companions then left and soon after returned with Jimenez. He and Sulogaol were again frisked and ordered to remove their clothes and to lower their underwear to their knees. Nothing was found in their person. Ramos got shabu, money, tin foil, and a lighter from his pocket and placed these on the table. Arposeple protested Ramos' act of planting evidence but Ramos told him to explain himself at the police station. He was made to board a police car while Sulogaol was being investigated by the policemen. He told Tara that she and Sulogaol would be his witnesses as they had seen the policemen plant evidence.[49]

Arposeple was brought to the police station with Sulogaol where he complained that the policemen had planted evidence against him. Ramos told him that the items were not his (Ramos) but belonged to the CIDG. Arposeple did not request a lawyer when he was jailed because he has no relatives in Bohol. He was investigated by the chief of police and other policemen. He did not sign the inventory of the items allegedly taken from him because there was actually nothing found on him. Because he and Sulogaol were not willing to have their pictures taken at the police station, he was hit at the back of his head and slapped by a policeman while Sulogaol was hit on the stomach by Ramos.[50]

Sulogaol testified that in the early dawn of 21 September 2005, he and Arposeple were at Ubujan District, Tagbilaran City,

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[47] *Id*. at 10-14.

[48] *Id*. at 14-17.

[49] *Id*. at 17-20.

[50] *Id*. at 21-28.

to borrow ₱100.00 from Tara, Arposeple's friend, to pay for their v-hire fare. After paying for the fare, Arposeple and Sulogaol decided to stay at Tara's place to play cards until morning.[51]

While he and Arposeple were playing cards, two policemen in civilian clothes kicked the door and said they were conducting a raid. The policemen handcuffed Arposeple while he was picking up the scattered cards. The policemen pointed their guns at them. When Tara asked the policemen why Arposeple was handcuffed, they said that Arposeple sold shabu. Sulogaol and Arposeple were frisked twice by the policemen but nothing was found on them. Sulogaol saw Ramos put a plastic sachet containing shabu on the table. He told Ramos not to plant evidence against them since nothing was found on them. Two of the policemen left the room while the other two stayed behind to watch over him and Arposeple.[52]

After two hours, the two policemen who had earlier left returned with two barangay kagawads and a representative from the media. He and Arposeple were frisked again. While Arposeple was being boarded into the car, Jimenez told Sulogaol he would not be charged as long as he would testify against Arposeple. When he declined the offer, he was also made to board the vehicle. At the police station, he and Arposeple were made to sign a paper but when they refused, they were told to admit owning the shabu and the piece of the foil. When they refused to be photographed with the items that were allegedly seized, Arposeple was hit on the face while he was hit on the chest and struck with a placard on his right leg.[53]

The Ruling of the RTC

On 20 November 2007, the RTC rendered its decision[54] in these cases, viz:

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[51] TSN, 28 June 2007, pp. 5-9.

[52] *Id.* at 10-15.

[53] *Id.* at 18-23.

[54] Records (Crim. Case No. 12852), pp. 155-164; presided by Judge Baudilio K. Dosdos.

WHEREFORE, in Criminal Case No. 12852, the court finds accused Pablo Arposeple y Sanchez and Jhunrel Sulogaol y Datu, guilty beyond reasonable doubt of the offense of Violation of Section 5, Article II, of R.A. 9165, embraced in the afore-quoted information. There being no aggravating nor mitigating circumstance adduced and proven at the trial, the said accused are each hereby sentenced to the indivisible penalty of life imprisonment and to pay a fine of ₱300,000.00 Pesos, with the accessory penalties of the law, and to pay the costs.

In Criminal Case No. 12853, the court finds accused Pablo Arposeple y Sanchez, guilty beyond reasonable doubt of the offense of Violation of Section 11, Article II, of R.A. 9165, embraced in the aforequoted information. There being no aggravating nor mitigating circumstance adduced and proven at the trial, the said accused is hereby sentenced to the indeterminate penalty of imprisonment of TWELVE (12) YEARS and ONE (1) DAY, as minimum, to FOURTEEN (14) YEARS, as maximum, and to pay a fine of ₱200,000.00 Pesos, with the accessory penalties of the law, and to pay the costs.

In Criminal Case No. 12854, the court finds accused Pablo Arposeple y Sanchez, guilty beyond reasonable doubt of the offense of Violation of Section 12, Article II, of R.A. 9165, embraced in the afore-quoted information. There being no aggravating nor mitigating circumstance adduced and proven at the trial, the said accused is hereby sentenced to the indeterminate penalty of imprisonment of from SIX (6) MONTHS and ONE (1) DAY, as minimum, to FOUR (4) years, as maximum, and to pay a fine of ₱25,000.00 Pesos, with the accessory penalties of the law, and to pay the costs.

The charges against accused Jhunrel Sulogaol, under Criminal Case Nos. 12853 and 12854 are hereby ordered dismissed and the said accused acquitted, for insufficiency of evidence.

Accused, being detention prisoners are hereby credited in full of the period of their preventive imprisonment.

In compliance with Par. 4, Section 21 of R.A. 9165, the evidence in these cases consisting of one (1) sachet of shabu, with an aggregate weight of 0.01 gram, and paraphernalia with Shabu leftovers are hereby ordered confiscated, destroyed and/or burned, subject to the implementing guidelines of the Dangerous Drugs Board as to the proper disposition and destruction of such item.

SO ORDERED.[55]

[55] *Id.* at 163-164.

The Ruling of the CA

Arguing that the essential elements of the crimes had not been established by the prosecution with moral certainty, the appellants appealed before the CA, Cebu City. The CA, through its Nineteenth Division,[56] however did not agree with the appellants and ruled that the trial court had the unique opportunity, denied of appellate courts, to observe the witnesses and to note their demeanor, conduct, and attitude under direct and cross-examination.[57] The CA held that the prosecution witnesses categorically testified in court and positively identified the appellants, and that the buy-bust operation was regularly conducted by the police.[58] Moreover, it declared that although the team have not strictly complied with the requirements of the chain of custody, they had substantially complied therewith, viz: Ramos turned over the seized items to Bagotchay; on the same day, the items, which had been properly marked were turned over to the laboratory and received by PO2 Casagan; de Guzman made her own markings on the items; and the items were presented in court by Ramos and de Guzman, who identified that the items were those seized from the buy-bust operation where the appellants were arrested.[59]

The CA held that the failure of the buy-bust team in complying with Section *(Sec.)* 21, R.A. No. 9165 did not render the items as inadmissible in evidence considering that what were essential and necessary in drug cases were preserved by the arresting officers in compliance with the requirements of the law. On the one hand, the non-presentation of the informant was ruled by the CA as dispensable for the successful prosecution of the cases because his testimony will only be corroborative and cumulative.[60]

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[56] *Rollo*, pp. 3-16. Penned by Associate Justice and Chairperson Edgardo L. Delos Santos, and concurred in by Associate Justices Ramon Paul L. Hernando and Victoria Isabel A. Paredes.

[57] *Id.* at 11.

[58] *Id.*

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

[60] *Id.* at 14.

In compliance with Sec. 11(3), Article II of R.A. No. 9165, the CA found the need to modify in Crim. Case No. 12853 the fine imposed by the RTC to Arposeple from ₱200,000.00 to ₱300,000.00. Thus, the dispositive portion of the CA's decision reads:

> WHEREFORE, in view of the foregoing, the instant appeal is DENIED. Accordingly, the assailed 20 November 2007 Decision of the Regional Trial Court (RTC), Branch 2 of Tagbilaran City, Bohol is hereby AFFIRMED with MODIFICATION. The fine imposed to Pablo Arposeple y Sanchez in Criminal Case No. 12853 is hereby increased to Three Hundred Thousand Pesos (Php300,000.00)
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> No pronouncement as to costs.[61]

ISSUE

The sole issue raised by the appellants was the following:

> THE TRIAL COURT ERRED IN CONVICTING THE ACCUSED-APPELLANTS OF THE CRIME CHARGED DESPITE THE FACT THAT THE PROSECUTION FAILED TO PROVE THEIR GUILT BEYOND RESONABLE DOUBT.

THE RULING OF THE COURT

The appeal is meritorious.

An accused is presumed innocent until his guilt is proven beyond reasonable doubt.

In all criminal cases, the presumption of innocence of an accused is a fundamental constitutional right that should be upheld at all times, viz:

> 2. In all criminal prosecutions, the accused shall be presumed innocent until the contrary is proved, and shall enjoy the right to be heard by himself and counsel, to be informed of the nature and cause of the accusation against him, to have a speedy, impartial, and public trial, to meet the witnesses face to face, and to have compulsory process to secure the attendance of witnesses and the production of

[61] *Id.* at 15.

evidence in his behalf. However, after arraignment, trial may proceed notwithstanding the absence of the accused provided, that he has been duly notified and his failure to appear is unjustifiable.[62]

In consonance with this constitutional provision, the burden of proof rests upon the prosecution[63] and the accused must then be acquitted and set free should the prosecution not overcome the presumption of innocence in his favor.[64] Conversely, in convicting the accused all the elements of the crime charged must be proven beyond reasonable doubt, [65] viz:

Sec. 2. Proof beyond reasonable doubt. — x x x Proof beyond reasonable doubt does not mean such a degree of proof as, excluding possibility of error, produces absolute certainty. Moral certainty only is required, or that degree of proof which produces conviction in an unprejudiced mind.[66]

Settled in our jurisprudence is the rule that the conviction of the accused must rest, not on the weakness of the defense, but on the strength of the prosecution. The burden is not on the accused to prove his innocence.[67]

On the one hand, unless some facts or circumstances of weight and influence have been overlooked or the significance of which has been misinterpreted, the findings and conclusion of the trial court on the credibility of witnesses are entitled to great respect and will not be disturbed because it has the advantage of hearing the witnesses and observing their deportment and manner of testifying.[68] This rule however is not set in stone as not to admit recognized exceptions considering that "an appeal in criminal cases opens the entire case for review, and it is the duty of the

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[62] Sec. 14(2), Art. III of the 1987 Constitution.

[63] *People v. Patentes*, 726 Phil. 590, 606 (2014).

[64] *People v. Cruz,* 736 Phil. 564, 580 (2014).

[65] *Ngo v. People,* 478 Phil. 676, 680 (2004).

[66] Rule 133, Rules of Court.

[67] *Macayan, Jr. v. People,* 756 Phil. 202, 214 (2015).

[68] *People v. Tamaño, et al.,* G.R. No. 208643, 5 December 2016.

reviewing tribunal to correct, cite, and appreciate errors in the appealed judgment whether they are assigned or unassigned. The appeal confers the appellate court full jurisdiction over the case and renders such court competent to examine records, revise the judgment appealed from, increase the penalty, and cite the proper provision of the penal law."[69] (citations omitted)

With these as our guideposts, we shall proceed to evaluate the records of these cases.

The charges against the appellants vis-à-vis the requirement on the unbroken chain of custody of the seized drugs

In Crim. Case No. 12852, Arposeple and Sulogaol were charged and convicted with violation of Sec. 5, Article *(Art.)* II of R.A. No. 9165.[70]

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[69] *Gamboa v. People*, G.R. No. 220333, 14 November 2016.

[70] **Section 5.** Sale, Trading, Administration, Dispensation, Delivery, Distribution and Transportation of Dangerous Drugs and/or Controlled Precursors and Essential Chemicals. — The penalty of life imprisonment to death and a fine ranging from Five hundred thousand pesos (₱500,000.00) to Ten million pesos (₱10,000,000.00) shall be imposed upon any person, who, unless authorized by law, shall sell, trade, administer, dispense, deliver, give away to another, distribute dispatch in transit or transport any dangerous drug, including any and all species of opium poppy regardless of the quantity and purity involved, or shall act as a broker in any of such transactions.

The penalty of imprisonment ranging from twelve (12) years and one (1) day to twenty (20) years and a fine ranging from One hundred thousand pesos (₱100,000.00) to Five hundred thousand pesos (₱500,000.00) shall be imposed upon any person, who, unless authorized by law, shall sell, trade, administer, dispense, deliver, give away to another, distribute, dispatch in transit or transport any controlled precursor and essential chemical, or shall act as a broker in such transactions.

If the sale, trading, administration, dispensation, delivery, distribution or transportation of any dangerous drug and/or controlled precursor and essential chemical transpires within one hundred (100) meters from the school, the maximum penalty shall be imposed in every case.

For drug pushers who use minors or mentally incapacitated individuals as runners, couriers and messengers, or in any other capacity directly connected

In Crim. Case Nos. 12853 and 12854, although both appellants were charged with violation of Secs. 11[71]

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to the dangerous drugs and/or controlled precursors and essential chemical trade, the maximum penalty shall be imposed in every case.

If the victim of the offense is a minor or a mentally incapacitated individual, or should a dangerous drug and/or a controlled precursor and essential chemical involved in any offense herein provided be the proximate cause of death of a victim thereof, the maximum penalty provided for under this Section shall be imposed.

The maximum penalty provided for under this Section shall be imposed upon any person who organizes, manages or acts as a "financier" of any of the illegal activities prescribed in this Section.

The penalty of twelve (12) years and one (1) day to twenty (20) years of imprisonment and a fine ranging from One hundred thousand pesos (₱100,000.00) to Five hundred thousand pesos (₱500,000.00) shall be imposed upon any person, who acts as a "protector/coddler" of any violator of the provisions under this Section.

[71] **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) 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 methamphetamine 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 (MDA) or "ecstasy", paramethoxyamphetamine (PMA), trimethoxyamphetamine (TMA), lysergic acid diethylamine (LSD), gamma hydroxyamphetamine (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

and 12,[72] Art. II of R.A. No. 9165, only Arposeple was convicted on both counts after the RTC ruled that the sachets of shabu and the drug paraphernalia were found only in his person after the team undertook a body search. It must be remembered that a person lawfully arrested may be searched without a warrant

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methamphetamine hydrochloride or "shabu" is ten (10) grams 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 hyrdochloride, marijuana resin oil, methamphetamine hyrdochloride or "shabu," or other dangerous drugs such as, but not limited to, MDMA or "ecstacy," 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 (500) grams of marijuana; and

(3) Imprisonment of twelve (12) years and one (1) day to twenty years and a fine ranging from Three hundred thousand pesos (₱300,000.00) to Four hundred thousand (₱400,000.00) if the quantities of dangerous drugs are less than five (5) grams of opium, morphine, heroin, cocoaine, or cocaine hyrdochloride, marijuana resin or marijuana resin oil, methamphetamine hydrochloride or "shabu", or other dangerous drugs such as, but not limited to, MDMA or "ecstacy", PMA, TMA, LSD, GHB, and those similarly designed or newly introduced drugs and their derivatives, without having any therapeutic value or if the quantity is far beyond therapeutic requirements; or less than three hundred (300) grams of marijuana.

[72] **Section 12.** *Possession of Equipment, Instrument, Apparatus and Other Paraphernalia for Dangerous Drugs.*– The penalty of imprisonment ranging from six (6) months and one (1) day to four (4) years and a fine ranging from Ten thousand pesos (₱10,000.00) to Fifty thousand pesos (₱50,000.00) shall be imposed upon any person, who, unless authorized by law, shall possess or have under his/her control any equipment, instrument, apparatus and other paraphernalia fit or intended for smoking, consuming, administering, injecting, ingesting, or introducing any dangerous drug into the body: *Provided*, That in the case of medical practitioners and various professionals who are required to carry such equipment, instrument, apparatus and other paraphernalia in the practice of their profession, the Board shall prescribe the necessary implementing guidelines thereof.

The possession of such equipment, instrument, apparatus and other paraphernalia fit or intended for any of the purposes enumerated in the preceding paragraph shall be *prima facie* evidence that the possessor has smoked, consumed, administered to himself/herself, injected, ingested or used a dangerous drug and shall be presumed to have violated Section 15 of this Act.

for anything which may have been used or may constitute proof in the commission of an offense.[73]

Jurisprudence dictates that to secure a conviction for illegal sale of dangerous drugs under Sec. 5, Art. II of R.A. 9165, the prosecution must establish the following: (1) the identity of the buyer and the seller, the object of the sale, and its consideration; and (2) the delivery of the thing sold and the payment therefor.[74] The essential elements of illegal possession of dangerous drugs under Sec. 11 are as follows: (1) the accused is in possession of an item or object that is identified to be a prohibited drug; (2) such possession is not authorized by law; and (3) the accused freely and consciously possesses the said drug.[75] On the one hand, the elements of illegal possession of equipment, instrument, apparatus and other paraphernalia for dangerous drugs under Sec. 12 are the following: (1) possession or control by the accused of any equipment, apparatus or other paraphernalia fit or intended for smoking, consuming, administering, injecting, ingesting, or introducing any dangerous drug into the body; and (2) such possession is not authorized by law.[76] The CA ruled that all the elements of the offenses charged against appellants were established with moral certainty.[77]

We do not agree.

In *People v. Jaafar*[78] we declared that in all prosecutions for violations of R.A. No. 9165, the *corpus delicti* is the dangerous drug itself, the existence of which is essential to a judgment of conviction; thus, its identity must be clearly established. The justification for this declaration is elucidated as follows:

> 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

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[73] *People v. Montevirgen,* 723 Phil. 534, 543 (2013).

[74] *People v. Ismael*, G.R. No. 208093, 20 February 2017.

[75] *People v. Minanga*, 751 Phil. 240, 248 (2015).

[76] *People v. Villar*, G.R. No. 215937, 9 November 2016.

[77] *Rollo,* p. 11.

[78] G.R. No. 219829, 18 January 2017.

in the laboratory and offered in court as evidence. The chain of custody, as a method of authentication, ensures that unnecessary doubts involving the identity of seized drugs are removed.[79]

Equally significant therefore as establishing all the elements of violations of R.A. No. 9165 is proving that there was no hiatus in the chain of custody of the dangerous drugs and paraphernalia. It would be useless to still proceed to determine the existence of the elements of the crime if the *corpus delicti* had not been proven beyond moral certainty. Irrefragably, the prosecution cannot prove its case for violation of the provisions of R.A. No. 9165 when the seized items could not be accounted for or when there were significant breaks in their chain of custody that would cast doubt as to whether those items presented in court were actually those that were seized. An enlightened precedent provides for the meaning of chain of custody, viz:

> Chain of custody is defined as "the duly recorded authorized movements and custody of seized drugs or controlled chemicals or plant sources of dangerous drugs or laboratory equipment of each stage, from the time of seizure/confiscation to receipt in the forensic laboratory to safekeeping to presentation in court for destruction." Such record of movements and custody of seized item shall include the identity and signature of the person who held temporary custody of the seized item, the date and time when such transfer of custody were made in the course of safekeeping and use in court as evidence, and the final disposition.[80]

The stringent requirement as to the chain of custody of seized drugs and paraphernalia was given life in the provisions of R.A. No. 9165, 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 confiscated, seized and/or surrendered, for proper disposition in the following manner:

[79] *Id*.

[80] *People v. Ameril*, G.R. No. 203293, 14 November 2016.

(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;

The Implementing Rules and Regulations *(IRR)* of R.A. No. 9165 provides the proper procedure to be followed in Sec. 21(a) of the Act, viz:

> a. The apprehending office/team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof: Provided, that the physical inventory and photograph shall be conducted at the place where the search warrant is served; or at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizures; Provided, further that noncompliance 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.

Even the Dangerous Drugs Board *(DDB)* – the policy-making and strategy-formulating body in the planning and formulation of policies and programs on drug prevention and control tasked to develop and adopt a comprehensive, integrated, unified and balanced national drug abuse prevention and control strategy[81] – has expressly defined chain of custody involving the dangerous drugs and other substances in the following terms in Sec. 1(b) of DDB Regulation No. 1, Series of 2002,[82] to wit:

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[81] Sec. 77, R.A. No. 9165.

[82] Guidelines on the Custody and Disposition of Seized Dangerous Drugs,

b. "Chain of Custody" means the duly recorded authorized movements and custody of seized drugs or controlled chemicals or plant sources of dangerous drugs or laboratory equipment of each stage, from the time of seizure/confiscation to receipt in the forensic 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.[83]

Jurisprudence dictates the links that must be established in the chain of custody in a buy-bust situation: *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.[84]

a. The first link was weak.

On the *first link*, the importance of marking had been discussed as follows:

The first stage in the chain of custody is the marking of the dangerous drugs or related items. **Marking, which is the affixing on the dangerous drugs or related items by the apprehending officer or the poseur-buyer of his initials or signature or other identifying signs, should be made in the presence of the apprehended violator immediately upon arrest.** The importance of the prompt marking cannot be denied, because succeeding handlers of the dangerous drugs or related items will use the marking as reference. Also, the marking operates to set apart as evidence the dangerous drugs or related items from other material from the moment they are confiscated until they are disposed of at the close of the criminal proceedings, thereby

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Controlled Precursors and Essential Chemicals, and Laboratory Equipment pursuant to Section 21, Article II of the IRR of RA No. 9165 in relation to Section 81(b), Article IX of RA No. 9165.

[83] *People v. Gonzales*, 708 Phil. 121, 129-130 (2013).

[84] *People v. Poja*, G.R. No. 215937, 9 November 2016.

forestalling switching, planting, or contamination of evidence. **In short, the marking immediately upon confiscation or recovery of the dangerous drugs or related items is indispensable in the preservation of their integrity and evidentiary value**.[85]

The prosecution claimed that the body search conducted by Ramos on Arposeple yielded the seized items. The inventory of the items by Bagotchay outside Tara's house was witnessed by the appellants, two kagawads, and a representative each from the DOJ and the media. Except for the appellants, the witnesses to the inventory including Jimenez, as team leader, and Tara, as representative of the appellants, affixed their respective signatures on the certificate of inventory. Noteworthy, nothing was mentioned in the certificate of inventory as to the marking of the seized items considering that the certificate contained a plain enumeration of the items, viz:

One (1) pc. transparent cellophane sachet containing suspected shabu powder
Two (2) pcs. empty transparent cellophane sachets containing suspected shabu leftover
Two (2) pcs. rolled aluminum foil used for tooter
Two (2) pcs. folded aluminum foil
Two (2) pcs. disposable lighters
One (1) pc. bamboo clip
One (1) pc. half blade
One (1) pc. five hundred peso bill – as marked money bearing SN# GY 558660
One (1) pc. one hundred peso (₱100) bill
One (1) pc. playing card plastic case[86]

Ramos, Tabuelog, and Jimenez failed to explain how and when the seized items were marked. Ramos stated that after the inventory of the items the appellants were brought to the police station for proper disposition, i.e., the booking of the appellants, and the team's preparation of their report.[87] Ramos and Tabuelog

[85] *People v. Ismael*, *supra* note 74, citing *People v. Gonzales*, *supra* note 83 at 130-131.

[86] Record of Documentary Evidence, p. 5.

[87] TSN, 6 June 2006, pp. 15-18.

executed their respective affidavits[88] relative to the buy-bust operation but both failed to mention anything therein as to what had happened to the seized items after the inventory and when these were probably brought to the police station for marking.

De Guzman admitted that she had no knowledge as to who made the markings on the evidence.[89] Even Ruiz's testimony never made mention of the marking. True, there were already markings on the seized items when these were submitted to the laboratory for examination but not one of the prosecution witnesses testified as to who had made the markings, how and when the items were marked, and the meaning of these markings. Conspicuously, the uncertainty exceedingly pervades that the items presented as evidence against the appellants were exactly those seized during the buy-bust operation.

Also glaring was the hiatus from the time the seized items were inventoried by Bagotchay in front of Tara's house to the time these were delivered to the laboratory. In his memorandum[90] relative to his request for the laboratory examination of the seized items, P/Supt. Ernesto Agas *(Agas)* stated that the evidence were obtained on 21 September 2005 at around 4:00 a.m. Bagotchay delivered the evidence to the laboratory, notably already marked, on the same day at 3:05 p.m. The lapse of eleven (11) hours for the submission of the seized items to the laboratory was significant considering that the preservation of the chain of custody vis-à-vis the contraband ensures the integrity of the evidence incriminating the accused, and relates to the element of relevancy as one of the requisites for the admissibility of the evidence.[91] In contrast, Agas' memorandum[92] pertinent to his request for the drug/urine tests of the appellants were forwarded to the laboratory on the same day at 9:50 a.m. or a gap of at least six (6) hours only.

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[88] Record of Documentary Evidence, pp. 1-4; Exhs. "A" and "B".

[89] TSN, 18 April 2006, pp. 12-14.

[90] Record of Documentary Evidence, p. 6; Exh. "G".

[91] *People v. Reyes*, G.R. No. 199271, 19 October 2016, citing *People v. Mendoza,* 736 Phil. 749, 761 (2014).

[92] Record of Documentary Evidence, p. 8; Exh. "I".

Bagotchay, who was assigned by Jimenez as the custodian of the seized items, was never presented by the prosecution to elucidate on the following important matters: the significant break from the inventory to the actual marking of the items; how and when these items were marked; the justification for the long period it took him to submit these to the laboratory; the identity and signature of the person who held temporary custody of seized items; 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.[93]

To stress, in order that the seized items may be admissible, the prosecution must show by records or testimony, the continuous whereabouts of the exhibit at least between the times it came into the possession of the police officers until it was tested in the laboratory to determine its composition up to the time it was offered in evidence.[94] In *Mallillin v. People*[95] we were more definite on qualifying the method of authenticating evidence through marking, viz: "(I)t would include testimony about every link in the chain, from the moment the item was picked up to the time it is offered into evidence; in such a way that every person who touched the exhibit would describe how and from whom it was received, where it was and what happened to it while in the witness' possession; the condition in which it was received and the condition in which it was delivered to the next link in the chain."[96] We have scrupulously scanned the records but found nothing that would support a declaration that the seized items were admissible.

Section 21 of R.A. No. 9165 requires that the seized items be photographed 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 each from the media and the DOJ, and any elected public official. The records of these cases, however, were bereft of any showing of these photographs while the testimony of the prosecution witnesses

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[93] *People v. Ameril*, *supra* note 80.

[94] *People v. Tamaño, supra* note 68.

[95] 576 Phil. 576 (2008), cited in *People v. Ismael*, *supra* note 74.

[96] *Id*. at 587.

were most notably silent on whether photographs were actually taken as required by law.

Certainly revealing from these findings was the consistent noncompliance by the team with the requirements of Sec. 21 of R.A. No. 9165. It must be remembered that this provision of the law was laid down by Congress as a safety precaution against potential abuses by law enforcement agents who might fail to appreciate the gravity of the penalties faced by those suspected to be involved in the sale, use or possession of illegal drugs.[97] While it may be true that noncompliance with Sec. 21 of Republic Act No. 9165 is not fatal to the prosecution's case provided that the integrity and evidentiary value of the seized items are properly preserved by the apprehending officers, this exception will only be triggered by the existence of a ground that justifies departure from the general rule.[98] The prosecution, however, miserably failed to prove that its cases fall within the jurisprudentially recognized exception to the rule.

The first link in the chain of custody was undoubtedly inherently weak which caused the other links to miserably fail. The first link, it is emphasized, primarily deals on the preservation of the identity and integrity of the confiscated items, the burden of which lies with the prosecution. The marking has a twin purpose, viz: **first,** to give the succeeding handlers of the specimen a reference, and **second,** to separate the marked evidence from the *corpus* of all other similar or related evidence from the moment of seizure until their disposition at the end of criminal proceedings, thereby obviating switching, "planting," or contamination of evidence.[99] Absent therefore the certainty that the items that were marked, subjected to laboratory examination, and presented as evidence in court were exactly those that were allegedly seized from Arposeple, there would be no need to proceed to evaluate the succeeding links or to determine the existence of the other elements of the charges against the appellants. Clearly, the cases for the prosecution

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[97] *Rontos v. People*, 710 Phil. 328, 335 (2013).

[98] *People v. Jaafar*, *supra* note 78.

[99] *People v. Goco*, G.R. No. 219584, 17 October 2016.

had been irreversibly lost as a result of the weak first link irretrievably breaking away from the main chain.

b. The presumption of regularity in the performance of duty cannot prevail in these cases.

Even the presumption as to regularity in the performance by police officers of their official duties easily disappeared before it could find significance in these cases. Continuing accretions of case law reiterate that a high premium is accorded the presumption of innocence over the presumption of regularity in the performance of official duty, viz:

> We have usually presumed the regularity of performance of their official duties in favor of the members of buy-bust teams enforcing our laws against the illegal sale of dangerous drugs. Such presumption is based on three fundamental reasons, namely: *first*, innocence, and not wrongdoing, is to be presumed; *second*, an official oath will not be violated; and, *third*, a republican form of government cannot survive long unless a limit is placed upon controversies and certain trust and confidence reposed in each governmental department or agent by every other such department or agent, at least to the extent of such presumption. But the presumption is rebuttable by affirmative evidence of irregularity or of any failure to perform a duty. Judicial reliance on the presumption despite any hint of irregularity in the procedures undertaken by the agents of the law will thus be fundamentally unsound because such hint is itself affirmative proof of irregularity.
>
> The presumption of regularity of performance of official duty stands only when no reason exists in the records by which to doubt the regularity of the performance of official duty. And even in that instance the presumption of regularity will not be stronger than the presumption of innocence in favor of the accused. Otherwise, a mere rule of evidence will defeat the constitutionally enshrined right to be presumed innocent. Trial courts are instructed to apply this differentiation, and to always bear in mind the following reminder issued in *People v. Catalan*:
>
> > x x x We remind the lower courts that the presumption of regularity in the performance of duty could not prevail over the stronger presumption of innocence favoring the accused. Otherwise, the constitutional guarantee of the accused being presumed innocent would be held subordinate to a mere rule of evidence allocating the burden of evidence. Where, like here,

> the proof adduced against the accused has not even overcome the presumption of innocence, the presumption of regularity in the performance of duty could not be a factor to adjudge the accused guilty of the crime charged.
>
> Moreover, the regularity of the performance of their duty could not be properly presumed in favor of the policemen because the records were replete with indicia of their serious lapses. As a rule, a presumed fact like the regularity of performance by a police officer must be inferred only from an established basic fact, not plucked out from thin air. To say it differently, it is the established basic fact that triggers the presumed fact of regular performance. Where there is any hint of irregularity committed by the police officers in arresting the accused and thereafter, several of which we have earlier noted, there can be no presumption of regularity of performance in their favor.

It must be noted that the chemistry report[100] of De Guzman mentioned that the specimens submitted for examination contained either small amount[101] or traces[102] only of white substance which tested positive for methamphetamine hydrochloride. The informations in Crim. Case Nos. 12852 and 12853 respectively refer to a transparent cellophane sachet and two empty transparent cellophane sachets, each of which contained shabu weighing not more than 0.01 grams. Recent cases[103] have highlighted the need to ensure the integrity of seized drugs in the chain of custody when only a minuscule amount of drugs had been allegedly seized from the accused. Pertinently, we have 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 [with]." [104]

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[100] Record of Documentary Evidence, p. 7; Exh. "H".

[101] *Id.*; Specimen "A".

[102] *Id.*; Specimens "B", "B-1"; "C" and "C-1".

[103] *People v. Jaafar*, *supra* note 78, citing *People v. Holgado*, 741 Phil. 78, 81 (2014); *Tuano v. People*, G.R. No. 205871, 28 September 2016; and *People v. Caiz*, G.R. No. 215340, 13 July 2016, 797 SCRA 26, 58.

[104] *People v. Holgado*, 741 Phil. 78 (2014).

The guilt of the appellants was not proven beyond reasonable doubt.

This much is clear and needs no debate: the blunders committed by the police officers relative to the procedure in Sec. 21, R.A. No. 9165, especially on the highly irregular manner by which the seized items were handled, generates serious doubt on the integrity and evidentiary value of the items. Considering that the seized items constitute the *corpus delicti* of the offenses charged, the prosecution should have proven with moral certainty that the items confiscated during the buy-bust operation were actually those presented before the RTC during the hearing. In other words, it must be unwaveringly established that the dangerous drug presented in court as evidence against the accused is the same as that seized from him in the first place.[105] Under the principle that penal laws are strictly construed against the government, stringent compliance with Sec. 21, R.A. No. 9165 and its IRR is fully justified.[106] The breaches in the procedure provided in Sec. 21, R.A. No. 9165 committed by the police officers, and left unacknowledged and unexplained by the State, militate against a finding of guilt beyond reasonable doubt against the appellants as the integrity and evidentiary value of the *corpus delicti* had been compromised.[107]

To recapitulate, the records of these cases were bereft of any showing that the prosecution had discharged its burden to: (1) overcome the presumption of innocence which appellants enjoy; (2) prove the *corpus delicti* of the crime; (3) establish an unbroken chain of custody of the seized drugs; and (4) offer any explanation why the provisions of Sec. 21, R.A. No. 9165 were not complied with. This Court is thus constrained to acquit the appellants based on reasonable doubt.[108]

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[105] *People v. Tamaño, supra* note 68.

[106] *Rontos v. People*, *supra* note 97 at 335.

[107] *Gamboa v. People*, *supra* note 69.

[108] *People v. Ismael*, *supra* note 74.

WHEREFORE, in view of the foregoing, we **REVERSE** and **SET ASIDE** the 3 October 2011 Decision of the Court of Appeals in CA-G.R. CR-HC No. 00865. Accused-appellants Pablo Arposeple y Sanchez and Jhunrel Sulogaol y Datu are hereby **ACQUITTED** of the crimes charged for failure of the prosecution to prove their guilt beyond reasonable doubt. They are ordered **IMMEDIATELY RELEASED** from detention unless they are otherwise legally confined for another cause.

Let a copy of this Decision be sent to the Director of the Bureau of Corrections, Muntinlupa City, for immediate implementation. The Director of Corrections is directed to report the action he has taken to this Court within five (5) days from receipt of this Decision.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 206437. November 22, 2017]

LEANDRO CRUZ, EMMANUEL MANAHAN, ALRIC JERVOSO, *petitioners, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; PETITION FOR REVIEW ON *CERTIORARI*; AS A RULE, ONLY QUESTIONS OF LAW MAY BE RAISED THEREIN; THE RULE ADMITS OF EXCEPTIONS INCLUDING SUCH SITUATION WHERE THE LOWER COURT HAD IGNORED, OVERLOOKED, OR MISCONSTRUED

RELEVANT FACTS, WHICH IF TAKEN INTO CONSIDERATION WILL CHANGE THE OUTCOME OF THE CASE.— As a rule, only questions of law, not of facts, may be raised in a petition under Rule 45 of the Rules of Court. This rule, however, admits of exceptions including such situation where the lower court had ignored, overlooked, or misconstrued relevant facts, which if taken into consideration will change the outcome of the case. Considering said exception, and the fact that the liberty of petitioners is at stake here, the Court sees it necessary to carefully review the records of this case, and determine whether the CA properly affirmed the RTC Decision convicting petitioners of Qualified Theft.

2. **POLITICAL LAW; CONSTITUTIONAL LAW; BILL OF RIGHTS; PRESUMPTION OF INNOCENCE; THE ACCUSED IS INNOCENT UNTIL PROVEN OTHERWISE BY PROOF BEYOND REASONABLE DOUBT.—** [N]o less than our Constitution provides the presumption that the accused is innocent until proven otherwise by proof beyond a reasonable doubt. Such proof requires moral certainty, or that "degree of proof which produces conviction in an unprejudiced mind." Additionally, the prosecution has the burden to overcome the presumption of innocence. And, in the discharge of its burden, the prosecution must rely on the strength of its evidence, and not on the weakness of the defense.

3. **CRIMINAL LAW; REVISED PENAL CODE; QUALIFIED THEFT; ELEMENTS.—** x x x [The] prosecution must show that the following elements of Qualified Theft are present here: (a) there must be taking of personal property, which belongs to another; (b) such taking was done with intent to gain, and without the owner's consent; (c) it was made with no violence or intimidation against persons nor force upon things; and (d) it was done under any of the circumstances under Article 310 of the Revised Penal Code, which circumstances include grave abuse of confidence. x x x However, the prosecution miserably failed to discharge its burden.

4. **REMEDIAL LAW; EVIDENCE; CONFESSION; PRESUMPTION OF VOLUNTARINESS OF CONFESSION MAY BE OVERCOME BY SUBSTANTIAL EVIDENCE THAT ONE'S ADMISSION WAS NOT TRUE AND THE CONFESSION WAS UNWILLINGLY GIVEN; CASE AT BAR.—** [T]he Court gives no credence to the supposed written

confessions made by Cruz, Jervoso and their co-accused Pardilla. On this, the Court is not unmindful of the presumption of voluntariness of a confession. However, the confessant may overcome such presumption provided that he or she substantiates that one's admission was not true and the confession was unwillingly given. In *People v. Enanoria*, the Court held that there must be external manifestations to prove that the confession was not voluntary. These external manifestations included institution of a criminal action against the alleged intimidators for maltreatment, and evidence of compulsion, duress or violence on the confessant. Undeniably, these external manifestations are present here. To note, a day after the execution of their confessions regarding the supposed theft of Prestige Brands' personal properties, Cruz and Jervoso promptly reported the matter to the Makati police. They even filed a case for grave coercion, grave threats, and incriminating innocent persons, against Prestige Brands. Furthermore, petitioners also narrated the details on how they were threatened and intimidated prior to and during the execution of said confessions.

APPEARANCES OF COUNSEL

Soo Gutierrez Leogardo & Lee for petitioners.
Cuevas Colago Tecson & Dela Cruz Law Office for private respondents.
The Solicitor General for public respondent.

D E C I S I O N

DEL CASTILLO, *J.*:

This Petition for Review on *Certiorari* assails the July 20, 2012 Decision[1] and March 27, 2013 Resolution[2] of the Court of Appeals (CA) in CA-G.R. CR No. 32942. The CA affirmed the August 13, 2009 Decision[3] of the Regional Trial Court (RTC)

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[1] CA *rollo*, pp. 255-267; penned by Associate Justice Danton Q. Bueser and concurred in by Associate Justices Amelita G. Tolentino and Ramon R. Garcia.

[2] *Id*. at 354-355.

[3] Records, pp. 600-615; penned by Judge Reynaldo M. Laigo.

of Makati, Branch 56 in Criminal Case No. 04-2725 finding Leandro Cruz (Cruz), Emmanuel Manahan (Manahan), and Alric Jervoso (Jervoso) guilty of Qualified Theft, and imposing upon them the penalty of ten (10) years and one (1) day of *prision mayor*, as minimum, to fourteen (14) years, eight (8) months and one (1) day of *reclusion temporal*, as maximum.

Factual Antecedents

In an Information[4] dated May 17, 2004, Cruz, Manahan, Jervoso (petitioners), and Alvin Pardilla (Pardilla) were charged with Qualified Theft the accusatory portion of which reads:

> That in or about and sometime during the month of October, 2003, in the City of Makati, Metro Manila, Philippines, a place within the jurisdiction of this Honorable Court, the above-named accused, being then the Warehouse Supervisor, Assistant Warehouse Supervisor, Delivery Driver cum Warehouse Assistant and Warehouse cum Delivery Assistant, respectively, and as such have access to the Warehouse and enjoying the trust and confidence reposed upon them by complainant, with grave abuse of confidence, intent to gain and without the knowledge and consent of the owner thereof, did then and there willfully, unlawfully and feloniously, take, steal, and carry away the stock products held in the warehouse in the total amount of Php1,122,205.00 belonging to PRESTIGE BRANDS PHIL., INC., herein represented by VAIBHAV TEMBULKAR y ATMARAM, to the damage and prejudice of the owner thereof.
>
> CONTRARY TO LAW.

When arraigned, petitioners pleaded "Not Guilty"[5] to the charges against them while Pardilla remained at large.[6]

After the termination of the pre-trial, trial on the merits ensued.

Version of the Prosecution

To establish its case, the prosecution presented Vinod Dadlani (Dadlani), the President of Prestige Brands Phils., Inc. (Prestige

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[4] *Id*. at 1-2.

[5] *Id*. at 153-155.

[6] TSN, August 11, 2005, p. 3.

Brands);[7] Albert Ding (Ding), the former Finance Manager of the Prestige Group of Companies in South East Asia;[8] and Rebecca Pascual (Pascual), the former Finance Manager of Prestige Brands.[9] These witnesses testified on the following facts:

Prestige Brands, a company engaged in the sale and distribution of various products in the Philippines, through Dadlani, employed Cruz, Manahan, Jervoso, and Pardilla[10] as Warehouse Supervisor, Assistant Warehouse Supervisor, Delivery Driver and Warehouse Assistant, and Warehouse Assistant, respectively.[11] Dadlani authorized only five individuals — petitioners, Pardilla, and Prestige Brands' Vice President, Vaibhav Tembulkar (Tembulkar), — to have access to its warehouse located at the 4th Floor of the ITC Building in Jupiter, Makati City. Only Cruz and Tembulkar had keys to its locks. They would open it in the morning, and in the evening, Cruz would turnover his keys to Tembulkar. Authorized warehouse personnel were not subjected to any checking when they leave the warehouse.[12] On the other hand, non-warehouse personnel, like Pascual, could enter the same only if accompanied by a warehouse staff, and would be frisked when they leave the premises.[13]

In October 2003, Tembulkar informed Dadlani that he would conduct an investigation since discrepancies in their record vis-à-vis the physical count of the items stored in the warehouse were noted.[14] Based on the company's inventory updates for January 2003 to April 2003, and October 2003 conducted by

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[7] *Id.* at 5.

[8] TSN, December 4, 2006, p. 16.

[9] TSN, January 11, 2007, pp. 3-5.

[10] TSN, August 11, 2005, pp. 11-12.

[11] TSN, October 3, 2006, p. 8.

[12] TSN, October 5, 2006, pp. 8-16.

[13] TSN, January 11, 2007, p. 11.

[14] TSN, August 11, 2005, p. 14.

Ding,[15] about ₱1.2 million worth of Prestige Brands' products were unaccounted, which included fragrance brands like Hugo Boss, Dolce and Gabbana, Ferrari, and So You by Beverly Hills.[16]

On November 20, 2003, Tembulkar referred petitioners and Pardilla to Dadlani. Thereafter, Cruz, Jervoso, and Pardilla admitted to Dadlani that they stole and sold products of Prestige Brands, and divided the proceeds among themselves. Cruz, Jervoso, and Pardilla executed their written confession on the matter. However, Manahan did not confess to anything.[17] Subsequently, petitioners and Pardilla no longer reported for work. Thus, on November 27, 2003, Prestige Brands issued a Memorandum requiring them to conduct a physical stock count and verify the missing products.[18]

Meanwhile, Cruz filed his resignation letter dated October 29, 2003 which Dadlani accepted but modified its effectivity date.[19] Later, Prestige Brands twice wrote Cruz to report back to work and make a stock count but to no avail.[20]

Version of the Defense

Petitioners denied the charges against them and averred as follows:

Prestige Brands employed petitioners and Pardilla as warehouse personnel.[21] In particular, they were tasked to prepare perfumes for delivery to the clients of the company. After packing the items, the staff of the Accounting Department would frisk petitioners and Pardilla. Thereafter, they would deliver the perfumes to different stores.[22] Cruz and Tembulkar kept the

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[15] TSN, December 4, 2006, p. 8.

[16] TSN, February 16, 2006, pp. 49-51.

[17] TSN, August 11, 2005, pp. 15-20.

[18] TSN, February 16, 2006, pp. 17-18, 23.

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

[20] *Id.* at 33-38.

[21] TSN, August 5, 2008, p. 6.

[22] TSN, June 24, 2008, pp. 6-12.

keys to the two locks of the first door leading to the warehouse, where Prestige Brands stored all its products for delivery.[23] The first door of the warehouse had two locks; Cruz kept the key to the first lock while Tembulkar had the key to the second lock. And only Tembulkar had a key to the second door leading to the warehouse.[24]

On November 15, 2003, Cruz filed his resignation letter but it was agreed that his resignation would take effect only on November 29, 2003.[25]

On November 20, 2003, however, while Jervoso was in Robinsons Department Store delivering perfumes, he received a call from Cruz telling him to return to the office. Upon arriving in their office, Cruz told Jervoso that Dadlani wanted Jervoso to drive for him (Dadlani).[26] Jervoso drove Dadlani to GMA 7. Thereafter, Jervoso, Dadlani, and Dadlani's friend, Mayor Lito Atienza[27] (Mayor Atienza), went to Baywalk at Roxas Boulevard, Manila. There, Mayor Atienza told Jervoso that his (Jervoso) boss had a problem as his employees stole from him ₱10 million worth of perfumes. Jervoso replied that nothing was lost because an inventory was conducted but Mayor Atienza countered that petitioners were the only ones present during the inventory. Mayor Atienza likewise told Jervoso to cooperate or else he would be liable.[28]

On the same day, Dadlani and Ding met with petitioners and Pardilla in Dadlani's office.[29] Dadlani told Cruz about the missing items in the warehouse but Cruz replied that he was unaware of it. Dadlani told Cruz that he would disclose the

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[23] TSN, October 28, 2008, p. 5; TSN, December 2, 2008, p. 10.

[24] TSN, December 2, 2008, p. 11.

[25] *Id.* at 13.

[26] TSN, June 24, 2008, pp. 18-20.

[27] TSN, October 21, 2008, p. 19.

[28] TSN, June 24, 2008, pp. 20-24.

[29] TSN, August 5, 2008, p. 10; TSN, October 28, 2008, p. 9.

incident to the media, and would involve their family. Dadlani then told Cruz that if he would sign the computer printout handed him, no complaint would be filed against petitioners and Pardilla. Perforce, Cruz signed the document where he admitted that he stole products of Prestige Brands.[30]

During his testimony, Cruz stated that he failed to reconcile the discrepancies in the inventory because he had no access to the computer-generated report related to it; also his office table was forcibly opened and all documents material for the reconciliation of the discrepancies were taken.[31] Upon presentment of a letter dated October 20, 2003, Cruz acknowledged that it was the same document that Dadlani asked him to sign minus the jurat.[32]

On November 20, 2003, Dadlani also spoke with Jervoso. On the same occasion, Dadlani handed Jervoso a letter dated October 20, 2003 which the latter signed without understanding that it contained an accusation of theft against him, his co-petitioners, and Pardilla.[33]

Likewise, Dadlani handed Manahan a letter which stated that petitioners and Pardilla stole several items from the company. Despite Dadlani mentioning his friends in the media, particularly from GMA 7 and Manila Bulletin, and his connections in Manila, including Mayor Atienza and the National Bureau of Investigation (NBI), Manahan refused to sign said letter.[34] On November 21, 2003, Manahan resigned from Prestige Brands.[35]

On November 22, 2003, while Jervoso and Cruz were working in the warehouse, Ernesto Lontoc (Lontoc) and Atty. Francisco Simon (Atty. Simon), who were purportedly from the NBI, asked

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[30] TSN, December 2, 2008, pp. 14-17, 37.

[31] *Id.* at 29.

[32] *Id.* at 17-18.

[33] TSN, June 24, 2008, pp. 25-30.

[34] TSN, October 21, 2008, pp. 16-22.

[35] TSN, October 28, 2008, pp. 16-17.

them to write a letter admitting that they (Jervoso and Cruz) stole perfumes. Jervoso wrote a letter which, contrary to the request, stated that he, his co-petitioners, and Pardilla did nothing wrong against the company. Dadlani got mad when he received Jervoso's letter. Ultimately, despite his initial protest, Jervoso was prevailed to prepare a letter attesting that they stole from the company. After the incident, Jervoso no longer reported for work.[36] During the trial, Jervoso denied that the letter he wrote contained a jurat.[37]

Meanwhile, on November 23, 2003, Cruz and Jervoso went to the Makati Police Station and reported[38] that at about 5:00 p.m. on November 21, 2003, Dadlani, Ding, and an unidentified male person forced them to sign a confession letter, which alleged that they stole products from the warehouse; that on November 22, 2003, Dadlani, Lontoc, and Atty. Simon forced them to translate their confession into their (Cruz and Jervoso) own handwriting; and that they were intimidated into signing the letter and even detained at the company premises up to 11:15 p.m. and were allowed to leave only after affixing their signature to the confession letter.

On November 24, 2003, Cruz and Jervoso filed with the Makati Prosecutor's Office a Complaint[39] for grave coercion, grave threats, and incriminating innocent persons against Prestige Brands. At the time of the trial, the motion for reconsideration filed relative to the denial of the petition for review (on the dismissal of the complaint) was still pending with the Department of Justice.[40]

Ruling of the Regional Trial Court

On August 13, 2009, the RTC rendered its Decision against petitioners, the dispositive portion of which reads:

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[36] TSN, June 24, 2008, pp. 35-39.

[37] *Id.* at 37-38.

[38] Records, p. 58; TSN, December 2, 2008, p. 25.

[39] *Id.* at 59-61.

[40] TSN, December 2, 2008, pp. 38-39; TSN, February 10, 2009, p. 8.

WHEREFORE, with all the foregoing consideration, the Court finds that the prosecution established beyond reasonable doubt the guilt of the accused Alric Jervoso, Leandro Cruz and Emmanuel Manahan as having committed the crime of Qualified Theft, and are sentenced to suffer the penalty of 10 years and 1 day of Prision Mayor as minimum; 14 years, 8 months and 1 day of Reclusion Temporal as maximum.

Said accused are ordered to pay solidarily the private complainant the amount of ₱1,122,205.00.

The case against accused Alvin Pardilla, who is at large is archived.

SO ORDERED.[41]

The RTC held that the prosecution proved that petitioners committed grave abuse of confidence when they stole items belonging to Prestige Brands. It added that petitioners enjoyed trust and confidence of Prestige Brands because they were given access to company stocks, which they took out for delivery to clients.

It further decreed that the prosecution established the fact of loss of Prestige Brands' personal properties, comprising of its inventories for the periods ending on April 30, 2003 and October 2003 in the total amount of ₱1,122,205.00. It ratiocinated that while no one witnessed the actual taking of said items, the written admissions of Jervoso and Cruz were admissible in evidence. These admissions, according to the RTC, were part of *res gestae* because they were spontaneous reactions to the confrontation, and were not mere afterthought. It added that while Manahan did not submit any written confession, it appeared that he shared in the proceeds of the stolen items, which was indicative of conspiracy and connivance.

In sum, the RTC ruled that the chain of evidence led to the conclusion that petitioners committed Qualified Theft because they had exclusive access to the warehouse; their admission when confronted were concrete and convincing; hence, they were guilty of theft of company stocks.

Undaunted, petitioners appealed to the CA.

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[41] Records, p. 615.

Ruling of the Court of Appeals

On July 20, 2012, the CA affirmed the RTC Decision.

According to the CA, the prosecution established loss of Prestige Brands' personal property as shown by its inventories for May 2003 and for October 2003. It ruled that petitioners had exclusive access to the warehouse; they had the duties to safekeep the items and maintain an inventory thereof; and when discrepancies were noted in the inventory, petitioners failed to explain or account for such loss/discrepancies. It also gave credence to the admission of petitioners that they stole from Prestige Brands.

On March 27, 2013, the CA denied petitioners' Motion for Reconsideration.

Aggrieved, petitioners filed this Petition for Review raising the following grounds:

THE COURT OF APPEALS ISSUED ITS ASSAILED DECISION AND RESOLUTION IN A MANNER NOT IN ACCORD WITH LAW BY UPHOLDING PETITIONERS' CONVICTION FOR THE CRIME OF QUALIFIED THEFT.

A.

THE COURT OF APPEALS' RELIANCE ON THE INVENTORIES AND ITS CONCLUSION THAT THE 'ELEMENT OF LOSS' WAS ESTABLISHED ARE BOTH CONTRARY TO LAW AND JURISPRUDENCE CONSIDERING THAT THE INVENTORIES DID NOT PROVE ANY OF THE ELEMENTS OF QUALIFIED THEFT AND NOT A MERE 'LOSS[.]'

B.

CONTRARY TO THE COURT OF APPEALS' RULING, THE WRITTEN CONFESSIONS PURPORTEDLY EXECUTED BY PETITIONERS, SHOULD NOT HAVE BEEN GIVEN EVIDENTIARY WEIGHT SINCE THE SAME WERE INVOLUNTARILY EXECUTED IN VIOLATION OF THE CONSTITUTIONAL RIGHTS OF THE PETITIONERS, AND THEY WERE NOT CORROBORATED WITH *CORPUS DELICTI*, AS REQUIRED BY THE RULES OF COURT[.]

C.

THE COURT OF APPEALS FAILED TO TAKE INTO ACCOUNT THE PHYSICAL IMPOSSIBILITY OF TAKING ALL THE ALLEGED MISSING PERFUMES IN ONE INSTANCE ONLY THAT SHOULD HAVE CREATED REASONABLE DOUBT ON THE GUILT OF THE PETITIONERS.

D.

CONTRARY TO THE FINDING OF THE COURT OF APPEALS, THE PROSECUTION FAILED TO PROVE THAT PETITIONERS' POSITIONS INVOLVED CONFIDENCE REPOSED BY PRESTIGE BRANDS SO AS TO QUALIFY THE CRIME OF THEFT CONSIDERING THAT THE PROSECUTION MERELY PRESENTED THE JOB DESCRIPTIONS, LETTERS OF APPOINTMENTS OF THE PETITIONERS, AND A SKETCH OF THE WAREHOUSE.

E.

THE COURT OF APPEALS ACTED CONTRARY TO LAW AND JURISPRUDENCE WHEN IT UPHELD THE SUFFICIENCY OF THE PROSECUTION'S CIRCUMSTANTIAL EVIDENCE CONSIDERING THAT THE COMBINATION OF ALL THE CIRCUMSTANCES DID NOT ESTABLISH THAT A CRIME HAD BEEN COMMITTED, NOR THAT THE PETITIONERS WERE GUILTY THEREOF BEYOND REASONABLE DOUBT.[42]

Petitioners' Arguments

Petitioners stress that apart from the shortage or loss of inventories, the CA did not explain how the unlawful taking was committed in this case. They also contend that the discrepancy in Prestige Brands' inventory from January 2003 to April 30, 2003 did not prove that they committed theft in October 2003. They further argue that there was no showing that the lost items were indeed stored in the warehouse, or were in their possession. As such, they posit that "the inventory reports did not establish (1) the existence of the fragrances, (2) the possession thereof by [them] or (3) the alleged taking thereof, or (4) that there was theft or (5) that [p]etitioners committed

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[42] *Rollo*, pp. 18-19.

the same, ([6]) much less with grave abuse of trust and confidence."[43] They further claim that the written confessions they purportedly executed have no evidentiary value because they did not voluntarily execute them, and the same were not corroborated with *corpus delicti.* They insist that they signed their confessions under duress.

In fine, petitioners posit that the circumstantial evidence against them did not prove that a crime was committed and that they were guilty thereof. As such, there is reasonable doubt that they committed theft against Prestige Brands.

Respondent's Arguments

For its part, respondent maintains that petitioners abused Prestige Brand's confidence when they stole items for which they were hired to safeguard and protect. It also asseverates that the notarized confessions of petitioners must prevail over their defense of mere denial.

Our Ruling

The Petition is with merit.

As a rule, only questions of law, not of facts, may be raised in a petition under Rule 45 of the Rules of Court. This rule, however, admits of exceptions including such situation where the lower court had ignored, overlooked, or misconstrued relevant facts, which if taken into consideration will change the outcome of the case. Considering said exception, and the fact that the liberty of petitioners is at stake here, the Court sees it necessary to carefully review the records of this case, and determine whether the CA properly affirmed the RTC Decision convicting petitioners of Qualified Theft.[44]

Moreover, no less than our Constitution provides the presumption that the accused is innocent until proven otherwise

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[43] *Id.* at 33.

[44] *Franco v. People,* G.R. No. 191185, February 1, 2016, 782 SCRA 526, 534-535.

by proof beyond a reasonable doubt.[45] Such proof requires moral certainty, or that "degree of proof which produces conviction in an unprejudiced mind."[46] Additionally, the prosecution has the burden to overcome the presumption of innocence. And, in the discharge of its burden, the prosecution must rely on the strength of its evidence, and not on the weakness of the defense.[47]

Here, petitioners with their co-accused Pardilla were charged with Qualified Theft. Based on the foregoing precepts, they are presumed innocent unless the prosecution established by proof beyond reasonable doubt that they are guilty as charged. In order to do so, the prosecution must show that the following elements of Qualified Theft are present here: (a) there must be taking of personal property, which belongs to another; (b) such taking was done with intent to gain, and without the owner's consent; (c) it was made with no violence or intimidation against persons nor force upon things; and (d) it was done under any of the circumstances under Article 310 of the Revised Penal Code, which circumstances include grave abuse of confidence.[48]

Put in another way, in order for petitioners to be found guilty of Qualified Theft, the prosecution must prove with moral certainty that Prestige Brands lost its personal property by petitioners' felonious taking[49] thereof or by their acts of depriving Prestige Brands of its control and possession without its consent.[50]

However, the prosecution miserably failed to discharge its burden.

First, the RTC confirmed that no one witnessed the actual taking of items belonging to Prestige Brands. To establish unlawful taking, the RTC merely relied on the assertion that

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[45] *Atienza v. People*, 726 Phil. 570, 588 (2014).

[46] *People v. Tadepa*, 314 Phil. 231, 236 (1995).

[47] *Atienza v. People*, *supra* at 589.

[48] See *Engr. Zapanta v. People,* 707 Phil. 23, 31 (2013).

[49] *Id.* at 32.

[50] *Tan v. People,* 379 Phil. 999, 1010-1011 (2000).

there were discrepancies in the inventories of Prestige Brands. Such reliance, however, is misplaced because the inventories[51] for January-April 2003, and October 2003, contained only a list of items purportedly stored in Prestige Brands' warehouse and nothing more. Similar to our ruling in *Manuel Huang Chua v. People,*[52] we can neither speculate on the purpose of these inventories nor surmise on the stories behind them. While the prosecution insists that the inventories evidenced the discrepancies of the items stored in the warehouse and those that the company lost, the inventories themselves did not indicate such fact.

Moreover, it is contrary to ordinary human experience that Prestige Brands did not promptly investigate the supposed discrepancies in its inventory for January-April 2003. It even waited for the subsequent October 2003 inventory to verify the supposed shortage of items. Indeed, prudent behavior would have prompted Prestige Brands to immediately investigate and determine if it sustained any loss at the earliest possible opportunity, and if it indeed sustained any loss, whether petitioners were the perpetrators of the unlawful taking.[53]

Second, contrary to the finding of the RTC and the CA, petitioners and Pardilla did not have exclusive access to the warehouse of Prestige Brands.

Both prosecution and defense revealed that Dadlani authorized five people — petitioners, Pardilla, and Tembulkar — to have access to its warehouse. In fact, Tembulkar, along with Cruz, held its keys. Cruz could not enter the warehouse if the second lock is not opened using Tembulkar's keys. Moreover, petitioners were being frisked by the accounting staff everytime they take out items for delivery. The prosecution further confirmed that Cruz must turn over his keys to Tembulkar in the evening. This only means that, aside from petitioners, other individuals may

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[51] Records, pp. 31-35.

[52] 402 Phil. 717, 728 (2001).

[53] See *Manuel Huang Chua v. People, id.*

have entered the warehouse and may have had taken the alleged missing items. Indeed, in order to justify the contention that petitioners took the items in the warehouse, it is necessary to prove the impossibility that no other person has committed the crime. However, given that petitioners were not the only personnel who could enter the warehouse, the Court cannot exclude the possibility that some other person may have had committed the alleged theft against the company.[54]

In addition, the prosecution did not present Tembulkar as its witness. To our view, such non-presentation weakens its case since Tembulkar's testimony is crucial in establishing the charge against petitioners.[55] For one, and as stated above, he had access to the warehouse, not just petitioners. For another, the Information revealed that Tembulkar represented Prestige Brands in the filing of this case. He was also the one who allegedly informed Dadlani of the discrepancies in the inventories, and conducted the investigation on the matter. Also, according to the prosecution, he was the one who referred petitioners and Pardilla to Dadlani during the November 20, 2003 meeting. Hence, Tembulkar had personal knowledge of the supposed loss sustained by Prestige Brands.

Third, the Court gives no credence to the supposed written confessions made by Cruz, Jervoso and their co-accused Pardilla.

On this, the Court is not unmindful of the presumption of voluntariness of a confession. However, the confessant may overcome such presumption provided that he or she substantiates that one's admission was not true and the confession was unwillingly given. In *People v. Enanoria,*[56] the Court held that there must be external manifestations to prove that the confession was not voluntary. These external manifestations included institution of a criminal action against the alleged intimidators for maltreatment, and evidence of compulsion, duress or violence

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[54] *Franco v. People, supra* note 44 at 545.

[55] See *Manuel Huang Chua v. People, supra* note 52 at 726.

[56] 285 Phil. 138, 157 (1992).

on the confessant. Undeniably, these external manifestations are present here.

To note, a day after the execution of their confessions regarding the supposed theft of Prestige Brands' personal properties, Cruz and Jervoso promptly reported the matter to the Makati police. They even filed a case for grave coercion, grave threats, and incriminating innocent persons, against Prestige Brands.

Furthermore, petitioners also narrated the details on how they were threatened and intimidated prior to and during the execution of said confessions. In the case of Jervoso, he averred that Mayor Atienza talked to him at Baywalk in Roxas Boulevard and asked him to cooperate or else he (Jervoso) would be liable. On the other hand, Cruz and Jervoso stated that NBI employees (Lontoc and Atty. Simon) intimidated them into signing said confession. They narrated with particularity that on November 22, 2003, they were forced to stay up to 11:15 p.m. in their office to translate into Filipino and into their handwriting the typewritten confession they earlier executed. In the case of Manahan, he also affirmed that Dadlani intimidated him into signing a confession by mentioning to him his (Dadlani) friends in the media, and his connections to Mayor Atienza and the NBI. Although Manahan refused to make a written admission, he confirmed the intimidation made by Dadlani against him.

The Court also observes that although the aforesaid confessions were individually executed by Cruz, Jervoso and Pardilla, they were in fact similarly worded, except as to the name of the confessant, to wit:

October 20, 2003

Prestige Brands Phil., Inc.

Attn: Mr. Vinod Dadlani

Dear Sir,

I, [Cruz/Jervoso/Pardilla], hereby confirm and admit that I have stolen products, namely fragrances from the warehouse of Prestige Brands Phil., Inc. in my time working with the Company. I have sold many of the stolen products and the proceeds were shared with my colleagues

in the warehouse, ie, [Leandro Cruz, Emmanuel Manahan, Alvin Pardilla, and Alric Jervoso].

I make this honest confession out of my own free will and without compulsion.

Yours truly,

Sgd.
[Cruz/Jervoso/Pardilla][57]

Even the translations of these confessions into Filipino executed by Cruz and Jervoso were also similarly worded, except as to the names and signatures of the persons executing them, *viz.*:

Nov. 22, 2003

Ako si [Leandro C. Cruz/Alric B. Jervoso] ay umaamin na may kinuha akong produkto sa warehouse ng Prestige Brands Phils., Inc. Ibinenta namin ang produkto at pinaghati-hatian namin nina Alvin Pardilla, [Alvic Jervoso, Leandro C. Cruz,] at Emmanuel Manahan.[58]

Sgd.

[Cruz/Jervoso/Pardilla]

Notably, these confessions did not contain specific details as regards any item unlawfully taken. Indeed, an indication of voluntariness is the disclosure of the details in the confession which details are only known to the declarant. For lack of necessary details in their statements, we hold that the same did not establish any unlawful taking of the personal properties of Prestige Brands.[59]

To add, Cruz and Jervoso vehemently denied that their statements contained a jurat. The prosecution did not, however, address this matter. This is so even if it may conveniently present the Notary Public before whom petitioners and Pardilla

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[57] Records, pp. 263-265; dorsal portions.

[58] *Id*.

[59] *People v. Enanoria, supra* note 56.

purportedly appeared and voluntarily and intelligently sworn to the truth of their statements. Such is the case if indeed petitioners presented these statements before a Notary Public.[60]

Without the supposed confessions discussed above, there is no other evidence that would establish that petitioners committed theft against Prestige Brands. Verily, the Court cannot simply accept the theory of the prosecution at face value, and ignore the basic rule that criminal conviction must rest upon the strength of the prosecution's evidence, and not on the weakness of the defense.[61] Indeed, the —

> evidence for the prosecution must stand or fall on its own weight and cannot be allowed to draw strength from the weakness of the defense. Moreover, when the circumstances are capable of two or more inferences, as in this case, such that one of which is consistent with the presumption of innocence and the other is compatible with guilt, the presumption of innocence must prevail and the [C]ourt must acquit.[62]

WHEREFORE, the Petition for Review is **GRANTED**. The July 20, 2012 Decision and March 27, 2013 Resolution of the Court of Appeals in CA-G.R. CR No. 32942 are **REVERSED and SET ASIDE**. Petitioners Leandro Cruz, Emmanuel Manahan, and Alric Jervoso are hereby **ACQUITTED** on the ground that their guilt has not been proved beyond reasonable doubt. Their immediate release from detention is hereby ordered, unless other lawful and valid grounds for their further detention exist.

SO ORDERED.

Sereno, C.J. (Chairperson), Leonardo-de Castro, Peralta,[*] and *Tijam, JJ.,* concur.

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[60] *Id*.

[61] *Tan v. People, supra* note 50 at 1013.

[62] *Balerta v. People,* 748 Phil. 806, 822-823 (2014).

[*] Per September 6, 2017 raffle,

THIRD DIVISION

[G.R. No. 207666. November 22, 2017]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **FLORIANO TAYABAN,** *accused-appellant.*

SYLLABUS

1. **CRIMINAL LAW; RAPE; WHEN THE VICTIM IS UNDER 12 YEARS OF AGE; IT IS THE VICTIM'S MENTAL AGE THAT IS DETERMINATIVE OF HER CAPACITY TO GIVE CONSENT.—** To sustain a conviction [of rape] under Article 266-A(1) of the Revised Penal Code, it must be shown that a man had carnal knowledge of a woman, and that said carnal knowledge was under any of the following circumstances: a) Through force, threat or intimidation; b) The victim is deprived of reason; c) The victim is unconscious; d) By means of fraudulent machination; e) By means of grave abuse of authority; f) When the victim is under 12 years of age; or g) When the victim is demented. In relation to the requirement that the victim should be under 12 years of age, it is the victim's mental age that is determinative of her capacity to give consent.

2. **REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; FACTUAL FINDINGS OF THE TRIAL COURT, RESPECTED.—** [F]actual findings of the trial court, its assessment of the credibility of witnesses and the probative weight of their testimonies, and the conclusions based on these factual findings are to be given the highest respect. When these have been affirmed by the Court of Appeals, this Court will generally not re-examine them.

3. **CRIMINAL LAW; RAPE; WHEN THE OFFENDER COMMITTED THE CRIME, KNOWING THE INTELLECTUAL DISABILITY OF THE OFFENDED PARTY; PROPER PENALTY.—** Under Section 266-B of the Revised Penal Code, when the offender committed the crime, knowing of the intellectual disability of the offended party, the death penalty shall be imposed. Considering that the imposition of the death penalty is prohibited, the Court of Appeals properly imposed the penalty of *reclusion perpetua* without

eligibility for parole instead. However, in line with current jurisprudence, ₱100,000.00 as civil indemnity, ₱100,000.00 as moral damages, and ₱100,000.00 as exemplary damages shall be awarded to the victim.

APPEARANCES OF COUNSEL

Office of the Solicitor General for plaintiff-appellee.
Public Attorney's Office for accused-appellant.

R E S O L U T I O N

LEONEN, *J.*:

This resolves the appeal[1] from the Court of Appeals June 28, 2012 Decision[2] in CA-GR. CR-HC No, 04580, affirming with modification the July 12, 2010 Decision[3] of Branch 14, Regional Trial Court, [redacted] Ifugao. The Regional Trial Court found the accused therein, Floriano Tayaban (Tayaban), guilty beyond reasonable doubt of the crime of rape. It imposed the penalty of *reclusion perpetua* and ordered Tayaban to pay the victim ₱50,000.00 as civil indemnity and ₱50,000;00 as moral damages. On appeal, the Court of Appeals affirmed the Regional Trial Court Decision, but imposed the penalty of *reclusion perpetua* without eligibility for parole.

In the Information dated August 20, 2008, accused-appellant Tayaban was charged with the crime of rape.[4] It read, in part:

That sometime in May, 2008, at [redacted], hence, within the jurisdiction of this Honorable Court, the

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[1] CA *rollo*, pp. 173-175. The appeal was filed under Rule 124, Section 13(c) of the Rules of Court.

[2] *Rollo*, pp. 2-20. The Decision was penned by Associate Justice Agnes Reyes-Carpio and concurred in by Associate Justices Jose C. Reyes, Jr. and Priscilla J. Baltazar-Padilla of the Tenth Division, Court of Appeals, Manila.

[3] CA *rollo*, pp, 22-34. The Decision, docketed as Crim. Case No. 1783, was penned by Presiding Judge Joseph P. Baguilat.

[4] *Rollo*, p. 3.

above-named accused DID then and there willfully, unlawfully and feloniously have carnal knowledge of one AAA, a sixteen (16)[-] year[-]old mentally retardate.[5]

Upon arraignment on October 8, 2008, accused-appellant entered a plea of not guilty. Trial on the merits then ensued after the requisite pre-trial.[6]

The version of the prosecution was as follows:

AAA had been previously assessed to have moderate mental retardation, an intellectual disability.[7] Sometime in May 2008, AAA went to the house of her uncle, accused-appellant Tayaban, at [redacted], Ifugao.[8] While she was there, accused-appellant undressed her and removed his pants. He then inserted his penis in her vagina many times and bit her breast.[9] Around three (3) months later,[10] Dr. Mae Codamon-Diaz (Dr. Diaz) physically examined AAA and found a healed laceration on her hymen, which she said could have occurred more than two (2) weeks earlier.[11]

The version of the defense was as follows:

Accused-appellant was a farmer. In the first week of May 2008, he brought a carabao to Baguio for the last novena of his brother-in-law's father. He returned to Ifugao after six (6) to seven (7) days. He went to [redacted] to get his tools then proceeded to [redacted], which was about an hour away,[12] to fix a house where he could stay and work. He returned to [redacted]

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[5] *Id*.

[6] *Id*.

[7] CA *rollo*, p. 24.

[8] *Id*. at 23.

[9] *Id*.

[10] *Rollo*, p. 14.

[11] CA *rollo*, pp. 23-24.

[12] *Id*. at 29-30.

sometime around the end of May 2008 or the beginning of June 2008.[13]

In its July 12, 2010 Decision,[14] the Regional Trial Court found accused-appellant guilty beyond reasonable doubt of the crime of rape. It noted that although it was proven that accused-appellant was AAA's uncle, this aggravating circumstance was not alleged in the Information and could not be considered. Similarly, it could not consider the minority of the victim, as her age was not properly established during trial.[15] The Regional Trial Court found AAA's testimony credible.[16] It rejected accused-appellant's defense as a self-serving fabrication[17] and noted that his defense was corroborated only by his wife.[18] The dispositive portion of this Decision read:

> WHEREFORE, premises considered, the Court finds accused guilty beyond reasonable doubt of the crime of rape and hereby sentences accused to suffer imprisonment of reclusion perpetua. The Court further orders accused to pay the complainant [AAA] in the amount of Fifty Thousand (Php50,000.00) Pesos as indemnity and another Fifty Thousand (Php50,000.00) as moral damages.
>
> SO ORDERED.[19]

In its June 28, 2012 Decision,[20] the Court of Appeals affirmed the findings of the Regional Trial Court but modified the penalty. The dispositive portion of this Decision read:

> WHEREFORE, premises considered, the assailed decision dated 12 July 2010 of the Regional Trial Court (RTC), Branch 14, [redacted],

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[13] *Id.* at 24-25.

[14] *Id.* at 22-34.

[15] *Id.* at 32.

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

[17] *Id.* at 30.

[18] *Id.*

[19] *Id.* at 34.

[20] *Rollo*, pp. 2-20.

Ifugao, in Crim. Case No. 1783 is AFFIRMED with modification in that accused-appellant is meted out an imprisonment of reclusion perpetua without eligibility for parole.

SO ORDERED.[21]

Thus, accused-appellant filed a Notice of Appeal with the Court of Appeals.[22]

In compliance with its January 11, 2013 Resolution,[23] which gave due course to accused-appellant's notice of appeal, the Court of Appeals elevated the records of the case to this Court.[24] In its September 2, 2013 Resolution, the Court of Appeals notified the parties that they may file their respective supplemental briefs.[25] Both parties filed their respective manifestations in lieu of supplemental briefs on November 6, 2013.[26]

After carefully considering the parties' arguments and the records of this case, this Court resolves to dismiss accused-appellant's appeal for failing to show reversible error in the assailed decision warranting this Court's appellate jurisdiction.

Article 266-A of the Revised Penal Code provides, in part:

Article 266-A. *Rape; When And How Committed*. — Rape is Committed —

1) By a man who shall have carnal knowledge of a woman under any of the following circumstances:

a) Through force, threat, or intimidation;

b) When the offended party is deprived of reason or otherwise unconscious;

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[21] *Id*. at 20.

[22] CA *rollo*, pp, 173-175.

[23] *Id*. at 176.

[24] *Rollo*, p. 1.

[25] *Id*. at 26.

[26] *Id*. at 27-29, Manifestation of accused-appellant and *rollo*, pp. 30-34, Manifestation of plaintiff-appellee.

c) By means of fraudulent machination or grave abuse of authority; and

d) When the offended party is under twelve (12) years of age or is demented, even though none of the circumstances mentioned above be present.

To sustain a conviction under Article 266-A(1) of the Revised Penal Code, it must be shown that a man had carnal knowledge of a woman, and that said carnal knowledge was under any of the following circumstances:

a) Through force, threat or intimidation;

b) The victim is deprived of reason;

c) The victim is unconscious;

d) By means of fraudulent machination;

e) By means of grave abuse of authority;

f) When the victim is under 12 years of age; or

g) When the victim is demented.[27]

In relation to the requirement that the victim should be under 12 years of age, it is the victim's mental age that is determinative of her capacity to give consent. In *People v. Corpuz y Flores*:[28]

In *People v. Quintos y Badilla*, this Court emphasized that the conditions under Article 266-A should be construed in the light of one's capacity to give consent. Similarly, this Court clarified that an intellectually disabled person is not automatically deprived of reason. Thus,

> We are aware that the terms, "mental retardation" or "intellectual disability," had been classified under "deprived of reason." The terms, "deprived of reason" and "demented",

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[27] *People v. Quintos y Badilla*, 746 Phil. 809, 821-822 (2014) [Per *J.* Leonen, Second Division].

[28] G.R. No. 208013, July 3, 2017, < http://scjudiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2017/july2017/208013.pdf > [Per *J.* Leonen, Second Division].

> however, should be differentiated from the term, "mentally retarded" or "intellectually disabled." ***An intellectually disabled person is not necessarily deprived of reason or demented. This court had even ruled that they may be credible witnesses. However, his or her maturity is not there despite the physical age. He or she is deficient in general mental abilities and has an impaired conceptual, social, and practical functioning relative to his or her age, gender, and peers. Because of such impairment, he or she does, not meet the "social-cultural standards of personal independence and social responsibility.***" (Emphasis provided, citations omitted)

In *Quintos*, this Court also clarified that one's capacity to give consent depends upon his or her mental age and not on his or her chronological age.

> Thus, a person with a chronological age of 7 years and a normal mental age is as capable of making decisions and giving consent as a person with a chronological age of 35 and a mental age of 7. Both are considered incapable of giving rational consent because both are not yet considered to have reached the level of maturity that gives them the capability to make rational decisions, especially on matters involving sexuality. Decision-making is a function of the mind. ***Hence, a person's capacity to decide whether to give consent or to express resistance to an adult activity is determined not by his or her chronological age but by his or her mental age.*** Therefore, in determining whether a person is "twelve (12) years of age" under Article 266-A (1) (d), the interpretation should be in accordance with either the chronological age of the child if he or she is not suffering from intellectual disability, or the mental age if intellectual disability is established. (Emphasis provided)

If a woman above 12 years old has a mental age of a child below 12, the accused remains liable for rape even if the victim acceded to the sordid acts. The reason behind the rule "is simply that if sexual intercourse with a victim under twelve years of age is rape, it must thereby follow that carnal knowledge of a woman whose mental age is that of a child below twelve years should likewise be constitutive of rape."[29] (Emphasis in the original, citations omitted)

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

The prosecution was able to prove carnal knowledge, AAA testified that accused-appellant inserted his penis into her vagina repeatedly.[30] Dr. Diaz's testimony corroborated that there had been carnal knowledge of AAA.[31] The prosecution also proved that due to her intellectual disability, AAA's mental age was equivalent to someone under 12 years old. AAA's intellectual disability was established by the testimony of her teacher[32] and was found by the Regional Trial Court, which itself was able to examine her demeanor:

> The Court observed the victim even before she testified, that her demeanor is that of a two to three year old child. She looked at someone, then turn[ed] her head left and right and face[d] other people while shaking her head with a smile but without a word. Her actuations clearly and . . . obviously indicate that she is mentally retardate (sic). As a retardate, she falls under Paragraph 1 (B) of Article 266-A of the Revised Penal Code. In PP vs. Rolando Magabo, 350 SCRA 126, a mental retardate is classified as a person deprived of reason, not one who is demented. Carnal knowledge of a retardate person is considered rape under subparagraph B not D of 266-A(1) of the Revised Penal Code.[33]

This claim has no merit.

The presentation of a psychologist is not essential in determining the intellectual condition of AAA. In this case, AAA's intellectual disability was established by the testimony of her teacher and the Regional Trial Court's observation of her conduct in court. Even accused-appellant himself admitted that he was aware of AAA's intellectual disability.[34] Moreover, a Psychological Report was issued by the Philippine Mental Health Association, [redacted], showing that AAA's overall level of intellectual functioning is comparable to a three (3)-year-old child. Accused-appellant has failed to

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[30] CA *rollo*, p. 23.

[31] *Id.* at 23-24.

[32] *Id.* at 24.

[33] *Id.* at 26.

[34] *Rollo*, p. 10.

show any reason to reverse the finding of the lower courts. Thus, this Court quotes the Court of Appeals with approval:

> Mental abnormality may be established by evidence other than medical evidence or psychiatric evaluation; it may be established by the testimonies of witnesses.
>
> While the prosecution did not present a psychologist to prove that AAA was a mental retardate, the prosecution had established the mental retardation of AAA through the testimony of Gladys Marie Tobiagon (teacher of AAA at [redacted]), thus:
>
> . . . . . .
>
> PROS TUMAPANG ON DIRECT EXAMINATION:
>
> Q Madam witness, do you know the private complainant, alleged victim in this case, AAA?
> A Yes.
>
> Q Why do you know her?
> A She was my pupil in 2003.
>
> . . . . . .
>
> Q What is that school?
> A [redacted]
>
> Q What is SPED all about?
> A SPED Diagnose disability of children with malfunction mentally.
>
> Q Are you saying these pupils are children whose mental development does not corresponds (sic) their biological age?
> A Yes.
>
> Q You mean children about 16 to 17, some of them have mental age of 4, 5[,] 6?
> A Yes.
>
> . . . . . .
>
> Q You are focused in their mental disability?
> A My class is a multi class for mental disability.
>
> Q You said you know AAA who is one of your pupils. Do you remember how old she is?
> A That time in 2003, her birth date is June 20, 1991 so I think 14 years old.

Q Although 14 years old, how do you assess?
A She has poor assessment. She could not cope in her academic subjects.

. . . . . .

Q She has mental ability less her age of 14?
A Yes.

Q Could you say capable for 2 or 3 grades?
A No.

Q Limited only to that special class?
A She cannot go on with her academic subjects. She cannot identify colors or members, even conversations or make a sentence.

Q She had to be stopped in that level?
A [Maybe] we could train them for some personal activity. For example, how to take a bath, personal hygiene or how to eat, to work with supervision.

Q Could she count up to 20?
A She could say but not identify.

Q She could add?
A No.

Q Could she remember if you ask her?
A She can.

Q Definitely, what is your conclusion?
A She has a poor assessment.

Q Mentally retarded?
A We have four classifications, three kinds of mentally retarded, mild moderate, profound and severe and AAA falls under moderate. She can take a bath.

Q So she is just easy to manipulate?
A Yes. You say to her to work and she can do the work but not exactly the result you expected.

Q She cannot intelligently respond?
A Like sweeping, she just sweeps like that. Sometimes when she tells about the work, I cannot let her work well because she has a problem. She bumps or just falls down.

Q Definitely based on your assessment, she cannot give intelligently or give proposal to any sexual activity?
A She cannot.

. . . . . .

Moreover, the accused-appellant himself admitted during cross-examination that he knew the mental condition of AAA, *viz*:

. . . . . .

PROS TUMAPANG ON CROSS EXAMINATION

. . . . . .

Q And despite her age, she was still studying in that SPED class because of her mental condition. Are you aware of that?
A Yes. She was studying there.

Q Because of her weak mental condition, are you aware of that?
A Of course, I know we are neighbors.

. . . . . .

Moreover, in compliance with the trial court's Order dated 20 January 2009, the Office of the Municipal Social Welfare and Development of Lagawe, Ifugao, submitted a Psychological Report issued by the Philippine Mental Health Association, Baguio-Benguet Chapter, Inc., showing that AAA was diagnosed to be suffering from *Moderate Retardation* thus:

VI. TEST RESULTS & INTERPRETATIONS

Intellectual Evaluation
SB IV

AREA	SAS SCORE	CLASSIFICATION	AGE EQUIVALENT
VERBAL REASONING	36	Moderate Retardation	
Vocabulary			3 years, 8 months
Comprehension			3 years, 2 months
ABSTRACT/VISUAL REASONING	36	Moderate Retardation	2 years, 5 months
Pattern Analysis			
QUANTITATIVE REASONING	36	Moderate Retardation	

Quantitative			2 years, 5 months
SHORT-TERM MEMORY Bead Memory Memory for sentences	36	Moderate Retardation	 3 years, 7 months 3 years, 1 month
OVERALL SCORE	36	Moderate Retardation	3 years, 1 month

The obtained IQ of [AAA] in the SB of 36 is estimated within the Moderate Retardation level of intellectual functioning and it equates to 3 years, 1 month old. Compared to her age-group, she is delayed in terms of solving novel problems utilizing adaptive strategies.

She performed poorly in all the areas assessed. Particularly, her ability to understand words and to use these to reason out is limited. As per observation at the time of testing, most of her responses are 'di ko alam.' Besides, her logical thinking, analysis and synthesis are inadequate. In relation to her BGVMT score that corresponds to 4 years, 6 months old, she needs great deal of time in transferring her thoughts and perceptions into fine motor activities such as in writing and drawing.

Further, her numerical reasoning, counting and matching numbers is limited. Similarly, her immediate recall, processing and retrieval of visual and auditory stimuli are much lower than what is expected of her age.

In the VSMS, she obtained a Social Quotient that is classified within the Moderate retardation level of social adoptive functioning and it equates to 6 years, 5 months old. This implies a need for close supervision in going to places outside neighborhood, communication skills, taking a bath, buying from a store, looking at her hygiene and doing household chores.

Emotional Evaluation

Her projective tests are reflective of instability and poor integrative capacity that seems to be stemming from developmental lag, immaturity and neurological malfunctioning. As such, she may be impulsive. Her backaches confirm her somatic preoccupations. Socially, she tends to be withdrawn and to have difficulty reaching towards others.

With the foregoing, We are one with the court *a quo*'s findings that indeed AAA is a mentally retardate (sic).[35] (Citations omitted)

Accused-appellant also argued that even assuming AAA had an intellectual disability, her testimony was not credible. He claimed that because AAA required assistance from a Department of Social Welfare and Development employee when she took the witness stand, her testimony was heavily coached, and hence, not worthy of credence.[36]

On this point, factual findings of the trial court, its assessment of the credibility of witnesses and the probative weight of their testimonies, and the conclusions based on these factual findings are to be given the highest respect. When these have been affirmed by the Court of Appeals, this Court will generally not re-examine them.[37]

Here, both the Court of Appeals and the Regional Trial Court examined the evidence presented by both parties and found AAA's testimony to be credible, clear, straightforward, and convincing. She testified:

COURT

Q- Do you know one Soriano?
A- Witness clarified the name of accused as Tulian.

PROSECUTOR:

Q- And this Tulian in Court?
A- Yes. (Witness points to a ... man who said in the bench who when asked his name, he answered to the name of Floriano Tayaban.)

Q- Do you know this Floriano Tayaban also named as Tulian?
A- [Y]es[.]

COURT:

Q- Why do you know him?

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[35] *Id.* at 7-12.

[36] CA *rollo*, pp. 59-60.

[37] See *People v. Castel,* 593 Phil. 288 (2003) [Per *J.* Reyes, *En Banc*].

A- (witness is facing left and right and just smiling.)

. . . . . .

Q- Do you remember if any time in the past if your uncle did anything bad to you?
A- There is.

Q- Will you please tell us what bad thing your uncle did to you?
A- About his penis.

Q- What did he do with his pennis (sic) to you?
A- He inserted his pennies (sic) to my vagina.

Q- How about your breast, did he do something to your breast?
A- There is, he bit it.

Q- And what did you feel after he bit your breast?
A- He bit both of my breast[s].

Q- And did you felt (sic) pain?
A- Yes[,] it is painful.

Q- How about when he inserted his penning (sic) inside your vagina, did you felt (sic) pain?
A- Yes.[38] (Grammatical errors in the original)

The Court of Appeals and Regional Trial Court similarly appreciated as credible the testimony of Dr. Diaz, who examined AAA:

PROS. TUMAPANG ON DIRECT EXAMINATION:

PROS. TUMAPANG: (to the Witness)

Q Doctor, do you recall if you were [on] duty at the Ifugao Provincial Hospital on July 10, 2008?
A Yes, sir.

Q And do you recall having examined and treated one AAA who was brought to the hospital for examination regarding her complaint of being allegedly sexually abused?
A Yes, Sir.

Q Would you please tell the Court what were your findings?

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[38] *Rollo*, p. 13.

A The patient was brought to the hospital by the Social Worker, Mrs. Pantaleon and a policewoman and when I examined her she told me that she was abused by a relative, an uncle, and in fact it is not just once but several times and she was threatened not to tell anybody about the incident.

Q And did the patient mentioned (sic) the alleged abuser?
A An uncle, a certain Sorian.

Q And after getting the history of the patient what did you do?
A After getting the history I examined her whole body because she told me that she was also bit at the breast and this happened May, 2008 and she submitted herself for medical examination about three months after. Anyway, I examined her genital parts and there was a laceration about 3:00 o'clock at the area of her reproductive organ. It was healed because it happened three months ago. There are no other findings on her physical features.

Q And were your findings reduced into writing?
A Yes, Sir.

Q There is here a Medical Certificate having been issued by Dr. Mae Codamon-Diaz regarding the medical examination of a certain AAA, please go over and tell the Court if this is the document you issued?
A Yes, this is the one.

Q Is that your signature above the typewritten name Mae D. Codamon-Diaz?
A Yes, Sir.[39]

Accused-appellant has failed to present any cogent reason to reverse the factual findings of the Court of Appeals and of the Regional Trial Court.

Under Section 266-B of the Revised Penal Code, when the offender committed the crime, knowing of the intellectual disability of the offended party, the death penalty shall be imposed. Considering that the imposition of the death penalty is prohibited,[40]

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

[40] Rep. Act No. 9346 (2006) also known as An Act Prohibiting the Death Penalty in the Philippines.

the Court of Appeals properly imposed the penalty of *reclusion perpetua* without eligibility for parole instead.

However, in line with current jurisprudence, ₱100,000.00 as civil indemnity, ₱100,000.00 as moral damages, and ₱100,000,00 as exemplary damages shall be awarded to the victim.[41]

WHEREFORE, this Court **ADOPTS** the findings of fact and conclusions of law of the Court of Appeals June 28, 2012 Decision in CA-G.R. CR-HC No. 04580, which found accused-appellant Floriano Tayaban **GUILTY** beyond reasonable doubt of rape and sentenced him to *reclusion perpetua* without eligibility for parole. This assailed Decision is **AFFIRMED with MODIFICATION** in that the award of damages shall be increased to ₱100,000.00 as civil indemnity, ₱100,000.00 as moral damages, and ₱100,000.00 as exemplary damages. The award of damages shall earn interest at the rate of six percent (6%) per annum from the date of finality of the judgment until fully paid.

SO ORDERED.

Bersamin[*] *(Acting Chairperson)*, *Martires*, and *Gesmundo, JJ.*, concur.

Velasco, Jr., J., on official leave.

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[41] *People v. Jugueta*, G.R. No. 202124, April 5, 2016 < http://scjudiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2016/april2016/202124.pdf> [Per *J.* Peralta, *En Banc*].

[*] Designated Acting Chairperson per S.O. No. 2514 dated November 8, 2017.

THIRD DIVISION

[G.R. No. 207805. November 22, 2017]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **CESAR BALAO *y* LOPEZ,** *accused-appellant.*

SYLLABUS

1. **REMEDIAL LAW; EVIDENCE; BURDEN OF PROOF AND PRESUMPTIONS; EVERY CONVICTION REQUIRES PROOF BEYOND REASONABLE DOUBT, AND THE RESPONSIBILITY OF DISCHARGING THIS BURDEN LIES WITH THE PROSECUTION, WHO MUST ESTABLISH THE IDENTITY OF THE PERPETRATOR OF THE CRIME WITH EQUAL CERTAINTY AS THE CRIME ITSELF FOR, EVEN IF THE COMMISSION OF THE CRIME IS A GIVEN, THERE CAN BE NO CONVICTION WITHOUT THE IDENTITY OF THE MALEFACTOR BEING LIKEWISE CLEARLY ASCERTAINED.—** Every conviction requires proof beyond reasonable doubt. This standard does not entail absolute certainty but only moral certainty or that which "ultimately appeals to a person's very conscience." The main consideration of every court is not whether or not it has "doubts on the innocence of the accused but whether it entertains such doubts on his guilt." The immense responsibility of discharging this burden lies with the prosecution, who must establish the identity of the perpetrator of the crime with equal certainty as the crime itself "for, even if the commission of the crime is a given, there can be no conviction without the identity of the malefactor being likewise clearly ascertained."

2. **ID.; ID.; CREDIBILITY OF WITNESSES; THE TRIAL COURTS' ASSESSMENT OF A WITNESS' CREDIBILITY IS GENERALLY GIVEN GREAT WEIGHT AND RESPECT BY THE APPELLATE COURTS, EXCEPT WHERE THERE IS A CLEAR SHOWING THAT THE ASSESSMENT WAS MADE ARBITRARILY OR THAT THE TRIAL COURT PLAINLY OVERLOOKED CERTAIN FACTS OF SUBSTANCE OR VALUE THAT IF CONSIDERED MIGHT AFFECT THE RESULT OF THE CASE.—** The conviction

of accused-appellant rests on the testimony of Francisco, the sole eyewitness presented by the prosecution during trial. The Court of Appeals found no reason to re-evaluate the trial court's assessment of Francisco's credibility holding that his testimony was "clear and positive in its vital points." The trial courts' assessment of a witness' credibility is generally given great weight and respect by the appellate courts. Trial courts are in the best position to gauge whether or not a witness has testified truthfully since they had "the direct opportunity to observe the witnesses on the stand." However, if there is a clear showing that the assessment was made arbitrarily or that "the trial court . . . plainly overlooked certain facts of substance or value that if considered might affect the result of the case," then appellate courts would not hesitate to review the trial court's findings, especially when a person's fundamental right to liberty is at stake.

3. **ID.; ID.; ID.; THE IDENTIFICATION OF THE ACCUSED AS THE PERPETRATOR OF THE CRIME IS REGARDED AS MORE IMPORTANT THAN ASCERTAINING THE NAME OF THE ACCUSED, AND THE CONFUSION IN THE PERPETRATOR'S NAME, BY ITSELF, WOULD BE INSUFFICIENT TO OVERTURN THE POSITIVE IDENTIFICATION MADE BY A CREDIBLE WITNESS.—** This Court has pored over the records of the case and has found no significant evidence that would support an acquittal. Accused-appellant's conviction is affirmed. Francisco, the sole eyewitness, was familiar with accused-appellant and knew accused-appellant's identity and reputation even before the stabbing incident took place. x x x. [A]lthough Francisco did not know accused-appellant's name, Francisco knew accused-appellant's identity. x x x. The identification of the accused as the perpetrator of the crime is regarded as more important than ascertaining the name of the accused. For instance, in *People v. Catipon*, this Court held that confusion in the perpetrator's name, by itself, would be insufficient to overturn the positive identification made by a credible witness.

4. **ID.; ID.; ID.; THE TESTIMONY OF THE PROSECUTION WITNESS IS ENTITLED TO FULL WEIGHT AND CREDIT WHERE IT WAS NOT ESTABLISHED THAT HE WAS ANIMATED BY ILL-MOTIVES IN TESTIFYING AGAINST ACCUSED-APPELLANT.—** Although Francisco stated that he disliked accused-appellant for being a notorious troublemaker in their community, this does not conclusively

establish that he was animated by ill-motives in testifying against accused-appellant. The presumption then is that Francisco testified in good faith. Therefore, his testimony should be "entitled to full weight and credit."

5. CRIMINAL LAW; REVISED PENAL CODE; MURDER; CONVICTION OF ACCUSED-APPELLANT FOR THE CRIME OF MURDER, AFFIRMED; PROPER IMPOSABLE PENALTY.— Accused-appellant's conviction for the crime of murder is affirmed. However, this Court modifies the civil indemnity, moral damages, and exemplary damages to ₱100,000.00 each in accordance with *People v. Jugueta*. In *Jugueta*, 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.*:

The testimony of a single eyewitness to a crime, even if uncorroborated, produces a conviction beyond reasonable doubt as long as it is credible and positive.[1] A considerable lapse of time between the commission of the offense and the identification of the accused in open court, by itself, would be insufficient to overturn a finding of guilt.

This resolves an appeal from the October 31, 2012 Decision[2] of the Court of Appeals in CA-G.R. CR-HC No. 04765, which

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[1] *People v. Gonzales*, 370 Phil. 577 (1999) [Per *J.* Gonzaga-Reyes, *En Banc*].

[2] *Rollo,* pp. 2-17. The Decision was penned by Associate Justice Normandie B. Pizarro and concurred in by Associate Justices Remedios A. Salazar-Fernando and Manuel M. Barrios of the Second Division, Court of Appeals, Manila.

affirmed the conviction of Cesar Balao y Lopez (Balao) for the crime of murder.

In the Information[3] dated February 8, 2001, Balao was charged of murder. The accusatory portion of this Information read:

> That on or about April 10, 1991, in the City of Manila, Philippines, the said accused, conspiring and confederating together with others whose true names, identities and present whereabouts are still unknown and helping one another, did then and there wilfully, unlawfully and feloniously with intent to kill and with treachery and evident premeditation, attack, assault and use personal violence upon one WILFREDO VILLARANDA, by then and there stabbing the latter with a bladed weapon, hitting him on the right upper chest, thereby inflicting upon him mortal wound which was the direct and immediate cause of his death thereafter.
>
> Contrary to law.[4]

The case was initially archived on November 29, 2001[5] but was revived on January 21, 2003, upon Balao's apprehension.[6] During arraignment, Balao pleaded not guilty.[7]

On June 3, 2003, the case was provisionally dismissed due to the repeated absence of the prosecution's material witnesses. Balao was then released. Eight (8) days later, the case was revived upon motion of the prosecution. Trial on the merits ensued.[8] At first, Balao was absent during trial as he was hiding under a different name and was detained at the San Juan Municipal Jail for the crime of theft.[9] Upon order of the trial court, Balao was transferred to Manila City Jail.[10]

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[3] Records, p. 1.

[4] *Id*.

[5] *Id*. at 17, RTC Order dated November 29, 2001.

[6] *Id*. at 21, RTC Order dated January 21, 2003.

[7] CA *rollo*, p. 82, RTC Decision dated October 12, 2010.

[8] *Id*. at 83, RTC Decision dated October 12, 2010.

[9] Records, pp. 123-124.

[10] *Id*. at 154.

The prosecution presented the following witnesses: Rodel Francisco (Francisco); Christopher Villaranda (Christopher); SPO2 Federico Bernardino (SPO2 Bernardino); and Dr. Valentin Bernales (Dr. Bernales).[11] Asuncion M. Villaranda was also presented to testify on the civil aspect of the case. Their collective testimonies produced the prosecution's version of the incident.

Christopher, a brother of victim Wilfredo Villaranda (Wilfredo), narrated that at around 7:00 p.m. on April 9, 1991, he and his friend were walking along Tejeron Street near Don Mariano Marcos High School in Sta. Ana, Manila. Roberto "Obet" Espejo (Espejo) suddenly came out of nowhere, poked him with an arrow, and then left.[12]

The next day, Christopher chanced upon Espejo in front of Don Mariano Marcos High School. Christopher asked Espejo why he poked him the previous night to which Espejo replied, "*Wala kang pakialam, gago ka*."[13] This enraged Christopher. A fistfight ensued between them. Espejo lost and threatened Christopher by saying, "*Isusumbong kita kay Cesar Balao*."[14] Christopher brushed off Espejo's threat and decided to go home. While Christopher was on his way home, he met a friend who invited him to watch a movie.[15]

At around 11:45 a.m. of the same day, Francisco was in front of Don Mariano Marcos High School. He narrated that he saw Wilfredo on a bicycle, engaged in a conversation with Espejo and a certain Purong.[16] Francisco, who stood four (4) to five (5) meters away from the group, overheard Espejo inquiring about Christopher's whereabouts. While the three (3) were chatting, Balao suddenly appeared behind Wilfredo and stabbed

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[11] CA *rollo*, p. 83.

[12] *Id*. at 84-85.

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

[14] *Id*. at 87.

[15] *Id*.

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

him in the chest with a fan knife. Espejo, Purong, and Balao immediately fled from the scene. Wilfredo alighted from his bicycle and tried to chase them but he fell down. Wilfredo was immediately rushed to Trinity General Hospital. However, he was pronounced dead on arrival.[17] Francisco testified that he knew Balao as a troublemaker in the area. He also stated that Balao, Espejo, and Purong were members of the Dupaks Fraternity.[18]

Christopher only learned about his brother's death later that day.[19]

On the other hand, Balao interposed the defense of alibi. The defense presented the following witnesses: Fausto Balao (Fausto), Balao's father; Elda Magat (Magat); Anita Lumbaga (Lumbaga); Luzviminda Balao-Vergara (Luzviminda), Balao's sister; and Balao himself. Their collective testimonies produced the defense's version of the alleged incident.

Balao narrated that at 7:00 p.m. on April 9, 1991, he and his family boarded a bus bound for Cagayan Province. His eldest sister, Luzviminda,[20] arrived from Japan and wanted to visit Piat Church, being a devotee of Our Lady of Piat. Balao and his family arrived in Cagayan on April 10, 1991. They stayed for one (1) night at a relative's house in Catotoran, Camalaniugan. The next day, they went to Piat Church. After hearing mass, Balao and Luzviminda took photographs to commemorate their visit. Balao and his family left the province after a few days and arrived in Manila on April 14, 1991.[21]

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[17] *Id*.

[18] *Id*. at 86.

[19] *Id*.

[20] Luzviminda was referred to as "Luzviminda" by Cesar and as "Virginia" by Fausto. *See* Luzviminda's testimony, TSN dated February 4, 2009, pp. 7-8; Fausto's testimony, TSN dated September 5, 2005, p. 4; and Balao's testimony, TSN dated December 4, 2008, p. 5.

[21] CA *rollo,* pp. 88-89.

Balao's testimony was corroborated by the testimonies of Luzviminda and Fausto.[22]

A photograph of Balao's visit to Piat Church and a photograph purportedly showing Balao with his family in Camalaniugan River were both presented in court.[23]

Magat and Lumbaga testified that they were both in Hollywood Street in Pandacan, Manila during the alleged incident. They saw four (4) persons conversing with each other within the vicinity. Both Magat and Lumbaga testified that they saw a person from the group fall down and that they did not recognize Balao from the group. However, Lumbaga stated that she had never met Balao before and that she only learned of his identity when she appeared in court.[24]

On October 12, 2010, the Regional Trial Court rendered a Decision,[25] finding Balao guilty beyond reasonable doubt of murder. The Regional Trial Court gave more weight to the positive identification of Balao as the perpetrator of the crime over Balao's defense of alibi.[26] Judgment was rendered as follows:

> WHEREFORE, in view of all the foregoing, the Court finds accused CESAR BALAO y LOPEZ GUILTY beyond reasonable doubt of the crime of MURDER, and sentences him to suffer the penalty of imprisonment of reclusion perpetua.
>
> Accused Cesar Balao is further ordered to pay the heirs of the victim Willy Villaranda the total amount of ₱190,000.00 representing civil indemnity as well as actual, exemplary and moral damages as clearly stated in the body of the Decision.

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[22] *Id.* at 89-92.

[23] *Id.* at 92.

[24] *Id.* at 90-91.

[25] *Id.* at 82-96. The Decision, docketed as Crim. Case No. 01-190439, was penned by Presiding Judge Rosalyn D. Mislos-Loja of Branch 41, Regional Trial Court, Manila.

[26] *Id.* at 92-96.

Costs against the accused.

SO ORDERED.[27]

Balao filed his Notice of Appeal on November 10, 2010.[28]

In his Appellant's Brief,[29] Balao asserted that the prosecution failed to establish his guilt beyond reasonable doubt. The trial court heavily relied on the testimony of a single eyewitness to determine whether or not he was guilty of the crime charged. Although he was identified as Wilfredo's assailant, the sole eyewitness, Francisco, had ill motives against him. Therefore, Francisco's testimony should be re-examined and more weight should be given to accused-appellant's alibi, which was corroborated by the testimonies of the other defense witnesses.[30]

On the other hand, in its Appellee's Brief,[31] the Office of the Solicitor General asserted that a conviction may rest on the sole testimony of an eyewitness provided that the testimony is clear and straightforward.[32] Francisco had no ill motive against Balao or any history of quarrels with him.[33] Furthermore, Balao's defense of alibi was weak as there was no showing that it was physically impossible for him to be at the place of the commission of the crime on the day of the alleged incident.[34]

In its Decision[35] dated October 31, 2012, the Court of Appeals affirmed Balao's conviction but modified the amounts of damages:

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[27] *Id*. at 96.

[28] *Id*. at 54.

[29] *Id*. at 67-81, Accused-Appellant's Brief dated July 13, 2011.

[30] *Id*. at 75.

[31] *Id*. at 105-126, Appellee's Brief dated November 10, 2011.

[32] *Id*. at 120.

[33] *Id*. at 122.

[34] *Id*. at 123-124.

[35] *Rollo,* pp. 2-17.

WHEREFORE, the appeal is DENIED. The assailed decision of the RTC in Crim. Case No. 01-190439 finding the Accused-Appellant guilty of Murder and ordering the payment [of] actual and moral damages are AFFIRMED with the MODIFICATION that the award of civil indemnity is DECREASED from Seventy-Five Thousand Pesos (PhP75,000.00) to Fifty Thousand Pesos (PhP50,000.00) while the exemplary damages are INCREASED from Twenty-Five Thousand Pesos (PhP25,000.00) to Thirty Thousand Pesos (PhP30,000.00). Costs against the Accused-Appellant.

SO ORDERED.[36]

The Court of Appeals emphasized that although Francisco was the only witness who positively identified Balao as the perpetrator of the crime, his testimony was credible and sufficient to support a finding of guilt.[37] As regards Balao's alibi, the Court of Appeals observed that the photograph showing Balao in Piat Church had no date or time stamp. Even if it was proven that the photograph was taken on April 11, 1991, or the day after the alleged incident, it only established that Balao was in Piat Church on April 11, 1991 but did not prove that Balao was not in Manila the day before, the day of the alleged incident.[38]

On November 16, 2012, Balao filed his Notice of Appeal,[39] which was given due course in the Court of Appeals January 9, 2013 Resolution.[40] The case records were then elevated to this Court on June 27, 2013.[41]

In its Resolution[42] dated August 28, 2013, this Court noted the records forwarded by the Court of Appeals and notified the parties to submit their respective supplemental briefs if they

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[36] *Id*. at 16.

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

[38] *Id*. at 13.

[39] *Id*. at 18-20.

[40] *Id*. at 21.

[41] *Id*. at 1.

[42] *Id*. at 23.

desired. Both parties manifested that they would no longer file supplemental briefs.[43]

The sole issue for this Court's resolution is whether or not accused-appellant Cesar Balao is guilty beyond reasonable doubt of murder.

Every conviction requires proof beyond reasonable doubt. This standard does not entail absolute certainty[44] but only moral certainty or that which "ultimately appeals to a person's very conscience."[45] The main consideration of every court is not whether or not it has "doubts on the innocence of the accused but whether it entertains such doubts on his guilt."[46]

The immense responsibility of discharging this burden lies with the prosecution, who must establish the identity of the perpetrator of the crime with equal certainty as the crime itself "for, even if the commission of the crime is a given, there can be no conviction without the identity of the malefactor being likewise clearly ascertained."[47]

The conviction of accused-appellant rests on the testimony of Francisco, the sole eyewitness presented by the prosecution during trial. The Court of Appeals found no reason to re-evaluate the trial court's assessment of Francisco's credibility holding that his testimony was "clear and positive in its vital points."[48]

The trial courts' assessment of a witness' credibility is generally given great weight and respect by the appellate courts. Trial courts are in the best position to gauge whether or not a

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[43] *Id*. at 29-31, Office of the Solicitor General's Manifestation; and *rollo*, pp. 32-34, Balao's Manifestation.

[44] RULES OF COURT, Rule 133, Sec. 2.

[45] *Daayata v. People of the Philippines*, G.R. No. 205745, March 8, 2017 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2017/march2017/205745.pdf> 12 [Per *J.* Leonen, Second Division].

[46] *People v. Bacalso*, 395 Phil. 192, 205 (2000) [Per *J*. Vitug, *En Banc*].

[47] *Id*. at 199.

[48] *Rollo*, p. 11.

witness has testified truthfully since they had "the direct opportunity to observe the witnesses on the stand."[49]

However, if there is a clear showing that the assessment was made arbitrarily or that "the trial court . . . plainly overlooked certain facts of substance or value that if considered might affect the result of the case,"[50] then appellate courts would not hesitate to review the trial court's findings, especially when a person's fundamental right to liberty is at stake.[51]

Although there is value in the contention of the Office of the Solicitor General that a finding of guilt may rest solely on the testimony of a single eyewitness, this Court is not so quick to rely on this rule. Evidently, there was a considerable lapse of time between the commission of the offense and the identification of the accused in open court—12 years, six (6) months, and eight (8) days to be exact. The incident happened on April 10, 1991 but it was not until October 20, 2003 when Francisco took the witness stand[52] and it was not until April 19, 2004 when Francisco identified accused-appellant in open court.[53]

The main consideration now is whether or not this circumstance would be sufficient to overturn accused-appellant's conviction.

This Court has pored over the records of the case and has found no significant evidence that would support an acquittal. Accused-appellant's conviction is affirmed.

Francisco, the sole eyewitness, was familiar with accused-appellant and knew accused-appellant's identity and reputation even before the stabbing incident took place.

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[49] *People v. Dinglasan*, 334 Phil. 691, 704 (1997) [Per *J.* Panganiban, Third Division].

[50] *Id*.

[51] *Id*.

[52] Records, p. 106.

[53] TSN dated April 19, 2004, pp. 5-6.

First, although Francisco did not know accused-appellant's name, Francisco knew accused-appellant's identity. In his Sinumpaang Salaysay dated April 17, 1991, Francisco stated:

T: Saan at kailan ang sinabi mong pag-saksak kay WILFREDO VILLARANDA?

S: Sa may Hollywood St., noong . . . Abril 10, 1991 mga bandang alas Onse kuarenta y singko ng umaga.

. . . . . .

T: Sino ang nakita mong sumaksak kay WILFREDO VILLARANDA?

S: Hindi ko po kilala sa pangalan pero sa mukha ay kilala ko at may nagsabi na ang sumaksak ay si Cesar Balao @ Tonton.[54]

Francisco explained how he came to know of accused-appellant before the stabbing incident during his cross-examination, thus:

Atty. Villanueva: Prior to the incident on April 10, 1991, do you know already this Cesar Balao?

A Yes, sir.

Q Why do you know him, Mr. Witness?

Witness:

"Madalas po kasi siya nandoon sa harap ng eskwelahan."

Atty. Villanueva:

Considering you said you know him, what can you say about this person?

A "Paka ano laging nag-aabang ng away. Naghahanap ng away po."

Q Were you involved in those occasions where he asked for a fight?

A No, sir. "Paglabas po ng eskwelahan. Kasi officer ako noong araw. Puwede akong lumabas tapos 'yung ibang mga estudyante

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[54] Records, p. 8, Francisco's Sinumpaang Salaysay dated April 17, 1991. The records do not show when and how Francisco learned of accused-appellant's name.

hindi. Natataon na kapag nagkahabulan sa Carreon, Sta. Ana, Manila, nakikita ko nangunguna agad 'yung Cesar Balao."

. . . . . .

Q To whom was he asking for a fight?

A "Sa mga estudyante po doon na ano, lalo pag alam niyang mga batang estudyante, mga ganun. 'Yung mga estudyanteng pauwi na sa bahay."

Q How about the persons present around?

A "'Yung mga estudyante lang po ng Don Mariano Marcos High School."

Q At that time, Mr. Witness, do you hold [an]y position in your barangay?

A No, sir.

Q What do you do whenever he picked a fight?

A "Minsan dire-diretso na lang ako ng uwi. Hindi na po ako nakiki-usyoso doon."[55]

The identification of the accused as the perpetrator of the crime is regarded as more important than ascertaining the name of the accused. For instance, in *People v. Catipon*,[56] this Court held that confusion in the perpetrator's name, by itself, would be insufficient to overturn the positive identification made by a credible witness.[57]

Second, when he testified in court, Francisco affirmed without hesitation that it was accused-appellant who stabbed Wilfredo in the chest. During his direct examination, Francisco narrated the events that transpired on the day of the alleged incident and identified the person responsible for Wilfredo's death:

Q While you were in front of Don Mariano Marcos High School at Carreon St., Sta. Ana, Manila at around 11:45 on April

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[55] TSN dated October 20, 2003, pp.13-15.

[56] 223 Phil. 403 (1985) [Per *J.* Melencio-Herrera, First Division].

[57] *Id*. at 415.

10, 1991, do you recall of any unusual incident that happened, if any?

A Yes, sir.

Q What is this unusual incident, if any?

Witness:

When Willy was stabbed by Cesar Balao, sir.

Court:

Do you know this Cesar Balao?

Witness:

Yes, Your Honor.

Court:

Why do you know him?

Witness:

He is always there in front of the school looking for trouble, Your Honor, every morning.[58]

Apart from Francisco's positive identification of Balao as the perpetrator of the crime, Francisco narrated in a straightforward manner how Wilfredo was killed, thus:

Pros. Rebagay:

How did Cesar Balao stabbed (sic) Willy Villaranda?

A "Kasi po may kumakausap kay Willy na dalawang tao na nagngangalang Purong at Obet. Bigla pong tumakbo galing sa likuran" . . . (unfinished)

. . . . . .

Witness:

"Galing sa likuran ni Willy. Kausap ni Willy si Purong at Obet. Hinahanap kay Willy yung kapatid na si Cris."

. . . . . .

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[58] TSN dated October 20, 2003, pp. 4-5.

Q What happened when this Obet whose real name is Roberto Espejo was looking for Cris?

A "Tumakbo po si Cesar Balao galing sa likuran. Nakasakay [po sa] bisikleta si Willy Villaranda. Dito nanggaling 'yung taong sumaksak. Akala ni Willy, sinuntok lang siya."[59]

Francisco's testimony on how Wilfredo was killed does not appear to be tainted with any irregularity. The circumstances surrounding the commission of the crime gave him a fair opportunity to observe the events that transpired. First, the killing happened around noon, in broad daylight when he could see clearly. Second, Francisco was at a distance not far from where the victim and the accused-appellant were standing when the stabbing occurred.

Moreover, Francisco's testimony is bolstered by the autopsy report, which stated that Wilfredo died from a "stab wound, located on the upper inner quadrant of the chest, right side," which was caused by "a single-bladed sharp pointed instrument."[60] This is consistent with Francisco's eyewitness account that Wilfredo was stabbed in the chest with a fan knife.

Accused-appellant discredits Francisco's testimony on the ground that Francisco had ill-motives to testify against him.[61] Accused-appellant quotes a portion of Francisco's testimony during cross-examination:

Q: Were you in any way involved in trouble by this Cesar Balao?
A: Yes, sir.

Q: Which even land you in trouble likewise, Mr. Witness?
A: Yes, sir.

Q: And because of this, Mr. Witness, you dislike Cesar Balao?
A: Yes, sir.

Q: And being a tough guy and I presumed even a menace to your place, you want this Cesar Balao to be disposed in your place, Mr. Witness?

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

[60] CA *rollo*, p. 46.

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

A: Yes, sir.

Q: And one of that is to have him incarcerated?
A: Yes, sir.

Q: That's why you are now testifying for him to be incarcerated?
A: Yes, sir.

. . . . . .

Q: And that's why you are testifying that he stabbed Wilfredo Villaranda but your main purpose is for him to be incarcerated so that he will no longer be around?
A: Yes, sir.[62]

Although Francisco stated that he disliked accused-appellant for being a notorious troublemaker in their community, this does not conclusively establish that he was animated by ill-motives in testifying against accused-appellant. The presumption then is that Francisco testified in good faith.[63] Therefore, his testimony should be "entitled to full weight and credit."[64]

Accused-appellant's conviction for the crime of murder is affirmed. However, this Court modifies the civil indemnity, moral damages, and exemplary damages to ₱100,000.00 each in accordance with *People v. Jugueta*.[65] In *Jugueta,* 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[.]"[66]

WHEREFORE, the appeal is **DISMISSED**. The assailed Decision of the Court of Appeals in CA-G.R. CR-HC No. 04765

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[62] *Id.* at 76.

[63] *People v. Emoy*, 395 Phil. 371, 384 (2000) [Per *J.* Pardo, First Division].

[64] *Id.*

[65] G.R. No. 202124, April 5, 2016 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2016/april2016/202124.pdf> [Per *J.* Peralta, *En Banc*].

[66] *Id.* at 27.

is **AFFIRMED** with **MODIFICATION**. Accused-appellant Cesar Balao *y* Lopez 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 Wilfredo Villaranda the amount of ₱40,000 as actual damages, ₱100,000.00 as civil indemnity, ₱100,000.00 as exemplary damages, and ₱100,000.00 as moral damages. In line with current jurisprudence, interest at the rape 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.[67]

SO ORDERED.

Bersamin[*] *(Acting Chairperson), Martires,* and *Gesmundo, JJ.,* concur.

Velasco, Jr., J., on official leave.

THIRD DIVISION

[G.R. No. 208224. November 22, 2017]

DR. JOSEPH L. MALIXI, DR. EMELITA Q. FIRMACION, MARIETTA MENDOZA, AURORA AGUSTIN, NORA AGUILAR, MA. THERESA M. BEFETEL, and MYRNA NISAY, *petitioners, vs.* **DR. GLORY V. BALTAZAR,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; RULES OF COURT; EVERY SECTION IN THE RULES OF COURT AND EVERY ISSUANCE

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[67] See *Nacar v. Gallery Frames, et al.*, 716 Phil. 267, 271-283 (2013) [Per *J.* Peralta, *En Banc*].

[*] Designated Acting Chairperson per S.O. No. 2514 dated November 8, 2017.

OF THIS COURT WITH RESPECT TO PROCEDURAL RULES ARE PROMULGATED WITH THE OBJECTIVE OF A MORE EFFICIENT JUDICIAL SYSTEM.— Procedural rules are essential in the administration of justice. The importance of procedural rules in the adjudication of disputes has been reiterated in numerous cases. In *Santos v. Court of Appeals, et al.*: Procedural rules are not to be disdained as mere technicalities that may be ignored at will to suit the convenience of a party. Adjective law is important in insuring the effective enforcement of substantive rights through the orderly and speedy administration of justice. These rules are not intended to hamper litigants or complicate litigation but, indeed, to provide for a system under which suitors may be heard in the correct form and manner and at the prescribed time in a peaceful confrontation before a judge whose authority they acknowledge. The other alternative is the settlement of their conflict through the barrel of a gun. Moreover, in *Le Soleil Int'l. Logistics Co., Inc., et al. v. Sanchez, et al.:* Time and again, we have stressed that procedural rules do not exist for the convenience of the litigants; the rules were established primarily to provide order to, and enhance the efficiency of, our judicial system. x x x Technical rules serve a purpose. They are not made to discourage litigants from pursuing their case nor are they fabricated out of thin air. Every section in the Rules of Court and every issuance of this Court with respect to procedural rules are promulgated with the objective of a more efficient judicial system.

2. ID.; ID.; LIBERAL APPLICATION; IN NUMEROUS CASES, THE SUPREME COURT HAS RELAXED THE OBSERVANCE OF PROCEDURAL RULES TO ADVANCE SUBSTANTIAL JUSTICE; CIRCUMSTANCES THAT MAY MERIT THE RELAXATION OF PROCEDURAL RULES, ENUMERATED. — Time and again, this Court has relaxed the observance of procedural rules to advance substantial justice. x x x Despite the number of cases wherein this Court relaxed the application of procedural rules, this Court has repeatedly reminded litigants that: [T]he bare invocation of "the interest of substantial justice" is not a magic wand that will automatically compel this Court to suspend procedural rules. "Procedural rules are not to be belittled or dismissed simply because their non-observance may have resulted in prejudice to a party's substantive rights. Like all rules, they are required to be followed except only for the most persuasive of reasons when they may be relaxed to relieve

a litigant of an injustice not commensurate with the degree of his thoughtlessness in not complying with the procedure prescribed." x x x Circumstances that may merit the relaxation of procedural rules are enumerated in *Barnes v. Hon. Quijano Padilla,*citing *Sanchez v. Court of Appeals:* In the *Sanchez* case, the Court restated the range of reasons which may provide justification for a court to resist a strict adherence to procedure, enumerating the elements for an appeal to be given due course by a suspension of 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 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.

3. ID.; ID.; ID.; THE COURT MAY OPT FOR THE LIBERAL APPLICATION OF THE PROCEDURAL RULES DUE TO COMPELLING CIRCUMSTANCES OF THE CASE; CASE AT BAR.— Due to compelling circumstances in this case, this Court opts for a liberal application of procedural rules. First, Department Personnel Order No. 2008-1452, which designated respondent as Officer-in-Charge of Bataan General Hospital, was signed by then Department of Health Secretary Duque. Duque was also the signatory in the 2008 Memorandum of Agreement, the undated Supplemental Memorandum of Agreement, and the June 16, 2009 Memorandum of Agreement, which were the bases of respondent's secondment. Duque was later appointed as Civil Service Commission Chairman and signed the October 17, 2011 Decision and the July 17, 2012 Resolution of the Civil Service Commission, dismissing the complaint against respondent. Clearly, a conflict of interest existed when the public officer authorizing the secondment of respondent was also the same person dismissing the complaint questioning respondent's secondment. Second, resolving the merits of the case would "give more efficacy to the constitutional mandate on the accountability of public officers and employees[.]" x x x Furthermore, in the interest of judicial economy, the Court of Appeals should avoid dismissal of cases based merely on technical grounds. Judicial economy requires the prosecution of cases "with the least cost to the parties" and to the courts' time, effort, and resources.

4. POLITICAL LAW; ADMINISTRATIVE LAW; FORUM SHOPPING, IN THE CONCEPT OF *RES JUDICATA*, IS

APPLICABLE TO JUDGMENTS OR DECISIONS OF ADMINISTRATIVE AGENCIES PERFORMING JUDICIAL OR QUASI-JUDICIAL FUNCTIONS.— On a final note, this Court clarifies the concept of forum shopping. Forum shopping is generally judicial. x x x In *Ligtas v. People,* this Court reiterated that *res judicata* may also be applied to "decisions rendered by agencies in judicial or quasi-judicial proceedings and not to purely administrative proceedings[.]" x x x Thus, forum shopping, in the concept of *res judicata,* is applicable to judgments or decisions of administrative agencies performing judicial or quasi-judicial functions.

APPEARANCES OF COUNSEL

Palomo Agatep Reñido & Associates Law Offices for petitioners.
Paguio Law Office for respondent.

D E C I S I O N

LEONEN, *J.*:

This is a Petition for Review on Certiorari[1] under Rule 45 of the 1997 Rules of Civil Procedure, praying that the January 22, 2013[2] and July 16, 2013[3] Resolutions of the Court of Appeals in CA-G.R. SP No. 127252 and the October 17, 2011 Decision[4] and July 17, 2012 Resolution[5] of the Civil Service Commission

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[1] *Rollo*, pp. 8-38.

[2] *Id*. at 39. The Resolution was witnessed by Associate Justices Rebecca De Guia-Salvador, Apolinario D. Bruselas, Jr., and Samuel H. Gaerlan of the Third Division, Court of Appeals, Manila.

[3] *Id*. at 40. The Resolution was witnessed by Associate Justices Rebecca De Guia-Salvador, Apolinario D. Bruselas, Jr., and Samuel H. Gaerlan of the Third Division, Court of Appeals, Manila.

[4] *Id*. at 173-186. The Decision was penned by Commissioner Mary Ann Z. Fernandez-Mendoza and signed by Chairman Francisco T. Duque III. Commissioner Rasol L. Mitmug was on leave.

[5] *Id*. at 188-191. The Resolution was penned by Commissioner Mary Ann Z. Fernandez-Mendoza and signed by Chairman Francisco T. Duque III.

be reversed and set aside.[6] The Civil Service Commission dismissed the administrative complaint of herein petitioners Dr. Jose L. Malixi (Dr. Malixi), Dr. Emelita Q. Firmacion (Dr. Firmacion), Marietta Mendoza (Mendoza), Aurora Agustin (Agustin), Nora Aguilar (Aguilar), Ma. Theresa M. Befetel (Befetel), and Myrna Nisay (Nisay) against herein respondent Dr. Glory V. Baltazar (Baltazar) for violating the rule on forum shopping.[7] The Court of Appeals dismissed the Petition for Certiorari filed by petitioners on procedural grounds.[8]

In their Complaint[9] dated December 15, 2010, petitioners prayed before the Civil Service Commission that respondent Dr. Baltazar be held administratively liable for gross misconduct and that she be dismissed from service.[10]

Petitioners were employees of Bataan General Hospital holding the following positions: Dr. Malixi was the Vice President of the Samahan ng Manggagawa ng Bataan General Hospital, Dr. Firmacion was a Medical Specialist II, Mendoza and Agustin were both Nurse III, Aguilar and Befetel were both Nurse II, and Nisay was a Nursing Attendant II. Meanwhile, Dr. Baltazar was the Officer-in-Charge Chief of Bataan General Hospital.[11]

Petitioners alleged that sometime in May 2008, the Department of Health and the Province of Bataan entered into a Memorandum of Agreement regarding the construction of Bataan General Hospital's three (3)-storey building. While this Memorandum was in effect, the Department of Health, through then Secretary Francisco T. Duque (Duque), issued Department Personnel Order No. 2008-1452, appointing Dr. Baltazar as the hospital's Officer-in-Charge.[12]

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[6] *Id*. at 35, Petition for Review.

[7] *Id*. at 186, Civil Service Commission Decision.

[8] *Id*. at 39, Court of Appeals Resolution dated January 22, 2013.

[9] *Id*. at 58-72.

[10] *Id*. at 71.

[11] *Id*. at 60-61.

[12] *Id*. at 61.

According to petitioners, the Department of Health and the Province of Bataan entered into a Supplemental Memorandum.[13] One (1) of the provisions stated that the parties agreed to give the supervision of the hospital to the Secretary of Health or "his duly authorized representative with a minimum rank of Assistant Secretary[.]"[14] A third Memorandum of Agreement was executed by the parties on June 16, 2009, but the Department of Health refused to renew the agreement "due to a complaint already filed before the Honorable Congresswoman Herminia Roman, and before the Department of Health."[15]

In their Complaint, petitioners questioned the validity of Dr. Baltazar's appointment and qualifications.[16] They alleged that her appointment was "without any basis, experience[,] or expertise[.]"[17] They claimed that she was appointed only by virtue of an endorsement of the Bataan Governor and without the prescribed Career Service Executive Board qualifications.[18] Thus, her appointment violated Sections 8(1)(c), 8(2), 21(1), and 22 of Book V of the Administrative Code, which provide:

> SECTION 8. Classes of Positions in the Career Service. — (1) Classes of positions in the career service appointment to which requires examinations shall be grouped into three major levels as follows:
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> . . . . . .
>
> (c) The third level shall cover positions in the Career Executive Service.
>
> (2) Except as herein otherwise provided, entrance to the first two levels shall be through competitive examinations, which shall be open to those inside and outside the service who meet the minimum qualification requirements. Entrance to a higher level does not require

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[13] *Id.* at 61-62.

[14] *Id.* at 62.

[15] *Id.*

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

[17] *Id.* at 63.

[18] *Id.* 64.

previous qualification in the lower level. **Entrance to the third level shall be prescribed by the Career Executive Service Board.**

. . . . . .

SECTION 21. Recruitment and Selection of Employees.— (1) Opportunity for government employment shall be open to all qualified citizens and positive efforts shall be exerted to attract the best qualified to enter the service. **Employees shall be selected on the basis of fitness to perform the duties and assume the responsibilities of the positions.**

. . . . . .

SECTION 22. Qualification Standards. — (1) A qualification standard expresses the minimum requirements for a class of positions in terms of education, training and experience, civil service eligibility, physical fitness, and other qualities required for successful performance. The degree of qualifications of an officer or employee shall be determined by the appointing authority on the basis of the qualification standard for the particular position.

Qualification standards shall be used as basis for civil service examinations for positions in the career service, as guides in appointment and other personnel actions, in the adjudication of protested appointments, in determining training needs, and as aid in the inspection and audit of the agencies' personnel work programs.

It shall be administered in such manner as to continually provide incentives to officers and employees towards professional growth and foster the career system in the government service.

(2) The establishment, administration and maintenance of qualification standards shall be the responsibility of the department or agency, with the assistance and approval of the Civil Service Commission and in consultation with the Wage and Position Classification Office.[19]
(Emphasis and underscoring in the original)

Petitioners pointed out that Dr. Baltazar's appointment was by virtue of a secondment pursuant to the Memorandum of Agreement. Her third year as Officer-in-Charge via secondment already violated the law for failing to comply with the required

[19] *Id.* at 63-65.

qualification standards.[20] Granting that there was compliance, secondment that exceeds one (1) year is subject to the Civil Service Commission's approval under Section 9(a),[21] Rule VII of the Omnibus Rules Implementing Book V of Executive Order No. 292 and Department of Health Administrative Order No. 46, series of 2001. Civil Service Commission Memorandum Circular No. 15, series of 1999 likewise provides that the contract of secondment should be submitted to the Commission within 30 days from its execution. A year after Dr. Baltazar's secondment, the Commission did not issue any authority for her to continue to hold office as Officer-in-Charge of the hospital. Hence, her assumption without the required authority was deemed illegal.[22]

Petitioners averred that the non-renewal of the Memorandum of Agreement by the Department of Health rendered her appointment ineffective. Her holding of the position after this non-renewal was already illegal.[23]

In addition to Dr. Baltazar's alleged invalid appointment and lack of qualifications, petitioners contended that she committed several abusive and malevolent acts detrimental to Bataan General Hospital's officers and employees.[24] She authorized the collection of fees for the insertion and removal of intravenous fluids and fees for the Nurse Station without any legal basis.[25] She also

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[20] *Id.* at 65.

[21] Omnibus Rules Implementing Book V of Executive Order No. 292, Rule VII, Section 9(a) provides:

SECTION 9. Secondment is a movement of an employee from one department or agency to another which is temporary in nature and which may or may not require the issuance of an appointment but may either involve reduction or increase in compensation.

Secondment shall be governed by the following general guidelines:

(a) Secondment for a period exceeding one year shall be subject to approval by the Commission.

[22] *Rollo*, pp. 65-66, Complaint.

[23] *Id.* at 66.

[24] *Id.* at 66-70.

[25] *Id.* at 67.

caused the removal from payroll of an employee, who, up to the filing of the Complaint, had yet to receive remuneration, hazard pay, subsistence, and other allowances.[26]

Petitioners likewise alleged that Dr. Baltazar manipulated the creation of the Selection and Promotion Board to give her control over the personnel's employment and promotion. She also disregarded the next-in-line rule when it comes to appointment and promotion of employees.[27]

Furthermore, Dr. Baltazar allegedly employed two (2) doctors as contractual employees who were paid ₱20,000.00 but worked only half the time rendered by an employee-doctor of Bataan General Hospital. Lastly, petitioners claimed that Dr. Baltazar allowed her doctor siblings to accommodate private patients while expressly prohibiting other doctors to do the same.[28]

On October 17, 2011, the Civil Service Commission rendered a Decision[29] dismissing the Complaint on the ground of forum shopping. The Civil Service Commission found that all elements of forum shopping were present in the case and that petitioners' letter dated September 7, 2010 filed with the Department of Health contained the same allegations against Dr. Baltazar and sought for the same relief. Finally, the judgment by the Department of Health would result to *res judicata* in the case before the Civil Service Commission. It also noted that another case was pending before the Office of the Ombudsman in relation to the alleged removal of an employee in the hospital's payroll.[30]

Nevertheless, the Civil Service Commission resolved the issue of Dr. Baltazar's appointment "[f]or clarificatory purposes[.]"[31] It held that Dr. Baltazar was not appointed as Officer-in-Charge

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[26] *Id.* at 68.

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

[28] *Id.* at 69-70.

[29] *Id.* at 173-186.

[30] *Id.* at 180-185.

[31] *Id.* at 185.

of Bataan General Hospital but was merely seconded to the position. Section 6 of the Civil Service Commission Circular No. 40, series of 1998, only requires that seconded employees occupy a "professional, technical and scientific position[.]"[32]

The Civil Service Commission added that the approval requirement for secondments that exceed one (1) year was already amended by Civil Service Commission Circular No. 06-1165.[33] The new circular merely required that the Memorandum of Agreement or the secondment contract be submitted to the Commission "for records purposes[.]"[34] Failure to submit within 30 days from the execution of the agreement or contract will only make the secondment in effect 30 days before the submission date.[35]

On the alleged violation of the next-in-line rule, the Civil Service Commission held that "[e]mployees holding positions next-in-rank to the vacated position do not enjoy any vested right thereto for purposes of promotion."[36] Seniority will only be considered if the candidates possess the same qualifications.[37]

The dispositive portion of the Civil Service Commission Decision read:

WHEREFORE, the complaint of Dr. Joseph L. Malixi, Dr. Emelita Q. Firmacion, Marietta Mendoza, Aurora Agustin, Nora Aguilar, Ma. Theresa M. Befetel and Myrna Nisay against Dr. Glory V. Baltazar for Dishonesty; Misconduct; Oppression; Violation of Existing Civil Service Law and Rules or Reasonable Office Regulations; and Conduct Prejudicial to the Best Interest of the Service and Being Notoriously Undesirable is hereby **DISMISSED** for violation of the rule against forum-shopping.[38] (Emphasis in the original)

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[32] *Id*.

[33] *Id*.

[34] *Id*.

[35] *Id*.

[36] *Id*. at 186.

[37] *Id*.

[38] *Id*.

Petitioners moved for reconsideration and argued that the letter before the Department of Health was simply a request to meet the Secretary, and not a Complaint. Furthermore, the letter before the Department of Health and the Complaint before the Civil Service Commission did not contain the same parties or seek the same relief.[39]

On July 17, 2012, the Civil Service Commission promulgated a Resolution[40] denying the Motion for Reconsideration. It held that it was the Department of Health that considered petitioners' letter as their complaint, and not the Civil Service Commission. Moreover, the Department of Health already exercised jurisdiction over the case when it required Dr. Baltazar to comment on the letter-complaint.[41]

Petitioners elevated the case before the Court of Appeals.

On January 22, 2013, the Court of Appeals issued a Minute Resolution,[42] dismissing the appeal:

> The petition is DISMISSED in view of the following:
>
> 1. the dates when the assailed Decision was received and when [a Motion for Reconsideration] thereto was filed are not indicated;
> 2. the attached October 17, 2011 Decision and July 17, 2012 Resolution are mere photocopies;
> 3. petitioner's counsel's [Mandatory Continuing Legal Education] date of compliance is not indicated; and
> 4. there are no proofs of competent evidence of identities.[43]

Petitioners moved for reconsideration, which was denied by the Court of Appeals in its July 16, 2013 Minute Resolution.[44]

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[39] *Id*. at 189-190, Civil Service Commission Resolution.

[40] *Id*. at 188-191.

[41] *Id*. at 190.

[42] *Id*. at 39.

[43] *Id*.

[44] *Id*. at 40.

On September 4, 2013, petitioners filed a Petition for Review[45] against Dr. Baltazar before this Court. They pray for the reversal of the Decision and Resolution of the Court of Appeals and of the Decision and Resolution of the Civil Service Commission.[46]

Petitioners maintain that they indicated the important dates in their appeal before the Court of Appeals and that they attached certified true copies of the assailed Decision and Resolution.[47] However, they admit that they failed to indicate the date of their counsel's Mandatory Continuing Legal Education (MCLE) compliance and to provide proof of "competent evidence of identities."[48]

Petitioners also deny that they committed forum shopping. The alleged Complaint sent to the Department of Health was a mere letter stating the employees' grievances and objections to the illegalities and violations committed by respondent. It was a mere request for the Department of Health Secretary to tackle the issues and investigate the concerns in the hospital's management. This letter was not intended to serve as a formal Complaint. They request that this Court set aside the issue on forum shopping and that the case be resolved on its merits.[49]

On January 14, 2014, respondent filed her Comment[50] and prayed for the dismissal of the petition. She argues that the procedural infirmities of petitioners' appeal are fatal to their case.[51]

On February 27, 2014, petitioners filed their Reply.[52] They reiterated their request for the relaxation of procedural rules and the resolution of the case based on its merits. They also

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[45] *Id*. at 8-38.

[46] *Id*. at 35.

[47] *Id*. at 27-29.

[48] *Id*. at 29-30.

[49] *Id*. at 30-35.

[50] *Id*. at 204-213.

[51] *Id*. at 206-209.

[52] *Id*. at 214-220.

disclosed that Civil Service Commission Chairman Duque, who signed the October 17, 2011 Decision, was formerly the Department of Health Secretary who seconded respondent as Bataan General Hospital's Officer-in-Charge. Lastly, petitioners added that their letter to the Department of Health was not a Complaint since it was not assigned a case number.[53]

The sole issue for this Court's resolution is whether or not the Court of Appeals erred in dismissing the petition based on procedural grounds.

I

Procedural rules are essential in the administration of justice. The importance of procedural rules in the adjudication of disputes has been reiterated in numerous cases.[54] In *Santos v. Court of Appeals, et al.*:[55]

> Procedural rules are not to be disdained as mere technicalities that may be ignored at will to suit the convenience of a party. Adjective law is important in insuring the effective enforcement of substantive rights through the orderly and speedy administration of justice. These rules are not intended to hamper litigants or complicate litigation but, indeed, to provide for a system under which suitors may be heard in the correct form and manner and at the prescribed time in a peaceful confrontation before a judge whose authority they acknowledge. The other alternative is the settlement of their conflict through the barrel of a gun.[56]

Moreover, in *Le Soleil Int'l. Logistics Co., Inc., et al. v. Sanchez, et al.*:[57]

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[53] *Id.* at 216-218.

[54] See *Lazaro v. Court of Appeals*, 386 Phil. 412, 417-418 (2000) [Per *J.* Panganiban, Third Division], *Samala v. Court of Appeals*, 416 Phil. 1, 7 (2001) [Per *J.* Pardo, First Division], *Norris v. Hon. Parentela, Jr.*, 446 Phil. 462, 472 (2003) [Per *J.* Quisumbing, Second Division], and *National Power Corporation v. Southern Philippines Power Corporation*, G.R. No. 219627, July 4, 2016, 795 SCRA 540, 551 [Per *J.* Leonen, Second Division].

[55] 275 Phil. 894 (1991) [Per *J.* Cruz, First Division].

[56] *Id.* at 898.

[57] 769 Phil. 466 (2015) [Per *J.* Perez, First Division].

Time and again, we have stressed that procedural rules do not exist for the convenience of the litigants; the rules were established primarily to provide order to, and enhance the efficiency of, our judicial system.[58]

In this case, the Court of Appeals pointed out four (4) procedural infirmities:

1. the dates when the assailed Decision was received and when [a Motion for Reconsideration] thereto was filed are not indicated;
2. the attached October 17, 2011 Decision and July 17, 2012 Resolution are mere photocopies;
3. petitioner's counsel's [Mandatory Continuing Legal Education] date of compliance is not indicated; and
4. there are no proofs of competent evidence of identities.[59]

Technical rules serve a purpose. They are not made to discourage litigants from pursuing their case nor are they fabricated out of thin air. Every section in the Rules of Court and every issuance of this Court with respect to procedural rules are promulgated with the objective of a more efficient judicial system.

On the first procedural rule that petitioners allegedly failed to comply with, this Court explained the rationale of the requisite material dates in *Lapid v. Judge Laurea*:[60]

> There are three material dates that must be stated in a petition for *certiorari* brought under Rule 65. *First*, the date when notice of the judgment or final order or resolution was received; *second*, the date when a motion for new trial or for reconsideration was filed; and *third*, the date when notice of the denial thereof was received . . . As explicitly stated in the aforementioned Rule, failure to comply with any of the requirements shall be sufficient ground for the dismissal of the petition.
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> The rationale for this strict provision of the Rules of Court is not difficult to appreciate. As stated in *Santos vs. Court of Appeals*, the

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[58] *Id.* at 473.

[59] *Rollo*, p. 39, Court of Appeals Decision.

[60] 439 Phil. 887 (2002) [Per *J.* Quisumbing, Second Division].

requirement is for purpose of determining the timeliness of the petition, thus:

> The requirement of setting forth the three (3) dates in a petition for *certiorari* under Rule 65 is for the purpose of determining its timeliness. Such a petition is required to be filed not later than sixty (60) days from notice of the judgment, order or *Resolution* sought to be assailed. Therefore, that the petition for *certiorari* was filed forty-one (41) days from receipt of the denial of the motion for reconsideration is hardly relevant. *The Court of Appeals was not in any position to determine when this period commenced to run and whether the motion for reconsideration itself was filed on time since the material dates were not stated . . .*

Moreover, as reiterated in *Mabuhay vs. NLRC*, . . . "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."[61] (Emphasis in the original, citations omitted)

On the second procedural rule, this Court discussed the necessity of certified true copies in *Pinakamasarap Corporation v. National Labor Relations Commission*:[62]

There is a sound reason behind this policy and it is to ensure that the copy of the judgment or order sought to be reviewed is a faithful reproduction of the original so that the reviewing court would have a definitive basis in its determination of whether the court, body or tribunal which rendered the assailed judgment or order committed grave abuse of discretion.[63] (Citation omitted)

On the third procedural rule, this Court clarified the importance of complying with the required MCLE information in *Intestate Estate of Jose Uy v. Atty. Maghari*:[64]

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[61] *Id.* at 895-896.

[62] 534 Phil. 222 (2006) [Per *J.* Austria-Martinez, First Division].

[63] *Id.* at 230.

[64] 768 Phil. 10 (2015) [Per *J.* Leonen, *En Banc*].

The inclusion of information regarding compliance with (or exemption from) Mandatory Continuing Legal Education (MCLE) seeks to ensure that legal practice is reserved only for those who have complied with the recognized mechanism for "keep[ing] abreast with law and jurisprudence, maintain[ing] the ethics of the profession[,] and enhanc[ing] the standards of the practice of law."[65]

Lastly, proofs of competent evidence of identities are required to ensure "that the allegations are true and correct and not a product of the imagination or a matter of speculation, and that the pleading is filed in good faith."[66]

II

Time and again, this Court has relaxed the observance of procedural rules to advance substantial justice.[67]

In *Acaylar, Jr. v. Harayo*,[68] the Court of Appeals denied petitioner's Petition for Review for failure to state the date he received the assailed Decision of the Regional Trial Court and the date he filed his Motion for Reconsideration.[69] This Court held:

[F]ailure to state the material dates is not fatal to his cause of action, provided the date of his receipt, *i.e.*, 9 May 2006, of the RTC Resolution dated 18 April 2006 denying his Motion for Reconsideration is duly

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[65] *Id*. at 25, *citing* Bar Matter No. 850 (2001), Rule 1, Sec. 1.

[66] *Heirs of Amada Zaulda v. Zaulda*, 729 Phil. 639, 650 (2014) [Per *J.* Mendoza, Third Division].

[67] *City of Dagupan v. Maramba*, 738 Phil. 71, 87-89 (2014) [Per *J.* Leonen, Third Division], citing *Sy v. Local Government of Quezon City*, 710 Phil. 549, 557-558 (2013) [Per *J.* Perlas-Bernabe, Second Division], *United Airlines v. Uy*, 376 Phil. 688, 697 (1999) [Per *J.* Bellosillo, Second Division], and *Samala v. Court of Appeals*, 416 Phil. 1, 7 (2001) [Per *J.* Pardo, First Division]. See also *National Power Corporation v. Southern Philippines Power Corporation*, G.R. No. 219627, July 4, 2016, 795 SCRA 540, 551 [Per *J.* Leonen, Second Division], citing *Bagalanon v. Court of Appeals*, 166 Phil. 699, 702 (1977) [Per *J.* Martin, First Division].

[68] 582 Phil. 600 (2008) [Per *J.* Chico-Nazario, Third Division].

[69] *Id*. at 610.

alleged in his Petition. In the recent case of *Great Southern Maritime Services Corporation v. Acuña*, we held that "the failure to comply with the rule on a statement of material dates in the petition may be excused since the dates are evident from the records." The more material date for purposes of appeal to the Court of Appeals is the date of receipt of the trial court's order denying the motion for reconsideration. The other material dates may be gleaned from the records of the case if reasonably evident.

. . . . . .

Accordingly, the parties are now given the amplest opportunity to fully ventilate their claims and defenses brushing aside technicalities in order to truly ascertain the merits of this case. Indeed, judicial cases do not come and go through the portals of a court of law by the mere mandate of technicalities. Where a rigid application of the rules will result in a manifest failure or miscarriage of justice, technicalities should be disregarded in order to resolve the case. In *Aguam v. Court of Appeals*, we ruled that:

> The court has [the] discretion to dismiss or not to dismiss an appellant's appeal. It is a power conferred on the court, not a duty. The "discretion must be a sound one, to be exercised in accordance with the tenets of justice and fair play, having in mind the circumstances obtaining in each case." Technicalities, however, must be avoided. The law abhors technicalities that impede the cause of justice. The court's primary duty is to render or dispense justice. "A litigation is not a game of technicalities." "Law suits, unlike duels, are not to be won by a rapier's thrust. Technicality, when it deserts its proper office as an aid to justice and becomes its great hindrance and chief enemy, deserves scant consideration from courts." Litigations must be decided on their merits and not on technicality. Every party litigant must be afforded the amplest opportunity for the proper and just determination of his cause, free from the unacceptable plea of technicalities. Thus, dismissal of appeals purely on technical grounds is frowned upon where the policy of the court is to encourage hearings of appeals on their merits and the rules of procedure ought not to be applied in a very rigid, technical sense; rules of procedure are used only to help secure, not override substantial justice. It is a far better and more prudent course of action for the court to excuse a technical lapse and afford the parties a review of the case on appeal to attain the ends of justice rather than dispose of the case on technicality

> and cause a grave injustice to the parties, giving a false impression of speedy disposal of cases while actually resulting in more delay, if not a miscarriage of justice.[70] (Citations omitted)

In *Barroga v. Data Center College of the Philippines, et al.*,[71] petitioner likewise failed to state in his Petition for Certiorari before the Court of Appeals the date he received the assailed Decision of the National Labor Relations Commission and the date he filed his Partial Motion for Reconsideration.[72] This Court held that "this omission is not at all fatal because these material dates are reflected in petitioner's Partial Motion for Reconsideration[.]"[73] This Court, citing *Acaylar*, further held:

> In *Acaylar, Jr. v. Harayo*, we held that failure to state these two dates in the petition may be excused if the same are evident from the records of the case. It was further ruled by this Court that the more important material date which must be duly alleged in the petition is the date of receipt of the resolution of denial of the motion for reconsideration. In the case at bar, petitioner has duly complied with this rule.
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> . . . . . .
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> The Court has time and again upheld the theory that the rules of procedure are designed to secure and not to override substantial justice. These are mere tools to expedite the decision or resolution of cases, hence, their strict and rigid application which would result in technicalities that tend to frustrate rather than promote substantial justice must be avoided. The CA thus should not have outrightly dismissed petitioner's petition based on these procedural lapses.[74] (Citations omitted)

In *Paras v. Judge Baldado*,[75] the Court of Appeals dismissed petitioners' Petition for Certiorari on purely procedural grounds.

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[70] *Id.* at 612-613.

[71] 667 Phil. 808 (2011) [Per *J.* Del Castillo, First Division].

[72] *Id.* at 815 and 817.

[73] *Id.* at 817.

[74] *Id.* at 817-818.

[75] 406 Phil. 589 (2001) [Per *J.* Gonzaga-Reyes, Third Division].

It found that petitioners failed to attach the required certified true copy of the assailed Regional Trial Court Order in their petition.[76] This Court set aside the resolutions of the Court of Appeals and held:

> [T]he records reveal that duplicate original copies of the said RTC orders were in fact attached to one of the seven copies of the petition filed with the Court of Appeals; moreover, copies of the same orders, this time accomplished by the clerk of court, were submitted by petitioners in their motion for reconsideration. Thus, the Court finds that there was substantial compliance with the requirement and the Court of Appeals should have given the petition due course.
>
> "Cases should be determined on the merits, after full opportunity to all parties for ventilation of their causes and defenses, rather than on technicality or some procedural imperfections. In that way, the ends of justice would be served better."[77] (Citations omitted)

In *Durban Apartments Corporation v. Catacutan*,[78] petitioner also failed to attach certified true copies of the assailed decisions of the Labor Arbiter and of the National Labor Relations Commission in their petition before the Court of Appeals. The Court of Appeals dismissed the petition on procedural grounds; but this Court, upon review, decided the case on its merits.[79] This Court held:

> [I]n the exercise of its equity jurisdiction, the Court may disregard procedural lapses so that a case may be resolved on its merits. Rules of procedure should promote, not defeat, substantial justice. Hence, the Court may opt to apply the Rules liberally to resolve substantial issues raised by the parties.
>
> It is well to remember that this Court, in not a few cases, has consistently held that cases shall be determined on the merits, after full opportunity to all parties for ventilation of their causes and defense, rather than on technicality or some procedural imperfections. In so

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[76] *Id*. at 592-593.

[77] *Id*. at 596.

[78] 514 Phil. 187 (2005) [Per *J*. Ynares-Santiago, First Division].

[79] *Id*. at 194.

doing, the ends of justice would be better served. The dismissal of cases purely on technical grounds is frowned upon and the rules of procedure ought not to be applied in a very rigid, technical sense, for they are adopted to help secure, not override, substantial justice, and thereby defeat their very ends. Indeed, rules of procedure are mere tools designed to expedite the resolution of cases and other matters pending in court. A strict and rigid application of the rules that would result in technicalities that tend to frustrate rather than promote justice must be avoided.[80] (Citations omitted)

In *Manila Electric Company v. Gala*,[81] respondent sought for the denial of petitioner's Petition for Review on Certiorari before this Court for allegedly violating procedural rules. Among the grounds that respondent relied upon was the failure of petitioner's counsels to state in the petition their updated MCLE certificate numbers.[82] This Court brushed aside the technical infirmity and held:

> We stress at this point that it is the spirit and intention of labor legislation that the NLRC and the labor arbiters shall use every reasonable means to ascertain the facts in each case speedily and objectively, without regard to technicalities of law or procedure, provided due process is duly observed. In keeping with this policy and in the interest of substantial justice, we deem it proper to give due course to the petition, especially in view of the conflict between the findings of the labor arbiter, on the one hand, and the NLRC and the CA, on the other. As we said in *S.S. Ventures International, Inc. v. S.S. Ventures Labor Union*, "the application of technical rules of procedure in labor cases may be relaxed to serve the demands of substantial justice."[83] (Citations omitted)

In *Doble, Jr. v. ABB, Inc.*,[84] this Court held that the Court of Appeals erred when it dismissed the Petition for Certiorari due

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[80] *Id*. at 195.

[81] 683 Phil. 356 (2012) [Per *J*. Brion, Second Division].

[82] *Id*. at 364.

[83] *Id*. at 364.

[84] G.R. No. 215627, June 5, 2017 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2017/june2017/215627.pdf> [Per *J*. Peralta, Second Division].

to the failure of petitioner's counsel to provide information regarding his MCLE compliance.[85] Citing *People v. Arrojado*,[86] this Court held:

> On point is *People v. Arrojado* where it was held that the failure of a lawyer to indicate in his or her pleadings the number and date of issue of his or her MCLE Certificate of Compliance will no longer result in the dismissal of the case:
>
> > In any event, to avoid inordinate delays in the disposition of cases brought about by a counsel's failure to indicate in his or her pleadings the number and date of issue of his or her MCLE Certificate of Compliance, this Court issued an *En Banc* Resolution, dated January 14, 2014 which amended B.M. No. 1922 by repealing the phrase "Failure to disclose the required information would cause the dismissal of the case and the expunction of the pleadings from the records" and replacing it with "Failure to disclose the required information would subject the counsel to appropriate penalty and disciplinary action." Thus, *under the amendatory Resolution, the failure of a lawyer to indicate in his or her pleadings the number and date of issue of his or her MCLE Certificate of Compliance will no longer result in the dismissal of the case and expunction of the pleadings from the records.* Nonetheless, such failure will subject the lawyer to the prescribed fine and/or disciplinary action.
>
> Granted that the Petition for *Certiorari* was filed before the CA on October 29, 2013 even before the effectivity of *En Banc* Resolution dated January 14, 2014 which amended B.M. No. 1922, it bears to stress that petitioner's counsel later submitted Receipts of Attendance in the MCLE Lecture Series for his MCLE Compliance IV on March 3, 2014 and the Certificate of Compliance albeit on January 26, 2015. Hence, the CA erred in issuing the assailed November 28, 2014 Resolution denying Doble's motion for reconsideration, there being no more reason not to reinstate the petition for *certiorari* based on procedural defects which have already been corrected. Needless to state, liberal construction of procedural rules is the norm to effect substantial justice, and litigations should, as much as possible, be

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[85] *Id*. at 12.

[86] 772 Phil. 440, 448-449 (2015) [Per *J*. Peralta, Third Division].

decided on the merits and not on technicalities.[87] (Emphasis in the original, citations omitted)

In *Heirs of Amada Zaulda v. Zaulda*,[88] one (1) of the grounds cited by the Court of Appeals to support its dismissal of the Petition for Review was petitioners' failure to provide competent evidence of identities on the Verification and Certification against Forum Shopping.[89] On this point, this Court held:

> As regards the competent identity of the affiant in the Verification and Certification, records show that he proved his identity before the notary public through the presentation of his Office of the Senior Citizen (OSCA) identification card. Rule II, Sec. 12 of the *2004 Rules on Notarial Practice* requires a party to the instrument to present competent evidence of identity. Sec. 12, as amended, provides:
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> > Sec. 12. Competent Evidence of Identity.— The phrase "competent evidence of identity" refers to the identification of an individual based on:
> >
> > (a) at least one current identification document issued by an official agency bearing the photograph and signature of the individual, 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 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, certificate from the National Council for the Welfare of Disabled Persons (NCWDP), Department of Social Welfare and Development certification [as amended by A.M. No. 02-8-13-SC dated February 19, 2008]; or
> >
> > (b) the oath or affirmation of one credible witness not privy to the instrument, document or transaction who is personally

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[87] *Doble, Jr. v. ABB, Inc.*, G.R. No. 215627, June 5, 2017 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2017/june2017/215627.pdf> 12-13 [Per *J.* Peralta, Second Division].

[88] 729 Phil. 639 (2014) [Per *J.* Mendoza, Third Division].

[89] *Id.* at 641-642.

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.

It is clear from the foregoing provisions that a *senior citizen card* is one of the competent identification cards recognized in the 2004 Rules on Notarial Practice. For said reason, there was compliance with the requirement. Contrary to the perception of the CA, attachment of a photocopy of the identification card in the document is not required by the 2004 Rules on Notarial Practice. Even A.M. No. 02-8-13-SC, amending Section 12 thereof, is silent on it. Thus, the CA's dismissal of the petition for lack of competent evidence on the affiant's identity on the attached verification and certification against forum shopping was without clear basis.

Even assuming that a photocopy of competent evidence of identity was indeed required, non-attachment thereof would not render the petition fatally defective. It has been consistently held that verification is merely a formal, not jurisdictional, requirement, affecting merely the form of the pleading such that non-compliance therewith does not render the pleading fatally defective. It is simply intended to provide an assurance that the allegations are true and correct and not a product of the imagination or a matter of speculation, and that the pleading is filed in good faith. The court may in fact order the correction of the pleading if verification is lacking or it may act on the pleading although it may not have been verified, where it is made evident that strict compliance with the rules may be dispensed so that the ends of justice may be served . . .

. . . . . .

Again, granting *arguendo* that there was non-compliance with the verification requirement, the rule is that courts should not be so strict about procedural lapses which do not really impair the proper administration of justice. After all, the higher objective of procedural rule is to ensure that the substantive rights of the parties are protected. Litigations should, as much as possible, be decided on the merits and not on technicalities. Every party-litigant must be afforded ample opportunity for the proper and just determination of his case, free from the unacceptable plea of technicalities.

In *Coca-Cola Bottlers v. De la Cruz*, where the verification was marred only by a glitch in the evidence of the identity of the affiant,

the Court was of the considered view that, in the interest of justice, the minor defect can be overlooked and should not defeat the petition.

The reduction in the number of pending cases is laudable, but if it would be attained by precipitate, if not preposterous, application of technicalities, justice would not be served. The law abhors technicalities that impede the cause of justice. The court's primary duty is to render or dispense justice. "It is a more prudent course of action for the court to excuse a technical lapse and afford the parties a review of the case on appeal rather than dispose of the case on technicality and cause a grave injustice to the parties, *giving a false impression of speedy disposal of cases* while actually resulting in more delay, if not miscarriage of justice."

What should guide judicial action is the principle that a party-litigant should be given the fullest opportunity to establish the merits of his complaint or defense rather than for him to lose life, liberty, honor, or property on technicalities. The rules of procedure should be viewed as mere tools designed to facilitate the attainment of justice. Their strict and rigid application, which would result in technicalities that tend to frustrate rather than promote substantial justice, must always be eschewed.[90] (Emphasis in the original, citations omitted)

In *Trajano v. Uniwide Sales Warehouse Club*,[91] respondent prayed for this Court's outright denial of the Petition for Review due to petitioner's failure to provide competent evidence of identity in the verification page.[92] This Court brushed aside this technicality and held:

Contrary to Uniwide's claim, the records of the case show that the petition's verification page contains Trajano's competent evidence of identity, specifically, Passport No. XX041470. Trajano's failure to furnish Uniwide a copy of the petition containing his competent evidence of identity is a minor error that this Court may and chooses to brush aside in the interest of substantial justice. This Court has, in proper instances, relaxed the application of the Rules of Procedure when the party has shown substantial compliance with it. In these cases, we have held that the rules of procedure should not be applied

[90] *Id*. at 649-652.

[91] 736 Phil. 264 (2014) [Per *J*. Brion, Second Division].

[92] *Id*. at 272.

in a very technical sense when it defeats the purpose for which it had been enacted, *i.e.*, to ensure the orderly, just and speedy dispensation of cases. We maintain this ruling in this procedural aspect of this case.[93] (Citations omitted)

Despite the number of cases wherein this Court relaxed the application of procedural rules, this Court has repeatedly reminded litigants that:

[T]he bare invocation of "the interest of substantial justice" is not a magic wand that will automatically compel this Court to suspend procedural rules. "Procedural rules are not to be belittled or dismissed simply because their non-observance may have resulted in prejudice to a party's substantive rights. Like all rules, they are required to be followed except only for the most persuasive of reasons when they may be relaxed to relieve a litigant of an injustice not commensurate with the degree of his thoughtlessness in not complying with the procedure prescribed." The Court reiterates that rules of procedure . . . "have oft been held as absolutely indispensable to the prevention of needless delays and to the orderly and speedy discharge of business. . . . The reason for rules of this nature is because the dispatch of business by courts would be impossible, and intolerable delays would result, without rules governing practice . . . . Such rules are a necessary incident to the proper, efficient and orderly discharge of judicial functions." Indeed, in no uncertain terms, the Court held that the said rules may be relaxed only in "exceptionally meritorious cases."[94] (Citations omitted)

Circumstances that may merit the relaxation of procedural rules are enumerated in *Barnes v. Hon. Quijano Padilla*,[95] citing *Sanchez v. Court of Appeals*:[96]

In the *Sanchez* case, the Court restated the range of reasons which may provide justification for a court to resist a strict adherence to

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[93] *Id.* at 273-274.

[94] *Lazaro v. Court of Appeals*, 386 Phil. 412, 417-418 (2000) [Per *J.* Panganiban, Third Division]. See also *Valderrama v. People*, G.R. No. 220054, March 27, 2017 [Per *J.* Leonen, Second Division].

[95] 500 Phil. 303 (2005) [Per *J.* Austria-Martinez, Second Division].

[96] 452 Phil. 665 (2003) [Per *J.* Bellosillo, *En Banc*].

procedure, enumerating the elements for an appeal to be given due course by a suspension of 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 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.[97]

In *Republic v. Dagondon*,[98] the Court of Appeals dismissed petitioner's appeal for failure to timely file a motion for reconsideration of the trial court decision.[99] The Court of Appeals held that the trial court decision "could no longer be assailed pursuant to the doctrine of finality and immutability of judgments."[100] This Court relaxed its application of the doctrine on immutability of judgment and held:

> The mandatory character, however, of the rule on immutability of final judgments was not designed to be an inflexible tool to excuse and overlook prejudicial circumstances. Hence, the doctrine must yield to practicality, logic, fairness, and substantial justice.
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> . . . . . .
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> [A] departure from the doctrine is warranted since its strict application would, in effect, circumvent and undermine the stability of the Torrens System of land registration adopted in this jurisdiction. Relatedly, it bears stressing that the subject matter of the instant controversy, i.e., Lot 84, is a sizeable parcel of real property. More importantly, petitioner had adequately presented a strong and meritorious case.
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> Thus, in view of the aforesaid circumstances, the Court deems it apt to exercise its prerogative to suspend procedural rules and to

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[97] *Barnes v. Hon. Quijano Padilla*, 500 Phil. 303, 311 (2005) [Per *J.* Austria-Martinez, Second Division], citing *Sanchez v. Court of Appeals*, 452 Phil. 665, 674 (2003) [Per *J.* Bellosillo, *En Banc*].

[98] G.R. No. 210540, April 19, 2016, 790 SCRA 414 [Per *J.* Perlas-Bernabe, First Division].

[99] *Id*. at 419.

[100] *Id*.

resolve the present controversy according to its merits.[101] (Citations omitted)

In *People v. Layag*,[102] this Court likewise relaxed the rule on immutability of judgment due to a special or compelling circumstance. This Court held that the death of accused-appellant is a compelling circumstance that warrants a re-examination of the criminal case.[103]

In *Philippine Bank of Communications v. Yeung*,[104] petitioner belatedly filed its Motion for Reconsideration before the Court of Appeals.[105] Nonetheless, this Court gave due course to the Petition for Review and held:

> [W]e find the delay of 7 days, due to the withdrawal of the petitioner's counsel *during the reglementary period of filing an MR*, excusable in light of the merits of the case. Records show that the petitioner immediately engaged the services of a new lawyer to replace its former counsel and petitioned the CA to extend the period of filing an MR due to lack of material time to review the case. There is no showing that the withdrawal of its counsel was a contrived reason or an orchestrated act to delay the proceedings; the failure to file an MR within the reglementary period of 15 days was also not entirely the petitioner's fault, as it was not in control of its former counsel's acts.
>
> Moreover, after a review of the contentions and the submissions of the parties, we agree that suspension of the technical rules of procedure is warranted in this case in view of the CA's erroneous application of legal principles and the substantial merits of the case. If the petition would be dismissed on technical grounds and without due consideration of its merits, the registered owner of the property

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[101] *Id.* at 420-421.

[102] G.R. No. 214875, October 17, 2016 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2016/october2016/214875.pdf> [Per *J.* Perlas-Bernabe, First Division].

[103] *Id.* at 3.

[104] 722 Phil. 710 (2013) [Per *J.* Brion, Second Division].

[105] *Id.* at 718.

shall, in effect, be barred from taking possession, thus allowing the absurd and unfair situation where the owner cannot exercise its right of ownership. This, the Court should not allow. In order to prevent the resulting inequity that might arise from the outright denial of this recourse — that is, the virtual affirmance of the writ's denial to the detriment of the petitioner's right of ownership – we give due course to this petition despite the late filing of the petitioner's MR before the CA.[106] (Emphasis in the original)

In *Development Bank of the Philippines v. Court of Appeals*,[107] petitioner failed to file its appellant's brief within the extended period granted by the Court of Appeals. Thus, the Court of Appeals dismissed petitioner's appeal.[108] This Court reversed the dismissal and held:

> Similarly, the case at bar is impressed with public interest. If petitioner's appeal is denied due course, a government institution could lose a great deal of money over a mere technicality. Obviously, such an appeal is far from being merely frivolous or dilatory.
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> . . . . . .
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> Time and again, this Court has reiterated the doctrine that the rules of procedure are mere tools intended to facilitate the attainment of justice, rather than frustrate it. A strict and rigid application of the rules must always be eschewed when it would subvert the rules' primary objective of enhancing fair trials and expediting justice. Technicalities should never be used to defeat the substantive rights of the other party. Every party-litigant must be afforded the amplest opportunity for the proper and just determination of his cause, free from the constraints of technicalities.[109] (Citations omitted)

In *Parañaque Kings Enterprises, Inc. v. Court of Appeals*,[110] respondents prayed for the denial of the petition on the ground that petitioner failed to file 12 copies of its brief, in violation

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[106] *Id.* at 722-723.

[107] 411 Phil. 121 (2001) [Per *J.* Gonzaga-Reyes, Third Division].

[108] *Id.* at 131.

[109] *Id.* at 136-138.

[110] 335 Phil. 1184 (1997) [Per *J.* Panganiban, Third Division].

of Rule 45, Section 2 of the Rules of Court.[111] This Court dismissed the technical defect and held:

> We have ruled that when non-compliance with the Rules was not intended for delay or did not result in prejudice to the adverse party, dismissal of appeal on mere technicalities — in cases where appeal is a matter of right — may be stayed, in the exercise of the court's equity jurisdiction. It does not appear that respondents were unduly prejudiced by petitioner's nonfeasance. Neither has it been shown that such failure was intentional.[112] (Citation omitted)

III

Due to compelling circumstances in this case, this Court opts for a liberal application of procedural rules. First, Department Personnel Order No. 2008-1452,[113] which designated respondent as Officer-in-Charge of Bataan General Hospital, was signed by then Department of Health Secretary Duque. Duque was also the signatory in the 2008 Memorandum of Agreement,[114] the undated Supplemental Memorandum of Agreement,[115] and the June 16, 2009 Memorandum of Agreement,[116] which were the bases of respondent's secondment. Duque was later appointed as Civil Service Commission Chairman and signed the October 17, 2011 Decision and the July 17, 2012 Resolution of the Civil Service Commission, dismissing the complaint against respondent. Clearly, a conflict of interest existed when the public officer authorizing the secondment of respondent was also the same person dismissing the complaint questioning respondent's secondment.

Second, resolving the merits of the case would "give more efficacy to the constitutional mandate on the accountability of

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[111] *Id*. at 1193-1194.

[112] *Id*. at 1194.

[113] *Rollo*, p. 44.

[114] *Id*. at 41-43.

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

[116] *Id*. at 47-50.

public officers and employees[.]"[117] In *Executive Judge Paredes v. Moreno*,[118] this Court found respondent "guilty of conduct prejudicial to the best interest of the service"[119] for his continued absence of almost three (3) months.[120] This Court held:

> His misconduct is prejudicial to the service. Although a mere employee/laborer in the City Court of Manila, respondent is as much duty-bound to serve with the highest degree of responsibility, integrity, loyalty and efficiency as all other public officers and employees . . . We find respondent's shortcomings to warrant a sanction to serve as deterrent not only to him but also to other court employees who shall commit the same or any and all forms of official misconduct which undermine the people's faith in their fitness for public service.[121]

Furthermore, in the interest of judicial economy, the Court of Appeals should avoid dismissal of cases based merely on technical grounds. Judicial economy requires the prosecution of cases "with the least cost to the parties"[122] and to the courts' time, effort, and resources.[123]

IV

On a final note, this Court clarifies the concept of forum shopping.

Forum shopping is generally judicial. It exists:

> [W]henever a party "repetitively avail[s] of several judicial remedies in different courts, simultaneously or successively, all substantially founded on the same transactions and the same essential facts and

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[117] *Executive Judge Paredes v. Moreno*, 187 Phil. 542, 546 (1980) [Per *J.* De Castro, First Division].

[118] 187 Phil. 542 (1980) [Per *J.* De Castro, First Division].

[119] *Id.* at 546.

[120] *Id.* at 545.

[121] *Id.* at 545-546.

[122] *E.I. Dupont De Nemours and Co. v. Francisco*, G.R. No. 174379, August 31, 2016 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2016/august2016/174379.pdf> 9 [Per *J.* Leonen, Second Division].

[123] See *Bank of Commerce v. Perlas-Bernabe*, 648 Phil. 326 (2010) [Per *J.* Peralta, Second Division].

circumstances, and all raising substantially the same issues either pending in, or already resolved adversely by, some other court." It has also been defined as "an act of a party against whom an adverse judgment has been rendered in one forum of seeking and possibly getting a favorable opinion in another forum, other than by appeal or the special civil action of *certiorari*, or the institution of two or more actions or proceedings grounded on the same cause on the supposition that one or the other court would make a favorable disposition." Considered a pernicious evil, it adversely affects the efficient administration of justice since it clogs the court dockets, unduly burdens the financial and human resources of the judiciary, and trifles with and mocks judicial processes.[124] (Citations omitted)

The test to determine whether or not forum shopping was committed was explained in *Dy, et al. v. Yu, et al.*:[125]

To determine whether a party violated the rule against forum shopping, the most important factor to ask is whether the element *of litis pendentia* is present, or whether a final judgment in one case will amount to *res judicata* in another. Otherwise stated, the test for determining forum shopping is whether in the two (or more) cases pending, there is identity of parties, rights or causes of action, and reliefs sought. If a situation of *litis pendentia* or *res judicata* arises by virtue of a party's commencement of a judicial remedy identical to one which already exists (either pending or already resolved), then a forum shopping infraction is committed.[126] (Emphasis in the original, citation omitted)

In *Ligtas v. People*,[127] this Court reiterated that *res judicata* may also be applied to "decisions rendered by agencies in judicial or quasi-judicial proceedings and not to purely administrative proceedings[.]"[128] In *Salazar v. De Leon*,[129] this Court further held:

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[124] *Canuto, Jr. v. National Labor Relations Commission,* 412 Phil. 467, 474 (2001) [Per *J.* De Leon, Jr., Second Division].

[125] 763 Phil. 491 (2015) [Per *J.* Perlas-Bernabe, First Division].

[126] *Id.* at 511.

[127] 766 Phil. 750 (2015) [Per *J.* Leonen, Second Division].

[128] *Id.* at 771.

[129] 596 Phil. 472 (2009) [Per *J.* Chico-Nazario, Third Division].

Res judicata is a concept applied in the review of lower court decisions in accordance with the hierarchy of courts. But jurisprudence has also recognized the rule of administrative *res judicata*: "The rule which forbids the reopening of a matter once judicially determined by competent authority applies as well to the judicial and quasi-judicial facts of public, executive or administrative officers and boards acting within their jurisdiction as to the judgments of courts having general judicial powers. . . It has been declared that whenever final adjudication of persons invested with power to decide on the property and rights of the citizen is examinable by the Supreme Court, upon a writ of error or a *certiorari*, such final adjudication may be pleaded as *res judicata*." To be sure, early jurisprudence was already mindful that the doctrine of *res judicata* cannot be said to apply exclusively to decisions rendered by what are usually understood as courts without unreasonably circumscribing the scope thereof; and that the more equitable attitude is to allow extension of the defense to decisions of bodies upon whom judicial powers have been conferred.[130] (Citations omitted)

Thus, forum shopping, in the concept of *res judicata*, is applicable to judgments or decisions of administrative agencies performing judicial or quasi-judicial functions.

WHEREFORE, the Petition is **GRANTED**. The Resolutions dated January 22, 2013 and July 16, 2013 of the Court of Appeals in CA-G.R. SP No. 127252 are **REVERSED and SET ASIDE**. The case is hereby **REMANDED** to the Court of Appeals for a resolution on the merits of the case.

SO ORDERED.

Bersamin[*] *(Acting Chairperson), Martires,* and *Gesmundo, JJ.,* concur.

Velasco, Jr., J., on official leave.

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[130] *Id.* at 489.

[*] Designated Acting Chairperson per S.O. No. 2514 dated November 8, 2017.

FIRST DIVISION

[G.R. No. 209544. November 22, 2017]

SPOUSES ELLIS R. MILES and CAROLINA RONQUILLO-MILES, *petitioners, vs.* **BONNIE BAUTISTA LAO,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; THE ASCERTAINMENT OF GOOD FAITH OR THE LACK THEREOF, AND THE DETERMINATION OF NEGLIGENCE ARE FACTUAL MATTERS WHICH LAY OUTSIDE THE SCOPE OF A PETITION FOR REVIEW ON *CERTIORARI,* EXCEPT WHEN THE REGIONAL TRIAL COURT AND THE COURT OF APPEALS HAVE DIVERGENT FINDINGS OF FACT.— [W]e note that the issue of whether a mortgagee is in good faith generally cannot be entertained in a petition filed under Rule 45 of the 1997 Rules of Civil Procedure, as amended. This is because the ascertainment of good faith or the lack thereof, and the determination of negligence are factual matters which lay outside the scope of a petition for review on certiorari. However, a recognized exception to this rule is when the RTC and the CA have divergent findings of fact as in the case at bar.

2. CIVIL LAW; OBLIGATIONS AND CONTRACTS; MORTGAGE; DOCTRINE OF "THE MORTGAGEE IN GOOD FAITH"; A BUYER OR MORTGAGEE DEALING WITH PROPERTY COVERED BY A TORRENS CERTIFICATE OF TITLE IS NOT REQUIRED TO GO BEYOND WHAT APPEARS ON THE FACE OF THE TITLE, AS MORTGAGEE HAS A RIGHT TO RELY IN GOOD FAITH ON THE CERTIFICATE OF TITLE OF THE MORTGAGOR OF THE PROPERTY GIVEN AS SECURITY, AND IN THE ABSENCE OF ANY SIGN THAT MIGHT AROUSE SUSPICION, THE MORTGAGEE HAS NO OBLIGATION TO UNDERTAKE FURTHER INVESTIGATION. — There is indeed a situation where, despite the fact that the mortgagor is not the owner of the mortgaged property, his title being fraudulent, the mortgage contract and

any foreclosure sale arising therefrom are given effect by reason of public policy. This is the doctrine of "the mortgagee in good faith" based on the rule that buyers or mortgagees dealing with property covered by a Torrens Certificate of Title are not required to go beyond what appears on the face of the title. Indeed, a mortgagee has a right to rely in good faith on the certificate of title of the mortgagor of the property given as security, and in the absence of any sign that might arouse suspicion, the mortgagee has no obligation to undertake further investigation. This doctrine presupposes, however, that the mortgagor, who is not the rightful owner of the property, has already succeeded in obtaining Torrens title over the property in his name and that, after obtaining the said title, he succeeds in mortgaging the property to another who relies on what appears on the title.

3. ID.; ID.; ID.; ID.; THE BURDEN OF DISCOVERY OF INVALID TRANSACTIONS RELATING TO THE PROPERTY COVERED BY A TITLE APPEARING REGULAR ON ITS FACE IS SHIFTED FROM THE THIRD PARTY RELYING ON THE TITLE TO THE CO-OWNERS OR THE PREDECESSORS OF THE TITLE HOLDER; RATIONALE.— The Court, in the case of *Andres, et al. v. Philippine National Bank*, explained the dynamics of the burden of discovery in said doctrine, to wit: The doctrine protecting mortgagees and innocent purchasers in good faith emanates from the social interest embedded in the legal concept granting indefeasibility of titles. The burden of discovery of invalid transactions relating to the property covered by a title appearing regular on its face is shifted from the third party relying on the title to the co-owners or the predecessors of the title holder. Between the third party and the co-owners, it will be the latter that will be more intimately knowledgeable about the status of the property and its history. The costs of discovery of the basis of invalidity, thus, are better borne by them because it would naturally be lower. A reverse presumption will only increase costs for the economy, delay transactions, and, thus, achieve a less optimal welfare level for the entire society.

4. ID.; ID.; ID.; ID.; A HIGHER DEGREE OF PRUDENCE MUST BE EXERCISED BY THE MORTGAGEE WHERE THE SAME DOES NOT DIRECTLY DEAL WITH THE REGISTERED OWNER OF REAL PROPERTY.— In cases where the mortgagee does not directly deal with the registered owner of real property, the law requires that a higher degree

of prudence be exercised by the mortgagee. In this case, the title of the property under the name of spouses Ocampo was already registered as early as May 6, 1998, while the real estate mortgage was executed December 16, 1998. Hence, it is clear that respondent had every right to rely on the TCT presented to her insofar as the mortgagors' right of ownership over the subject property is concerned.

5. ID.; ID.; ID.; ID.; GOOD FAITH; DEFINED AND EXPLAINED.— In ascertaining good faith, or the lack of it, which is a question of intention, courts are necessarily controlled by the evidence as to the conduct and outward acts by which alone the inward motive may, with safety, be determined. Good faith, or want of it, is capable of being ascertained only from the acts of one claiming its presence, for it is a condition of the mind which can be judged by actual or fancied token or signs. Good faith, or want of it, is not a visible, tangible fact that can be seen or touched, but rather a state or condition of mind which can only be judged by actual or fancied token or signs. Good faith connotes an honest intention to abstain from taking unconscientious advantage of another. In *Manaloto, et al. v. Veloso III*, the Court defined good faith as "an honest intention to abstain from taking any unconscientious advantage of another, even through the forms or technicalities of the law, together with an absence of all information or belief of fact which would render the transaction unconscientious. In business relations, it means good faith as understood by men of affairs." In this case, respondent's decision to deal with the mortgagors through a middleman, does not equate to bad faith. At the outset, it bears to stress that the spouses Ocampo were already the registered owners of the property at the time they entered into a mortgage contract with respondent. Hence, respondent was justified in relying on the contents of TCT No. 212314 and is under no legal obligation to further investigate. Likewise, there is nothing in the records, and neither did petitioners point to anything in the title which would arouse suspicions as to the spouses Ocampo's defective title to the subject property.

6. ID.; ID.; ID.; THE MORTGAGEE'S USE OF A MIDDLEMAN, INSTEAD OF DIRECTLY DEALING WITH THE REGISTERED OWNER, IS NOT INDICATIVE OF BAD FAITH, AS BAD FAITH DOES NOT SIMPLY CONNOTE BAD JUDGMENT OR NEGLIGENCE.— While arguably, respondent's decision to use a middleman in her transactions

with the mortgagors could be characterized as risky or reckless, the same does not establish a corrupt motive on the part of respondent, nor an intention to take advantage of another person. Indeed, bad faith does not simply connote bad judgment or negligence.

7. ID.; ID.; ID.; ID.; THE RESPONDENT'S ACT OF FILING A FORECLOSURE SUIT INSTEAD OF A CRIMINAL CASE NOT INDICATIVE OF BAD FAITH, AS HE IS MERELY EXERCISING A PRIVILEGE GRANTED TO HIM BY LAW AS A SECURED CREDITOR.— Neither is respondent's act of filing a foreclosure suit instead of a criminal case against spouses Ocampo indicative of her bad faith. In *Sps. Yap and Guevarra v. First e-Bank Corp.*, this Court already recognized that if the debtor fails (or unjustly refuses) to pay his debt when it falls due and the debt is secured by a mortgage and by a check, the creditor has three options against the debtor and the exercise of one will bar the exercise of the others. The remedies include foreclosure and filing of a criminal case for violation of BP 22 (Bouncing Checks Law). Verily, when respondent opted to foreclose, he merely exercised a privilege granted to him by law as a secured creditor. Hence, without sufficient justification, We cannot impute bad faith on respondent by her exercise of such right.

APPEARANCES OF COUNSEL

Jesus M. Bautista for petitioners.
Sebastian Liganor Galinato & Alamis for respondent.

D E C I S I O N

TIJAM, *J.*:

This resolves the Petition for Review on *Certiorari*[1] under Rule 45 assailing the Decision[2] dated May 24, 2013 and

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[1] *Rollo*, pp. 9-40.

[2] Penned by Associate Justice Samuel H. Gaerlan with Associate Justices Apolinario D. Bruselas, Jr. and Priscilla J. Baltazar-Padilla concurring; *id.* at 41-49.

Resolution[3] dated September 30, 2013 of the Court of Appeals (CA) in CA-G.R. CV No. 95973.

The Antecedents

This case stemmed from a complaint[4] filed by petitioner Spouses Ellis and Carolina Miles (Petitioners) against spouses Ricardo and Cresencia Ocampo (spouses Ocampo), spouses Rodora and Reynaldo Jimenez, Bonnie Bautista Lao (respondent), Atty. Mila Flores, in her capacity as the Register of Deeds, Makati City and Atty. Engracio M. Escasinas, Jr., in his capacity as the Clerk of Court VII and Ex-Officio Sheriff of the Regional Trial Court (RTC), Makati City.

Petitioners claimed that on March 28, 1983, they became registered owners in fee simple of a parcel of land in Makati City, covered by Transfer Certificate of Title (TCT) No. 120427[5] (subject property). They averred that before they left for the United States, they entrusted the duplicate of the TCT of the subject property to their niece, defendant Rodora Jimenez (Rodora) so that she may offer it to interested buyers. They claimed that no written Special Power of Attorney (SPA) to sell the property was given to Rodora.

They alleged that Rodora and spouses Ocampo conspired and made it appear, through a falsified Deed of Donation dated April 21, 1998, that petitioners were donating the subject property to spouses Ocampo. As a result, TCT No. 120427 was cancelled and a new one, TCT No. 212314[6] was issued in the name of spouses Ocampo.

Later on, petitioners claimed that through falsification, evident bad faith and fraud, spouses Ocampo caused the execution of a falsified Real Estate Mortgage[7] in favor of respondent Lao,

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[3] *Id*. at 74-75.

[4] *Id*. at 98-113.

[5] *Id*. at 127.

[6] *Id*. at 114.

[7] *Id*. at 118-123.

with the subject property as security, in exchange of a loan in the amount of Php2,500,000. Since the spouses Ocampo failed to pay the loan, respondent foreclosed the mortgage.

Alleging that there was collusion among the defendants, petitioners prayed that TCT No. 212314 in the name of spouses Ocampo be cancelled, and TCT No. 120427 under their name be restored. They also prayed for the nullification of the Deed of Donation[8] dated April 21, 1998, the mortgage executed by spouses Ocampo in favor of respondent and the cancellation of the mortgage inscription on the title of the property.

For their part, all the defendants denied petitioners' claim that there was collusion among them.

For defendant Rodora, she claimed that she is related to petitioners by consanguinity, and by affinity to spouses Ocampo. She admitted to the sale of the subject property to spouses Ocampo. She however claimed that the sale was with petitioners' knowledge and consent through a SPA[9] dated July 10, 1997. She claimed that petitioners communicated the same via overseas call. She claimed that the agreement was for spouses Ocampo to pay the consideration within two months from the execution of the Deed of Sale on February 13, 1998.[10]

Spouses Ocampo maintained that they acquired the property in good faith and for value. They offered in evidence a SPA purportedly executed by petitioners authorizing Rodora to sell the property and a Deed of Sale[11] purportedly executed by Rodora in their favor.[12]

Meanwhile, respondent alleged that she entered into a mortgage contract with spouses Ocampo without knowledge that their title thereon was defective. She claimed that at the

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[8] *Id*. at 116-117.

[9] *Id*. at 126.

[10] *Id*. at 134-135.

[11] *Id*. at 124-125.

[12] *Id*. at 128-133.

time of the mortgage, the subject property was in the name of spouses Ocampo and there was nothing in the title which suggested that it was fraudulently acquired. She even claimed that she conducted an ocular inspection on the property to determine if there were other occupants thereon but none were found.[13]

The Ruling of the RTC

In a Decision[14] dated January 14, 2009, the RTC ruled in favor of petitioners. The dispositive portion of the Decision reads:

In view of the foregoing antecedents, judgment is rendered in favor of the plaintiffs and against the defendants, as follows:

1. Declaring Transfer Certificate of Title No. 21234 in the name of [Spouses Ocampo] as null and void and of no legal force and effect and TCT No. 120427 in the name of Ellis Miles is hereby restored;
2. The Deed of Donation dated 21 April 1998, Deed of Absolute Sale, Special Power of Attorney and all other documents resulting to the cancellation of TCT No. 120427 as well as the Real Estate Mortgage dated 22 December 1998 inscribed under Entry No. 21772/T-212314, they are declared null and void and of no legal force and effect whatsoever;
3. [Respondent] is hereby ordered to voluntarily and peacefully surrender to the Court the Owner's Duplicate of TCT No. 212314 within fifteen (15) days from finality of the judgment for purposes of cancellation;
4. Ordering the Register of Deeds of Makati City to cancel all of the entries appearing at the dorsal portion of TCT No. 120427,
5. Ordering defendants [Rodora] and [spouses Ocampo] jointly and severally to pay [petitioners] the amount of ₱572,940.00 (sic) representing their airfare from the USA to the Philippines;
6. Ordering defendants Jimenez and [spouses Ocampo] jointly and severally to pay [petitioners] the amount of ₱1,000,000.00 as moral and exemplary damages; and

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[13] *Id*. at 137-149.

[14] *Id*. at 85-96.

7. Ordering defendants Jimenez and [spouses Ocampo] jointly and severally to pay [petitioners] the amount of ₱500,000.00 as and for attorney's fees.

The compulsory counterclaim of defendants are denied for lack of merit. Likewise, for failure to prove the same, [respondent]'s cross-claim against defendants Jimenez and [spouses Ocampo] are denied.

SO ORDERED.[15]

Only respondent appealed to the CA. Meanwhile, it appears that the trial court issued a writ of execution[16] dated July 8, 2010, implementing paragraphs 4 to 7 of its January 14, 2009 Decision.

The Ruling of the CA

The appellate court reversed the trial court and ruled that respondent is a mortgagee in good faith. The dispositive portion of its Decision[17] states:

WHEREFORE, premises considered, the instant Appeal is GRANTED and the Decision dated 14 January 2009 of the Regional Trial Court of Makati City, Branch 146, in Civil Case No. 99-1986 is **REVERSED and SET ASIDE** in so far as defendant-appellant Bonnie S. Lao is concerned.

Accordingly, the Real Estate Mortgage dated 22 December 1998 between defendant Spouses Ricardo Ocampo and Cresencia Ocampo and defendant-appellant Bonnie S. Lao is hereby declared **VALID and with LEGAL FORCE and EFFECT.**

SO ORDERED.[18]

Petitioners' motion for reconsideration was likewise denied in the CA's Resolution dated September 30, 2013.

Hence, this petition.

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[15] *Id*. at 95.

[16] *Id*. at 156-159.

[17] *Id*. at 41-49.

[18] *Id*. at 48.

The Ruling of the Court

The only issue for Our resolution is whether or not the CA erred in ruling that respondent is a mortgagee in good faith.

In this petition, petitioners alleged that respondent never conducted an investigation on the title of spouses Ocampo and the status of the subject property when she entered into a mortgage contract with the spouses Ocampo. They also conclude that respondent was not diligent when she dealt with the spouses Ocampo through one Carlos Talay.

At the outset, We note that the issue of whether a mortgagee is in good faith generally cannot be entertained in a petition filed under Rule 45 of the 1997 Rules of Civil Procedure, as amended.[19] This is because the ascertainment of good faith or the lack thereof, and the determination of negligence are factual matters which lay outside the scope of a petition for review on certiorari.[20] However, a recognized exception to this rule is when the RTC and the CA have divergent findings of fact as in the case at bar.[21]

There is indeed a situation where, despite the fact that the mortgagor is not the owner of the mortgaged property, his title being fraudulent, the mortgage contract and any foreclosure sale arising therefrom are given effect by reason of public policy.[22] This is the doctrine of "the mortgagee in good faith" based on the rule that buyers or mortgagees dealing with property covered by a Torrens Certificate of Title are not required to go beyond what appears on the face of the title.

Indeed, a mortgagee has a right to rely in good faith on the certificate of title of the mortgagor of the property given as

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[19] *Arguelles, et al. v. Malarayat Rural Bank, Inc.*, 730 Phil. 226, 234 (2014).

[20] *Philippine National Bank v. Juan F. Villa*, G.R. No. 213241, August 1, 2016.

[21] *Arguelles, et al. v. Malarayat Rural Bank, Inc.*, *supra* at 234-235.

[22] *Bank of Commerce v. San Pablo, et al.,* 550 Phil. 805, 820-821 (2007) citing *Cavite Development Bank v. Spouses Lim*, 381 Phil. 355, 368 (2000).

security, and in the absence of any sign that might arouse suspicion, the mortgagee has no obligation to undertake further investigation. This doctrine presupposes, however, that the mortgagor, who is not the rightful owner of the property, has already succeeded in obtaining Torrens title over the property in his name and that, after obtaining the said title, he succeeds in mortgaging the property to another who relies on what appears on the title.

The Court, in the case of *Andres, et al. v. Philippine National Bank*,[23] explained the dynamics of the burden of discovery in said doctrine, to wit:

> The doctrine protecting mortgagees and innocent purchasers in good faith emanates from the social interest embedded in the legal concept granting indefeasibility of titles. The burden of discovery of invalid transactions relating to the property covered by a title appearing regular on its face is shifted from the third party relying on the title to the co-owners or the predecessors of the title holder. Between the third party and the co-owners, it will be the latter that will be more intimately knowledgeable about the status of the property and its history. The costs of discovery of the basis of invalidity, thus, are better borne by them because it would naturally be lower. A reverse presumption will only increase costs for the economy, delay transactions, and, thus, achieve a less optimal welfare level for the entire society.[24]

In cases where the mortgagee does not directly deal with the registered owner of real property, the law requires that a higher degree of prudence be exercised by the mortgagee.[25]

In this case, the title of the property under the name of spouses Ocampo was already registered as early as May 6, 1998, while the real estate mortgage was executed December 16, 1998. Hence, it is clear that respondent had every right to rely on the TCT presented to her insofar as the mortgagors' right of ownership over the subject property is concerned.

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[23] *Andres, et al. v. Philippine National Bank,* 745 Phil. 459 (2014).

[24] *Id*. at 473.

[25] *Mercado v. Allied Banking Corporation*, 555 Phil. 411, 427 (2007).

Petitioners and the RTC however claims that respondent is in bad faith considering that she did not directly deal with the mortgagors, and dealt with them only through respondent's agent, Carlos Talay.

We find otherwise.

Petitioners' line of argument is *non-sequitur* and is simply insufficient to controvert respondent's good faith as mortgagee.

In ascertaining good faith, or the lack of it, which is a question of intention, courts are necessarily controlled by the evidence as to the conduct and outward acts by which alone the inward motive may, with safety, be determined. Good faith, or want of it, is capable of being ascertained only from the acts of one claiming its presence, for it is a condition of the mind which can be judged by actual or fancied token or signs.[26] Good faith, or want of it, is not a visible, tangible fact that can be seen or touched, but rather a state or condition of mind which can only be judged by actual or fancied token or signs.[27] Good faith connotes an honest intention to abstain from taking unconscientious advantage of another.[28] In *Manaloto, et al. v. Veloso III*,[29] the Court defined good faith as "an honest intention to abstain from taking any unconscientious advantage of another, even through the forms or technicalities of the law, together with an absence of all information or belief of fact which would render the transaction unconscientious. In business relations, it means good faith as understood by men of affairs."[30]

In this case, respondent's decision to deal with the mortgagors through a middleman, does not equate to bad faith. At the outset, it bears to stress that the spouses Ocampo were already the registered owners of the property at the time they entered into

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[26] *Expresscredit Financing Corp. v. Sps. Velasco*, 510 Phil. 342, 352 (2005).

[27] *Id*.

[28] *PNB v. Heirs of Estanislao and Deogracias Militar,* 526 Phil. 788 (2006).

[29] 646 Phil. 639 (2010).

[30] *Id*. at 656.

a mortgage contract with respondent. Hence, respondent was justified in relying on the contents of TCT No. 212314 and is under no legal obligation to further investigate. Likewise, there is nothing in the records, and neither did petitioners point to anything in the title which would arouse suspicions as to the spouses Ocampo's defective title to the subject property.

While arguably, respondent's decision to use a middleman in her transactions with the mortgagors could be characterized as risky or reckless, the same does not establish a corrupt motive on the part of respondent, nor an intention to take advantage of another person. Indeed, bad faith does not simply connote bad judgment or negligence.[31]

We also note respondent's insistence that she conducted an ocular inspection on the subject property and found that the lot was vacant before she decided to enter into a mortgage contract with spouses Ocampo. This fact remained uncontroverted throughout the trial before the RTC. We agree with respondent that the allegation set forth in spouses Ocampo's Manifestation and Motion to Set Aside Decision[32] against Defendants Spouses Ocampo dated November 3, 2009 cannot be appreciated to contradict the established fact that respondent made an ocular inspection of the subject property. The pertinent portion of the said manifestation states:

2. However, long before the said decision was rendered, the plaintiffs have already taken possession of the property subject of this litigation by way of recovering their ownership thereof;

3. In fact, plaintiffs had long been leasing the subject property to a certain JUAN ARMAMENTO, a barangay kagawad of Pio del Pilar;

4. The foregoing facts render the decision of the Court moot and academic insofar as defendants Spouses Ocampo are concerned, no longer enforceable against them, having in effect been satisfied.[33]

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[31] *Adriano, et al. v. Lasala, et al.,* 719 Phil. 408, 419 (2013).

[32] *Rollo*, pp. 160-163.

[33] *Id.* at 161-162.

Suffice it to state that the aforesaid statements are mere allegations, not presented during trial, and are unsupported by any evidence.[34] Hence, We cannot accord weight to them. Certainly, it is plausible that the lease to the aforesaid Armamento could have occurred after the mortgage was already executed, and even during the pendency of the case.

Neither is respondent's act of filing a foreclosure suit instead of a criminal case against spouses Ocampo indicative of her bad faith. In *Sps. Yap and Guevarra v. First e-Bank Corp.*,[35] this Court already recognized that if the debtor fails (or unjustly refuses) to pay his debt when it falls due and the debt is secured by a mortgage and by a check, the creditor has three options against the debtor and the exercise of one will bar the exercise of the others. The remedies include foreclosure and filing of a criminal case for violation of BP 22 (Bouncing Checks Law). Verily, when respondent opted to foreclose, he merely exercised a privilege granted to him by law as a secured creditor. Hence, without sufficient justification, We cannot impute bad faith on respondent by her exercise of such right.

WHEREFORE, the petition is **DENIED** for lack of merit. The Decision dated May 24, 2013 and Resolution dated September 30, 2013 of the Court of Appeals in CA-G.R. CV No. 95973 are hereby **AFFIRMED.**

SO ORDERED.

Sereno, C.J. (Chairperson), Leonardo-de Castro, del Castillo, and *Jardeleza, JJ.,* concur.

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[34] *Sps. Guidangen v. Wooden,* 682 Phil. 112, 124 (2012).

[35] 617 Phil. 57 (2009).

SECOND DIVISION

[G.R. No. 209906. November 22, 2017]

COCA-COLA BOTTLERS PHILS., INC., *petitioner, vs.* **ERNANI GUINGONA MEÑEZ,** *respondent.*

SYLLABUS

1. CIVIL LAW; EXTRA-CONTRACTUAL OBLIGATIONS; QUASI-DELICTS; THE DOCTRINE OF EXHAUSTION OF ADMINISTRATIVE REMEDIES IS NOT APPLICABLE IN A COMPLAINT FOR DAMAGES WITH RESPECT TO OBLIGATIONS ARISING FROM QUASI-DELICTS; CASE AT BAR.— The CA correctly ruled that prior resort to BFD is not necessary for a suit for damages under Article 2187 of the Civil Code to prosper. Article 2187 unambiguously provides: Manufacturers and processors of foodstuffs, drinks, toilet articles and similar goods shall be liable for death or injuries caused by any noxious or harmful substances used, although no contractual relation exists between them and the consumers. Quasi-delict being the source of obligation upon which Meñez bases his cause of action for damages against CCBPI, the doctrine of exhaustion of administrative remedies is not applicable. Such is not a condition precedent required in a complaint for damages with respect to obligations arising from quasi-delicts under Chapter 2, Title XVII on Extra-Contractual Obligations, Article 2176, *et seq*. of the Civil Code which includes Article 2187.

2. ID.; DAMAGES; MORAL DAMAGES; TO BE ENTITLED TO MORAL DAMAGES, PHYSICAL INJURIES SUSTAINED MUST BE SUPPORTED BY SUFFICIENT EVIDENCE; CASE AT BAR.— The cases when moral damages may be awarded are specific. Unless the case falls under the enumeration as provided in Article 2219, which is exclusive, and Article 2220 of the Civil Code, moral damages may not be awarded. x x x Apparently, the only ground which could sustain an award of moral damages in favor of Meñez and against CCBPI is Article 2219 (2) — quasi-delict under Article 2187 causing physical injuries. Unfortunately, Meñez has not presented competent, credible and preponderant evidence to prove that he suffered physical injuries when he allegedly ingested kerosene from the

"Sprite" bottle in question. Nowhere in the CA Decision is the physical injury of Meñez discussed. The RTC Decision states the diagnosis of the medical condition of Meñez in the medical abstract prepared by Dr. Abel Hilario Gomez, who was not presented as a witness, and signed by Dr. Magbanua, Jr. (Exhibit "R"): "the degree of poisoning on the plaintiff [Meñez] was mild, since the amount ingested was minimal and did not have severe physical effects on his body." In his testimony, Dr. Magbanua, Jr. stated: "To my mind, [Meñez] had taken in kerosene of exactly undetermined amount, apparently or probably, only a small amount because the degree of adverse effect on his body is very minimal knowing that if he had taken in a large amount he would have been in x x x very serious trouble and we would have seen this when we examined him." The statements of the doctors who tended to the medical needs of Meñez were equivocal. "Physical effects on the body" and "adverse effect on his body" are not very clear and definite as to whether or not Meñez suffered physical injuries and if these statements indicate that he did, what their nature was or how extensive they were. Consequently, in the absence of sufficient evidence on physical injuries that Meñez sustained, he is not entitled to moral damages.

3. **ID.; ID.; EXEMPLARY DAMAGES; MAY BE GRANTED IN QUASI-DELICTS IF THE DEFENDANT ACTED WITH GROSS NEGLIGENCE; CASE AT BAR.—** As to exemplary or corrective damages, these may be granted in quasi-delicts if the defendant acted with gross negligence pursuant to Article 2231 of the Civil Code. The CA justified its award of exemplary damages in the following manner: On the liability of manufacturers, the principle of strict liability applies. It means that proof of negligence is not necessary. It appl[i]es even if the defendant manufacturer or processor has exercised all the possible care in the preparation and sale of his product x x x. Extra-ordinary diligence is required of them because the life of the consuming public is involved in the consumption of the foodstuffs or processed products. Evidently, the CA's reasoning is not in accord with the gross negligence requirement for an award of exemplary damages in a quasi-delict case. Moreover, Meñez has failed to establish that CCBPI acted with gross negligence. Other than the opened "Sprite" bottle containing pure kerosene allegedly served to him at the Rosante Bar and Restaurant (Rosante), Meñez has not presented any evidence

that would show CCBPI's purported gross negligence. The Court agrees with the RTC's finding that there was failure on the part of Meñez to categorically establish the chain of custody of the "Sprite" bottle which was the very core of the evidence in his complaint for damages and that, considering that the "Sprite" bottle allegedly contained pure kerosene, it was quite surprising why the employees of Rosante did not notice its distinct, characteristic smell. Thus, Meñez is not entitled to exemplary damages absent the required evidence. The only evidence presented by Meñez is the opened "Sprite" bottle containing pure kerosene. Nothing more.

4. ID.; ID.; ATTORNEY'S FEES AND COST OF SUIT; AWARD THEREOF, NOT WARRANTED IN CASE AT BAR.— The CA Decision did not even provide the basis for the award of ₱50,000.00 as attorney's fees and cost of suit. The award is found only in the dispositive portion and, unlike the award of moral and exemplary damages, there was no explanation provided in the body of the Decision. It can only be surmised that the CA awarded attorney's fees only because it awarded exemplary damages. In any event, based on Article 2208 of the Civil Code, Meñez is not entitled to attorney's fees and expenses of litigation because, as with his claim for exemplary damages, he has not established any other ground that would justify this award.

APPEARANCES OF COUNSEL

Angara Abello Concepcion Regala & Cruz for petitioner.
Yap-Siton Law Office for respondent.

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] of the

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[1] *Rollo*, pp. 3-70.

[2] *Id.* at 71-83. Penned by Associate Justice Gabriel T. Ingles, with Associate Justices Pampio A. Abarintos and Marilyn B. Lagura-Yap concurring.

Court of Appeals[3] (CA) dated April 22, 2013 in CA-G.R. CV No. 02361 and the Resolution[4] dated October 11, 2013 denying the motion for reconsideration filed by petitioner, Coca-Cola Bottlers Phils., Inc. (CCBPI). The CA Decision granted the appeal and reversed the Decision[5] dated October 29, 2007 of the Regional Trial Court, 7th Judicial Region, Branch 39, Dumaguete City (RTC) in Civil Case No. 11316.

Facts and Antecedent Proceedings

The Decision of the CA dated April 22, 2013 states the facts as follows:

> Research [s]cientist Ernani Guingona Meñez [Meñez] was a frequent customer of Rosante Bar and Restaurant [Rosante] of Dumaguete City. On March 28, 1995, at about 3:00 o'clock in the afternoon, Me[ñ]ez went to Rosante and ordered two (2) bottles of beer. Thereafter, he ordered pizza and a bottle of "Sprite". His additional order arrived consisting of one whole pizza and a bottled softdrink Sprite with a drinking straw, one end and about three-fourths of which was submerged in the contents of the bottle, with the other and the remaining third of the straw outside the bottle, as is the usual practice in eateries when one orders a bottled softdrink.
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> Meñez then took a bite of pizza and drank from the straw the contents of the Sprite [b]ottle. He noticed that the taste of the softdrink was not one of Sprite but of a different substance repulsive to taste. The substance smelled of kerosene. He then felt a burning sensation in his throat and stomach and could not control the urge to vomit. He left his table for the toilet to vomit but was unable to reach the toilet room. Instead, he vomited on the lavatory found immediately outside the said toilet.
>
> Upon returning to the table, he picked up the bottle of Sprite and brought it to the place where the waitresses were and angrily told them that he was served kerosene. [Meñez] even handed the bottle to the waitresses who passed it among themselves to smell it. All of

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[3] Eighteenth (18th) Division.

[4] *Rollo*, pp. 84-89.

[5] *Id*. at 371-390. Penned by Presiding Judge Arlene Catherine A. Dato.

the waitresses confirmed that the bottle smelled of kerosene and not of Sprite.

Meñez then went out of the restaurant taking with him the bottle. He found a person manning the traffic immediately outside the restaurant, whom he later came to know as Gerardo Ovas, Jr. of the Traffic Assistant Unit. He reported the incident and requested the latter to accompany him to the Silliman [University] Medical Center (SUMC). Heading to SUMC for medical attention, Ovas brought the bottle of Sprite with him.

While at the Emergency Room, [Meñez] again vomited before the hospital staff could examine him. [Meñez] had to be confined in the hospital for three (3) days.

Later, [Meñez] came to know that a representative from [Rosante] came to the hospital and informed the hospital staff that Rosante [would] take care of the hospital and medical bills.

The incident was reported to the police and recorded in the Police Blotter. The bottle of Sprite was examined by Prof. Chester Dumancas, a licensed chemist of Silliman University. The analysis identified the contents of the liquid inside the bottle as pure kerosene.

As a result of the incident, [Meñez] filed a complaint against [CCBPI and Rosante] and prayed for the following damages:

(a) Three Million Pesos (₱3,000,000.00) as actual damages;
(b) Four Million Pesos (₱4,000,000.00) as moral damages;
(c) Five Hundred Thousand Pesos (₱500,000.00) as exemplary damages;
(d) One Hundred Thousand Pesos (₱100,000[.00]) as attorney's fees;
(e) Cost of Suit.

In answer to the complaint filed, [CCBPI and Rosante] set out their own version of facts. Rosante x x x alleged that [Meñez] was heard to have only felt nausea but did not vomit when he went to the comfort room. Rosante further denied that the waitresses confirmed the content of the bottle to be kerosene. In fact, [Meñez] refused to have the waitresses smell it.

As an affirmative defense, [Rosante] argued that [Meñez] has no cause of action against it as it merely received said bottle of Sprite allegedly containing kerosene from [CCBPI], as a matter of routinary procedure. It argued that Rosante is not expected to open and taste

each and every [content] in order to make sure it is safe for every customer.

It further alleged that Robert Sy was made as representative of [Rosante] when in fact he is not the registered owner of the establishment but merely involved in the management.

CCBPI for its part filed a motion to dismiss the complaint. The motion was founded on the grounds that:

> 1) [Meñez] failed to allege all the requisites of liability under Article 2187 of the Civil Code, not even for the law on torts and quasi-delict to apply against [CCBPI].
>
> 2) [Meñez] failed to exhaust administrative remedies and/or comply with the Doctrine of the Prior Resort.

CCBPI interposed that a perusal of the complaint revealed that there is no allegation therein which states that CCBPI uses noxious or harmful substance in the manufacture of its products. What the complaint repeatedly stated is that the bottle with the name SPRITE on it contained a substance which was later identified as pure kerosene.

As to the second ground, [CCBPI] cited Republic Act No. 3720, as amended x x x "*An Act to Ensure the Safety and Purity of Foods and Cosmetics, and the Purity, Safety, Efficacy and Quality of Drugs and Devices Being Made Available to the Public, Vesting the Bureau of Food and Drugs with Authority to Administer and Enforce the Laws pertaining thereto, and for other Purposes*[.]" CCBPI argued that pursuant to the law, [Meñez] failed to avail of and exhaust an administrative remedy provided for prior to a filing of a suit in court. It quoted,

> (d) When it appears to the Director x x x that any article of food x x x is adulterated or misbranded, he shall cause notice thereof to be given to the person or persons concerned and such person or persons shall be given an opportunity to be heard before the Board of Food and Drug Inspection and to submit evidence impeaching the correctness of the finding or charge in question.

From this provision, CCBPI concluded that an administrative remedy was existing and that [Meñez] failed to avail thereof.

CCBPI further argued that the doctrine of strict liability tort on product liability is but a creation of American Jurisprudence, as clearly

shown by the cases cited in support thereof, and never before adopted as a doctrine of the Supreme Court. Hence, it submits that at most it only has a persuasive effect and should not be used as a precedent in fixing the liability of CCBPI.

Pre-[t]rial and [t]rial ensued. [Meñez] introduced several exhibits to substantiate the damages he prayed for. Among others were Explanation of Benefits and Statements of Account from healthcare providers to show that he had to undergo a series of examinations in the United States as consequence of the incident. [Meñez] also included in his exhibits his profile as a scientist in attempt to prove that damages were also incurred with the delay of his work; still as a consequence of the kerosene poisoning.

With the termination of the trial, and the directive to parties to file their respective memoranda, the case was finally submitted for decision.[6]

The RTC Ruling

The CA Decision further states:

The Regional Trial Court (RTC) dismissed the complaint for insufficiency of evidence. The [RTC] found the evidence for [Meñez] to be ridden with gaps. It declared that there was failure of [Meñez] to categorically establish the chain of custody of the "Sprite" bottle which was the very core of the evidence in his complaint for damages. The Court noted that from the time of the incident, thirty-six (36) hours have lapsed before the "Sprite" bottle was submitted for laboratory examination. During such time, the "Sprite" bottle changed hands several times. The RTC then ruled that the scanty evidence presented by [Meñez] concerning the chain of custody of the said "Sprite" bottle and [his] unexplained failure x x x to present several vital witnesses to prove such fact indeed casts a serious doubt on the veracity of his allegations.

The [RTC] observed,

> "In this case, the results of the laboratory examination conducted on the "Sprite" bottle show that the same contained PURE KEROSENE, and not "Sprite" containing traces of kerosene or "Sprite" adulterated with kerosene. [x]xx A test

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[6] *Id*. at 71-74.

result showing that the said "Sprite" bottle contained traces of kerosene would have been more in consonance with [Meñez]'s claim of negligence[.]"

The RTC further noted that since kerosene had a characteristic smell, and considering that the "Sprite" bottle allegedly contained pure kerosene, it was quite surprising why the employees of [Rosante] did not notice its distinct smell.

Finally, the RTC held that the complaint was devoid of merit as it should have first ventilated [Meñez's] grievance with the Bureau of Food and Drugs pursuant to R.A. 3720 as amended by Executive Order No. 175.

Thus, the [RTC] disposed,

"WHEREFORE, the complaint is hereby DISMISSED for insufficiency of evidence, with costs against the plaintiff.

Likewise, the counterclaims of defendants are hereby DISMISSED.

SO ORDERED."

Aggrieved, [Meñez went to the CA] on appeal.[7]

The CA Ruling

In its Decision[8] dated April 22, 2013, the CA granted the appeal and reversed the Decision of the RTC. The CA ruled that the RTC erred in dismissing the case for failing to comply with an administrative remedy because it is not a condition precedent in pursuing a case for damages under Article 2187 of the Civil Code which is the basis of Meñez's complaint for damages.[9] The CA also ruled that Meñez was not entitled to actual damages given the observation of his attending physician, Dr. Juanito Magbanua, Jr. (Dr. Magbanua, Jr.), that "his hospital stay was uneventful" and "to [his] mind, he had taken in x x x only a small amount [of kerosene] because the degree of adverse

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[7] *Id*. at 74-75.

[8] *Id*. at 71-83.

[9] *Id*. at 71, 78.

effect on his body [was] very minimal knowing that if he had taken in a large amount he would have been in x x x very serious trouble and we would have seen this when we examine him."[10] The CA, however, awarded moral and exemplary damages in favor of Meñez.[11]

The dispositive portion of the CA Decision states:

WHEREFORE, the appeal is hereby **GRANTED**. The decision in Civil Case No. 11316 is **REVERSED**. Defendant-Appellee Coca-Cola Bottlers Philippines Inc. is ORDERED to pay the following with six [per cent] (6%) interest per annum reckoned from May 5, 1995:

1. Moral damages in the amount of two hundred thousand pesos (₱200,000.00);
2. Exemplary [d]amages in the amount of two hundred thousand pesos (₱200,000.00);
3. Fifty thousand pesos (₱50,000.00) as attorney's fees and cost of suit.

The total aggregate monetary award shall in turn earn 12% per annum from the time of finality of this Decision until fully paid.

SO ORDERED.[12]

CCBPI filed a motion for reconsideration, which was denied in the CA Resolution[13] dated October 11, 2013.

Hence, this Petition. Meñez filed a Comment[14] dated April 9, 2014. CCBPI filed a Reply[15] dated May 30, 2014.

Issues

Whether the CA erred in awarding moral damages to Meñez.

Whether the CA erred in awarding exemplary damages to Meñez.

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[10] *Id*. at 78-79.

[11] See *id*. at 80-82.

[12] *Id*. at 83.

[13] *Id*. at 84-89.

[14] *Id*. at 645-694.

[15] *Id*. at 709-742.

Whether the CA erred in awarding attorney's fees to Meñez.

Whether the CA erred in holding that Meñez did not violate the doctrine of exhaustion of administrative remedies and prior resort to the Bureau of Food and Drugs (BFD) is not necessary.

The Court's Ruling

The Petition is meritorious.

The CA correctly ruled that prior resort to BFD is not necessary for a suit for damages under Article 2187 of the Civil Code to prosper. Article 2187 unambiguously provides:

> ART. 2187. Manufacturers and processors of foodstuffs, drinks, toilet articles and similar goods shall be liable for death or injuries caused by any noxious or harmful substances used, although no contractual relation exists between them and the consumers.

Quasi-delict being the source of obligation upon which Meñez bases his cause of action for damages against CCBPI, the doctrine of exhaustion of administrative remedies is not applicable. Such is not a condition precedent required in a complaint for damages with respect to obligations arising from quasi-delicts under Chapter 2, Title XVII on Extra-Contractual Obligations, Article 2176, *et seq*. of the Civil Code which includes Article 2187.

However, the CA erred in ruling that Meñez is entitled to moral damages, exemplary damages and attorney's fees.

The cases when moral damages may be awarded are specific. Unless the case falls under the enumeration as provided in Article 2219, which is exclusive, and Article 2220 of the Civil Code, moral damages may not be awarded. Article 2219 provides:

> ART. 2219. Moral damages may be recovered in the following and analogous cases:
>
> (1) A criminal offense resulting in physical injuries;
>
> **(2) Quasi-delicts causing physical injuries**;
>
> (3) Seduction, abduction, rape, or other lascivious acts;
>
> (4) Adultery or concubinage;

(5) Illegal or arbitrary detention or arrest;

(6) Illegal search;

(7) Libel, slander or any other form of defamation;

(8) Malicious prosecution;

(9) Acts mentioned in Article 309;

(10) Acts and actions referred to in Articles 21, 26, 27, 28, 29, 30, 32, 34, and 35.

x x x x x x x x x
(Emphasis supplied)

Article 2220 provides the following additional legal grounds for awarding moral damages: (1) willful injury to property if the court should find that, under the circumstances, such damages are justly due; and (2) breaches of contract where the defendant acted fraudulently or in bad faith.

In justifying the award of moral damages to Meñez, the CA invoked the U.S. cases *Escola v. Coca-Cola Bottling Co.*[16] and *Wallace v. Coca-Cola Bottling Plants, Inc.*[17] The CA, however, failed to show the direct connection of these cases with the instances when moral damages may be awarded under the Civil Code.

Apparently, the only ground which could sustain an award of moral damages in favor of Meñez and against CCBPI is Article 2219 (2) — quasi-delict under Article 2187 causing physical injuries.

Unfortunately, Meñez has not presented competent, credible and preponderant evidence to prove that he suffered physical injuries when he allegedly ingested kerosene from the "Sprite" bottle in question. Nowhere in the CA Decision is the physical injury of Meñez discussed. The RTC Decision states the diagnosis of the medical condition of Meñez in the medical abstract

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[16] 24 Cal.2d 453, 150 P.2d 436 (1944).

[17] 269 A.2d 117 (1970).

prepared by Dr. Abel Hilario Gomez, who was not presented as a witness,[18] and signed by Dr. Magbanua, Jr. (Exhibit "R"): "the degree of poisoning on the plaintiff [Meñez] was mild, since the amount ingested was minimal and did not have severe physical effects on his body."[19] In his testimony, Dr. Magbanua, Jr. stated: "To my mind, [Meñez] had taken in kerosene of exactly undetermined amount, apparently or probably, only a small amount because the degree of adverse effect on his body is very minimal knowing that if he had taken in a large amount he would have been in x x x very serious trouble and we would have seen this when we examined him."[20] The statements of the doctors who tended to the medical needs of Meñez were equivocal. "Physical effects on the body" and "adverse effect on his body" are not very clear and definite as to whether or not Meñez suffered physical injuries and if these statements indicate that he did, what their nature was or how extensive they were.

Consequently, in the absence of sufficient evidence on physical injuries that Meñez sustained, he is not entitled to moral damages.

As to exemplary or corrective damages, these may be granted in quasi-delicts if the defendant acted with gross negligence pursuant to Article 2231[21] of the Civil Code.

The CA justified its award of exemplary damages in the following manner:

> On the liability of manufacturers, the principle of strict liability applies. It means that proof of negligence is not necessary. It appl[i]es even if the defendant manufacturer or processor has exercised all the possible care in the preparation and sale of his product x x x. Extra-ordinary diligence is required of them because the life of the

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[18] See *rollo*, p. 179.

[19] *Id*. at 374.

[20] *Id*. at 79.

[21] ART. 2231. In quasi-delicts, exemplary damages may be granted if the defendant acted with gross negligence.

consuming public is involved in the consumption of the foodstuffs or processed products.[22]

Evidently, the CA's reasoning is not in accord with the gross negligence requirement for an award of exemplary damages in a quasi-delict case.

Moreover, Meñez has failed to establish that CCBPI acted with gross negligence. Other than the opened "Sprite" bottle containing pure kerosene allegedly served to him at the Rosante Bar and Restaurant (Rosante), Meñez has not presented any evidence that would show CCBPI's purported gross negligence. The Court agrees with the RTC's finding that there was failure on the part of Meñez to categorically establish the chain of custody of the "Sprite" bottle which was the very core of the evidence in his complaint for damages and that, considering that the "Sprite" bottle allegedly contained pure kerosene, it was quite surprising why the employees of Rosante did not notice its distinct, characteristic smell. Thus, Meñez is not entitled to exemplary damages absent the required evidence. The only evidence presented by Meñez is the opened "Sprite" bottle containing pure kerosene. Nothing more.

Regarding attorney's fees, Article 2208 of the Civil Code provides:

> ART. 2208. In the absence of stipulation, attorney's fees and expenses of litigation, other than judicial costs, cannot be recovered, except:
>
> (1) When exemplary damages are awarded;
>
> (2) When the defendant's act or omission has compelled the plaintiff to litigate with third persons or to incur expenses to protect his interest;
>
> (3) In criminal cases of malicious prosecution against the plaintiff;
>
> (4) In case of a clearly unfounded civil action or proceeding against the plaintiff;
>
> (5) Where the defendant acted in gross and evident bad faith in refusing to satisfy the plaintiff's plainly valid, just and demandable claim;

[22] *Rollo*, p. 82; citation omitted.

(6) In actions for legal support;

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

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

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

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

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

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

The CA Decision did not even provide the basis for the award of ₱50,000.00 as attorney's fees and cost of suit. The award is found only in the dispositive portion and, unlike the award of moral and exemplary damages, there was no explanation provided in the body of the Decision. It can only be surmised that the CA awarded attorney's fees only because it awarded exemplary damages.

In any event, based on Article 2208 of the Civil Code, Meñez is not entitled to attorney's fees and expenses of litigation because, as with his claim for exemplary damages, he has not established any other ground that would justify this award.

WHEREFORE, the Petition is hereby **GRANTED**. The Court of Appeals Decision dated April 22, 2013 and Resolution dated October 11, 2013 in CA-G.R. CV No. 02361 are **REVERSED** and **SET ASIDE**. The dismissal of the complaint for insufficiency of evidence by the Regional Trial Court, 7th Judicial Region, Branch 39, Dumaguete City in its Decision dated October 29, 2007 in Civil Case No. 11316 is **AFFIRMED**.

SO ORDERED.

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

Reyes, Jr., J., on leave.

THIRD DIVISION

[G.R. No. 210080. November 22, 2017]

MACARIO S. PADILLA, *petitioner, vs.* **AIRBORNE SECURITY SERVICE, INC. AND/OR CATALINA SOLIS,** *respondents*.

SYLLABUS

1. REMEDIAL LAW; APPEAL TO THE SUPREME COURT; PETITION FOR REVIEW ON *CERTIORARI* MAY ONLY RAISE QUESTIONS OF LAW; EXCEPTIONS; CASE AT BAR.— Rule 45 petitions, such as the one brought by petitioner, may only raise questions of law. Equally settled however, is that this rule admits of the following exceptions: (1) when the findings are grounded entirely on speculation, surmises or conjectures; (2) *when the inference made is manifestly mistaken, absurd or impossible;* (3) when there is grave abuse of discretion; (4) *when the judgment is based on a misapprehension of facts;* (5) when the findings of facts are conflicting; (6) when in making its findings the [Court of Appeals] went beyond the issues of the case, or its findings are contrary to the admissions of both the appellant and the appellee; (7) when the findings are contrary to the trial court; (8) when the findings are conclusions without citation of specific evidence on which they are based; (9) when the facts set forth in the petition, as well as in the petitioner's main and reply briefs, are not disputed by the respondent; (10) when the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record; and (11) *when the [Court of Appeals] manifestly overlooked certain relevant facts not disputed by the parties, which, if properly considered, would justify a different conclusion.* The Court of Appeals made a gross misapprehension of facts and overlooked other material details. The facts of this case, when more appropriately considered, sustain a conclusion different from that of the Court of Appeals. Petitioner was constructively dismissed from employment owing to his inordinately long floating status.

2. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; TERMINATION OF EMPLOYMENT BY

EMPLOYER; PLACING SECURITY GUARDS ON A TEMPORARY OFF-DETAIL FOR A PERIOD BEYOND SIX (6) MONTHS IS TANTAMOUNT TO CONSTRUCTIVE DISMISSAL; CASE AT BAR.— The practice of placing security guards on "floating status" or "temporary off-detail" is a valid exercise of management prerogative. Jurisprudence has settled that the period of temporary off-detail must not exceed six (6) months. Beyond this, a security guard's floating status shall be tantamount to constructive dismissal. x x x Therefore, a security guard's employer must give a new assignment to the employee within six (6) months. This assignment must be to a specific or particular client. "A general return-to-work order does not suffice." x x x To prove that petitioner was offered a new assignment, respondents presented a series of letters requiring petitioner to report to respondent Airborne's head office. These letters merely required petitioner to report to work and to explain why he had failed to report to the office. These letters did not identify any specific client to which petitioner was to be re-assigned. The letters were, at best, nothing more than general return-to-work orders. Jurisprudence is consistent in its disapproval of general return-to-work orders as a justification for failure to timely render assignments to security guards.

3. **ID.; ID.; ID.; ABANDONMENT OF WORK, AS A GROUND; ELEMENTS; NOT PRESENT IN CASE AT BAR.—** For an employee to be considered to have abandoned his work, two (2) requisites must concur. First, the employee must have failed to report for work or have been absent without a valid or justifiable reason. Second, the employee must have had a "clear intention to sever the employer-employee relationship." This Court has emphasized that "the second element [i]s the more determinative factor." This second element, too, must be "manifested by some overt acts." x x x Considering petitioner's 24 years of uninterrupted service, it is highly improbable that he would abandon his work so easily. There is no logical explanation why petitioner would abandon his work. Being a security guard has been his source of income for 24 long years. x x x Equally belying petitioner's intent to abandon his work is his immediate filing of a Complaint for illegal dismissal on February 23, 2010. This was only eight (8) month after he was placed on floating status. x x x Taking the totality of circumstances into consideration, this Court is unable to conclude

that petitioner abandoned his work. Rather, this Court finds that he was placed on floating status for more than six (6) months. Thus, he was constructively dismissed.

APPEARANCES OF COUNSEL

Public Attorney's Office for petitioner.
Antonio Gerardo B. Collado for respondents.

D E C I S I O N

LEONEN, *J.*:

Placing security guards on floating status is a valid exercise of management prerogative. However, any such placement on off-detail should not exceed six (6) months. Otherwise, constructive dismissal shall be deemed to have occurred. Security guards dismissed in this manner are ordinarily entitled to reinstatement. It is not for tribunals resolving these kinds of dismissal cases to take the initiative to rule out reinstatement. Otherwise, the discriminatory conduct of their employers in excluding them from employment shall unwittingly find official approval.

Age, per se, cannot be a valid ground for denying employment to a security guard.

This resolves a Petition for Review on Certiorari[1] under Rule 45 of the 1997 Rules of Civil Procedure praying that the assailed April 18, 2013 Decision[2] and November 11, 2013 Resolution[3] of the Court of Appeals in CA-G.R. SP No. 122700 be reversed and set aside.

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[1] *Rollo,* pp. 11-29.

[2] *Id*. at 31-41. The Decision was penned by Associate Justice Jane Aurora C. Lantion and concurred in by Associate Justices Vicente S.E. Veloso and Eduardo B. Peralta, Jr. of the Twelfth Division, Court of Appeals, Manila.

[3] *Id*. at 43-44. The Resolution was penned by Associate Justice Jane Aurora C. Lantion and concurred in by Associate Justices Vicente S.E. Veloso and Eduardo B. Peralta, Jr. of the Twelfth Division, Court of Appeals, Manila.

The assailed Court of Appeals April 18, 2013 Decision sustained the August 3, 2011 Decision[4] of the National Labor Relations Commission, which affirmed the September 10, 2010 Decision[5] of Labor Arbiter Fedriel S. Panganiban (Labor Arbiter Panganiban) dismissing petitioner Macario S. Padilla's (Padilla) Complaint[6] for illegal dismissal. The assailed Court of Appeals November 11, 2013 Resolution denied petitioner's Motion for Reconsideration.[7]

On September 1, 1986, Padilla was hired by respondent Airborne Security Service, Inc. (Airborne) as a security guard.[8] He was first assigned at an outlet of Trebel Piano along Ortigas Avenue Extension, Pasig City.[9]

Padilla allegedly rendered continuous service until June 15, 2009, when he was relieved from his post at City Advertising Ventures Corporation and was advised to wait for his re-assignment order. On July 27, 2009, he allegedly received a letter from Airborne directing him to report for assignment and deployment. He called Airborne's office but was told that he had no assignment yet. On September 9, 2009, he received another letter from Airborne asking him to report to its office. He sent his reply letter on September 22, 2009 and personally reported to the office to inquire on the status of his deployment with a person identified as Mr. Dagang, Airborne's Director for Operations. He was told that Airborne was having a hard time finding an assignment for him since he was already over 38 years old. Padilla added that he was advised by Airborne's personnel to

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[4] *Id*. at 169-176. The Decision, docketed as NLRC-LAC-No. 01-000062-11 [NLRC NCR 02-02851-10 (05-07337-10)], was penned by Commissioner Angelo Ang Palana and concurred in by Presiding Commissioner Herminio V. Suelo and Commissioner Numeriano D. Villena of the Fourth Division, National Labor Relations Commission, Quezon City.

[5] *Id*. at. 150-156.

[6] *Id*. at 115-117.

[7] *Id*. at 241-246.

[8] *Id*. at 32.

[9] *Id*. at 151.

resign, but he refused. In December 2009, when he reported to the office to collect his 13th month pay, he was again persuaded to hand in his resignation letter. Still not having been deployed or re-assigned, on February 23, 2010, Padilla filed his Complaint for illegal dismissal,[10] impleading Airborne and its president, respondent Catalina Solis (Solis).[11]

Respondents countered that Padilla was relieved from his post on account of a client's request.[12] Thereafter, Padilla was directed to report to Airborne's office in accordance with a Disposition/Relieve Order dated June 15, 2009. However, he failed to comply and went on absence without leave instead.[13] Respondents added that more letters—dated July 27, 2009; September 9, 2009, which both directed Padilla to submit a written explanation of his alleged unauthorized absences; January 12, 2010; and May 27, 2010—instructed Padilla to report to Airborne's office, to no avail.[14] Respondents further denied receiving Padilla's September 22, 2009 letter of explanation.[15]

In his September 10, 2010 Decision,[16] Labor Arbiter Panganiban dismissed Padilla's Complaint.[17] He lent credence to respondents' claim that Padilla failed to report for work despite the letters sent to him.[18]

In its August 3, 2011 Decision,[19] the National Labor Relations Commission affirmed in toto Labor Arbiter Panganiban's Decision.[20]

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[10] *Id*.

[11] *Id*. at 115.

[12] *Id*. at 152.

[13] *Id*.

[14] *Id*. at 152-153.

[15] *Id*. at 153.

[16] *Id*. at 150-156.

[17] *Id*. at 156.

[18] *Id*. at 155.

[19] *Id*. at 169-176.

[20] *Id*. at 175.

The assailed Court of Appeals April 18, 2013 Decision sustained the rulings of the National Labor Relations Commission and of Labor Arbiter Panganiban.[21] It concluded that, if at all, Padilla was placed on floating status for only two (2) months, from June 15, 2009, when he was recalled, to July 27, 2009.[22] It emphasized that the temporary "off-detail" or placing on "floating" status of security guards for less than six (6)-months does not amount to dismissal[23] and that there is constructive dismissal only when a security agency fails to provide an assignment beyond the six (6)-month threshold.[24] The Court of Appeals also found that it was Padilla who failed to report for work despite respondents' July 27, 2009 and September 9, 2009 letters.[25]

Following the Court of Appeals' denial of his Motion for Reconsideration,[26] Padilla filed the present Petition before this Court.

For this Court's resolution is the sole issue of whether or not petitioner Macario S. Padilla was constructively dismissed from his employment with respondent Airborne Security Service, Inc., he having been placed on floating status apparently on the basis of his age and not having been timely re-assigned.

The Court of Appeals gravely erred in ruling that petitioner was not constructively dismissed and in concluding that he went on absence without leave and abandoned his work.

I

Rule 45 petitions, such as the one brought by petitioner, may only raise questions of law.[27] Equally settled however, is that this rule admits of the following exceptions:

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[21] *Id.* at 40.

[22] *Id.*

[23] *Id.* at 38-40.

[24] *Id.*

[25] *Id.*

[26] *Id.* at 241-246.

[27] RULES OF COURT, Rule 45, Section 1:

(1) when the findings are grounded entirely on speculation, surmises or conjectures; (2) *when the inference made is manifestly mistaken, absurd or impossible;* (3) when there is grave abuse of discretion; (4) *when the judgment is based on a misapprehension of facts;* (5) when the findings of facts are conflicting; (6) when in making its findings the [Court of Appeals] went beyond the issues of the case, or its findings are contrary to the admissions of both the appellant and the appellee; (7) when the findings are contrary to the trial court; (8) when the findings are conclusions without citation of specific evidence on which they are based; (9) when the facts set forth in the petition, as well as in the petitioner's main and reply briefs, are not disputed by the respondent; (10) when the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record; and (11) *when the [Court of Appeals] manifestly overlooked certain relevant facts not disputed by the parties, which, if properly considered, would justify a different conclusion.*[28] (Emphasis supplied, citation omitted)

The Court of Appeals made a gross misapprehension of facts and overlooked other material details. The facts of this case, when more appropriately considered, sustain a conclusion different from that of the Court of Appeals. Petitioner was constructively dismissed from employment owing to his inordinately long floating status.

II

The practice of placing security guards on "floating status" or "temporary off-detail" is a valid exercise of management prerogative.[29] Jurisprudence has settled that the period of

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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.

[28] *Tatel v. JLFP Investigation Security Agency, Inc.,* 755 Phil. 171, 181-182 (2015) [*J.* Perlas-Bernabe, First Division].

[29] *Soliman Security Services, Inc. v. Sarmiento,* G.R. No. 194649, August 10, 2016 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?flle=/jurisprudence/2016/august2016/l94649.pdf> [*J.* Perez, Third Division].

temporary off-detail must not exceed six (6) months. Beyond this, a security guard's floating status shall be tantamount to constructive dismissal.[30] In *Reyes v. RP Guardians Security Agency:*[31]

> Temporary displacement or temporary off-detail of security guard is, generally, allowed in a situation where a security agency's client decided not to renew their service contract with the agency and no post is available for the relieved security guard. Such situation does not normally result in a constructive dismissal. *Nonetheless, when the floating status lasts for more than six (6) months, the employee may be considered to have been constructively dismissed.* No less than the Constitution guarantees the right of workers to security of tenure, thus, employees can only be dismissed for just or authorized causes and after they have been afforded the due process of law.[32] (Emphasis supplied, citations omitted)

Therefore, a security guard's employer must give a new assignment to the employee within six (6) months.[33] This assignment must be to a specific or particular client.[34] "A general return-to-work order does not suffice.":[35]

> A holistic analysis of the Court's disposition in *JLFP Investigation* reveals that: [1] an employer must assign the security guard to another posting within six (6) months from his last deployment, otherwise, he would be considered constructively dismissed; and [2] the security guard must be assigned to a specific or particular client. A general return-to-work order does not suffice.[36]

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[30] *Reyes v. RP Guardians Security Agency, Inc.,* 708 Phil. 598 (2013) [*J.* Mendoza, Third Division].

[31] *Reyes v. RP Guardians Security Agency, Inc.*, 708 Phil. 598 (2013) [*J.* Mendoza, Third Division].

[32] *Id.* at 603-604.

[33] *Ibon v. Genghis Khan Security Services,* G.R. No. 221085, June 19, 2017 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2017/june2017/221085.pdf>7 [*J.* Mendoza, Second Division].

[34] *Id*.

[35] *Id*.

[36] *Id*.

III

To prove that petitioner was offered a new assignment, respondents presented a series of letters requiring petitioner to report to respondent Airborne's head office.[37] These letters merely required petitioner to report to work and to explain why he had failed to report to the office. These letters did not identify any specific client to which petitioner was to be re-assigned. The letters were, at best, nothing more than general return-to-work orders.

Jurisprudence is consistent in its disapproval of general return-to-work orders as a justification for failure to timely render assignments to security guards.

In *Ibon v. Genghis Khan Security Services,*[38] petitioner Ravengar Ibon (Ibon) filed a complaint for illegal dismissal after he was placed on floating status for more than six (6) months by his employer, respondent Genghis Khan Security Services (Genghis Khan). In its defense, Genghis Khan claimed that Ibon abandoned his work after he failed to report for work despite its letters requiring him to do so. Ruling in favor of Ibon, this Court noted that:

> Respondent could not rely on its letter requiring petitioner to report back to work to refute a finding of constructive dismissal. The letters, dated November 5, 2010 and February 3, 2011, which were supposedly sent to petitioner merely requested him to report back to work and to explain why he failed to report to the office after inquiring about his posting status.[39]

Similarly, in *Soliman Security Services, Inc. v. Sarmiento,*[40] respondent security guards claimed that they were illegally

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[37] *Rollo,* pp. 39-40.

[38] G.R. No. 221085, June 19, 2017 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=jurisprudence/2017/june2017/221085.pdf> [J. Mendoza, Second Division].

[39] *Id.* at 6.

[40] G.R. No. 194649, August 10, 2016 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2016/august2016/194649.pdf> [J. Perez, Third Division].

dismissed after they were placed on floating status for more than six (6) months. Their employer, petitioner Soliman Security Services, Inc. (Soliman), presented notices requiring them to go back to work. However, this Court found that the notices did not absolve Soliman of liability:

> The crux of the controversy lies in the consequences of the lapse of a significant period of time without respondents having been reassigned. Petitioner agency faults the respondents for their repeated failure to comply with the directives to report to the office for their new assignments. To support its argument, petitioner agency submitted in evidence notices addressed to respondents, which read:
>
> > You are directed to report to the undersigned to clarify your intentions as you have not been reporting to seek a new assignment after your relief from Interphil.
> >
> > To this date, we have not received any update from you neither did you update your government requirements. . .
> >
> > We are giving you up to May 10, 2007 to comply or we will be forced to drop you from our roster and terminate your services for abandonment of work and insubordination.
> >
> > Consider this our final warning.
>
> As for respondents, they maintain that the offers of new assignments were mere empty promises. Respondents claim that they have been reporting to the office tor new assignments only to be repeatedly turned down and ignored by petitioner's office personnel.
>
> . . . . . .
>
> Instead of taking the opportunity to clarify during the hearing that respondents were not dismissed but merely placed on floating status and instead of specifying details about the available new assignments, the agency merely gave out empty promises. No mention was made regarding specific details of these pending new assignments. If respondent guards indeed had new assignments awaiting them, as what the agency has been insinuating since the day respondents were relieved from their posts, the agency should have identified these assignments during the hearing instead of asking respondents to report back to the office. The agency's statement in the notices — that respondents have not clarified their intentions because they have

not reported to seek new assignments since they were relieved from their posts — is specious at best.[41]

IV

As a further defense, respondents add that it was petitioner who abandoned his work.[42]

For an employee to be considered to have abandoned his work, two (2) requisites must concur. First, the employee must have failed to report for work or have been absent without a valid or justifiable reason. Second, the employee must have had a "clear intention to sever the employer-employee relationship."[43] This Court has emphasized that "the second element [i]s the more determinative factor."[44] This second element, too, must be "manifested by some overt acts."[45]

Petitioner's conduct belies any intent to abandon his work. To the contrary, it demonstrates how he took every effort to retain his employment. Right after he received the first letter dated July 27, 2009, he called Airborne's head office, only to be told that he had no assignment yet.[46] Upon being informed by his wife of a subsequent letter dated September 9, 2009, he replied in the following manner:[47]

SIR,

HEREWITH MY EXPLANATION REGARDING YOUR LETTER THAT I RECEIVED MY WIFE YESTERDAY 22 SEPT. 09, WHY IM NOT REPORTING IN YOUR OFFICE, SINCE I RECEIVED IN MY POST AT CITY ADVERTISING CORP. JUNE 15-09. THAT'S NOT TRUE, SIR.

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

[42] *Rollo,* pp. 33-34.

[43] *Tatel v. JLFP Investigation Security Agency, Inc.,* 755 Phil. 171, 179 (2015) [*J.* Perlas-Bernabe, First Division].

[44] *Tatel v. JLFP Investigation Security Agency, Inc*., *Id. at* 184.

[45] *Tatel v. JLFP Investigation Security Agency, Inc., Id.*

[46] *Rollo,* pp. 151-152, Labor Arbiter Decision.

[47] *Id*. at 19-20.

KINABUKASAN PAGKA RECEIVED KO SA CITY ADS CORP. NAG-REPORT AKO PERO DI TAYO NAGKITA NAKA-ALIS KA NA, NAGKA-USAP TAYO SA CELLPHONE NG OPISINA KAY MAM POPS. SABI MO SA PAY-DAY NA LANG TAYO MAG-USAP.

AFTER OUR CONVERSATION ON PAY-DAY, YOU TOLD ME "NO AVAILABLE POST FOR YOU RIGHT NOW, BUT JUST CALL ME UP, OR I WILL CALL YOU IF THERE'S A POSSIBLE POST." SO OFTENTIMES I'LL CALL, YOUR ANSWER'S THE SAME: "NO POST".

SO DON'T WORRY, SIR, I'LL ALWAYS PRAY TO OUR ALMIGHTY GOD, SOMEDAY, YOU GIVE ME WORK/BEST POST.

THANK YOU AND HOPING FOR YOUR UNDERSTAND REGARDING THESE MATTER.

RESPECTFULLY YOURS,

Mr. M. PADILLA[48]

Petitioner emphasized that he also personally reported to Airborne's Operations Director, Mr. Dagang, to inquire about his re-assigmnent. However, Mr. Dagang told him that "they were having difficulty finding him a deployment because he was already old."[49] Petitioner added that sometime in December 2009, when he personally reported to the head office to get this 13th month pay, he was persuaded to resign.[50]

Considering petitioner's 24 years of uninterrupted service, it is highly improbable that he would abandon his work so easily.[51] There is no logical explanation why petitioner would abandon his work. Being a security guard has been his source of income for 24 long years.

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[48] *Id.* (Grammatical errors in the original).

[49] *Id.* at 19.

[50] *Id.*

[51] See *Tatel v. JLFP Investigation Security Agency, Inc.,* 755 Phil. 171 (2015) [*J.* Perlas-Bernabe, First Division].

In *Tatel v. JLFP Investigation Security Agency,*[52] Vicente Tatel (Tatel), a security guard, filed a complaint for illegal dismissal after being placed on floating status for more than six (6) months. In finding that Tatel did not abandon his work, this Court gave consideration to Tatel's prolonged service or continuous employment:

> The charge of abandonment in this case is belied by the high improbability of Tatel intentionally abandoning his work, taking into consideration his length of service and, concomitantly, his security of tenure with JLFP. As the NLRC had opined, no rational explanation exists as to why an employee who had worked for his employer for more than ten (10) years would just abandon his work and forego whatever benefits he may be entitled to as a consequence thereof. As such, respondents failed to sufficiently establish a deliberate and unjustified refusal on the part of Tatel to resume his employment, which therefore leads to the logical conclusion that the latter had no such intention to abandon his work.[53]

Equally belying petitioner's intent to abandon his work is his immediate filing of a Complaint for illegal dismissal on February 23, 2010. This was only eight (8) month after he was placed on floating status.[54] As similarly noted in *Tatel v. JLFP Investigatiqn Security Agency*:[55]

> An employee who forthwith takes steps to protest his layoff cannot, as a general rule, be said to have abandoned his work, and the filing of the complaint is proof enough of his desire to return to work, thus negating any suggestion of abandonment.[56] (Citation omitted)

Taking the totality of circumstances into consideration, this Court is unable to conclude that petitioner abandoned his work.

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[52] 755 Phil. 171 (2015) [*J.* Perlas-Bernabe, First Division].

[53] *Tatel v. JLFP Investigation Security Agency, Inc., Id.* at 184-185.

[54] *Rollo,* p. 13, Petition.

[55] *Tatel v. JLFP Investigation Security Agency, Inc.,* 755 Phil. 171 (2015) [*J.* Perlas-Bernabe, First Division].

[56] *Id*. at 185.

Rather, this Court finds that he was placed on floating status for more than six (6) months. Thus, he was constructively dismissed.

V

As a consequence of the finding of illegal dismissal, petitioner would ordinarily be entitled to reinstatement, pursuant to Article 294 of the Labor Code:

> Article 294. Security of Tenure. — . . . An employee who is unjustly dismissed from work shall be entitled to reinstatement without loss of seniority rights and other privileges and to his full backwages, inclusive of allowances, and to his other benefits or their monetary equivalent computed from the time his compensation was withheld from him up to the time of his actual reinstatement.

It is unreasonable to deny employees their means of earning a living exclusively on the basis of age when there is no other indication that they are incapable of performing their functions. It is true that certain tasks require able-bodied individuals. Age, per se, is not a reliable indication of physical stamina or mental rigor. What is crucial in determining capacity for continuing employment is an assessment of an employee's state of health, not his or her biological age. Outside of limitations founded on scientific and established wisdom such as the age of minority, proscriptions against child labor, or a standard retirement age, it is unjust to discriminate against workers who are within an age range that is typical of physical productivity.

Ordinarily, it is not for this Court to foreclose an employee's chances of regaining employment through reinstatement. It is not for this Court to rule out reinstatement on its own. To do so would amount to a tacit approval of the abusive, discriminatory conduct displayed by employers such as Airborne. It would be a capitulation to and virtual acceptance of the employer's assertion that employees of a certain age can no longer engage in productive labor. However, considering that petitioner himself specifically prayed for an award of separation pay and has also been specific in asking that he no longer be reinstated, this Court awards him separation pay, in lieu of reinstatement.

VI

Respondent Solis may not be held personally liable for the illegal termination of petitioner's employment.

As this Court explained in *Saudi Arabian Airlines v. Rebesencio:*[57]

> A corporation has a personality separate and distinct from those of the persons composing it. Thus, as a rule, corporate directors and officers are not liable for the illegal termination of a corporation's employees. It is only when they acted in bad faith or with malice that they become solidarily liable with the corporation.
>
> In *Ever Electrical Manufacturing, Inc. (EEMI) v. Samahang Manggagawa ng Ever Electrical,* this court clarified that "[b]ad faith does not connote bad judgment or negligence; it imports a dishonest purpose or some moral obliquity and conscious doing of wrong; it means breach of a known duty through some motive or interest or ill will; it partakes of the nature of fraud."[58]

Other than Solis' designation as Airborne's president, this Court finds no indication that she acted out of bad faith or with malice specifically aimed at petitioner as, regards the termination of his employment. Thus, this Court finds that she did not incur any personal liability.

WHEREFORE, the Petition for Review on Certiorari is **GRANTED.** The assailed April 18, 2013 Decision and November 11, 2013 Resolution of the Court of Appeals in CA-G.R. SP No. 122700 are **REVERSED and SET ASIDE.** Accordingly, respondent Airborne Security Service, Inc. is ordered to pay petitioner Macario S. Padilla:

1. Full backwages and other benefits computed from the date petitioner's employment was illegally terminated until the finality of this Decision;

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[57] 750 Phil. 791 (2015) [Per *J.* Leonen, Second Division].

[58] *Id*. at 844-845, citing *Ever Electrical Manufacturing, Inc. (EEMI) v. Samahang Manggagawa ng Ever Electrical,* 687 Phil. 529 (2012) [Per *J.* Mendoza, Third Division].

2. Separation pay computed from the date petitioner commenced employment until the finality of this Decision at the rate of one (1) month's salary for every year of service, with a fraction of a year of at least six (6) months being counted as one (1) whole year; and

3. Attorney's fees equivalent to ten percent (10%) of the total award.

The case is **REMANDED** to the Labor Arbiter to make a detailed computation of the amounts due to petitioner, which must be paid without delay, and for the execution of this judgment.

The case is **DISMISSED** with respect to respondent Catalina Solis.

SO ORDERED.

Bersamin[*] *(Acting Chairperson), Martires,* and *Gesmundo, JJ.,* concur.

Velasco, Jr., J., on official leave.

FIRST DIVISION

[G.R. No. 210592. November 22, 2017]

REGINO DELA CRUZ, substituted by his heirs, namely: MARIA, DANILO, REGINO, JUANITO, CECILIA, ROSALINA and CEFERINO all surnamed DELA CRUZ, represented by CEFERINO DELA CRUZ, *petitioners, vs.* **IRENEO DOMINGO, MARO, QUEZON, NUEVA ECIJA, and REGISTER OF DEEDS NORTH, TALAVERA, NUEVA ECIJA,** *respondents*.

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[*] Designated Acting Chairperson per S.O. No. 2514 dated November 8, 2017.

SYLLABUS

CIVIL LAW; LAND TITLES AND DEEDS; PRESIDENTIAL DECREE NO. 27; CERTIFICATE OF LAND TRANSFER; DOES NOT VEST OWNERSHIP IN THE HOLDER THEREOF; IT IS THE ISSUANCE OF THE EMANCIPATION PATENT THAT CONCLUSIVELY ENTITLES THE FARMER/GRANTEE OF THE RIGHTS OF ABSOLUTE OWNERSHIP; CASE AT BAR.— Dela Cruz asserted that he is the owner of the parcels of land covered by Domingo's TCT EP-82013 and TCT EP-82015, and that these lands are covered by his CLT 0401815; and for this reason, Domingo's titles should be cancelled and annulled. This is the essence of his claim. However, a certificate of land transfer does not vest ownership in the holder thereof. In *Martillano v. Court of Appeals,* this Court held that — x x x A certificate of land transfer merely evinces that the grantee thereof is qualified to, in the words of *Pagtalunan*, 'avail of the statutory mechanisms for the acquisition of ownership of the land tilled by him as provided under Pres. Decree No. 27.' It is not a muniment of title that vests upon the farmer/grantee absolute ownership of his tillage. On the other hand, an emancipation patent, while it presupposes that the grantee thereof shall have already complied with all the requirements prescribed under Presidential Decree No. 27, serves as a basis for the issuance of a transfer certificate of title. It is the issuance of this emancipation patent that conclusively entitles the farmer/grantee of the rights of absolute ownership. x x x Petitioners concede that Dela Cruz was not issued an EP over the subject property; he only has CLT 0401815. On the other hand, Domingo was issued EPs over the same property, after which transfer certificates of title, TCT EP- 82013 and TCT EP-82015, were issued to him. Between the two of them, Domingo is deemed the owner of the subject lands, and Dela Cruz has no valid claim. For some reason or other, Dela Cruz was not issued an EP for the subject lands, while for other lands, he was granted patents. This can only mean that for the subject lands, he failed to qualify as owner thereof under the government's agrarian reform program. For this reason alone, it is clear that Dela Cruz has no cause of action against Domingo. His claim of ownership which is the sole foundation for his case in DARAB Case No. 372, has fallen.

APPEARANCES OF COUNSEL

Rosita Dela Fuente-Torres for petitioners.
Donato Estrella for private respondent.

D E C I S I O N

DEL CASTILLO, *J.*:

Assailed in this Petition for Review on *Certiorari*[1] are the April 11, 2013 Decision[2] and December 2, 2013 Resolution[3] of the Court of Appeals (CA) dismissing the Petition for Review in CA-G.R. SP No. 114223 on the ground of forum shopping.

Factual Antecedents

Respondent Ireneo Domingo (Domingo) is the registered owner of a parcel of land totaling 13,165 square meters located in San Miguel (Mambarao), Quezon, Nueva Ecija, covered by Transfer Certificates of Title Nos. EP-82013 (TCT EP-82013) and EP-82015 (TCT EP-82015) both issued on May 24, 1989.[4]

Petitioner Regino Dela Cruz (Dela Cruz), on the other hand, was a farmer-beneficiary of three (3) parcels of land, to wit:

Lot Number	Area	Certificate of Land Transfer No.	Emancipation Patent No.
03822	1.01 hectares	0401813	EP-41868
03825	1.625 hectares	0401814	EP-82009
03794	**1.228 hectares**	**0401815**	**no EP was issued**[5]

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[1] *Rollo*, pp. 8-26.

[2] *Id*. at 30-43; penned by Associate Justice Zenaida T. Galapate-Laguilles and concurred in by Associate Justices Mariflor P. Punzalan Castillo and Amy C. Lazaro-Javier.

[3] *Id*. at 50-51.

[4] *Id*. at 78-79.

[5] *Id*. at 148-149.

DARAB Case Nos. 298, 299, and 300

On January 30, 2006, Domingo filed a case for recovery of possession with the Department of Agrarian Reform Adjudication Board (DARAB) Nueva Ecija against Dela Cruz, docketed as DARAB Case No. 298. In his Petition,[6] Domingo claimed that Dela Cruz was in possession by mere tolerance of his land covered by TCT EP-82013, and the latter refused to vacate the same even after demand and mediation before the Barangay Agrarian Reform Committee. Thus, Domingo prayed that as owner of the land occupied by Dela Cruz, he be placed in possession thereof.

Domingo immediately thereafter filed two more cases for recovery of possession against Dela Cruz before the DARAB, docketed as DARAB Case Nos. 299 and 300, relative to his land covered by TCT EP-82013 and TCT EP-82015.

Dela Cruz failed to timely file an answer to the three petitions, for which reason a consolidated Decision dated April 25, 2006 was rendered by DARAB Provincial Adjudicator Marvin Bernal ordering Dela Cruz to vacate Domingo's lands.[7]

Dela Cruz filed a motion for reconsideration with motion to admit his answer.

DARAB Case No. 372

Without awaiting the resolution of his motions for reconsideration and to admit answer in DARAB Case Nos. 298-300, Dela Cruz filed DARAB Case No. 372 (or 372'NNE'06) for annulment of TCT EP-82013 and TCT EP-82015. He claimed in his Petition[8] **that Domingo sold his lands (subsequently covered by TCT EP-82013 and TCT EP-82015) to one Jovita Vda. de Fernando** (Fernando); **that Fernando sold the same to him** (Dela Cruz), and to prove the sale, he attached Fernando's *Sinumpaang Salaysay*[9]

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[6] *Id*. at 127-129.

[7] See CA Decision, p. 3; *rollo*, p. 32.

[8] *Rollo*, pp. 52-58.

[9] *Id*. at 60.

and also the *Sinumpaang Salaysay*[10] of two disinterested persons attesting to the fact that Domingo sold the lands, totaling 12,500 square meters, to Fernando; that he (Dela Cruz) took possession of the said lands; **that in 1978, he was issued Certificate of Land Transfer No. 0401815 (CLT 0401815) covering 12,280 square meters of the said 12,500-square meter land**;[11] that he has fully paid the cost of the said lands; that he later found out that his land covered by CLT 0401815 was subsequently awarded to Domingo and registered under TCT EP-82013 and TCT EP-82015; that said registration was made through fraud, deceit and false machinations; and that Domingo could not have been a valid beneficiary of the said lands, since he was physically disabled ("*lumpo*") since birth. Dela Cruz prayed that Domingo's titles be annulled and cancelled; that he be declared owner of the lands covered thereby; that new titles be issued in his name; and that he be awarded attorney's fees and litigation expenses.

Domingo filed his Answer with Motion to Dismiss,[12] arguing that Dela Cruz's CLT 0401815 covers a parcel of land different from his lands; that he (Domingo) is in actual possession of the lands covered by TCT EP-82013 and TCT EP-82015; that Dela Cruz is guilty of forum shopping for filing the case in spite of the fact that a consolidated Decision has been issued in DARAB Case Nos. 298-300 against him; and for these reasons, the case should be dismissed.

On September 26, 2007, a Decision[13] was rendered by Talavera, Nueva Ecija DARAB Provincial Adjudicator Marvin Bernal, who also rendered the consolidated Decision in DARAB Case Nos. 298-300. It was held that Dela Cruz failed to prove that the subject parcels of land were sold to him; that the pieces of documentary evidence he submitted do not sufficiently prove a sale in his favor; that the lands belong to Domingo as the

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[10] *Id.* at 61-62.

[11] *Id*. at 53-54, 59.

[12] *Id*. at 81-84.

[13] *Id*. at 90-96.

awardee thereof; that Domingo's disability does not disqualify him from becoming a farmer-beneficiary under the agrarian laws; that Dela Cruz's allegations of fraud, deceit and false machinations have not been substantially proved; and that Dela Cruz merely holds a certificate of land transfer covering the subject lands, which does not grant ownership, as opposed to Domingo's transfer certificate of title. Thus, it was decreed that —

> WHEREFORE, in view of all the foregoing, judgment is hereby rendered by DISMISSING the instant petition, as it is hereby DISMISSED for lack of merit.
>
> All claims and other counterclaims the parties may have against each other [are] likewise dismissed for want of evidence.
>
> SO ORDERED.[14]

Ruling of the DARAB

Dela Cruz took the matter before the DARAB via appeal docketed as DARAB Case No. 15566. On December 3, 2009, the DARAB issued its Decision[15] declaring as follows:

> [Dela Cruz] claimed that he is the farmer-beneficiary of the involved landholding. Further, he alleged that the issuance of the said EPs to [Domingo] was tainted with fraud, false machination and deceit, if not mistake x x x. This allegation, however, was denied by the latter x x x. The Board finds no merit on [Dela Cruz's] allegation as this was only supported by certification/affidavits, receipts, and statements of accounts, which are not considered substantial.
>
> Besides[,] the landholding referred to by [Dela Cruz] is located at San Manuel (Quezon, Nueva Ecija), and not San Miguel (where the landholding involved herein is located), thereby corroborating [Domingo's] claim that [Dela Cruz] is claiming a different landholding not subject hereof x x x.

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[14] *Id*. at 96.

[15] *Id*. at 97-103; penned by DARAB Member Ambrosio B. De Luna and concurred in by DARAB Members Jim G. Coleto, Arnold C. Arrieta, and Ma. Patricia P. Rualo-Bello.

[Dela Cruz] failed to overcome the presumption of regularity in the issuance of the Emancipation Patents (EPs) sought to be cancelled herein.

WHEREFORE, premises considered, the appeal is hereby DISMISSED and the decision appealed from is AFFIRMED *in toto*.

SO ORDERED.[16] (Citations omitted)

Dela Cruz moved to reconsider,[17] but in an April 5, 2010 Resolution,[18] the DARAB held its ground.

Ruling of the Court of Appeals

Petitioners thus filed a Petition for Review, docketed as CA-G.R. SP No. 114223, questioning the DARAB's pronouncements.

On April 11, 2013, the CA issued the assailed Decision dismissing the Petition on the ground of forum shopping. It held that Dela Cruz should have raised his claim of ownership and possession as a counterclaim in DARAB Case Nos. 298-300; that since Domingo's cases for recovery of possession or reconveyance involved an assertion of his ownership over the subject parcels of land, Dela Cruz should have interposed his own claim in these cases and sought annulment and cancellation of titles therein; and that since the parties, issues, and causes of action in these cases are identical, a decision in one will constitute *res judicata* in the others.

Petitioners moved to reconsider,[19] but the CA stood firm. Hence, the present Petition.

Issues

Petitioners submit the following issues for resolution:

WHETHER FORUM SHOPPING AND *LITIS PENDENTIA* ARE VIOLATED IN THE CASE AT BAR.

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

[17] *Id*. at 104-114.

[18] *Id*. at 133-134.

[19] *Id*. at 44-48.

WHETHER THE CASE OF CANCELLATION OF EMANCIPATION PATENTS AND CERTIFICATES OF TITLES CAN BE MADE AS COMPULSORY COUNTERCLAIM WITHOUT VIOLATING THE RULE THAT CERTIFICATE[S] OF TITLE CANNOT BE COLLATERALLY ATTACKED.[20]

Petitioners' Arguments

Praying that the assailed CA pronouncements be set aside, and that Domingo's titles be annulled and in their stead new titles be issued in their name, petitioners maintain in their Petition and Reply[21] that there is no forum shopping in Dela Cruz's filing of DARAB Case No. 372 during the pendency of DARAB Case Nos. 298-300; that the latter cases involve merely the issue of recovery of possession and not ownership, which is the issue in DARAB Case No. 372; that Dela Cruz could not have raised the issue of ownership in DARAB Case Nos. 298-300, as this is tantamount to a collateral attack upon Domingo's titles, which is why he (Dela Cruz) filed a separate case for annulment and cancellation of said titles; that while Dela Cruz was the farmer-beneficiary of three parcels of land, he was "mysteriously" issued only two Emancipation Patents (EP), and no EP was issued with respect to his 1.228-hectare parcel of land, which is now covered by Domingo's titles TCT EP-82013 and TCT EP-82015, despite the fact that he (Dela Cruz) has fully paid for the same; that Domingo is incapable of personally cultivating the lands awarded to him because he is suffering from physical disability, and thus he is not a qualified farmer-beneficiary in contemplation of agrarian laws; and that contrary to what the DARAB pronounced, Dela Cruz was able to prove his case by substantial evidence, which thus entitles him to the remedies he seeks.

Domingo's Arguments

In his Comment[22] seeking affirmance of the questioned CA dispositions, Domingo counters that the CA is correct in finding

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[20] *Id.* at 13.

[21] *Id.* at 181-192.

[22] *Id.* at 165-169.

that Dela Cruz is guilty of forum shopping; that there is a pending appeal by Dela Cruz of the consolidated Decision in DARAB Case Nos. 298-300, and a decision in said appeal would constitute *res judicata* in the instant case; and that Dela Cruz should have interposed his claim of ownership by way of counterclaim in DARAB Case Nos. 298-300.

Our Ruling

The Court denies the Petition.

Dela Cruz asserted that he is the owner of the parcels of land covered by Domingo's TCT EP-82013 and TCT EP-82015, and that these lands are covered by his CLT 0401815; and for this reason, Domingo's titles should be cancelled and annulled. This is the essence of his claim.

However, a certificate of land transfer does not vest ownership in the holder thereof. In *Martillano v. Court of Appeals*,[23] this Court held that —

> x x x A certificate of land transfer merely evinces that the grantee thereof is qualified to, in the words of *Pagtalunan*, 'avail of the statutory mechanisms for the acquisition of ownership of the land tilled by him as provided under Pres. Decree No. 27.' It is not a muniment of title that vests upon the farmer/grantee absolute ownership of his tillage. On the other hand, an emancipation patent, while it presupposes that the grantee thereof shall have already complied with all the requirements prescribed under Presidential Decree No. 27, serves as a basis for the issuance of a transfer certificate of title. It is the issuance of this emancipation patent that conclusively entitles the farmer/grantee of the rights of absolute ownership. x x x[24] (Citations omitted)

Dela Cruz must have relied on past interpretations relative to the document he possesses. But these no longer hold true.

It is true that in past decisions of this Court, in particular *Torres v. Ventura* (which was cited by the DARAB Appeal Board) and *Quiban v. Butalid* (which was relied upon by the CA), we held that a tenant

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[23] 477 Phil. 226 (2004).

[24] *Id*. at 238.

issued a CLT is deemed the owner of the land. This is because PD 27 states that '(t)he tenant farmer, whether in land classified as landed estate or not, shall be deemed owner of a portion constituting a family-size farm of five (5) hectares if not irrigated and three (3) hectares if irrigated.'

But, as correctly argued by PDB, more current decisions of this Court (where the interpretation of the phrase 'deemed owner' was directly tackled) have clarified these pronouncements by distinguishing the legal effects of a CLT and those of an emancipation patent. *Martillano v. Court of Appeals* is instructive:

> Both instruments have varying legal effects and implications insofar as the grantee's entitlements to his landholdings. A certificate of land transfer merely evinces that the grantee thereof is qualified to, in the words of *Pagtalunan*, 'avail of the statutory mechanisms for the acquisition of ownership of the land tilled by him as provided under Pres. Decree No. 27.' It is not a muniment of title that vests upon the farmer/grantee absolute ownership of his tillage. On the other hand, an emancipation patent, while it presupposes that the grantee thereof shall have already complied with all the requirements prescribed under Presidential Decree No. 27, serves as a basis for the issuance of a transfer certificate of title. It is the issuance of this emancipation patent that conclusively entitles the farmer/grantee of the rights of absolute ownership. *Pagtalunan* distinctly recognizes this point when it said that:
>
> > It is the emancipation patent which constitutes conclusive authority for the issuance of an Original Certificate of Transfer, or a Transfer Certificate of Title, in the name of the grantee . . .
> >
> > Clearly, it is only after compliance with the above conditions which entitle a farmer/grantee to an emancipation patent that he acquires the vested right of absolute ownership in the landholding— a right which has become fixed and established, and is no longer open to doubt or controversy. At best, the farmer/grantee, prior to compliance with these conditions, merely possesses a contingent or expectant right of ownership over the landholding.

Given that Garcia is a holder of a CLT but not of an emancipation patent, full ownership of the land has not yet vested in him. Hence,

there is no basis for the CA and DARAB Appeal Board to direct the bank to turn over the land to him.[25] (Citations omitted)

Petitioners concede that Dela Cruz was not issued an EP over the subject property; he only has CLT 0401815. On the other hand, Domingo was issued EPs over the same property, after which transfer certificates of title, TCT EP-82013 and TCT EP-82015, were issued to him. Between the two of them, Domingo is deemed the owner of the subject lands, and Dela Cruz has no valid claim. For some reason or other, Dela Cruz was not issued an EP for the subject lands, while for other lands, he was granted patents. This can only mean that for the subject lands, he failed to qualify as owner thereof under the government's agrarian reform program.

For this reason alone, it is clear that Dela Cruz has no cause of action against Domingo. His claim of ownership, which is the sole foundation for his case in DARAB Case No. 372, has fallen. His accompanying claims of fraud, deceit, and machinations; prior sale in his favor; and disqualification of Domingo as farmer-beneficiary do not deserve consideration by this Court. These have been passed upon by the DARAB itself — and on two levels, no less. It need not be said that the Department of Agrarian Reform, through the DARAB, is in a "better position to resolve agrarian disputes, being the administrative agency possessing the necessary expertise on the matter and vested with primary jurisdiction to determine and adjudicate agrarian reform controversies."[26]

With the view taken of the case, there is no need to discuss the issues raised by the parties. They are not essential to the proper disposition of this simple case.

WHEREFORE, the Petition is **DENIED**. DARAB Case No. 372 is ordered **DISMISSED**.

SO ORDERED.

Sereno, C.J. (Chairperson), Leonardo-de Castro, Jardeleza, and *Tijam, JJ.,* concur.

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[25] *Planters Development Bank v. Garcia*, 513 Phil. 294, 310-311 (2005).

[26] *Heirs of Tantoco, Sr. v. Court of Appeals*, 523 Phil. 257, 284 (2006).

SECOND DIVISION

[G.R. Nos. 210689-90. November 22, 2017]

PHILIPPINE AMUSEMENT AND GAMING CORPORATION (PAGCOR), *petitioner, vs.* **THE COMMISSIONER OF INTERNAL REVENUE and the HEAD REVENUE EXECUTIVE ASSISTANT, LARGE TAXPAYER SERVICE, in their official capacities as Officers of the Bureau of Internal Revenue**, *respondents.*

[G.R. Nos. 210704 & 210725. November 22, 2017]

COMMISSIONER OF INTERNAL REVENUE, *petitioner, vs.* **PHILIPPINE AMUSEMENT AND GAMING CORPORATION (PAGCOR),** *respondent.*

SYLLABUS

1. POLITICAL LAW; STATUTES; PRESIDENTIAL DECREE NO. 1869, AS AMENDED; (PHILIPPINE AMUSEMENT AND GAMING CORPORATION CHARTER); UNDER ITS CHARTER, PAGCOR IS LIABLE FOR CORPORATE INCOME TAX ONLY ON ITS INCOME DERIVED FROM OTHER RELATED SERVICES, WHILE ITS INCOME FROM ITS GAMING OPERATIONS IS SUBJECT ONLY TO 5% FRANCHISE TAX; CASE AT BAR.— In *Philippine Amusement and Gaming Corporation v. Bureau of Internal Revenue*, the Court *En Banc* declared valid and constitutional Section 1 of RA No. 9337, which excluded PAGCOR from the list of GOCCs exempt from corporate income tax. The Court *En Banc* looked into the records of the Bicameral Conference Meeting dated April 18, 2005, and found that the legislative intent of the omission or removal of PAGCOR from said list was to require PAGCOR to pay the corporate income tax. PAGCOR sought clarification of the Court's Decision in the aforementioned case on account of the CIR's issuance of Revenue Memorandum Circular (RMC) No. 33-2013 which stated, among others, that PAGCOR's income from operations and licensing of gambling casinos and gaming clubs and other related operations are subject to both corporate income tax under the

1997 NIRC, as amended, and franchise tax pursuant to Section 13(2)(a) of PD No. 1869; while PAGCOR's other income that are not connected with its gaming operations are subject to corporate income tax under the 1997 NIRC, as amended. Treating PAGCOR's motion as a new petition, the Court *En Banc* rendered a Decision upholding PAGCOR's contention that its income from gaming operations is subject only to 5% franchise tax under PD No. 1869, as amended; while its income from other related services is subject to corporate income tax pursuant to PD No. 1869, as amended, in relation to RA No. 9337. The Court *En Banc* clarified that RA No. 9337 did not repeal the tax privilege granted to PAGCOR under PD No. 1869, with respect to its income from gaming operations. What RA No. 9337 withdrew was PAGCOR's exemption from corporate income tax on its income derived from other related services, previously granted under Section 27 (c) of RA No. 8424. x x x. In this case, the assessments for deficiency income tax covers both PAGCOR's income derived from gaming operations and other related services. Considering that the Court *En Banc* has already ruled that PAGCOR, under its Charter, remains to be exempt from income tax on its gaming operations, then PAGCOR should only be made liable to pay for deficiency income tax on its income derived from other related services for taxable years 2005 and 2006. The portions of the assessments insofar as they pertain to PAGCOR's income from gaming operations must therefore be cancelled and set aside.

2. TAXATION; INCOME TAXATION; FINAL WITHHOLDING TAX ON FRINGE BENEFITS; PAGCOR IS LIABLE FOR PAYMENT OF WITHHOLDING TAXES ON FRINGE BENEFITS UNLESS THE FRINGE BENEFIT IS REQUIRED BY THE NATURE OF ITS BUSINESS OR IS FOR ITS CONVENIENCE; CASE AT BAR.— As regards PAGCOR's liability for FBT, the same had already been settled in the case of *Commissioner of Internal Revenue v. Secretary of Justice,* which involved assessments for deficiency VAT, FBT and expanded withholding tax against PAGCOR for the years 1996 to 2000. In said case, the Court ruled that FBT is not covered by the exemptions provided under PD No. 1869; and considering that PAGCOR failed to present any evidence showing that the fringe benefits granted to its officers were necessary to its business or for its convenience, the deficiency FBT assessments on PAGCOR's car benefit plan was upheld. x x x In the same vein, PAGCOR, in this case, did not adduce

any proof, other than bare allegations, that the car plan granted to its officers was ultimately for the benefit of its business or for its convenience or advantage. Basic is the rule that mere allegations are not evidence and are not equivalent to proof. The CTA *En Banc* therefore did not err in upholding PAGCOR's deficiency FBT liability for taxable years 2005 and 2006.

3. POLITICAL LAW; STATUTES; PRESIDENTIAL DECREE NO. 1869, AS AMENDED; (PHILIPPINE AMUSEMENT AND GAMING CORPORATION CHARTER); TAX EXEMPTION GRANTED UNDER ITS CHARTER INCLUDES THE PAYMENT OF INDIRECT TAXES, SUCH AS VALUE-ADDED TAX (VAT).— The issue on whether PAGCOR is exempt from VAT is also not novel. In *Philippine Amusement and Gaming Corporation v. Bureau of Internal Revenue*, the Court, citing the case of *The Commissioner of Internal Revenue v. Acesite (Phils.) Hotel Corporation*, (*Acesite*) affirmed PAGCOR's position that the tax exemption granted under its Charter includes the payment of indirect taxes, such as VAT. The Court explained that: Petitioner is exempt from the payment of VAT, because PAGCOR's charter, P.D. No. 1869, is a special law that grants petitioner exemption from taxes. Moreover, the exemption of PAGCOR from VAT is supported by Section 6 of R.A. No. 9337, which retained Section 108 (B) (3) of R.A. No. 8424. x x x As pointed out by petitioner, although R.A. No. 9337 introduced amendments to Section 108 of R.A. No. 8424 by imposing VAT on other services not previously covered, it did not amend the portion of Section 108 (B) (3) that subjects to zero percent rate services performed by VAT-registered persons to persons or entities whose exemption under special laws or international agreements to which the Philippines is a signatory effectively subjects the supply of such services to 0% rate. x x x The CIR, however, argues that the Court's ruling in *Acesite* does not apply to this case because *Acesite* was based on the old Tax Code (1977 NIRC); while the assessments being made in the present case is in accordance with the 1997 NIRC, as amended by RA No. 9337. The CIR's contention is untenable. In the same PAGCOR case, the Court explained that while the basis of PAGCOR's exemption in *Acesite* was Section 102(b) of the 1977 NIRC, said provision was retained in the 1997 NIRC, as amended by RA No. 9337. Hence, the legislative intent is for PAGCOR to remain exempt from VAT even with the enactment of RA No.

9337. The CTA therefore was correct in cancelling the deficiency VAT assessments issued against PAGCOR for lack of legal basis.

APPEARANCES OF COUNSEL

Office of the Government Corporate Counsel for PAGCOR.
The Solicitor General for Commissioner of Internal Revenue, *et al*.

D E C I S I O N

CAGUIOA, *J*.:

Before the Court are consolidated petitions for review under Rule 45 of the Rules of Court. The Philippine Amusement and Gaming Corporation (PAGCOR) is the petitioner in G.R. Nos. 210689-90 while the Commissioner of Internal Revenue (CIR) is the petitioner in G.R. Nos. 210704 & 210725. Both petitioners assail the Decision[1] dated July 23, 2013 and Resolution[2] dated December 18, 2013 of the Court of Tax Appeals (CTA) *En Banc* in CTA EB Case Nos. 868 and 869[3]. The CTA *En Banc* dismissed the separate petitions for review filed by the CIR and PAGCOR, and affirmed the September 5, 2011 Decision[4]

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[1] *Rollo* (G.R. Nos. 210689-90), pp. 41-71; *rollo* (G.R. Nos. 210704 & 210725), pp. 36-66. Penned by Associate Justice Caesar A. Casanova, with Presiding Justice Roman G. Del Rosario and Associate Justices Juanito C. Castañeda, Jr., Lovell R. Bautista, Erlinda P. Uy, Esperanza R. Fabon-Victorino, Amelia R. Cotangco-Manalastas and Ma. Belen M. Ringpis-Liban concurring while Associate Justice Cielito N. Mindaro-Grulla was on leave.

[2] *Id*. at 74-85; *id*. at 69-80. Penned by Associate Justice Caesar A. Casanova, with Presiding Justice Roman G. Del Rosario and Associate Justices Juanito C. Castañeda, Jr., Lovell R. Bautista, Erlinda P. Uy, Esperanza R. Fabon-Victorino, Cielito N. Mindaro-Grulla, Amelia R. Cotangco-Manalastas and Ma. Belen M. Ringpis-Liban concurring.

[3] Also referred to as CTA EB Nos. 868 and 869.

[4] *Rollo* (G.R. Nos. 210689-90), pp. 263-300. Penned by Associate Justice Esperanza R. Fabon-Victorino, with Presiding Justice Ernesto D. Acosta and Associate Justice Erlinda P. Uy concurring.

and January 24, 2012 Resolution[5] of the CTA First Division in C.T.A. Case No. 7976.

The Facts

PAGCOR is a duly created government instrumentality by virtue of Presidential Decree (PD) No. 1869,[6] issued on July 11, 1983.[7] Under the said decree, specifically in Section 10, Title IV thereof, PAGCOR's franchise includes the "rights, privilege and authority to operate and maintain gambling casinos, clubs, and other recreation or amusement places, sports, gaming pools, i.e. basketball, football, lotteries, etc. whether on land or sea, within the territorial jurisdiction of the Republic of the Philippines." Likewise, it is legally empowered to "do and perform such other acts directly related to the efficient and successful operation and conduct of games of chance in accordance with existing laws and decrees."[8] It also has regulatory powers over "[a]ll persons primarily engaged in gambling, together with their allied business."[9]

Moreover, Section 13(2) of PD No. 1869 provides that "[n]o tax of any kind or form, income or otherwise, as well as fees, charges or levies of whatever nature, whether National or Local, shall be assessed and collected under this Franchise from [PAGCOR]; nor shall any form of tax or charge attach in any way to the earnings of [PAGCOR], except a Franchise Tax of five (5%) percent of the gross revenue or earnings derived by [PAGCOR] from its operation under this Franchise. Such tax shall be due and payable quarterly to the National Government and shall be in lieu of all kinds of taxes, levies, fees or assessments

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[5] *Id*. at 301-319.

[6] CONSOLIDATING AND AMENDING PRESIDENTIAL DECREE NOS. 1067-A, 1067-B, 1067-C, 1399 AND 1632, RELATIVE TO THE FRANCHISE AND POWERS OF THE PHILIPPINE AMUSEMENT AND GAMING CORPORATION (PAGCOR).

[7] See *rollo* (G.R. Nos. 210689-90), p. 264.

[8] PD No. 1869, Sec. 11(5).

[9] See *rollo* (G.R. Nos. 210689-90), p. 265; *id*., Sec. 8.

of any kind, nature or description, levied, established or collected by any municipal, provincial, or national government authority."

Section 14(5) of PD No. 1869 also states that PAGCOR "is authorized to operate such necessary and related services, shows and entertainment;" and "[a]ny income that may be realized from these related services shall not be included as part of the income of [PAGCOR] for the purpose of applying the franchise tax, but the same shall be considered as a separate income of the [PAGCOR] and shall be subject to income tax."

On January 1, 1998, Republic Act (RA) No. 8424[10] or the National Internal Revenue Code of 1997 (1997 NIRC) took effect wherein PAGCOR, under Section 27(C) thereof, was included among the government-owned or-controlled corporations (GOCCs) exempt from the payment of income tax, to wit:

CHAPTER IV - *Tax on Corporations*

SEC. 27. *Rates of Income Tax on Domestic Corporations.* —

x x x x x x x x x

(C) *Government-owned or -Controlled Corporations, Agencies or Instrumentalities.* — The provisions of existing special or general laws to the contrary notwithstanding, all corporations, agencies, or instrumentalities owned or controlled by the Government, **except the Government Service Insurance System (GSIS), the Social Security System (SSS), the Philippine Health Insurance Corporation (PHIC), the Philippine Charity Sweepstakes Office (PCSO) and the Philippine Amusement and Gaming Corporation (PAGCOR)**, shall pay such rate of tax upon their taxable income as are imposed by this Section upon corporations or associations engaged in a similar business, industry, or activity. (Emphasis and underscoring supplied)

Subsequently, on July 1, 2005, RA No. 9337[11] amended Section 27(C) of the 1997 NIRC, by removing PAGCOR from the list of the GOCCs exempt from payment of income tax.

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[10] AN ACT AMENDING THE NATIONAL INTERNAL REVENUE CODE, AS AMENDED, AND FOR OTHER PURPOSES.

[11] AN ACT AMENDING SECTIONS 27, 28, 34, 106, 107, 108, 109, 110, 111, 112, 113, 114, 116, 117, 119, 121, 148, 151, 236, 237 AND 288 OF THE NATIONAL INTERNAL REVENUE CODE OF 1997, AS AMENDED, AND FOR OTHER PURPOSES, otherwise known as the "Value-Added Tax (VAT) Reform Act" approved on May 24, 2005.

On June 20, 2007, RA No. 9487[12] was enacted extending PAGCOR's franchise under PD No. 1869 for another period of 25 years, renewable for another 25 years.

On July 14, 2008, PAGCOR received a letter dated July 2, 2008 from the Head of Revenue Executive Assistant (HREA) of the Large Taxpayers Service, Bureau of Internal Revenue (BIR), requesting for an informal conference on the results of an investigation regarding all its internal revenue tax liabilities for the taxable years 2005 and 2006.[13]

On August 11, 2008, PAGCOR received from the CIR a Preliminary Assessment Notice dated July 29, 2008 on its alleged deficiency income tax, Value-Added Tax (VAT), Fringe Benefit Tax (FBT), and documentary stamp tax for taxable years 2005 and 2006.[14]

On February 3, 2009, PAGCOR received from the CIR a Formal Letter of Demand, with attached Assessment Notices all dated December 9, 2008, but only for deficiency income tax, VAT and FBT, inclusive of charges, interest and compromise penalties for taxable years 2005 and 2006, in the aggregate amount of ₱5,927,542,547.76, broken down as follows[15]:

Taxable Year 2005

Particulars	Basic Tax	Surcharge	Interest	Compromise	Total
Income Tax	₱98,856,851.52	₱24,714,212.88	₱53,680,624.58	₱25,000.00	₱177,276,688.98
VAT	837,606,020.73	209,401,505.18	491,548,519.56	25,000.00	1,538,581,045.48
FBT	32,297,128.28	8,074,282.07	18,953,547.61	25,000.00	59,349,957.96
Totals	**₱968,760,000.53**[16]	**₱242,190,000.13**[17]	**₱564,182,691.75**	**₱75,000.00**	**₱1,775,207,692.42**[18]

[12] AN ACT FURTHER AMENDING PRESIDENTIAL DECREE NO. 1869, OTHERWISE KNOWN AS PAGCOR CHARTER.

[13] *Rollo* (G.R. Nos. 210689-90), pp. 265-266.

[14] *Id*. at 266.

[15] *Id*.

[16] Stated as ₱68,760,000.53 in the Decision of the CTA First Division, *id*.

[17] Stated as ₱42,190,000.13 in the Decision of the CTA First Division, *id*.

[18] *Rollo* (G.R. Nos. 210689-90), p. 266.

Taxable Year 2006

Particulars	Basic Tax	Surcharge	Interest	Compromise	Total
Income Tax	₱889,270,123.21	₱222,317,530.80	₱305,031,834.04	₱25,000.00	₱1,416,644,488.06
VAT	1,665,267,061.23	416,316,765.31	644,207,422.04	25,000.00	2,725,816,248.58
FBT	6,017,119.97	1,504,279.99	2,327,718.74	25,000.00	9,874,118.70
Totals	**₱2,560,554,304.41**	**₱640,138,576.10**[19]	**₱951,566,974.82**	**₱75,000.00**	**₱4,152,334,855.34**[20]

On March 3, 2009, PAGCOR filed a letter-protest dated February 16, 2009, addressed to the CIR.[21]

On September 29, 2009, PAGCOR filed a petition for review with the CTA, alleging inaction on the part of the CIR.[22]

On December 10, 2009, the CIR filed an Answer raising the following arguments, *inter alia*: (a) that PAGCOR is subject to ordinary corporate income tax; (b) that as an ordinary corporate taxpayer, PAGCOR is liable for payment of VAT on its income from casino operations and related services pursuant to the provisions of RA No. 7716[23] or the Expanded VAT Law; (c) that PAGCOR is liable for FBT under Section 33 of the 1997 NIRC in relation to Revenue Regulation (RR) No. 3-98; and, (d) that PAGCOR was duly assessed and informed of its deficiency tax liabilities for taxable years 2005 and 2006.[24]

During the pre-trial conference on April 30, 2010, the parties submitted the case for decision without presentation of evidence

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[19] Stated as ₱40,138,576.10 in the Decision of the CTA First Division, *id*. at 267.

[20] *Id*. at 266-267.

[21] *Id*. at 267.

[22] *Id*.

[23] AN ACT RESTRUCTURING THE VALUE-ADDED TAX (VAT) SYSTEM, WIDENING ITS TAX BASE AND ENHANCING ITS ADMINISTRATION, AND FOR THESE PURPOSES AMENDING AND REPEALING THE RELEVANT PROVISIONS OF THE NATIONAL INTERNAL REVENUE CODE, AS AMENDED, AND FOR OTHER PURPOSES, approved on May 5, 1994.

[24] *Rollo* (G.R. Nos. 210689-90), pp. 267-271.

on agreement that there are no factual issues involved and only legal issues are left for determination of the court. In view thereof and as prayed for, the parties were granted a period of thirty (30) days from receipt of the Pre-trial Order dated July 21, 2010, within which to file their respective memoranda.[25]

On September 5, 2011, the CTA Division rendered a Decision,[26] the dispositive portion of which reads:

WHEREFORE, the instant Petition for Review is hereby **PARTIALLY GRANTED.** Accordingly, the assessments representing deficiency VAT, as well as the surcharges, interests, and compromise penalties imposed thereon, in the aggregate amount of ₱4,264,397,294.06 for taxable years 2005 and 2006, are hereby **CANCELLED** and **SET ASIDE**.

However, the assessments for deficiency income tax and Fringe Benefit Tax (FBT) for taxable years 2005 and 2006 are hereby **AFFIRMED** with **MODIFICATIONS**. The compromise penalties are cancelled in the absence of mutual agreement between the parties. Accordingly, [PAGCOR] is hereby **ORDERED** to **PAY** [the CIR] the following basic deficiency income tax and FBT for taxable years 2005 and 2006, inclusive of the 25% surcharge imposed under Section 248(A)(3) of the NIRC of 1997, as amended:

	CY 2005	**CY 2006**	**TOTAL**
INCOME TAX			
Basic	₱ 98,856,851.52	₱ 889,270,123.21	₱988,126,974.73
Surcharge	24,714,212.88	222,317,530.80	247,031,743.68
Sub total	**₱123,571,064.40**	**₱1,111,587,654.01**	₱1,235,158,718.41
FBT			
Basic	₱ 32,297,128.28	₱ 6,017,119.97	₱ 38,314,248.25
Surcharge	8,074,282.07	1,504,279.99	9,578,562.06
Subtotal	**₱ 40,371,410.35**	**₱ 7,521,399.96**	₱ 47,892,810.31
TOTAL DEFICIENCY TAX	**₱163,942,474.75**	**₱1,119,109,053.97**	**₱1,283,051,528.72**

[25] *Id*. at 275.

[26] *Id*. at 263-300.

In addition, [PAGCOR] shall pay deficiency interest at the rate of twenty percent (20%) *per annum* on the following basic deficiency income taxes and FBT computed from the dates indicated herein until full payment thereof pursuant to Section 249(B) of the NIRC of 1997, as amended:

	CY 2005	**CY 2006**
Income Tax	₱98,856,851.52	₱ 889,270,123.21
Computed from	April 15, 2006	April 15, 2007
FBT	₱ 32,297,128.28	₱ 6,017,119.97
Computed from	January 25, 2006	January 25, 2007

[PAGCOR] is also liable to pay delinquency interest at the rate of twenty percent (20%) *per annum* on the accrued deficiency interest which was due for payment on December 31, 2008 and on the following total deficiency taxes, computed from December 31, 2008 until full payment thereof pursuant to Section 249(C) of the NIRC of 1997, as amended:

	CY 2005	**CY 2006**	**TOTAL**
INCOME TAX	₱123,571,064.40	₱1,111,587,654.01	₱ 1,235,158,718.41
FBT	40,371,410.35	7,521,399.96	47,892,810.31
TOTAL DEFICIENCY TAX	**₱163,942,474.75**	**₱1,119,109,053.97**	**₱ 1,283,051,528.72**

SO ORDERED.[27]

The CTA Division held that PAGCOR is exempt from VAT pursuant to Section 7(k) of RA No. 9337 in relation to PD No. 1869, which grants PAGCOR a blanket exemption from taxes with no distinction on whether the taxes are direct or indirect.[28]

However, with respect to the assessments for deficiency income tax, the CTA Division ruled that when RA No. 9337 took effect, PAGCOR was deleted from the list and ceased to be among those GOCCs exempt from paying income tax on

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[27] *Id*. at 297-299.

[28] *Id*. at 285-286.

their taxable income.[29] In other words, RA No. 9337 effectively withdrew the income tax exemption granted to PAGCOR under its charter.[30]

As regards the assessments for deficiency withholding tax on fringe benefits, the CTA Division ruled that the government's cause of action against PAGCOR is not for the collection of income tax but for the enforcement of the withholding tax provisions of the 1997 NIRC, and the compliance imposed upon PAGCOR as the withholding agent.[31] The CTA Division found that PAGCOR admitted that it provided car plan benefits to its executives during taxable years 2005 and 2006 but it did not present any evidence to prove that said car plan benefits were required by the nature of or necessary to its business.[32] Thus, pursuant to Section 33 of the 1997 NIRC, as amended, PAGCOR, as the employer-withholding agent, has the obligation to withhold the fringe benefit taxes due thereon; and non-compliance with said obligation renders it personally liable for the tax arising from the breach of a legal duty.[33]

In a Resolution[34] dated January 24, 2012, the CTA Division denied the parties' respective motions for partial reconsideration for lack of merit.

PAGCOR filed an appeal to the CTA *En Banc* maintaining that its casino and other related operations are not subject to taxes. The case was docketed as CTA EB Case No. 869.[35] The CIR also filed an appeal to the CTA *En Banc* insisting on PAGCOR's liability for deficiency VAT. The case was docketed as CTA EB Case No. 868.[36]

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[29] *Id*. at 282.

[30] *Id*.

[31] *Id*. at 295.

[32] *Id*.

[33] See *id*. at 289-296.

[34] *Id*. at 301-319.

[35] *Id*. at 213-261.

[36] *Rollo* (G.R. Nos. 210704 & 210725), pp. 347-364.

In the consolidated Decision[37] dated July 23, 2013, the CTA *En Banc* dismissed both appeals for lack of merit and affirmed the September 5, 2011 Decision and January 24, 2012 Resolution of the CTA Division.[38]

The parties' respective Motions for Partial Reconsideration[39] of the said Decision was denied by the CTA *En Banc* in the Resolution[40] dated December 18, 2013.

Hence, the instant consolidated petitions.[41]

PAGCOR, in its petition for review, docketed as G.R. Nos. 210689-90, submits the following issues for resolution:

x x x WHETHER THE CTA *EN BANC* SERIOUSLY ERRED IN FAILING TO CONSIDER THAT PAG[C]OR UNDER P.D. 1869, AS AMENDED BY R.A. 9487, IS LIABLE ONLY FOR THE 5% FRANCHISE TAX WHICH IS *IN LIEU* OF ALL KINDS OF TAXES, LEVIES, FEES OR ASSESSMENTS OF ANY KIND, NATURE OR DESCRIPTION, LEVIED, ESTABLISHED OR COLLECTED BY ANY MUNICIPAL, PROVINCIAL, OR NATIONAL GOVERNMENT AUTHORITY.

x x x WHETHER THE CTA *EN BANC* GRAVELY ERRED WHEN IT FAILED TO CONSIDER THAT PAGCOR'S EXEMPTION FROM INCOME TAX AND FBT UNDER ITS CHARTER WAS NOT AMENDED OR REPEALED BY RA 8424 AND R.A. 9337.

x x x ASSUMING THAT PAGCOR'S EXEMPTION FROM ALL FORMS AND KINDS OF TAXES PROVIDED UNDER SECTION 13 OF P.D. 1869, WAS AMENDED OR REPEALED BY R.A. 8424 AND R.A. 9337, WHETHER THE CTA *EN BANC* STILL SERIOUSLY ERRED WHEN IT FAILED TO CONSIDER THAT BY VIRTUE OF THE ENACTMENT OF R.A. 9487, PAGCOR'S AMENDED CHARTER, IT RESTORED THE RIGHTS, PRIVILEGES AND AUTHORITY GRANTED AND/OR ENJOYED BY IT UNDER P.D. 1869 BEFORE THE ENACTMENT OF R.A. 8424 AND R.A. 9337.

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[37] *Rollo* (G.R. Nos. 210689-90), pp. 41-71.

[38] *Id.* at 69.

[39] *Id.* at 321-339; *rollo* (G.R. Nos. 210704 & 210725), pp. 139-147.

[40] *Id.* at 74-85.

[41] *Id.* at 9-36; *rollo* (G.R. Nos. 210704 & 210725), pp. 9-33.

x x x WHETHER, THE CTA *EN BANC* ERRED WHEN IT DECLARED PAGCOR LIABLE FOR THE FBT AS A WITHHOLDING AGENT CONSIDERING THAT SUCH IMPOSITION OF LIABILITY VIOLATES PAGCOR'S RIGHT TO DUE PROCESS SINCE THE FBT WAS ASSESSED AGAINST IT AS A FINAL DIRECT TAX AS EMPLOYER AND NOT AS A WITHHOLDING TAX AGENT.

x x x WHETHER THE CTA *EN BANC* ERRED WHEN IT FAILED TO CONSIDER THAT, EVEN ASSUMING THAT PAGCOR IS NOT EXEMPT FROM FBT UNDER ITS CHARTER, THE CAR PLAN BENEFIT EXTENDED TO PAGCOR'S OFFICERS WAS NECESSARY IN THE CONDUCT OF ITS BUSINESS AND ACTUALLY INURED TO ITS BENEFIT. IN SUCH CASE, SUCH BENEFIT IS NOT COVERED BY THE FBT.

x x x ASSUMING THAT PAGCOR IS LIABLE FOR THE ALLEGED DEFICIENCIES IN INCOME TAX AND FBT TAX PAYMENTS, WHETHER THE CTA *EN BANC* ERRED WHEN IT FAILED TO CONSIDER THAT PAGCOR IS ONLY LIABLE FOR THE AMOUNT EQUIVALENT TO THE BASIC TAX EXCLUDING SURCHARGES, DEFICIENCY INTEREST AND DELINQUENCY INTEREST, AND OTHER SIMILAR CHARGES AND/OR PENALTIES.[42]

PAGCOR claims that, under its Charter, it is liable only for the 5% franchise tax which is in lieu of all kinds of national and local taxes, levies, fees or assessments; and said tax privilege was not amended or repealed by RA No. 9337.[43] It further argues that assuming said tax exemption was amended/repealed by RA No. 8424 and RA No. 9337, RA No. 9487, which extended PAGCOR's franchise to another 25 years, restored its rights, privileges and authority granted and/or enjoyed under PD No. 1869.[44]

PAGCOR also asserts that it is not liable for the FBT as withholding agent.[45] According to PAGCOR, the CTA allegedly failed to consider that the car plan extended to PAGCOR's

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[42] *Id*. at 14-16.

[43] *Id*. at 16.

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

[45] *Id*. at 25.

officers inured to its benefit and is required or necessary in the conduct of its business.[46] PAGCOR further claims that even assuming that it is subject to deficiency FBT, it is only liable for the basic tax excluding surcharges and interests, on the ground of good faith and honest belief that it is exempt from income tax and FBT.[47]

In its Comment,[48] the CIR, through the Office of the Solicitor General (OSG), counters that PAGCOR is no longer exempt from the payment of income taxes because its income tax exemption has been effectively withdrawn by the amendments to the 1997 NIRC introduced by RA No. 9337.[49]

On the other hand, the CIR's petition for review, docketed as G.R. Nos. 210704 and 210725, raises the sole issue of whether or not PAGCOR is exempt from the payment of VAT.[50] The CIR insists that under the 1997 NIRC, as amended, all franchise holders are liable for the payment of VAT, except those listed under Section 119[51] of the same Code. Since PAGCOR is not

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

[47] *Id*. at 29-30.

[48] *Id*. at 450-469.

[49] *Id*. at 457.

[50] *Rollo* (G.R. Nos. 210704 & 210725), p. 17.

[51] SEC. 119. *Tax on Franchises*. —Any provision of general or special law to the contrary notwithstanding, there shall be levied, assessed and collected in respect to all franchises on radio and/or television broadcasting companies whose annual gross receipts of the preceding year do not exceed Ten million pesos (₱10,000,000), subject to Section 236 of this Code, a tax of three percent (3%) and on gas and water utilities, a tax of two percent (2%) on the gross receipts derived from the business covered by the law granting the franchise: *Provided*, *however*, That radio and television broadcasting companies referred to in this Section shall have an option to be registered as a value-added taxpayer and pay the tax due thereon: *Provided*, *further*, That once the option is exercised, said option shall be irrevocable.

The grantee shall file the return with, and pay the tax due thereon to the Commissioner or his duly authorized representative, in accordance with the provisions of Section 128 of this Code, and the return shall be subject to audit by the Bureau of Internal Revenue, any provision of any existing law to the contrary notwithstanding.

among the franchise holders listed as exempt from the imposition of VAT, it stands to reason that PAGCOR is liable for VAT as an ordinary corporate taxpayer.[52]

In its Comment,[53] PAGCOR reiterates that it is only liable for the 5% franchise tax, which is in lieu of all kinds of national or local taxes, levies or imposition, including VAT, based on the provisions of PD No. 1869, which were not amended, modified or repealed by RA No. 9337.[54]

The Court's Ruling

G.R. Nos. 210689-90

The Court finds PAGCOR's petition partly meritorious.

PAGCOR is liable for corporate income tax only on its income derived from other related services.

In *Philippine Amusement and Gaming Corporation v. Bureau of Internal Revenue*,[55] the Court *En Banc* declared valid and constitutional Section 1 of RA No. 9337, which excluded PAGCOR from the list of GOCCs exempt from corporate income tax. The Court *En Banc* looked into the records of the Bicameral Conference Meeting dated April 18, 2005, and found that the legislative intent of the omission or removal of PAGCOR from said list was to require PAGCOR to pay the corporate income tax.

PAGCOR sought clarification of the Court's Decision in the aforementioned case on account of the CIR's issuance of Revenue Memorandum Circular (RMC) No. 33-2013 which stated, among others, that PAGCOR's income from operations and licensing of gambling casinos and gaming clubs and other related operations are subject to both corporate income tax under the 1997 NIRC, as amended, and franchise tax pursuant to Section

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[52] See *rollo* (G.R. Nos. 210704 & 210725), pp. 19-24.

[53] *Id.* at 494-516.

[54] *Id.* at 510-511.

[55] 660 Phil. 636 (2011).

13(2)(a) of PD No. 1869; while PAGCOR's other income that are not connected with its gaming operations are subject to corporate income tax under the 1997 NIRC, as amended.[56]

Treating PAGCOR's motion as a new petition, the Court *En Banc* rendered a Decision upholding PAGCOR's contention that its income from gaming operations is subject only to 5% franchise tax under PD No. 1869, as amended; while its income from other related services is subject to corporate income tax pursuant to PD No. 1869, as amended, in relation to RA No. 9337. The Court *En Banc* clarified that RA No. 9337 did not repeal the tax privilege granted to PAGCOR under PD No. 1869, with respect to its income from gaming operations. What RA No. 9337 withdrew was PAGCOR's exemption from corporate income tax on its income derived from other related services, previously granted under Section 27(C) of RA No. 8424. The Court *En Banc* explained:

> After a thorough study of the arguments and points raised by the parties, and in accordance with our Decision dated March 15, 2011, we sustain [PAGCOR's] contention that its income from gaming operations is subject only to five percent (5%) franchise tax under P.D. 1869, as amended, while its income from other related services is subject to corporate income tax pursuant to P.D. 1869, as amended, as well as R.A. No. 9337. This is demonstrable.
>
> ***First.*** Under P.D. 1869, as amended, [PAGCOR] is subject to income tax only with respect to its operation of related services. Accordingly, the income tax exemption ordained under Section 27(c) of R.A. No. 8424 clearly pertains only to [PAGCOR's] income from operation of related services. Such income tax exemption could not have been applicable to [PAGCOR's] income from gaming operations as it is already exempt therefrom under P.D. 1869, as amended, to wit:
>
> SECTION 13. Exemptions. —
>
> x x x x x x x x x
>
> (2) Income and other taxes. — (a) Franchise Holder: ***No tax of any kind or form, income or otherwise, as well as fees,***

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[56] See *Philippine Amusement and Gaming Corporation v. Bureau of Internal Revenue*, 749 Phil. 1010 (2014).

> ***charges or levies of whatever nature, whether National or Local, shall be assessed and collected under this Franchise from the Corporation; nor shall any form of tax or charge attach in any way to the earnings of the Corporation, except a Franchise Tax of five (5%) percent of the gross revenue or earnings derived by the Corporation from its operation under this Franchise***. Such tax shall be due and payable quarterly to the National Government and shall be in lieu of all kinds of taxes, levies, fees or assessments of any kind, nature or description, levied, established or collected by any municipal, provincial, or national government authority.

Indeed, the grant of tax exemption or the withdrawal thereof assumes that the person or entity involved is subject to tax. This is the most sound and logical interpretation because [PAGCOR] could not have been exempted from paying taxes which it was not liable to pay in the first place. This is clear from the wordings of P.D. 1869, as amended, imposing a franchise tax of five percent (5%) on its gross revenue or earnings derived by [PAGCOR] from its operation under the Franchise *in lieu* of all taxes of any kind or form, as well as fees, charges or levies of whatever nature, which necessarily include corporate income tax.

In other words, there was no need for Congress to grant tax exemption to [PAGCOR] with respect to its income from gaming operations as the same is already exempted from all taxes of any kind or form, income or otherwise, whether national or local, under its Charter, save only for the five percent (5%) franchise tax. The exemption attached to the income from gaming operations exists independently from the enactment of R.A. No. 8424. To adopt an assumption otherwise would be downright ridiculous, if not deleterious, since [PAGCOR] would be in a worse position if the exemption was granted (then withdrawn) than when it was not granted at all in the first place.

Moreover, as may be gathered from the legislative records of the Bicameral Conference Meeting of the Committee on Ways and Means dated October 27, 1997, the exemption of [PAGCOR] from the payment of corporate income tax was due to the acquiescence of the Committee on Ways and Means to the request of [PAGCOR] that it be exempt from such tax. Based on the foregoing, it would be absurd for [PAGCOR] to seek exemption from income tax on its gaming operations when under its Charter, it is already exempted from paying the same.

Second. Every effort must be exerted to avoid a conflict between statutes; so that if reasonable construction is possible, the laws must be reconciled in that manner.

As we see it, there is no conflict between P.D. 1869, as amended, and R.A. No. 9337. The former lays down the taxes imposable upon [PAGCOR], as follows: (1) *a five percent (5%) franchise tax* of the gross revenues or earnings derived from its operations conducted under the Franchise, which shall be due and payable *in lieu* of all kinds of taxes, levies, fees or assessments of any kind, nature or description, levied, established or collected by any municipal, provincial or national government authority; (2) *income tax* for income realized from other necessary and related services, shows and entertainment of [PAGCOR]. With the enactment of R.A. No. 9337, which withdrew the income tax exemption under R.A. No. 8424, petitioner's tax liability on income from other related services was merely reinstated.

It cannot be gainsaid, therefore, that the nature of taxes imposable is well defined for each kind of activity or operation. There is no inconsistency between the statutes; and in fact, they complement each other.

Third. Even assuming that an inconsistency exists, P.D. 1869, as amended, which expressly provides the tax treatment of [PAGCOR's] income prevails over R.A. No. 9337, which is a general law. It is a canon of statutory construction that a special law prevails over a general law — regardless of their dates of passage — and the special is to be considered as remaining an exception to the general. The *rationale* is:

> Why a special law prevails over a general law has been put by the Court as follows:
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> x x x x x x x x x
>
> x x x The Legislature consider and make provision for all the circumstances of the particular case. ***The Legislature having specially considered all of the facts and circumstances in the particular case in granting a special charter, it will not be considered that the Legislature, by adopting a general law containing provisions repugnant to the provisions of the charter, and without making any mention of its intention to amend or modify the charter, intended to amend, repeal, or***

modify the special act. (*Lewis vs. Cook County*, 74 Ill. App., 151; *Philippine Railway Co. vs. Nolting*, 34 Phil., 401.)

Where a general law is enacted to regulate an industry, it is common for individual franchises subsequently granted to restate the rights and privileges already mentioned in the general law, or to amend the later law, as may be needed, to conform to the general law. However, if no provision or amendment is stated in the franchise to effect the provisions of the general law, it cannot be said that the same is the intent of the lawmakers, for repeal of laws by implication is not favored.

In this regard, we agree with [PAGCOR] that if the lawmakers had intended to withdraw [PAGCOR's] tax exemption of its gaming income, then Section 13(2)(a) of P.D. 1869 should have been amended expressly in R.A. No. 9487, or the same, at the very least, should have been mentioned in the repealing clause of R.A. No. 9337. However, the repealing clause never mentioned [PAGCOR's] Charter as one of the laws being repealed. On the other hand, the repeal of other special laws, namely, Section 13 of R.A. No. 6395 as well as Section 6, fifth paragraph of R.A. No. 9136, is categorically provided under Section 24(a) (b) of R.A. No. 9337, to wit:

> SEC. 24. *Repealing Clause*. — The following laws or provisions of laws are hereby repealed and the persons and/or transactions affected herein are made subject to the value-added tax subject to the provisions of Title IV of the National Internal Revenue Code of 1997, as amended:
>
> (A) ***Section 13 of R.A. No. 6395 on the exemption from value-added tax of the National Power Corporation (NPC)***;
>
> (B) ***Section 6, fifth paragraph of R.A. No. 9136 on the zero VAT rate imposed on the sales of generated power by generation companies***; and
>
> (C) All other laws, acts, decrees, executive orders, issuances and rules and regulations or parts thereof which are contrary to and inconsistent with any provisions of this Act are hereby repealed, amended or modified accordingly.

When [PAGCOR's] franchise was extended on June 20, 2007 without revoking or withdrawing its tax exemption, it effectively

reinstated and reiterated all of [PAGCOR's] rights, privileges and authority granted under its Charter. Otherwise, Congress would have painstakingly enumerated the rights and privileges that it wants to withdraw, given that a franchise is a legislative grant of a special privilege to a person. Thus, the extension of [PAGCOR's] franchise under the same terms and conditions means a continuation of its tax exempt status with respect to its income from gaming operations. Moreover, all laws, rules and regulations, or parts thereof, which are inconsistent with the provisions of P.D. 1869, as amended, a special law, are considered repealed, amended and modified, consistent with Section 2 of R.A. No. 9487, thus:

> SECTION 2. *Repealing Clause*. — All laws, decrees, executive orders, proclamations, rules and regulations and other issuances, or parts thereof, which are inconsistent with the provisions of this Act, are hereby repealed, amended and modified.

It is settled that where a statute is susceptible of more than one interpretation, the court should adopt such reasonable and beneficial construction which will render the provision thereof operative and effective, as well as harmonious with each other.

Given that [PAGCOR's] Charter is not deemed repealed or amended by R.A. No. 9337, [PAGCOR's] income derived from gaming operations is subject only to the five percent (5%) franchise tax, in accordance with P.D. 1869, as amended. With respect to [PAGCOR's] income from operation of other related services, the same is subject to income tax only. The five percent (5%) franchise tax finds no application with respect to [PAGCOR's] income from other related services, in view of the express provision of Section 14(5) of P.D. 1869, as amended, to wit:

Section 14. Other Conditions.

x x x x x x x x x

> (5) Operation of related services. — The Corporation is authorized to operate such necessary and related services, shows and entertainment. ***Any income that may be realized from these related services shall not be included as part of the income of the Corporation for the purpose of applying the franchise tax***, but the same shall be considered as a separate income of the Corporation and shall be subject to income tax.

Thus, it would be the height of injustice to impose franchise tax upon [PAGCOR] for its income from other related services without basis therefor.

For proper guidance, the first classification of PAGCOR's income under RMC No. 33-2013 (*i.e.*, income from its operations and licensing of gambling casinos, gaming clubs and other similar recreation or amusement places, gambling pools) should be interpreted in relation to Section 13(2) of P.D. 1869, which pertains to the income derived from issuing and/or granting the license to operate casinos to PAGCOR's contractees and licensees, as well as earnings derived by PAGCOR from its own operations under the Franchise. On the other hand, the second classification of PAGCOR's income under RMC No. 33-2013 (*i.e.*, income from other related operations) should be interpreted in relation to Section 14(5) of P.D. 1869, which pertains to income received by PAGCOR from its contractees and licensees in the latter's operation of casinos, as well as PAGCOR's own income from operating necessary and related services, shows and entertainment.

x x x x x x x x x

In view of the foregoing disquisition, [the CIR], therefore, committed grave abuse of discretion amounting to lack of jurisdiction when it issued RMC No. 33-2013 subjecting both income from gaming operations and other related services to corporate income tax and five percent (5%) franchise tax. This unduly expands our Decision dated March 15, 2011 without due process since the imposition creates additional burden upon petitioner. Such act constitutes an overreach on the part of the respondent, which should be immediately struck down, lest grave injustice results. More, it is settled that in case of discrepancy between the basic law and a rule or regulation issued to implement said law, the basic law prevails, because the said rule or regulation cannot go beyond the terms and provisions of the basic law.

In fine, we uphold our earlier ruling that Section 1 of R.A. No. 9337, amending Section 27(c) of R.A. No. 8424, by excluding [PAGCOR] from the enumeration of GOCCs exempted from corporate income tax, is valid and constitutional. In addition, we hold that:

1. [PAGCOR's] tax privilege of paying five percent (5%) franchise tax *in lieu* of all other taxes with respect to its income from gaming operations, pursuant to P.D. 1869, as amended, is *not* repealed or amended by Section 1(c) of R.A. No. 9337;

2. [PAGCOR's] income from gaming operations is subject to the five percent (5%) franchise tax only; and

3. [PAGCOR's] income from other related services is subject to corporate income tax only.

In view of the above-discussed findings, this Court **ORDERS** the [CIR] to cease and desist the implementation of RMC No. 33-2013 insofar as it imposes: (1) corporate income tax on [PAGCOR's] income derived from its gaming operations; and (2) franchise tax on [PAGCOR's] income from other related services.

WHEREFORE, the Petition is hereby **GRANTED**. Accordingly, [the CIR] is **ORDERED** to cease and desist the implementation of RMC No. 33-2013 insofar as it imposes: (1) corporate income tax on [PAGCOR's] income derived from its gaming operations; and (2) franchise tax on [PAGCOR's] income from other related services.

SO ORDERED.[57] (Underscoring supplied; citations omitted)

In this case, the assessments for deficiency income tax covers both PAGCOR's income derived from gaming operations and other related services. Considering that the Court *En Banc* has already ruled that PAGCOR, under its Charter, remains to be exempt from income tax on its gaming operations,[58] then PAGCOR should only be made liable to pay for deficiency income tax on its income derived from other related services for taxable years 2005 and 2006. The portions of the assessments insofar as they pertain to PAGCOR's income from gaming operations must therefore be cancelled and set aside.

PAGCOR is liable for payment of withholding taxes on fringe benefits.

As regards PAGCOR's liability for FBT, the same had already been settled in the case of *Commissioner of Internal Revenue v. Secretary of Justice,*[59] which involved assessments for deficiency VAT, FBT and expanded withholding tax against

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[57] *Id.* at 1022-1029.

[58] See *id.* at 1026.

[59] G.R. No. 177387, November 9, 2016.

PAGCOR for the years 1996 to 2000. In said case, the Court ruled that FBT is not covered by the exemptions provided under PD No. 1869; and considering that PAGCOR failed to present any evidence showing that the fringe benefits granted to its officers were necessary to its business or for its convenience, the deficiency FBT assessments on PAGCOR's car benefit plan was upheld, *viz.*:

a. Final Withholding Tax on Fringe Benefits

The recomputed assessment for deficiency final withholding taxes related to the car plan granted to PAGCOR's employees and for its payment of membership dues and fees.

Under Section 33 of the NIRC, FBT is imposed as:

> A final tax of thirty-four percent (34%) effective January 1, 1998; thirty-three percent (33%) effective January 1, 1999; and thirty-two percent (32%) effective January 1, 2000 and thereafter, is hereby imposed on the grossed-up monetary value of fringe benefit furnished or granted to the employee (except rank and file employees as defined herein) by the employer, whether an individual or a corporation (unless the fringe benefit is required by the nature of, or necessary to the trade, business or profession of the employer, or when the fringe benefit is for the convenience or advantage of the employer). The tax herein imposed is payable by the employer which tax shall be paid in the same manner as provided for under Section 57 (A) of this Code.

FBT is treated as a final income tax on the employee that shall be withheld and paid by the employer on a calendar quarterly basis. As such, PAGCOR is a mere withholding agent inasmuch as the FBT is imposed on PAGCOR's employees who receive the fringe benefit. PAGCOR's liability as a withholding agent is not covered by the tax exemptions under its Charter.

The car plan extended by PAGCOR to its qualified officers is evidently considered a fringe benefit as defined under Section 33 of the NIRC. To avoid the imposition of the FBT on the benefit received by the employee, and, consequently, to avoid the withholding of the payment thereof by the employer, PAGCOR must sufficiently establish that the fringe benefit is required by the nature of, or is necessary to the trade, business or profession of the employer, or when the fringe benefit is for the convenience or advantage of the employer.

PAGCOR asserted that the car plan was granted "not only because it was necessary to the nature of the trade of PAGCOR but it was also granted for its convenience." The records are lacking in proof as to whether such benefit granted to PAGCOR's officers were, in fact, necessary for PAGCOR's business or for its convenience and advantage. Accordingly, PAGCOR should have withheld the FBT from the officers who have availed themselves of the benefits of the car plan and remitted the same to the BIR.[60] (Emphasis and underscoring supplied; citations omitted)

In the same vein, PAGCOR, in this case, did not adduce any proof, other than bare allegations, that the car plan granted to its officers was ultimately for the benefit of its business or for its convenience or advantage. Basic is the rule that mere allegations are not evidence and are not equivalent to proof.[61] The CTA *En Banc* therefore did not err in upholding PAGCOR's deficiency FBT liability for taxable years 2005 and 2006.

As regards PAGCOR's claim that it should not be held liable for surcharges and interests because it relied in good faith on the tax exemptions granted under its Charter and on the opinions of different government agencies affirming its liability for franchise tax only, this cannot be given consideration.

In several cases,[62] this Court deleted the imposition of surcharges and interests on the ground that the taxpayer's good faith and honest belief on previous interpretations of the BIR, the government agency tasked to interpret and implement the tax laws, constitute sufficient justification therefor. In these cases, the taxpayers pointed to a specific ruling issued by the BIR declaring that they are exempt from the payment of the assessed deficiency tax.

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[60] *Id.* at 17-19.

[61] *Real v. Belo*, 542 Phil. 109, 122 (2007).

[62] *Commissioner of Internal Revenue v. St. Luke's Medical Center, Inc.*, 695 Phil. 867 (2012); *Michel J. Lhuillier Pawnshop, Inc. v. Commissioner of Internal Revenue,* 533 Phil. 101 (2006)*; Tuason, Jr. v. Lingad,* 157 Phil. 159 (1974).

Here, PAGCOR fails to point to any particular BIR issuance or ruling which categorically declared that it is not subject to income tax and/or FBT. Instead, PAGCOR relies on the opinions of the Office of the Government Corporate Counsel,[63] and the OSG[64] and the Resolutions[65] issued by the Department of Justice — government offices bereft of any authority to implement or interpret tax laws. Thus, the interests and surcharges which under the law are mandated to be imposed, should be upheld.

G.R. Nos. 210704 & 210725

On the other hand, the CIR's petition for review is bereft of merit.

PAGCOR is exempt from payment of VAT.

The issue on whether PAGCOR is exempt from VAT is also not novel. In *Philippine Amusement and Gaming Corporation v. Bureau of Internal Revenue*,[66] the Court, citing the case of *The Commissioner of Internal Revenue v. Acesite (Phils.) Hotel Corporation*,[67] (*Acesite*) affirmed PAGCOR's position that the tax exemption granted under its Charter includes the payment of indirect taxes, such as VAT. The Court explained that:

> Petitioner is exempt from the payment of VAT, because PAGCOR's charter, P.D. No. 1869, is a special law that grants petitioner exemption from taxes.
>
> Moreover, the exemption of PAGCOR from VAT is supported by Section 6 of R.A. No. 9337, which retained Section 108 (B) (3) of R.A. No. 8424, thus:
>
> [R.A. No. 9337], SEC. 6. Section 108 of the same Code (R.A. No. 8424), as amended, is hereby further amended to read as follows:

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[63] *Rollo* (G.R. Nos. 210689-90), pp. 340-348.

[64] *Id*. at 349-355.

[65] *Id*. at 198-212, 361-380.

[66] *Supra* note 55.

[67] 545 Phil. 1 (2007).

SEC. 108. *Value-Added Tax on Sale of Services and Use or Lease of Properties.* —

(A) *Rate and Base of Tax.* — There shall be levied, assessed and collected, a value-added tax equivalent to ten percent (10%) of gross receipts derived from the sale or exchange of services, including the use or lease of properties: x x x

x x x x x x x x x

(B) ***Transactions Subject to Zero Percent (0%) Rate.*** — The following services performed in the Philippines by VAT-registered persons shall be subject to zero percent (0%) rate;

x x x x x x x x x

(3) **Services rendered to persons or entities whose exemption under special laws** or international agreements to which the Philippines is a signatory effectively **subjects the supply of such services to zero percent (0%) rate**;

x x x x x x x x x

As pointed out by petitioner, although R.A. No. 9337 introduced amendments to Section 108 of R.A. No. 8424 by imposing VAT on other services not previously covered, it did not amend the portion of Section 108 (B) (3) that subjects to zero percent rate services performed by VAT-registered persons to persons or entities whose exemption under special laws or international agreements to which the Philippines is a signatory effectively subjects the supply of such services to 0% rate.

Petitioner's exemption from VAT under Section 108 (B) (3) of R.A. No. 8424 has been thoroughly and extensively discussed in *Commissioner of Internal Revenue v. Acesite (Philippines) Hotel Corporation.* Acesite was the owner and operator of the Holiday Inn Manila Pavilion Hotel. It leased a portion of the hotel's premises to PAGCOR. It incurred VAT amounting to ₱30,152,892.02 from its rental income and sale of food and beverages to PAGCOR from January 1996 to April 1997. Acesite tried to shift the said taxes to PAGCOR by incorporating it in the amount assessed to PAGCOR. However, PAGCOR refused to pay the taxes because of its tax-exempt status. PAGCOR paid only the amount due to Acesite minus VAT in the sum of ₱30,152,892.02. Acesite paid VAT in the amount of ₱30,152,892.02 to the Commissioner of Internal Revenue, fearing the legal consequences of its non-payment. In May 1998, Acesite

sought the refund of the amount it paid as VAT on the ground that its transaction with PAGCOR was subject to zero rate as it was rendered to a tax-exempt entity. The Court ruled that PAGCOR and Acesite were both exempt from paying VAT, thus:

x x x x x x x x x

PAGCOR is exempt from payment of indirect taxes

It is undisputed that P.D. 1869, the charter creating PAGCOR, grants the latter an exemption from the payment of taxes. Section 13 of P.D. 1869 pertinently provides:

Sec. 13. *Exemptions.* —

x x x x x x x x x

(2) *Income and other taxes.* — (a) Franchise Holder: No tax of any kind or form, income or otherwise, as well as fees, charges or levies of whatever nature, whether National or Local, shall be assessed and collected under this Franchise from the Corporation; nor shall any form of tax or charge attach in any way to the earnings of the Corporation, except a Franchise Tax of five (5%) percent of the gross revenue or earnings derived by the Corporation from its operation under this Franchise. Such tax shall be due and payable quarterly to the National Government and shall be in lieu of all kinds of taxes, levies, fees or assessments of any kind, nature or description, levied, established or collected by any municipal, provincial, or national government authority.

(b) *Others*: The exemptions herein granted for earnings derived from the operations conducted under the franchise specifically from the payment of any tax, income or otherwise, as well as any form of charges, fees or levies, shall inure to the benefit of and extend to corporation(s), association(s), agency(ies), or individual(s) with whom the Corporation or operator has any contractual relationship in connection with the operations of the casino(s) authorized to be conducted under this Franchise and to those receiving compensation or other remuneration from the Corporation or operator as a result of essential facilities furnished and/or technical services rendered to the Corporation or operator.

Petitioner contends that the above tax exemption refers only to PAGCOR's direct tax liability and not to indirect taxes, like the VAT.

We disagree.

A close scrutiny of the above provisos clearly gives PAGCOR a blanket exemption to taxes with no distinction on whether the taxes are direct or indirect. We are one with the CA ruling that PAGCOR is also exempt from indirect taxes, like VAT, as follows:

> Under the above provision [Section 13 (2) (b) of P.D. 1869], the term "Corporation" or operator refers to PAGCOR. Although the law does not specifically mention PAGCOR's exemption from indirect taxes, **PAGCOR is undoubtedly exempt from such taxes because the law exempts from taxes persons or entities contracting with PAGCOR in casino operations**. Although, differently worded, the provision clearly exempts PAGCOR from indirect taxes. **In fact, it goes one step further by granting tax exempt status to persons dealing with PAGCOR in casino operations**. The unmistakable conclusion is that PAGCOR is not liable for the ₱30,152,892.02 VAT and neither is Acesite as the latter is effectively subject to zero percent rate under Sec. 108 B (3), R.A. 8424. (Emphasis supplied.)

Indeed, by extending the exemption to entities or individuals dealing with PAGCOR, the legislature clearly granted exemption also from indirect taxes. It must be noted that the indirect tax of VAT, as in the instant case, can be shifted or passed to the buyer, transferee, or lessee of the goods, properties, or services subject to VAT. **Thus, by extending the tax exemption to entities or individuals dealing with PAGCOR in casino operations, it is exempting PAGCOR from being liable to indirect taxes**.

The manner of charging VAT does not make PAGCOR liable to said tax.

It is true that VAT can either be incorporated in the value of the goods, properties, or services sold or leased, in which case it is computed as 1/11 of such value, or charged as an additional 10% to the value. Verily, the seller or lessor has the

option to follow either way in charging its clients and customer. In the instant case, Acesite followed the latter method, that is, charging an additional 10% of the gross sales and rentals. Be that as it may, the use of either method, and in particular, the first method, does not denigrate the fact that PAGCOR is exempt from an indirect tax, like VAT.

VAT exemption extends to Acesite

Thus, while it was proper for PAGCOR not to pay the 10% VAT charged by Acesite, the latter is not liable for the payment of it as it is exempt in this particular transaction by operation of law to pay the indirect tax. Such exemption falls within the former Section 102 (b) (3) of the 1977 Tax Code, as amended (**now Sec. 108 [b] [3] of R.A. 8424**), which provides:

> Section 102. *Value-added tax on sale of services.* — (a) Rate and base of tax — There shall be levied, assessed and collected, a value-added tax equivalent to 10% of gross receipts derived by any person engaged in the sale of services x x x; Provided, that the following services performed in the Philippines by VAT-registered persons shall be subject to 0%.
>
> x x x x x x x x x
>
> (3) **Services rendered to persons or entities whose exemption under special laws** or international agreements to which the Philippines is a signatory effectively subjects the supply of such services to zero (0%) rate (emphasis supplied).

The rationale for the exemption from indirect taxes provided for in P.D. 1869 and the extension of such exemption to entities or individuals dealing with PAGCOR in casino operations are best elucidated from the 1987 case of *Commissioner of Internal Revenue v. John Gotamco & Sons, Inc*., where the absolute tax exemption of the World Health Organization (WHO) upon an international agreement was upheld. We held in said case that the exemption of contractee WHO should be implemented to mean that the entity or person exempt is the contractor itself who constructed the building owned by contractee WHO, and such does not violate the rule that tax exemptions are personal because the **manifest intention of the agreement is to exempt the contractor so that no contractor's tax may be shifted to**

> **the contractee WHO. Thus, the proviso in P.D. 1869, extending the exemption to entities or individuals dealing with PAGCOR in casino operations, is clearly to proscribe any indirect tax, like VAT, that may be shifted to PAGCOR**.[68]
> (Additional emphasis supplied; citations omitted)

The CIR, however, argues that the Court's ruling in *Acesite* does not apply to this case because *Acesite* was based on the old Tax Code (1977 NIRC); while the assessments being made in the present case is in accordance with the 1997 NIRC, as amended by RA No. 9337.

The CIR's contention is untenable.

In the same PAGCOR case, the Court explained that while the basis of PAGCOR's exemption in *Acesite* was Section 102(b) of the 1977 NIRC, said provision was retained in the 1997 NIRC, as amended by RA No. 9337. Hence, the legislative intent is for PAGCOR to remain exempt from VAT even with the enactment of RA No. 9337. The CTA therefore was correct in cancelling the deficiency VAT assessments issued against PAGCOR for lack of legal basis.

WHEREFORE, in light of the foregoing considerations, the petition filed by the Commissioner of Internal Revenue in G.R. Nos. 210704 & 210725 is hereby **DENIED**; while the petition filed by the Philippine Amusement and Gaming Corporation in G.R. Nos. 210689-90 is **PARTLY GRANTED**. The Decision dated July 23, 2013 and the Resolution dated December 18, 2013 of the CTA *En Banc* in CTA EB Case Nos. 868 and 869 are hereby **AFFIRMED** with **MODIFICATION** that the assessments representing deficiency income tax in so far as it assessed the Philippine Amusement and Gaming Corporation for deficiency income tax, including surcharges and interest, on its income derived from gaming operations for taxable years 2005 and 2006, are hereby **CANCELLED** and **SET ASIDE**. The Philippine Amusement and Gaming Corporation is only liable to pay the deficiency income tax, including surcharges and interests,

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[68] *Id.* at 658-662.

on its income derived from other related activities for taxable years 2005 and 2006, and the assessed deficiency fringe benefit taxes, including surcharges and interests, for the same taxable years.

Let this case be **REMANDED** to the Court of Tax Appeals for the determination of the final amount to be paid by the Philippine Amusement and Gaming Corporation.

SO ORDERED.

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

Reyes, Jr., J., on leave.

FIRST DIVISION

[G.R. No. 212904. November 22, 2017]

YOLANDA VILLANUEVA-ONG, *petitioner, vs.* **JUAN PONCE ENRILE,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; PLEADINGS AND PRACTICES; COUNTERCLAIMS; NATURE AND KINDS THEREOF, EXPLAINED.— The nature and kinds of counterclaims are well-explained in jurisprudence. In *Alba, Jr. v. Malapajo*, the Court explained: [C]ounterclaim is any claim which a defending party may have against an opposing party. A compulsory counterclaim is one which, being cognizable by the regular courts of justice, 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. Such a counterclaim must be within the jurisdiction of the court both as to the amount and the nature thereof, except that in an original action before the Regional Trial Court, necessarily connected with the subject matter of

the opposing party's claim or even where there is such a connection, the Court has no jurisdiction to entertain the claim or it requires for adjudication the presence of third persons over whom the court acquire jurisdiction. A compulsory counterclaim is barred if not set up in the same action. "A counterclaim is permissive if it does not arise out of or is not necessarily connected with the subject matter of the opposing party's claim. It is essentially an independent claim that may be filed separately in another case." Determination of the nature of counterclaim is relevant for purposes of compliance to the requirements of initiatory pleadings. In order for the court to acquire jurisdiction, permissive counterclaims require payment of docket fees, while compulsory counterclaims do not.

2. ID.; ID.; ID.; COUNTERCLAIM; TEST TO DETERMINE NATURE THEREOF; PETITIONER'S COUNTERCLAIMS ARE COMPULSORY IN NATURE; COMPLIANCE WITH THE REQUIREMENTS FOR INITIATORY PLEADINGS NOT REQUIRED.— Jurisprudence has laid down tests in order to determine the nature of a counterclaim, to wit: (a) Are the issues of fact and law raised by the claim and the counterclaim largely the same? (b) Would *res judicata* bar a subsequent suit on defendants' claims, absent the compulsory counterclaim rule? (c) Will substantially the same evidence support or refute plaintiffs' claim as well as the defendants' counterclaim? and (d) Is there any logical relation between the claim and the counterclaim[?] x x x [A positive answer to all four questions would indicate that the counterclaim is compulsory]. In this case, the complaint filed by respondent for damages arose from the alleged malicious publication written by petitioner, hence central to the resolution of the case is petitioner's malice, or specifically that the libelous statement must be shown to have been written or published with the knowledge that they are false or in reckless disregard of whether they are false or not. Meanwhile, petitioner's counterclaim presupposes bad faith or malice on the part of respondent in instituting the complaint for damages. In the allegations supporting her counterclaims, it was alleged that respondent's complaint was filed merely to harass or humiliate her. Such allegations are founded on the theory of malicious prosecution. Traditionally, the term malicious prosecution has been associated with unfounded criminal actions, jurisprudence has also recognized malicious prosecution to include baseless civil suits intended to vex and humiliate the

defendant despite the absence of a cause of action or probable cause. In this case, while it can be conceded that petitioner can validly interpose a claim based on malicious prosecution, the question still remains as to the nature of her counterclaim, and the consequent obligation to comply with the requirements of initiatory pleadings. *We find that petitioners claims are compulsory, and hence should be resolved along with the civil complaint filed by respondent, without the necessity of complying with the requirements for initiatory pleadings.*

3. ID.; ID.; ID.; ID.; A COUNTERCLAIM PURELY FOR DAMAGES AND ATTORNEY'S FEES BY REASON OF THE UNFOUNDED SUIT FILED BY THE RESPONDENT IS A COMPULSORY COUNTERCLAIM WHICH MUST BE PLEADED IN THE SAME ACTION, OTHERWISE, IT IS BARRED.— Indeed, a perfunctory reading of respondent's allegations in support of her counterclaims refers to incidental facts or issues related to her counterclaim against petitioner. She alleges that respondent unduly singled her out, and is actually violating her legal and constitutional rights. However, stripped of the aforesaid niceties, it is at once apparent that petitioner essentially argues that respondent's suit is unfounded and is merely instituted to harass and vex her. A counterclaim purely for damages and attorney's fees by reason of the unfounded suit filed by the respondent, has long been settled as falling under the classification of compulsory counterclaim and it must be pleaded in the same action, otherwise, it is barred. In *Lafarge Cement Phil., Inc. v. Continental Cement Corp.* citing *Tiu Po, et al. v. Hon. Bautista, et al.*, this Court ruled that counterclaims seeking moral, actual and exemplary damages and attorneys fees against the respondent on account of their malicious and unfounded complaint was compulsory.

4. ID.; ID.; ID.; ID.; COMPULSORY COUNTERCLAIM; THE COUNTERCLAIM IS SO INTERTWINED WITH THE MAIN CASE THAT IT IS INCAPABLE OF PROCEEDING INDEPENDENTLY.— [T]he counterclaims, set up by petitioner arises from the filing of respondent's complaint. "The counterclaim is so intertwined with the main case that it is incapable of proceeding independently." We find that the evidence supporting respondent's cause that malice attended in the publication of the article would necessarily negate petitioner's counterclaim for damages premised on the malicious and baseless suit filed by respondent. x x x. Petitioner's

counterclaims refer to the consequences brought about by respondent's act of filing the complaint for damages.

5. ID.; ID.; ID.; ID.; THE MENTION OF THE CIVIL CODE PROVISION ON ABUSE OF RIGHTS DOES NOT DILUTE THE COMPULSORY NATURE OF THE COUNTERCLAIMS. — Petitioner's allegation citing Article 32 of the Civil Code do not dilute the compulsory nature of her counterclaims. In *Alday v. FGU Insurance Corporation*, this Court found the x x x allegation in therein defendant's counterclaim to be permissive, despite mention of the civil code provision on abuse of rights x x x.

6. ID.; ID.; ID.; ID.; DOCKET FEES ARE NOT REQUIRED TO BE PAID IN COMPULSORY COUNTERCLAIMS.— Neither should her counterclaims be dismissed pursuant to this Court's ruling in *Korea Technologies Co. Ltd. v. Hon. Lerma, et al.*, which held that "effective August 16, 2004 under Section 7, Rule 141, as amended by A.M. No. 04-2-04-SC, docket fees are now required to be paid in compulsory counterclaim or cross-claims." Note must be taken of OCA Circular No. 96-2009 entitled "*Docket Fees For Compulsory Counterclaims*," dated August 13, 2009, where it was clarified that the rule on imposition of filing fees on compulsory counterclaims has been suspended. Such suspension remains in force up to this day.

APPEARANCES OF COUNSEL

Jose Manuel I. Diokno for petitioner.
Ponce Enrile Reyes & Manalastas for respondent.

D E C I S I O N

TIJAM, *J.*:

Before Us is a Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Court, assailing the Decision[2] dated March 4,

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[1] *Rollo*, pp. 43-60.

[2] Penned by Associate Justice Celia C. Librea-Leagogo, concurred in by Associate Justices Franchito N. Diamante and Zenaida T. Galapate-Laguilles; *id.* at 64-75.

2014 and Resolution[3] dated June 9, 2014 of the Court of Appeals (CA) in CA-G.R. SP No. 132034.

The Facts

On December 4, 2012, Juan Ponce Enrile (respondent) filed a civil Complaint[4] for damages against Yolanda Villanueva-Ong (petitioner) for libel before the Regional Trial Court (RTC) of Pasay City, Branch 118, in Civil Case No. R-PSY-12-12031-CV. The pertinent portions of the complaint are as follows:

> 2.1 On 16 October 2012, a libelous article entitled "Like father like son?" was published in page 16, Opinion Section of the Philippine Star. The article was authored by [petitioner]. x x x
>
> 2.2 The article characterizes [respondent] as a liar, fraud, and manipulator. It accuses [respondent] of attempting to "revise history" with a devious purpose of enticing the electorate to support his only son, Juan Castañer Ponce Enrile, Jr., (popularly known as Jack Enrile), an incumbent Congressman in the province of Cagayan and a candidate in the upcoming senatorial elections. [Petitioner], instead of giving fair comments on [respondent] as public official, deliberately focuses on attacking his character with false and defamatory accusations and intrigues affecting his family and personal life.
>
> 2.3 The pertinent portions of the libelous article that characterizes [respondent] as a liar, fraud, and manipulator are as follows:
>
> > "Just when we were about to forgive-and-forget [respondent's] checkered past, he himself reminded us of what a wily, shifty chameleon he truly and naturally is.
> >
> > x x x x x x x x x
> >
> > In *Juan Ponce Enrile: A Memoir,* and bio-documentary *'Johnny'* that aired in ABS-CBN-he recants his previous recantation of the assasination attempt on him, which Marcos used as one more reason to justify Martial Law. x x x Did he expect national amnesia to afflict Filipinos who know the truth?"
> >
> > x x x x x x x x x

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[3] *Id*. at 78-79.

[4] *Id*. at 82-89.

"In his attempt to leave an acceptable legacy for posterity and bequeath a Senate seat for junior, the nonagenarian is sanitizing his recollections instead of asking for absolution. Stem cell therapy can deter dementia but it cannot regenerate an innocent man."

x x x x x x x x x

"We are being wooed to perpetuate the 40-years- running Enrile saga. Every night we should pray: *Dear God, Make all who want our vote, be the men we want them to be*."

2.4 The libelous article's opening sentence alone "Just when we were about to forgive-and-forget [respondent's] checkered past, he himself reminded us of what a wily, shifty chameleon he truly and naturally is" already indicates [petitioner's] malicious objective: to discredit the integrity of [respondent] and degrade his accomplishments and success as an elected public official. Read with the succeeding paragraphs cited above, the libelous article clearly depicts [respondent] as a liar and a hoax who deceives the public to believe that he is an honorable and respectable public figure.

2.5 Worse, the libelous article insinuates that [respondent] is a criminal who committed the crime of smuggling of cars. Thus:

"Another misdeed associated with father-and-son is the alleged rampant car smuggling in Port Irene. In 1995, the Cagayan Export Zone Authority (CEZA) was established through Republic Act 7922, authored by Cagayan native [respondent]. x x x Despite EO156 issued in 2008, which prohibited such importations, smuggling continued. Enrile countered that CEZA is not covered by the prohibition because the importers pay the correct duties and taxes. Ford reportedly pulled out its manufacturing business to protest the nefarious activities in CEZA."

2.6 These statements clearly tend to cause dishonor, discredit, disrespect, and contempt of [respondent] by characterizing him as a liar, fraud, manipulator, criminal and smuggler of cars.

2.7 At the time of publication of the libelous article, [respondent] is a public officer holding office in Pasay City."[5] (Underlining omitted and italics in the original)

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[5] *Id*. at 83-85.

On January 17, 2013, petitioner filed an Answer with Compulsory Counterclaims,[6] the pertinent portion of which, states:

> COMPULSORY COUNTERCLAIMS
> First Compulsory Counterclaim
>
> 2.4 [Petitioner] reiterates and incorporates by reference each and every allegation made in each and every preceding paragraph and sub-paragraph of this Answer.
>
> 25. In filing this lawsuit, [respondent] did not implead the editor, publisher, and newspaper that published [petitioner's] column (The Philippine Star), but only [petitioner].
>
> 26. [Respondent's] **unfounded** prosecution of [petitioner], coupled with the singling out of [petitioner], constitutes harassment, malice and evident bad faith. It is meant to intimidate and silence [petitioner], and to place a chilling effect on her rights (and the rights of other journalists) to express themselves and write freely about [respondent's] public conduct on matters of public concern.
>
> 27. In filing the Complaint, under the facts and circumstances set out above, [respondent] acted with malice, evident bad faith, and in a wanton, reckless, offensive and malevolent manner, and has caused [petitioner] damages consisting of x x x:
>
> x x x x x x x x x
>
> Second Compulsory Counterclaim
>
> 30. [Petitioner], as a Filipino citizen and journalist, has a constitutional right to speak out, write and express her opinion and make fair comments on matters of public interest, including those involving the public conduct of [respondent] as a public officer and public figure and his fitness for public office.
>
> 31. In singling out [petitioner] and suing her alone for libel, [respondent] acted with malice and evident bad faith. In so doing, [respondent] is using the strong arm of the law to intimidate, cow and silence [petitioner] and other journalists,

[6] *Id*. at 91-106.

and to neutralize and place a chilling effect on their ability to speak and write freely about [respondent's] public conduct on matters of public concern.

32. Under Article 32 of the Civil Code, a public officer who directly indirectly obstructs, defeats, violates or in any manner impedes or impairs a person's freedom of speech and freedom to write for the press is liable in actual, moral and exemplary damages, as well as attorney's fees and costs.[7] (Emphasis ours)

The respondent filed a Motion to Dismiss[8] (Re: Defendant's permissive counterclaims) which argued that petitioner's counterclaims are actually permissive, and hence should have complied with the requirements of an initiatory pleading, specifically the payment of docket fees and certification against forum shopping. Respondent prayed for dismissal of petitioner's counterclaims for her failure to comply with such requirements.

Meanwhile, petitioner opposed respondent's motion arguing that her counterclaims are both compulsory in nature, since both counterclaims arose from the filing of respondent's complaint.[9]

Ruling of the RTC

The RTC, in its Order[10] dated April 26, 2013, gave petitioner 15 days from receipt of the said order, to pay the appropriate docket fees, otherwise, such counterclaims shall be dismissed. Despite petitioner's motion for reconsideration,[11] the RTC stood its ground, and affirmed its ruling in the Order[12] dated July 22, 2013.

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[7] *Id*. at 101-103.

[8] *Id*. at 108-116.

[9] *Id*. at 118-125.

[10] Rendered by Presiding Judge Rowena Nieves A. Tan; *id*. at 143-145.

[11] *Id*. at 127-133.

[12] *Id*. at 146-147.

Dissatisfied, petitioner filed a petition for *certiorari* with the CA.

Ruling of the CA

On March 4, 2014, the CA issued the assailed Decision,[13] the dispositive portion of which states:

WHEREFORE, premises considered, the Petition is **DENIED**. No pronouncement as to costs.

SO ORDERED.[14]

Hence this petition where petitioner argues that the CA erred in ruling that her counterclaims are permissive in nature. She contends that the same are compulsory, having arisen from respondent's filing of complaint in the court *a quo*.

In his Comment,[15] respondent maintains that petitioner's counterclaims are permissive in nature since they are based on different sources of obligations: petitioner's counterclaims are based on quasi-delict, while respondent's claim is based on delict.

Issue

Are petitioner's counterclaims compulsory or permissive in nature?

Ruling of the Court

The nature and kinds of counterclaims are well-explained in jurisprudence. In *Alba, Jr. v. Malapajo*,[16] the Court explained:

[C]ounterclaim is any claim which a defending party may have against an opposing party. A compulsory counterclaim is one which, being cognizable by the regular courts of justice, arises out of or is connected with the transaction or occurrence constituting the subject

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[13] *Id.* at 64-75.

[14] *Id.* at 73.

[15] *Id.* at 178-189.

[16] G.R. No. 198752, January 13, 2016, 780 SCRA 534.

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. Such a counterclaim must be within the jurisdiction of the court both as to the amount and the nature thereof, except that in an original action before the Regional Trial Court, necessarily connected with the subject matter of the opposing party's claim or even where there is such a connection, the Court has no jurisdiction to entertain the claim or it requires for adjudication the presence of third persons over whom the court acquire jurisdiction. A compulsory counterclaim is barred if not set up in the same action.[17]

"A counterclaim is permissive if it does not arise out of or is not necessarily connected with the subject matter of the opposing party's claim. It is essentially an independent claim that may be filed separately in another case."[18]

Determination of the nature of counterclaim is relevant for purposes of compliance to the requirements of initiatory pleadings. In order for the court to acquire jurisdiction, permissive counterclaims require payment of docket fees, while compulsory counterclaims do not.[19]

Jurisprudence has laid down tests in order to determine the nature of a counterclaim, to wit:

(a) Are the issues of fact and law raised by the claim and the counterclaim largely the same? (b) Would *res judicata* bar a subsequent suit on defendants' claims, absent the compulsory counterclaim rule? (c) Will substantially the same evidence support or refute plaintiffs' claim as well as the defendants' counterclaim? and (d) Is there any logical relation between the claim and the counterclaim[?] x x x [A positive answer to all four questions would indicate that the counterclaim is compulsory].[20]

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[17] *Id.* at 541-542.

[18] *Id.* at 542.

[19] See *Elizabeth Sy-Vargas v. The Estate of Rolando Ogsos, Sr. and Rolando Ogsos, Jr.*, G.R. No. 221062, October 5, 2016.

[20] *Id.*, citing *Spouses Mendiola v. CA*, 691 Phil. 244 (2012).

In this case, the complaint filed by respondent for damages arose from the alleged malicious publication written by petitioner, hence central to the resolution of the case is petitioner's malice, or specifically that the libelous statement must be shown to have been written or published with the knowledge that they are false or in reckless disregard of whether they are false or not.[21]

Meanwhile, petitioner's counterclaim presupposes bad faith or malice on the part of respondent in instituting the complaint for damages. In the allegations supporting her counterclaims, it was alleged that respondent's complaint was filed merely to harass or humiliate her.

Such allegations are founded on the theory of malicious prosecution.

Traditionally, the term malicious prosecution has been associated with unfounded criminal actions, jurisprudence has also recognized malicious prosecution to include baseless civil suits intended to vex and humiliate the defendant despite the absence of a cause of action or probable cause.[22]

In this case, while it can be conceded that petitioner can validly interpose a claim based on malicious prosecution, the question still remains as to the nature of her counterclaim, and the consequent obligation to comply with the requirements of initiatory pleadings.

We find that petitioner's claims are compulsory, and hence should be resolved along with the civil complaint filed by respondent, without the necessity of complying with the requirements for initiatory pleadings.

Indeed, a perfunctory reading of respondent's allegations in support of her counterclaims refers to incidental facts or issues related to her counterclaim against petitioner. She alleges that

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[21] *Villanueva v. Phil. Daily Inquirer, Inc., et al.*, 605 Phil. 926, 940 (2009).

[22] *Magbanua v. Junsay*, 544 Phil. 349, 364 (2007); *Tiongco v. Atty. Deguma*, 375 Phil. 978, 991 (1999).

respondent unduly singled her out, and is actually violating her legal and constitutional rights.

However, stripped of the aforesaid niceties, it is at once apparent that petitioner essentially argues that respondent's suit is unfounded and is merely instituted to harass and vex her.

A counterclaim purely for damages and attorneys fees by reason of the unfounded suit filed by the respondent, has long been settled as falling under the classification of compulsory counterclaim and it must be pleaded in the same action, otherwise, it is barred.[23] In *Lafarge Cement Phil. Inc. v. Continental Cement Corp.*,[24] citing *Tiu Po, et al. v. Hon. Bautista, et al.*,[25] this Court ruled that counterclaims seeking moral, actual and exemplary damages and attorneys fees against the respondent on account of their malicious and unfounded complaint was compulsory.[26]

In this case, the counterclaims, set up by petitioner arises from the filing of respondent's complaint. "The counterclaim is so intertwined with the main case that it is incapable of proceeding independently."[27] We find that the evidence supporting respondent's cause that malice attended in the publication of the article would necessarily negate petitioner's counterclaim for damages premised on the malicious and baseless suit filed by respondent.

Bungcayao, Sr. v. Fort Ilocandia Property Holdings and Development Corp.[28] cited by respondent, is starkly different from the factual circumstances obtaining at the case at bar. In that case, petitioner Manuel C. Bungcayao, Sr. sought the annulment of a Deed of Assignment, Release, Waiver and

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[23] *Perkin Elmer Singapore Pte Ltd. v. Dakila Trading Corp*., 556 Phil. 822, 847-848 (2007).

[24] 486 Phil. 123 (2004).

[25] 191 Phil. 17 (1981).

[26] *Supra* note 24, at 136.

[27] *Cruz-Agana v. Judge Santiago-Lagman*, 495 Phil. 188, 194 (2005).

[28] 632 Phil. 391 (2010).

Quitclaim, on the ground of the lack of authority of petitioner's son to represent him thereon. For their part, respondent prayed, as counterclaims to the complaint, that petitioner be required to: 1) return the amount of ₱400,000 from respondent, 2) to vacate the portion of the respondent's property he (petitioner) was occupying, and 3) to pay damages because his (petitioner) continued refusal to vacate the property caused tremendous delay in the planned implementation of Fort Ilocandias expansion projects. In that case,We ruled that the recovery of possession of the property is a permissive counterclaim, while being an offshoot of the basic transaction between the parties, will not be barred if not set up in the answer to the complaint in the same case. This is because the title of respondent to the disputed property therein was actually recognized by the administrative authorities. Necessarily, respondent will not be precluded from asserting its right of ownership over the land occupied by petitioner in a separate proceeding. In other words, respondent's right therein can be enforced separately and is distinct from the legal consequences of the Deed of Assignment, Release, Waiver and Quitclaim executed between the parties therein.

The same, however, does not obtain in the instant case. Petitioner's counterclaims refer to the consequences brought about by respondent's act of filing the complaint for damages.

Petitioner's allegation citing Article 32 of the Civil Code do not dilute the compulsory nature of her counterclaims. In *Alday v. FGU Insurance Corporation*,[29] this Court found the following allegation in therein defendant's counterclaim to be permissive, despite mention of the civil code provision on abuse of rights, to wit:

(b) the minimum amount of ₱500,000.00 plus the maximum allowable interest representing defendant's accumulated premium reserve for 1985 and previous years, which FGU has unjustifiably failed to remit to defendant despite repeated demands in gross violation of their Special Agent's Contract and **in contravention of the principle of law that "every person must, in the exercise of his rights and in**

[29] 402 Phil. 962 (2001).

the performance of his duties, act with justice, give everyone his due, and observe honesty and good faith."[30] (Emphasis ours)

Considering the foregoing, petitioner's counterclaims should not be prejudiced for non-compliance with the procedural requirements governing initiatory pleadings.

Neither should her counterclaims be dismissed pursuant to this Court's ruling in *Korea Technologies Co. Ltd. v. Hon. Lerma, et al.*,[31] which held that "effective August 16, 2004 under Section 7, Rule 141, as amended by A.M. No. 04-2-04-SC, docket fees are now required to be paid in compulsory counterclaim or cross-claims."[32] Note must be taken of OCA Circular No. 96-2009 entitled "*Docket Fees For Compulsory Counterclaims*," dated August 13, 2009, where it was clarified that the rule on imposition of filing fees on compulsory counterclaims has been suspended. Such suspension remains in force up to this day.

WHEREFORE, premises considered, We resolve to **GRANT** the petition. The Decision dated March 4, 2014 and Resolution dated June 9, 2014 of the Court of Appeals in CA-G.R. SP No. 132034 are hereby **REVERSED and SET ASIDE.**

SO ORDERED.

Sereno, C.J. (Chairperson), Leonardo-de Castro, del Castillo, and *Jardeleza, JJ.,* concur.

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[30] *Id*. at 973.

[31] 566 Phil. 1 (2008).

[32] *Id*. at 20.

SECOND DIVISION

[G.R. No. 218570. November 22, 2017]

BEN MANANGAN, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. CRIMINAL LAW; CONSPIRACY; IMPLIED CONSPIRACY; MUST BE PROVEN BEYOND REASONABLE DOUBT AS THE CRIME ITSELF AND MUST NOT BE MERELY BASED ON THE TRIAL COURT'S "HONEST BELIEF"; CASE AT BAR.— "Honest belief" is a term rarely used in criminal cases. In *Philippine National Bank v. De Jesus*, "honest belief" was loosely defined as "the absence of malice and the absence of design to defraud or to seek an unconscionable advantage." A trial court's "honest belief" cannot be the basis of a finding of implied conspiracy because a finding of conspiracy must be supported by evidence constituting proof beyond reasonable doubt. In *People v. Bokingo*, this Court ruled that "conspiracy must be established with the same quantum of proof as the crime itself and must be shown as clearly as the commission of the crime." We hold that a finding of implied conspiracy must be proven beyond reasonable doubt, and must not be merely based on the trial court's "honest belief." The use of the term "honest belief" in the RTC's Decision did not refer to the quantum of proof used to prove a finding of implied conspiracy. In fact, the RTC clarified in the next paragraph that it was "convinced beyond moral certainty that conspiracy was shown."

2. ID.; ID.; ID.; WHEN PRESENT; ATTENDANCE OF CONSPIRACY IS PRESUMED IN THE CRIME OF ROBBERY BY A BAND.— An implied conspiracy exists when two or more persons are shown to have aimed their acts towards the accomplishment of the same unlawful object, each doing a part so that their combined acts, though apparently independent, were in fact connected and cooperative. Their acts must indicate a closeness of personal association and a concurrence of sentiment. It is proved not by direct evidence or mere conjectures, but through the mode and manner of the commission of the

offense, or from the acts of the accused before, during, and after the commission of the crime indubitably pointing to a joint purpose, a concert of action, and a community of interest. When the RTC and the Court of Appeals found, through the testimonies of the two eyewitnesses, that the crime of robbery by a band was committed, it meant that implied conspiracy existed. In *People v. Peralta*, this Court held that the law presumes the attendance of conspiracy in the crime of robbery by a band such that "any member of a band who is present at the commission of a robbery by the band, shall be punished as principal of any of the assaults committed by the band, unless it is shown that he attempted to prevent the same." Thus, conspiracy need not even be proven as long as the existence of a band is clearly established.

3. REMEDIAL LAW; EVIDENCE; DIRECT EVIDENCE REFERS TO EVIDENCE WHICH PROVES THE EXISTENCE OF A FACT IN ISSUE WITHOUT INFERENCE OR PRESUMPTION; DIRECT EVIDENCE DISTINGUISHED FROM CIRCUMSTANTIAL EVIDENCE; CASE AT BAR.— Direct evidence is different from circumstantial evidence. Direct evidence is evidence which, if believed, proves the existence of a fact in issue without inference or presumption. It is evidence from a witness who actually saw, heard, or touched the subject of questioning. On the other hand, circumstantial evidence is evidence that "indirectly proves a fact in issue through an inference which the factfinder draws from the evidence established." In this case, the testimonies of the two eyewitnesses constitute direct evidence that proved the *corpus delicti* of the crime of robbery by a band because both were actually at the scene of the crime. They saw with their own eyes that a group of armed and masked men led by the unmasked petitioner entered their house, ate their food, robbed them of Fifty Thousand Pesos (₱50,000.00), and left.

4. CRIMINAL LAW; REVISED PENAL CODE; ROBBERY BY A BAND; ELEMENTS; CASE AT BAR.— The prosecution proved the *corpus delicti* because all of the elements of the crime of robbery by a band were proven beyond reasonable doubt. It was proven that petitioner, a member of the band, was liable for his acts because the following requisites concurred: *First*, petitioner was proven to be a member of the band. Article 296 of the Revised Penal Code defines a "band" as a group of

more than three armed malefactors who take part in the commission of a robbery. In this case, petitioner was proven to have led in entering the complainant's house five other men who were all armed with long or short firearms when the robbery was committed. *Second*, petitioner was proven to be present at the commission of the robbery by the band because of the positive identification by the two eyewitnesses. x x x *Third*, the other members of the band committed an assault which is the use of force and threats against the victims to force them to part with their personal property, money amounting to Fifty Thousand Pesos (₱50,000.00). x x x *Last*, the petitioner did not prevent the assault. It was clear from the allegations and testimonies of the eyewitnesses that petitioner did not do anything to stop the other armed and masked men from committing the robbery.

5. REMEDIAL LAW; CRIMINAL PROCEDURE; MOTION FOR NEW TRIAL; NEWLY DISCOVERED EVIDENCE; REQUISITES; NOT ESTABLISHED IN CASE AT BAR.— Under paragraph 2, Section 2, Rule 121 of the Rules of Court, one ground for a Motion for New Trial is "that new and material evidence has been discovered which the accused would not with reasonable diligence have discovered and produced at the trial and which if introduced and admitted would probably change the judgement." In *Velasco v. Ortiz*, the Court summarized the requisites for a Motion for New Trial grounded on newly discovered evidence. These are: (a) the evidence had been discovered after trial; (b) the evidence could not have been discovered and produced during trial even with the exercise of reasonable diligence; and (c) the evidence is material and not merely corroborative, cumulative or impeaching, and is of such weight that, if admitted, would probably alter the result. x x x Petitioner's Motion for New Trial was correctly denied by the RTC because the statements sought to be presented by the six persons were already available before and during the trial. The statements merely corroborate petitioner's alibi and defense, which will not alter the result of the trial. Most importantly, the statements of these six persons could have been discovered, accessed, and produced during the trial with the exercise of reasonable diligence because all six persons were living in the same barangay as petitioner. The offering party, petitioner in this case, failed to secure the statements of the additional six

persons not because petitioner had no means of knowing that the pieces of evidence existed, but because petitioner was not diligent from the beginning.

APPEARANCES OF COUNSEL

De Alban Law Office for petitioner.
Office of the Solicitor General for respondent.

D E C I S I O N

CARPIO, *J.*:

The Case

This petition for review on *certiorari*[1] under Rule 45 of the Rules of Court seeks to reverse the 20 May 2014 Decision[2] and the 1 June 2015 Resolution[3] of the Court of Appeals in CA-G.R. CR No. 33280 which affirmed with modification the 22 January 2010 Decision[4] of the Regional Trial Court (RTC) of Cabagan, Isabela, Branch 22.

The Charge

Criminal Case No. 22-1597, entitled *People of the Philippines v. Ben Manangan, John Doe, Peter Doe, Richard Doe, Paul Doe*, *and Albert Doe,* was filed against Ben Manangan (petitioner) for the crime of robbery by a band under Article 295 of the Revised Penal Code (RPC), committed as follows:

That on or about the 5th day of February, 2001, in the [M]unicipality of Tumauini, [P]rovince of Isabela, Philippines and within the jurisdiction of this Honorable Court, the accused Ben Manangan,

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[1] *Rollo*, pp. 3-16.

[2] *Id*. at 18-33. Penned by Associate Justice Michael P. Elbinias, with Associate Justices Isaias P. Dicdican and Victoria Isabel A. Paredes concurring.

[3] *Id*. at 35-36.

[4] *Id*. at 58-66. Penned by Judge Conrado F. Manauis.

together with John Doe, Peter Doe, Richard Doe, Paul Doe and Albert Doe, whose identities are still to be determined, conspiring, confederating together and helping one another, all armed with assorted firearms, with intent to gain and by means of force and intimidation against person, that is: by poking their firearms towards the persons of Ocampo U. Denna and members of his family including one Felix Denna and at gun point, did then and there, willfully, unlawfully and feloniously, take, steal and bring away cash money in the amount of ₱50,000.00, belonging to the said Ocampo U. Denna, against his will and consent, to the damage and prejudice of the said owner, in the aforesaid amount of ₱50,000.00.

CONTRARY TO LAW.[5]

Upon arraignment, petitioner pleaded not guilty.[6]

Version of Facts of the Prosecution

The RTC Decision narrated the prosecution's version of the facts as culled from the testimonies of two eyewitnesses, Jolita Denna and Fortunata Denna:

Jolita Denna told the Court [that] Ben Manangan, the herein accused, is the nephew of her husband, Ben being married to her husband's niece. She knows Ben since the time the latter married his wife. She positively identified Ben Manangan in open court.

On February 5, 2001 in the evening, she together with her daughter Jesusa Denna, her brother-in-law Mariano Denna, and Mariano's daughter Fortunata Denna were inside their house [in] San Vicente, Tamauini, Isabela. At around 7:30 o'clock in the evening of said date, her husband arrived. When she and her husband were about to sleep and after [turning] off the light, she heard somebody [call], "Uncle Ampoy, Uncle Ampoy." Ampoy, according to her, is her husband Ocampo Denna. She responded by saying to the caller, "Please wait, I will just put on the light." She lighted an improvised gas lamp and thereafter opened the door and saw Ben Manangan's face. However, Ben who was in front of the door, put off the light by blowing it. Thereafter, the armed group of about six (6), wearing

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[5] *Id*. at 18-19.

[6] *Id*. at 21.

masks (bonnets), instructed her to cook. She obliged. After cooking, they ate. After eating, three (3) of the armed group went to the house of his brother-in-law while the other three (3) remained. Then, the remaining three (3) wearing masks (bonnets) ask[ed] for their money by saying, "Hold up, hold up, iyawa nu y kwartu" which means "Give me your money." She and her husband replied to them, [saying] they [did] not have money. They angrily reacted by saying, "You are lying," at the same time letting them choose "Give your money or be killed?" Threatened and afraid, she told her husband to just give their money. Her husband refused but [Jolita] pleaded to him to give their money because of fear. Then, she told the armed men wearing mask[s] to wait. She went to get their money amounting to Fifty Thousand (₱50,000.00) Pesos of different denominations and gave it to them. Thereafter, the armed group left.

x x x x x x x x x

Fortunata Denna narrated to the Court [that] she knows Ben Manangan. On February 5, 2001 in the evening, she was in the house of her uncle Ocampo "Ampoy" Denna married to Jolita Denna [in] San Vicente, Tumauini, Isabela. When she, her aunt Jolita Denna and Jesusa Denna were about to sleep, someone called for her Uncle Ampoy and heard her aunt [say] "Ben." Therafter, her Aunt Jolita lighted a gas lamp. She saw what her aunt was doing because she was lying just opposite the door where her aunt was. Later, her Aunt Jolita opened the door and afterwhich, somebody put off the gas lamp. The distance between the place where she was lying and the door was only about a meter. Then, she heard [someone] in an [I]locano dialect [say], "Mabalin ti makipangan?" which means "Can we eat?" Her aunt responded by calling her child to bring the kettle. While her aunt Jolita and daughter Jesusa were cooking, and while the armed men were roaming around, she was able to identify Ben Manangan who was not wearing [a] mask while she [could not identify the others] because they were all wearing masks and jackets. Then, she went out to help her aunt cook. After the [food was] cooked, the armed [men] including Ben Manangan ate. After eating, one of the armed men announced, "Hold up, hold up." Ben Manangan was with them when the hold up was declared. With their announcement, she [cowered] in fear and was chilling. Later, she heard her Aunt Jolita [say], "We do not have money," which was seconded by her Uncle Ampoy. However, the armed men insisted that they have the money and told her uncle and aunt "Give your money or we will kill you all." Moments later, she heard her Aunt Jolita tell her husband Ampoy,

"We should give now our money." Thereafter, her aunt went inside the house, took the money and gave it to the armed persons by saying "Here is the money." Then, the armed men after receiving the money left.

x x x x x x x x x[7]

Version of Facts of the Defense

The RTC Decision also narrated the defense's version of the facts based on the testimony of petitioner, as follows:

Ben Manangan, the herein accused, narrated to the Court that he knows Jolita Denna, she being a neighbor. He [likewise knows] Fortunata Denna but [is] not too familiar [with her]. He denied [having] participated in robbing Jolita Denna on the night of February 5, 2001, he being inside his house [in] San Vicente, Tumauini, Isabela. Before 7:30 o'clock in the evening of said day, he was having a drinking session with his brother-in-law Johnny Mamauag. They stopped drinking at around 9:00 o'clock in the evening and slept. The following morning, he was taken by police officers and brought to the Tumauini Police Station. At the police station, he saw his Uncle Ampoy and Aunt Jolita.

The proffered testimony of Johnny Mamauag, to wit:

> "That Johnny Mamauag will corroborate the earlier testimony of the accused that on February 5, 2001 from 7:30 to 9:00 o'clock in the evening at the residence of the accused [in] San Vicente, Tumauini, Isabela, they were drinking together. That Johnny Mamauag left after drinking at about 9:00 o'clock in the evening."

was admitted by the Public Prosecutor (Order dated November 20, 2009).

x x x x x x x x x[8]

The Ruling of the RTC

In its Decision dated 22 January 2010, the RTC found petitioner guilty beyond reasonable doubt of the crime of robbery

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[7] *Id*. at 59-60.

[8] *Id*. at 60-61.

by a band and sentenced him to suffer the indeterminate prison term of six years of *prision correccional* as minimum to ten years of *prision mayor* as maximum period, and ordered petitioner to pay the private complainant the amount of Fifty Thousand Pesos (₱50,000.00).

Petitioner filed a Motion for New Trial[9] dated 15 February 2010, reiterating his innocence and showing evidence which could not have been found by petitioner during the first trial. Attached to the Motion is the Affidavit of Maria Manangan,[10] petitioner's wife.

The RTC denied petitioner's Motion for New Trial in its Resolution dated 26 February 2010.[11]

Petitioner appealed to the Court of Appeals.[12]

The Ruling of the Court of Appeals

In its Decision dated 20 May 2014, the Court of Appeals affirmed with modification the RTC Decision by reducing the penalty imposed by the RTC to the indeterminate penalty of four years and two months of *prision correccional* as minimum to ten years of *prision mayor* as maximum period. The Court of Appeals also found that the RTC was correct in ordering petitioner to indemnify private complainant the amount of Fifty Thousand Pesos (₱50,000.00) as the amount unlawfully taken from private complainant.

Petitioner sought reconsideration which the Court of Appeals denied in its Resolution[13] dated 1 June 2015.

Hence, this petition.

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[9] *Id*. at 67-71.

[10] *Id*. at 72-76.

[11] *Id*. at 84-85.

[12] *Id*. at 91-107.

[13] *Id*. at 35-36.

The Issues

Petitioner presents the following issues:

1. Whether or not the Court of Appeals gravely erred in affirming the decision of the RTC in finding, based on its "honest belief," that there was "implied conspiracy";

2. Whether or not the *corpus delicti* was proven beyond reasonable doubt by the prosecution; and

3. Whether or not the denial of the *Motion for New Trial* by the RTC was proper.[14]

The Ruling of the Court

The petition has no merit.

The quantum of proof required to prove implied conspiracy is proof beyond reasonable doubt.

Petitioner questions whether the RTC and the Court of Appeals were correct in finding that there was implied conspiracy in the commission of the crime of robbery by a band based merely on the RTC's "honest belief."

In its Decision dated 22 January 2010, the RTC found, based on its honest belief, that implied conspiracy existed in the crime of robbery by a band. It held that:

> Expressed conspiracy was not shown by the prosecution. It means that there is no evidence showing that the co-accused Does had an agreement with accused Ben Manangan to commit robbery and decided to commit it.
>
> **However, it is the honest belief of the Court that implied conspiracy exist[s].**[15] (Boldfacing and underscoring supplied)

However, in the same Decision, the RTC further held that it was convinced beyond moral certainty that conspiracy was shown. It held that:

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[14] *Id*. at 6.

[15] *Id*. at 65.

This being the factual milieu of the case, **the Court is convinced beyond moral certainty that conspiracy was shown**, hence, Ben is equally guilty with the others as a co-conspirator to the crime of robbery.[16] (Boldfacing and underscoring supplied)

"Honest belief" is a term rarely used in criminal cases. In *Philippine National Bank v. De Jesus*,[17] "honest belief" was loosely defined as "the absence of malice and the absence of design to defraud or to seek an unconscionable advantage."[18]

A trial court's "honest belief" cannot be the basis of a finding of implied conspiracy because a finding of conspiracy must be supported by evidence constituting proof beyond reasonable doubt.[19] In *People v. Bokingo*,[20] this Court ruled that "conspiracy must be established with the same quantum of proof as the crime itself and must be shown as clearly as the commission of the crime."[21]

We hold that a finding of implied conspiracy must be proven beyond reasonable doubt, and must not be merely based on the trial court's "honest belief." The use of the term "honest belief" in the RTC's Decision did not refer to the quantum of proof used to prove a finding of implied conspiracy. In fact, the RTC clarified in the next paragraph that it was "convinced beyond moral certainty that conspiracy was shown."

The real issue now is whether the RTC and the Court of Appeals were correct in finding beyond reasonable doubt proof of implied conspiracy.

Petitioner argues that there is no implied conspiracy between him and the other accused. He points out that eyewitnesses Jolita and Fortunata Denna testified that petitioner did not do

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[16] *Id*.

[17] 458 Phil. 454 (2003).

[18] *Id*. at 460.

[19] *People v. Gabatin,* 280 Phil. 246, 253 (1991).

[20] 671 Phil. 71 (2011).

[21] *Id*. at 89.

anything that may be considered conspiratorial since he merely stood outside the house and did not receive the amount of Fifty Thousand Pesos (₱50,000.00) himself. Petitioner further alleges that his mere presence at the scene of the crime does not imply conspiracy.

Petitioner's argument is unmeritorious.

An implied conspiracy exists when two or more persons are shown to have aimed their acts towards the accomplishment of the same unlawful object, each doing a part so that their combined acts, though apparently independent, were in fact connected and cooperative. Their acts must indicate a closeness of personal association and a concurrence of sentiment.[22] It is proved not by direct evidence or mere conjectures, but through the mode and manner of the commission of the offense, or from the acts of the accused before, during, and after the commission of the crime indubitably pointing to a joint purpose, a concert of action, and a community of interest.[23]

When the RTC and the Court of Appeals found, through the testimonies of the two eyewitnesses, that the crime of robbery by a band was committed, it meant that implied conspiracy existed. In *People v. Peralta*,[24] this Court held that the law presumes the attendance of conspiracy in the crime of robbery by a band such that "any member of a band who is present at the commission of a robbery by the band, shall be punished as principal of any of the assaults committed by the band, unless it is shown that he attempted to prevent the same."[25] Thus, conspiracy need not even be proven as long as the existence of a band is clearly established.

The* corpus delicti *was proven beyond reasonable doubt by the prosecution.

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[22] *People v. De Leon,* 608 Phil. 701, 718 (2009).

[23] *People v. Del Castillo,* 679 Phil. 233, 254 (2012).

[24] 134 Phil. 701 (1968).

[25] *Id.* at 721.

Petitioner defines *corpus delicti* as the body or substance of the crime, and in its primary sense, refers to the fact that a crime has actually been committed. As applied to a particular offense, it means the actual commission by someone of the particular crime charged.[26]

In the present case, petitioner alleges that the *corpus delicti* was not proven because "[petitioner's] participation in the supposed felonious act is based on lackadaisical application of '**circumstantial evidence**.'"[27] Petitioner claims that there was no concrete showing that the victims were in possession of the property or object-matter of the offense. Petitioner asserts that "it should have been x x x a cause for wonder how a lamp-lit house in a rural area could so casually hold such amount — huge even by middle-family standards."[28]

We disagree with petitioner. Contrary to petitioner's contention that the *corpus delicti* was not proven, the prosecution sufficiently established through **direct evidence** that the crime of robbery by a band was committed.

Direct evidence is different from circumstantial evidence. Direct evidence is evidence which, if believed, proves the existence of a fact in issue without inference or presumption.[29] It is evidence from a witness who actually saw, heard, or touched the subject of questioning. On the other hand, circumstantial evidence is evidence that "indirectly proves a fact in issue through an inference which the factfinder draws from the evidence established."[30]

In this case, the testimonies of the two eyewitnesses constitute direct evidence that proved the *corpus delicti* of the crime of robbery by a band because both were actually at the scene of

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[26] *Rollo,* p. 9.

[27] *Id*.

[28] *Id*. at 10.

[29] *State v. Famber,* 358 Mo. 288, 214 S.W.2d 40, 43[3] (1948).

[30] *People v. Matito,* 468 Phil. 14, 26 (2004).

the crime. They saw with their own eyes that a group of armed and masked men led by the unmasked petitioner entered their house, ate their food, robbed them of Fifty Thousand Pesos (₱50,000.00), and left.

The prosecution proved the *corpus delicti* because all of the elements of the crime of robbery by a band were proven beyond reasonable doubt. It was proven that petitioner, a member of the band, was liable for his acts because the following requisites concurred:[31]

First, petitioner was proven to be a member of the band. Article 296 of the Revised Penal Code defines a "band" as a group of more than three armed malefactors who take part in the commission of a robbery. In this case, petitioner was proven to have led in entering the complainant's house five other men who were all armed with long or short firearms when the robbery was committed.[32]

Second, petitioner was proven to be present at the commission of the robbery by the band because of the positive identification by the two eyewitnesses. Petitioner cannot raise the defense of alibi that he was drinking in his house with his brother-in-law and was afterwards sleeping in his house beside his wife and child at the time the crime happened. Such alibi is not entitled to much weight, even if such alibi was corroborated by his brother-in-law and his wife, because the positive identification by the two eyewitnesses still prevails.

Well-settled is the rule that the defense of alibi is inherently weak and cannot prevail over the positive identification of the

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[31] These requisites are based on the last paragraph of Article 296 of the Revised Penal Code which states that:

> ART. 296. *Definition of a band and penalty incurred by the members thereof.* — x x x.
>
> Any member of a band, who is present at the commission of a robbery by the band, shall be punished as principal of any of the assaults committed by the band, unless it be shown that he attempted to prevent the same.

[32] *Rollo,* p. 66.

accused by the prosecution witnesses, unless the accused shows that it was physically impossible for him to have been at the scene of the crime.[33]

In this case, it was physically possible for petitioner to be at the scene of the crime because petitioner and the spouses Denna were just neighbors, as alleged by the prosecution witnesses and petitioner himself. Petitioner's wife is also Ocampo's niece; thus, they are related by affinity.[34] The RTC and Court of Appeals aptly found that the eyewitnesses were familiar with him and knew him personally.[35]

Third, the other members of the band committed an assault which is the use of force and threats against the victims to force them to part with their personal property, money amounting to Fifty Thousand Pesos (₱50,000.00). The RTC found, to wit:

> Jolita Denna emphatically expressed to the Court that she handed their money to the group of the accused against her will and out of fear, due to the **actual and physical threat to them to be killed** because the armed men were then **poking their long and short firearms** at them.[36] (Emphasis supplied)

Last, the petitioner did not prevent the assault. It was clear from the allegations and testimonies of the eyewitnesses that petitioner did not do anything to stop the other armed and masked men from committing the robbery.

Petitioner is correct that to prove the *corpus delicti* of the crime of robbery by a band, the lawful possessor of the object-matter of the offense must be proven. However, petitioner cannot allege that the spouses Denna could not possibly be the lawful possessors of the Fifty Thousand Pesos (₱50,000.00) simply because of their living and economic conditions. They bear no legal relation to the *corpus delicti* of the crime of robbery by a band.

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[33] *People v. Feliciano, Jr.,* 734 Phil. 499, 532-533 (2014).

[34] *Rollo,* pp. 45-46, 48, 50, 93-94.

[35] *Id.* at 23, 64.

[36] *Id.* at 62.

Furthermore, the RTC found that the personal property subject of the instant case belongs to the spouses Denna. It held:

x x x [T]he taking by the accused and his armed companions of the ₱50,000.00 belonging to the Dennas is unlawful. When the armed men of which accused Ben Manangan was a member announced a hold up and telling the Dennas to give their money, they did it to force them to hand **their money as [the armed men did] not have any color of authority to ask for that personal property — [that] money** x x x.[37] (Emphasis supplied)

This Court has consistently held that the findings of the RTC are not generally disturbed by the appellate courts since the RTC is in a better position to pass on issues of credibility, having heard the witnesses themselves and observed their manner of testifying, unless it is shown that the RTC overlooked certain facts or circumstances that could affect the outcome of the case.[38]

The RTC's denial of petitioner's* Motion for New Trial *was proper.

In its Resolution dated 26 February 2010, the RTC denied petitioner's Motion for New Trial. The RTC held that:

The motion asserts that there is a need to grant a new trial in order for the defense to present additional witnesses.

x x x x x x x x x

It is the humble opinion of the court that witnesses desired to be presented by the defense are witness[es] [who] are available at the time of trial. In fact, these witnesses are living in the same Barangay as that of the accused. In short, the testimonies of said witnesses are not considered newly discovered evidence but forgotten evidence, hence, not a valid ground for the grant of a new trial.

Finally, even if these witnesses are allowed to testify, it will not materially affect the outcome of the judgement because the basis of the judgement is the positive identification and affirmative statements of two (2) eyewitnesses that accused was among the robbers who robbed the private complainant.

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[37] *Id*.

[38] *People v. Napalit,* 444 Phil. 793, 801-802 (2003).

WHEREFORE, in view of the foregoing, the motion is denied for lack of merit.[39]

We agree with the Resolution of the RTC.

Under paragraph 2, Section 2, Rule 121 of the Rules of Court, one ground for a Motion for New Trial is "that new and material evidence has been discovered which the accused would not with reasonable diligence have discovered and produced at the trial and which if introduced and admitted would probably change the judgement."

In *Velasco v. Ortiz*,[40] the Court summarized the requisites for a Motion for New Trial grounded on newly discovered evidence. These are: (a) the evidence had been discovered after trial; (b) the evidence could not have been discovered and produced during trial even with the exercise of reasonable diligence; and (c) the evidence is material and not merely corroborative, cumulative or impeaching, and is of such weight that, if admitted, would probably alter the result. The Court further held:

> In order that a particular piece of evidence may be properly regarded as "newly discovered" for purposes of a grant of new trial, what is essential is not so much the time when the evidence offered first sprang into existence nor the time when it first came to the knowledge of the party now submitting it; **what is essential is, rather, that the offering party had exercised diligence in seeking to locate such evidence before or during trial but nonetheless failed to secure it**. Thus a party who, prior to the trial, had no means of knowing that a specific piece of evidence existed and was in fact obtainable, can scarcely be charged with lack of diligence. It is commonplace to observe that the term "diligence" is a relative and variable one, not capable of exact definition and the contents of which must depend entirely on the particular configuration of facts obtaining in each case.[41] (Emphasis supplied)

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[39] *Rollo*, pp. 84-85.

[40] 263 Phil. 210 (1990).

[41] *Id*. at 221-222, citing *Tumang v. Court of Appeals,* 254 Phil. 329, 335-336 (1989).

In this case, petitioner sought to present his wife, Maria Manangan, and six other persons.[42] What these persons will testify to, as shown by the statements attached to petitioner's Motion for New Trial, are mere reiterations of petitioner's defense that no robbery was committed. The statements merely allege that there was no news in their barangay about the robbery "which is unusual in a place where when a visitor of a friend [or] a relative arrives, the whole place knows."[43]

Petitioner's Motion for New Trial was correctly denied by the RTC because the statements sought to be presented by the six persons were already available before and during the trial. The statements merely corroborate petitioner's alibi and defense, which will not alter the result of the trial. Most importantly, the statements of these six persons could have been discovered, accessed, and produced during the trial with the exercise of reasonable diligence because all six persons were living in the same barangay as petitioner. The offering party, petitioner in this case, failed to secure the statements of the additional six persons not because petitioner had no means of knowing that the pieces of evidence existed, but because petitioner was not diligent from the beginning.

WHEREFORE, we **DENY** the petition. We **AFFIRM** the 20 May 2014 Decision and the 1 June 2015 Resolution of the Court of Appeals in CA-G.R. CR No. 33280.

SO ORDERED.

Peralta, Perlas-Bernabe, and *Caguioa, JJ.,* concur.

Reyes, Jr., J., on official leave.

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[42] These are the six (6) other persons:

(a) Jesus Tuting Denna Magaru – nephew of Ocampo Denna
(b) Felix Denna – brother of Ocampo Denna
(c) Gloria Denna – wife of Felix Denna; sister-in-law of Ocampo Denna
(d) Feliciano Denna Tandayu – barangay tanod
(e) Ilu Guiyab – former Punong Barangay of San Vicente, Tumauini, Isabela
(f) Delfin Guiyab – retired Commander in charge of Pulis Ti Umili (PTU) in Brgy. Lanna, an adjacent barangay of San Vicente

[43] *Rollo,* pp. 69, 75.

SECOND DIVISION

[G.R. No. 218574. November 22, 2017]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **RAUL MACAPAGAL *y* MANALO,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; REVISED PENAL CODE; ACTS OF LASCIVIOUSNESS UNDER ARTICLE 336 OF THE REVISED PENAL CODE IN RELATION TO SECTION 5 (B), ARTICLE II OF R.A. NO. 7610; CORRECT NOMENCLATURE OF THE CRIME IF THE VICTIM OF LASCIVIOUS CONDUCT IS UNDER TWELVE (12) YEARS OF AGE; CASE AT BAR.— In Criminal Case No. RTC-2003-0294, appellant should be held liable for acts of lasciviousness under Art. 336 of the RPC, in relation to Section (b), Art. III of R.A. No. 7610 instead of rape through sexual assault under Art. 266-A, paragraph 2 of the RPC. x x x In ***People v. Noel Go Caoili***, the Court prescribed guidelines in designating or charging the proper offense in case lascivious conduct is committed under Section 5(b) of R.A. No. 7610, and in determining the imposable penalty. "If the victim of lascivious conduct is under twelve (12) years of age, the nomenclature of the crime should be 'Acts of Lasciviousness under Article 336 of the Revised Penal Code in relation to Section 5(b), Article III of R.A. No. 7610' and pursuant to the second *proviso* thereof, the imposable penalty is *reclusion temporal* in its medium period." In this case, it was alleged in the information, stipulated during pre-trial and indicated in her birth certificate that BBB was 11 years old at the time of the commission of the crime charged in Criminal Case No. RTC-2003-0294. x x x All the elements of acts of lasciviousness under Art. 336 of the Revised Penal Code, in relation to Section 5(b), Art. III of R.A. No. 7610, were established by the prosecution through the credible testimony of BBB.

2. ID.; ID.; QUALIFIED RAPE; ELEMENTS; ESTABLISHED IN CASE AT BAR.— With respect to Criminal Cases Nos.

RTC-2003-0295 and RTC-2003-0296, the prosecution was, likewise, able to prove beyond reasonable doubt all the elements of qualified rape as defined under paragraph 1, Art. 266-A and penalized under paragraph 1, Art. 266-B of the RPC, as amended, namely: (1) sexual congress; (2) with a woman; (3) done by force and without consent; (4) the victim is under 18 years of age at the time of the rape; (5) 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. Through the categorical and consistent testimony of BBB, the prosecution established that appellant, her father, threatened to kill and undressed her, then inserted his penis in her vagina for about an hour, sometime in the summer of 1999 and on March 30, 2003.

3. **REMEDIAL LAW; EVIDENCE; DENIAL; A SELF-SERVING DEFENSE THAT CANNOT BE GIVEN GREATER WEIGHT THAN THE DECLARATION OF A CREDIBLE WITNESS WHO TESTIFIED ON AFFIRMATIVE MATTERS AND POSITIVELY IDENTIFIED THE PERPETRATOR OF THE CRIMES CHARGED; CASE AT BAR.—** All the arguments and issues raised in the appellant's brief — which the Public Attorney's Office adopted instead of filing a supplemental appeal brief — have been properly addressed in full and in detail in the appealed CA decision. Appellant's denial is a self-serving defense that cannot be given greater weight than the declaration of a credible witness, like BBB, who testified on affirmative matters and positively identified her father as the perpetrator of the crimes charged.

4. **ID.; ID.; FINDINGS OF FACT OF THE TRIAL COURT WHICH HAVE BEEN AFFIRMED BY THE APPELLATE COURT ARE GENERALLY BINDING UPON THE SUPREME COURT.—** When the trial court's findings have been affirmed by the appellate court, said findings are generally binding upon the Court, unless there is a clear showing that they were reached arbitrarily or it appears from the records that certain facts of weight, substance, or value are overlooked, misapprehended or misappreciated by the lower court which, if properly considered, would alter the result of the case. After a circumspect study of the records, the Court sees no compelling reason to depart from the foregoing principle.

5. CRIMINAL LAW; REVISED PENAL CODE; ALTERNATIVE CIRCUMSTANCES; RELATIONSHIP ; WHEN RELATIONSHIP WAS ALLEGED IN THE INFORMATION AND PROVEN DURING TRIAL, THE SAME SHOULD BE CONSIDERED AS AN AGGRAVATING CIRCUMSTANCE FOR THE PURPOSE OF INCREASING THE PERIOD OF THE IMPOSABLE PENALTY; PENALTY IN CASE AT BAR.— As to the penalty for the crime charged in Criminal Case No. RTC 2003-0294, considering that BBB was under 12 years old when appellant threatened her with a knife, forcibly removed her shorts and panty, and inserted his finger into her vagina on April 13, 1998, the imposable penalty for acts of lasciviousness under Art. 336 of the RPC, in relation to Section 5(b), Art. III of R.A. No. 7610, is *reclusion temporal* in its medium period which ranges from Fourteen (14) years, Eight (8) months and One (1) day to Seventeen (17) years and Four (4) months. Since the perpetrator of the offense is the father of the victim, and such alternative circumstance of relationship was alleged in the Information and proven during trial, the same should be considered as an aggravating circumstance for the purpose of increasing the period of the imposable penalty. There being no mitigating circumstance to offset the said alternative aggravating circumstance, the penalty provided shall be imposed in its maximum period. This is also in consonance with Section 31(c), Art. XII of R.A. No. 7610. Accordingly, appellant should be sentenced to suffer the indeterminate penalty of Fourteen (14) years and Eight (8) months of *reclusion temporal* in its minimum period, as minimum, to Seventeen (17) years and Four (4) months of *reclusion temporal* in its medium period, as maximum. A fine in the amount of ₱15,000.00 should also be imposed upon appellant in accordance with Section 31(f), Art. XII of the same law. The award of civil indemnity, moral damages and exemplary damages in the amount of ₱30,000.00 each is reduced to ₱20,000.00 for civil indemnity, and to ₱15,000.00 each for moral and exemplary damages, in line with ***Quimvel v. People***.

6. ID.; ID.; QUALIFIED RAPE; PENALTY IN CASE AT BAR.— [I]n Criminal Case Nos. RTC 2003-0295 and RTC 2003-0296,

the imposable penalty for the two (2) counts of qualified rape under Art. 266-A(1)(d), in relation to Art. 266-B(1) of the RPC, is death. However, in view of R.A. No. 9346 and A.M. No. 15-08-02-SC, the CA properly sustained the RTC in imposing the penalty of *reclusion perpetua* without eligibility for parole *in lieu* of death. In light of recent jurisprudence where it was held that in cases of qualified rape where the imposable penalty is death but the same is reduced to *reclusion perpetua* because of R.A. No. 9346, the award of civil indemnity, moral damages and exemplary damages should be increased from ₱75,000.00 to ₱100,000.00.

APPEARANCES OF COUNSEL

Public Attorney's Office for accused-appellant.
Office of the Solicitor General for plaintiff-appellee.

D E C I S I O N

PERALTA, *J.*:

This is an appeal from the Decision[1] dated August 8, 2014 of the Court of Appeals in CA-G.R. CR-H.C. No. 05495 which affirmed with modification the Decision[2] dated July 19, 2011 of the Regional Trial Court (*RTC*) of Naga City, Branch 20, finding appellant Raul Macapagal *y* Manalo guilty beyond reasonable doubt of two (2) counts of rape through sexual intercourse, and one (1) count of rape through sexual assault.

In three (3) separate Informations, appellant Raul Macapagal *y* Manalo was charged with three (3) counts of violation of Article 266-A and Article 266-B of the Revised Penal Code,[3]

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[1] Penned by Associate Justice Sesinando E. Villon, with Associate Justices Florito S. Macalino and Leoncia R. Dimagiba, concurring; *rollo,* pp. 2-31.

[2] Penned by Presiding Judge Erwin Virgilio P. Ferrer; CA *rollo,* pp. 50-63.

[3] Article 266-A. *Rape, When and How Committed. — Rape is committed —*

(*RPC*) in relation to Republic Act (*R.A.*) No. 7610,[4] the accusatory portions of which read:

In Criminal Case No. RTC-2003-0294:

That on or about a week after April 13, 1998 at about 10:00 o'clock in the evening and for several similar occasions thereafter in the Municipality of [redacted], Province of [redacted], Philippines and within the jurisdiction of the Honorable Court, the said accused, with grave abuse of confidence being the father of the private offended party, by means of force and intimidation did, then and there, with lewd designs, willfully, unlawfully and feloniously succeed in inserting

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1) By a man who shall have carnal knowledge of a woman . . .:
   a) Through force, threat, or intimidation;
   b) When the offended party is deprived of reason or otherwise unconscious;
   c) By means of fraudulent machination or grave abuse of authority; and
   d) When the offended party is under twelve (12) years of age or is demented, even though none of the circumstances mentioned above be present.

2) By any person who, under any of the circumstances mentioned in paragraph 1 hereof, shall commit an act of sexual assault by inserting his penis into another person's mouth or anal orifice, or any instrument or object, into the genital or anal orifice of another person.

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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 victim;

x x x x x x x x x

[4] An Act Providing For Stronger Deterrence and Special Protection Against Child Abuse, Exploitation and Discrimination, and For Other Purposes.

his finger inside the vagina of "BBB,"[5] his 11-year-old daughter who is a minor, against her will and without her consent to her damage and prejudice in such amount as may be awarded by the Honorable Court.

ACTS CONTRARY TO LAW.

In Criminal Case No. RTC-2003-0295:

That sometime during summer vacation in the year 1999 at about 2:00 o'clock in the afternoon and for several occasions thereafter in the Municipality of [redacted], Province of [redacted], Philippines and within the jurisdiction of the Honorable Court, the said accused, with grave abuse of confidence being the father of the private offended party, by means of force and intimidation did, then and there, with lewd designs, willfully, unlawfully and feloniously succeed in having sexual intercourse with "BBB," his 13-year-old daughter who is a minor, against her will and without her consent to her damage and prejudice in such amount as may be awarded by the Court.

ACTS CONTRARY TO LAW.

In Criminal Case No. RTC-2003-0296:

That sometime on March 30, 2003, at about 8:00 o'clock in the evening in the Municipality of [redacted], Province of [redacted], Philippines and within the jurisdiction of the Honorable Court, the said accused, with grave abuse of confidence being the father of

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[5] The identity of the victim or any information to establish or compromise her identity, as well as those of her immediate family or household members, shall be withheld pursuant to Republic Act No. 7610, "An Act Providing for Stronger Deterrence and Special Protection Against Child Abuse, Exploitation and Discrimination, and for Other Purposes"; Republic Act No. 9262, "An Act Defining Violence Against Women and Their Children, Providing for Protective Measures for Victims, Prescribing Penalties Therefor, and for Other Purposes"; Section 40 of A.M. No. 04-10-11-SC, known as the "Rule on Violence Against Women and Their Children," effective November 5, 2004; *People v. Cabalquinto*, 533 Phil. 703, 709 (2006); and Amended Administrative Circular No. 83-2015 dated September 5, 2017, Subject: Protocols and Procedures in the Promulgation, Publication, and Posting on the Websites of Decisions, Final Resolutions, and Final Orders Using Fictitious Names/Personal Circumstances.

the private offended party, by means of force and intimidation did, then and there, with lewd designs, willfully, unlawfully and feloniously succeed in having intercourse with "BBB," his 16-year-old daughter who is a minor, against her will and without her consent to her damage and prejudice in such amount as may be awarded by the Honorable Court.

ACTS CONTRARY TO LAW.[6]

Before appellant was arraigned, a motion to quash was filed on the ground that the Informations charged more than one offense. The prosecution opted to amend the Informations by deleting the phrase "and for several similar occasions thereafter," which the court granted.

On March 25, 2004, appellant, assisted by counsel, was arraigned and pleaded not guilty to all rape charges. During pre-trial, the parties stipulated on the identities of the parties, the fact that the birth certificate[7] shows that BBB is the daughter of appellant and a minor at the time of the alleged rape incidents. Joint trial of the cases followed.

In Criminal Case No. RTC-2003-0294, the incident of rape through sexual assault happened in April 1998 when BBB was only 11 years old. While sleeping with her mother and appellant in the sala of their house, BBB was awakened by someone rubbing her back. BBB did not recognize appellant at first because it was dark until he threatened her with a knife and told her not to make any noise. Appellant then forcibly removed BBB's shorts and panty, and inserted his finger into her genital, causing her to feel pain. Appellant also lifted BBB's shirt, held her breasts and molested her for an hour, during which she only cried.

In Criminal Case No. RTC-2003-0295, the incident of rape through carnal knowledge occurred in March 1999 when BBB was 13 years old. While BBB was alone in their house watching TV, appellant told her to get inside the room, but she refused.

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[6] *Rollo,* pp. 36-37.

[7] Records, p. 52.

Appellant got mad, slapped her face and dragged her inside the room. He then removed her shorts, slapped her again and covered her mouth when she tried to shout for help. After removing her bra and panty, appellant laid BBB on the bed, held her breasts and inserted his penis in her vagina, causing her to feel severe pain. BBB kept mum about the incident as she was afraid that he might kill her.

In Criminal Case No. RTC-2003-0296, the other incident of rape through carnal knowledge took place on March 30, 2003 when BBB was already 16 years old. Only appellant and BBB were at home that day since her mother and siblings went to Naga City. At about 8:00 p.m., BBB was preparing her beddings in their sala when appellant told her to undress herself. Since appellant threatened to kill her, BBB obeyed, Appellant also undressed himself, held BBB's breasts, kissed her and inserted his penis into her vagina for an hour.

When BBB's mother learned of the rape incidents, she accompanied BBB at NBI Naga City to file a complaint against appellant. Dr. Jane Fajardo conducted a medico-legal examination and came up with these findings: (1) old, deep, but healed hymenal lacerations at the 6 and 9 o'clock positions, (2) the edges are round and coaptible, and; (3) the hymenal orifice measures 2.5 cms. as to allow complete penetration by an average-sized adult Filipino male organ in full erection without producing hymenal injury.

Appellant denied all the rape charges against him for the following reasons: (1) after his wife gave birth on April 13, 1998, the lights in their bedroom were turned on all night; (2) in the summer of 1999, all his children stayed home all the time for no one among them took summer classes, and he was busy taking care of his one-year-old daughter; (3) in September 2002, he only required her daughter BBB to take a urine test because he learned that she missed her period.[8] He dismissed the allegations against him as a mere fabrication of his wife's

[8] CA *rollo* p. 40.

relatives who were against their marriage. He also claimed that BBB allowed herself to be part of such malicious scheme, as she was angry at him for having slapped and hurt her when he learned that she has a boyfriend and she missed two menstruation periods. He also denied having caused the abortion of BBB's baby in Manila, but admitted that he went there with BBB to visit his sister Rebecca who had arrived from the United States.

On July 19, 2011, the RTC rendered a judgment, convicting appellant of one (1) count of rape by sexual assault and two (2) counts of rape by sexual intercourse, thus:

> **WHEREFORE**, premises considered, the judgment is hereby rendered finding accused **Raul Macapagal *y* Manalo** guilty beyond reasonable doubt of rape, on two counts, through **sexual intercourse** and one count of rape through **sexual assault.**
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> As regards rape through **sexual intercourse**, accused is hereby sentenced to suffer *Reclusion Perpetua* for each count without eligibility for parole and to pay the offended party civil indemnity in the amount of ₱75,000.00, moral damages of ₱75,000.00 and exemplary damages of ₱30,000.00, in each of the two cases.
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> As regards the rape committed through **sexual assault**, accused is hereby sentenced to suffer the indeterminate penalty of imprisonment of ten (10) years and one (1) day of *prisión mayor*, as minimum, to seventeen (17) years, four (4) months and one (1) day of *reclusion temporal*, as maximum, and to indemnify the offended party civil indemnity of ₱30,000.00, moral damages of ₱30,000.00 and exemplary damages of ₱15,000.00.
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> **SO ORDERED**.[9]

The RTC found BBB's testimony credible as she was able to narrate clearly and unwaveringly how each of the rape incidents was done to her by appellant, her very own father, despite rigid cross-examinations conducted by the defense. The RTC noted that the genital examination conducted on BBB, showing the presence of old hymenal lacerations, is consistent with the finding of previous sexual intercourse.

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[9] *Id.* at 63.

With respect to appellant's defenses, the RTC held that his lame excuses of presence of other family members, lights turned on overnight and open bedroom door during the rape incidents, cannot prevail over the categorical narration of BBB of her defloration in the hands of appellant. As to the claim that BBB was angry at appellant as she suffered severe bruises when appellant learned that she was impregnated by her boyfriend, the RTC pointed out that he failed to prove that BBB indeed had a boyfriend that time. The RTC was also not impressed by appellant's claim that the malicious accusations against him are orchestrated by the family of his wife, considering that his in-laws even gave his family material and financial support. Anent the delay in the reporting of the incidents, the RTC found the same as justified in view of appellant's constant showing of his knife to BBB, and his verbal threat upon her while she was being raped to the effect that he would kill her should she tell anyone about the incidents. Although BBB cannot state precisely the dates of the rape incidents, the RTC stressed that the supposed inconsistencies merely refer to minor details, which have no effect on her credibility, and that the exact dates of the commission of the crime are not the element of the offense.

Aggrieved by the RTC judgment, appellant, through the Public Attorney's Office, filed an appeal. Appellant argued that while the last rape incident as testified to by BBB happened on March 30, 2003, the hymenal lacerations diagnosed by Medico-Legal Officer Dr. Jane Fajardo on April 3, 2003 are old and healed lacerations which were inflicted more than a month or a year before. Faulting BBB's credibility, appellant contended that not only did she tell anyone about the rape incident, she also tolerated similar incidences for the past five (5) years from April 1998 to April 3, 2004, which is rather odd because there were times when she was only with her mother at the clinic. Assuming that she was raped by her father, appellant claimed that BBB could have found solace in a safe house or in government institutions rendering social services for rape victims.

The Office of the Solicitor General insisted that appellant's guilt for the crimes charged had been proven beyond reasonable doubt by the prosecution's testimonial and documentary evidence.

On August 8, 2014, the CA rendered a Decision affirming the RTC judgment with modification on the damages awarded:

> **WHEREFORE**, in view of the foregoing, the Decision dated July 19, 2011 of the Regional Trial Court of Naga City, Branch 20, is hereby **AFFIRMED with MODIFICATION**, to read as follows:
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> 1. In Criminal Case No. RTC-2003-0294, appellant Raul Macapagal is hereby held GUILTY beyond reasonable doubt of the crime of Rape Through Sexual Assault and he is hereby sentenced to suffer the Indeterminate penalty of imprisonment of Ten (10) years and one (1) day of *prisión mayor*, as minimum, to seventeen (17) years, four (4) months and one (1) day of *reclusion temporal*, as maximum, and to indemnify the offended party civil indemnity of Thirty Thousand Pesos (₱30,000.00), moral damages of Thirty Thousand Pesos (₱30,000.00) and exemplary damages of Thirty Thousand Pesos (₱30,000.00);
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> 2. In Criminal Case No. RTC Nos. 2003-0295 and 2003-0296, appellant Raul Macapagal is hereby held GUILTY beyond reasonable doubt of two (2) counts of Rape Through Sexual Intercourse and that, for each count, he is hereby sentenced to suffer the penalty of *reclusion perpetua* without eligibility for parole, and ordered to pay the private offended party civil indemnity in the amount of Seventy-Five Thousand Pesos (₱75,000.00), moral damages also in the amount of Seventy-Five Thousand Pesos (₱75,000.00), and exemplary damages in the amount of Thirty Thousand Pesos (₱30,000.00);
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> 3. Appellant Raul Macapagal is further ordered to pay the private offended party interest on all damages awarded at the legal rate of Six Percent (6%) per annum until the same are fully paid.
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> SO ORDERED.[10]

The CA agreed with the RTC that BBB's testimony is credible, as she was firm and unwavering in her narration of her traumatic experience during the rape incidents perpetrated by her own father. The CA also ruled that the medical report and the testimony of the medico-legal officer on BBB's deep and healed

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[10] *Rollo*, pp. 30-31.

hymenal lacerations are consistent with BBB's allegations of rape against appellant. The CA observed that prior to the last rape incident, BBB had been victimized by appellant to countless sexual abuses which started in 1998, which explains the healed lacerations in BBB's genitals. The CA noted that BBB initially preferred to conceal her dishonor because the culprit was her own flesh and blood, who even threatened her life should she report the rape incidents to anyone. With respect to the inconsistencies pointed out by appellant, the CA ruled that they even tend to bolster her credibility as they are proofs of an unrehearsed testimony. Anent the claim that BBB could have avoided the rape incident by finding solace in a safe house or in a government institution, the CA stressed that BBB could hardly be expected to know what to do under such circumstances as she was only 11 years old when the first rape incident took place. The CA also ruled that it is unnatural for grandparents to use their grandchild in a scheme of malice against her own father, not to mention that it will subject the child to embarrassment and stigma.

Dissatisfied with the CA Decision, appellant filed a notice of appeal.

The appeal is devoid of merit.

After a careful review of the records, the Court finds no reason to reverse the RTC's judgment of conviction, but a modification of the penalty imposed, the damages awarded, and the nomenclature of the offense committed, are in order.

In Criminal Case No. RTC-2003-0294, appellant should be held liable for acts of lasciviousness under Art. 336[11] of the RPC, in relation to Section(b), Art. III of R.A. No. 7610[12] instead

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[11] Art. 336. *Acts of lasciviousness.* — Any person who shall commit any act of lasciviousness upon other persons of either sex, under any of the circumstances mentioned in the preceding article, shall be punished by *prisión correccional.*

[12] Section 5. *Child Prostitution and Other Sexual Abuse.*— Children, whether male or female, who for money, profit, or any other consideration or

of rape through sexual assault under Art. 266-A, paragraph 2 of the RPC.[13]

In ***Dimakuta v. People***,[14] the Court stressed that in instances where the lascivious conduct is covered by the definition under R.A. No. 7610, where the penalty is *reclusion temporal* medium, and the act is likewise covered by sexual assault under Art. 266-A, paragraph 2 of the RPC, which is punishable by *prisión mayor*, the offender should be liable for violation of Section 5 (b), Art. III of R.A. No. 7610, where the law provides for the higher penalty of *reclusion temporal* medium, if the offended party is a child victim. But if the victim is at least eighteen (18) years of age, the offender should be liable under Art. 266-A, par. 2 of the RPC and not R.A. 7610, unless the victim is at least 18 years old and she is unable to fully take care of herself or protect herself from abuse, neglect, cruelty, exploitation or discrimination because of a physical or mental disability or condition, in which case, the offender may still be held liable

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due to the coercion or influence of any adult, syndicate or group, indulge in sexual intercourse or lascivious conduct, are deemed to be children exploited in prostitution and other sexual abuse.

The penalty of *reclusion temporal* in its medium period to *reclusion perpetua* shall be imposed upon the following:

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(b) Those who commit the act of sexual intercourse of lascivious conduct with a child exploited in prostitution or subject to other sexual abuse; Provided, That when the victims is under twelve (12) years of age, the perpetrators shall be prosecuted under Article 335, paragraph 3, for rape and Article 336 of Act No. 3815, as amended, the Revised Penal Code, for rape or lascivious conduct, as the case may be: Provided, That the penalty for lascivious conduct when the victim is under twelve (12) years of age shall be *reclusion temporal* in its medium period.

[13] Article 266-*A. Rape, When and How Committed. — Rape is committed —*

x x x x x x x x x

2) By any person who, under any of the circumstances mentioned in paragraph 1 hereof, shall commit an act of sexual assault by inserting his penis into another person's mouth or anal orifice, or any instrument or object, into the genital or anal orifice of another person.

[14] G.R. No. 206513, October 20, 2015, 733 SCRA 228.

of sexual abuse under R.A. No. 7610. The reason for the foregoing is that, aside from the affording special protection and stronger deterrence against child abuse, R.A. No. 7610 is a special law which should clearly prevail over R.A. 8353, which is a mere general law amending the RPC.[15]

In ***People v. Chingh,***[16] the Court noted that "it was not the intention of the framers of R.A. No. 8353 to have disallowed the applicability of R.A. No. 7610 to sexual abuses committed to children. Despite the passage of R.A. No. 8353, R.A. No. 7610 is still good law, which must be applied when the victims are children or those 'persons below eighteen (18) years of age or those over but are unable to fully take care of themselves or protect themselves from abuse, neglect, cruelty, exploitation or discrimination because of a physical or mental disability or condition.'"

In ***People v. Noel Go Caoili***,[17] the Court prescribed guidelines in designating or charging the proper offense in case lascivious conduct is committed under Section 5(b) of R.A. No. 7610, and in determining the imposable penalty. "If the victim of lascivious conduct is under twelve (12) years of age, the nomenclature of the crime should be 'Acts of Lasciviousness under Article 336 of the Revised Penal Code in relation to Section 5(b), Article III of R.A. No. 7610' and pursuant to the second *proviso* thereof, the imposable penalty is *reclusion temporal* in its medium period." In this case, it was alleged in the information, stipulated during pre-trial and indicated in her birth certificate[18] that BBB was 11 years old at the time of the commission of the crime charged in Criminal Case No. RTC-2003-0294.

However, before an accused can be held criminally liable for lascivious conduct under Section 5(b), Art. III of R.A. No.

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[15] See Separate Concurring Opinion of Justice Diosdado M. Peralta in *Quimvel v. People*, G.R. No. 214497, April 18, 2017.

[16] 661 Phil. 208, 224 (2011).

[17] G.R. Nos. 196342 and 196848, August 8, 2017.

[18] Records, p. 52; Date of Birth: September 12, 1986.

7610, the Court held in ***Quimvel v. People***[19] that the requisites of acts of lasciviousness as penalized under Art. 336 of the RPC must be met in addition to the requisites for sexual abuse under Section 5(b), Art. III of R.A. No. 7610, namely:

1. The offender commits any act of lasciviousness or lewdness;
2. That it be done under any of the following circumstances:
   a. Through force, threat, or intimidation;
   b. When the offended party is deprived of reason or otherwise unconscious;
   c. By means of fraudulent machination or grave abuse of authority;
   d. When the offended party is under twelve (12) years of age or is demented, even though none of the circumstances mentioned above be present;
3. That said act is performed with a child exploited in prostitution or subjected to other sexual abuse; and
4. That the offended party is a child, whether male or female, below 18 years of age.

Regarding the first requisite, intentional touching, either directly or through clothing, of the genitalia of any person, with intent to abuse or gratify sexual desire falls under the definition of "lascivious conduct"[20] under Section 2 (h) of the rules and regulations of R.A. No. 7610. With respect to the second requisite, "force and intimidation" is said to be subsumed under "coercion and influence" and such terms are used almost synonymously.[21] This can be gleaned from Black's Law Dictionary definitions of "*coercion*" as "*compulsion; force;*

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[19] *Supra.*

[20] [T]he intentional touching, either directly or through clothing, of the genitalia, anus, groin, breast, inner thigh, or buttocks, or the introduction of any object into the genitalia, anus or mouth, of any person, whether of the same or opposite sex, with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person, bestiality, masturbation, lascivious exhibition of the genitals or pubic area of a person.

[21] *Quimvel v. People*, *supra* note 15.

duress," of "*influence*" as "*persuasion carried over to the point of overpowering the will,*" and of "*force*" as "*constraining power, compulsion; strength directed to an end*"; as well as from jurisprudence which defines "*intimidation*" as "*unlawful coercion; extortion; duress; putting in fear*".[22] Anent the third requisite, a child is deemed exploited in prostitution or subjected to other sexual abuse when the child indulges in sexual intercourse or lascivious conduct (a) for money, profit or any other consideration; or (b) under the coercion or any influence of any adult, syndicate or group.[23] As for the fourth requisite, "children" refers to a person below eighteen (18) years of age or those over but are unable to fully take care of themselves or protect themselves from abuse, neglect, cruelty, exploitation or discrimination because of a physical or mental disability or condition.[24]

All the elements of acts of lasciviousness under Art. 336 of the Revised Penal Code, in relation to Section 5(b), Art. III of R.A. No. 7610, were established by the prosecution through the credible testimony of BBB to the effect that appellant, her father, showed a knife and threatened to kill her should she make any noise, then forcibly removed her shorts and panty, and inserted his finger in her vagina, causing her to feel pain.

As the trial court aptly observed, BBB was able to describe how each of the rape incidents was done to her by her father, and her narration of the incidents were clear and detailed as she was able to clearly and unwaveringly narrate her ordeal in the hands of her very own father, thus:

[PROS. ZHELLA M. MANRIQUE]

Q: In this incident [on April 13, 1998] which you remember what time is it?
A: 10:00 o'clock in the evening.

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[22] *Id.* (Citations omitted)

[23] *Olivarez v. Court of Appeals*, 503 Phil. 421, 432 (2005).

[24] R.A. No. 7610, Section 3.

Q: While you were in your sala at 10:00 o'clock in the evening, who were your companions inside the house?
A: My mother, me and my father.

Q: What were you doing at that time at around 10:00 o'clock in the evening?
A: I was awakened when I felt somebody rubbing my back.

Q: You said, you were awakened because somebody was rubbing or holding your back, who was that person holding your back?
A: My father.

Q: You said you were sleeping with your mother, where was your mother at that time when you were awakened?
A: When I was awakened my mother was no longer around.

Q: Do you know where was your (sic) mother at that time when you were awakened?
A: I learned that she transferred in another room.

Q: When you were awakened and saw your father holding your back, what happened next?
A: He threatened me not to make any noise because he will kill me.

Q: After he threatened you, what was your reaction?
A: I was afraid, I know that he will really kill me and in fact he threatened and showed me a knife.

Q: After that, what happened next?
A: After that he removed my shorts and my panty.

Q: And after removing your shorts and your panty what did he do?
A: He told me that he will just insert his finger in my vagina.

Q: What did you feel when he told you that he will insert his finger into your vagina?
A: I did not like it ma'am. (sic)

Q: And then what did he say?
A: He told me that he will really insert his finger.

Q: And then what did he do?
A: He inserted his finger into my vagina.

Q: When he inserted his finger into your vagina, what did you feel?
A: I felt pain.

Q: Because you felt pain, what was your reaction?
A: I was crying at that time.

Q: Did you not try to shout because it is painful?
A: No ma'am, because I was afraid that he could kill me.

x x x x x x x x x

Q: You said that aside from inserting his finger into your vagina, what else did he do to you?
A: He lifted my t-shirt and he is holding my breast.

Q: On that day of April 1998, how old are you?
A: 11 years old.[25]

With respect to Criminal Cases Nos. RTC-2003-0295 and RTC-2003-0296, the prosecution was, likewise, able to prove beyond reasonable doubt all the elements of qualified rape as defined under paragraph 1, Art. 266-A[26] and penalized under paragraph 1, Art. 266-B[27] of the RPC, as amended, namely:

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[25] TSN, July 28, 2004, pp. 6-8.

[26] 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;
d. When the offended party is under twelve (12) years of age or is demented, even though none of the circumstances mentioned above be present.

If committed by a parent against his child under eighteen (18) years of age, the rape is qualified under paragraph 1, Article 266-B of the same Code, *viz.:*

[27] ART. 266-B. *Penalties.* — Rape under paragraph 1 of the next preceding article shall be punished by *reclusion perpetua.*

x x x x x x x x x

The death penalty shall also be imposed if the crime of rape is committed with any of the following aggravating/qualifying circumstances:

1. When the victim is under eighteen (18) years of age and the offender is a parent, ascendant, step-parent, guardian, relative by consanguinity or affinity within the third civil degree, or the common law spouse of the parent of the victim.

x x x x x x x x x

(1) sexual congress; (2) with a woman; (3) done by force and without consent; (4) the victim is under 18 years of age at the time of the rape; (5) 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.[28]

Through the categorical and consistent testimony of BBB, the prosecution established that appellant, her father, threatened to kill and undressed her, then inserted his penis in her vagina for about an hour, sometime in the summer of 1999 and on March 30, 2003, to wit:

> Q: You said that you remember something in the year 1999 about what time is that when said incident happened?
> A: The incident that happened in the year 1999 happened at about 2:00 o'clock in the afternoon.
>
> Q: Can you tell us, what was the month if you can remember?
> A: I think it was in the month of March.
>
> Q: Why do you say March?
> A: The incident happened shortly after summer vacation.
>
> Q: You said that an incident transpired between you and your father shortly after summer vacation, where did this transpire?
> A: At that time I was at the sala watching television.
>
> Q: In your house?
> A: Yes, ma'am.
>
> Q: Who were your companions at that time in your house?
> A: None, ma'am.
>
> Q: Aside from you there was no one else?
> A: In our house my father was there.
>
> Q: How about your mother?
> A: My mother was in her clinic and my brother and sisters were not also around at that time.

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[28] *People v. Lagbo*, G.R. No. 207535, February 10, 2016, 784 SCRA 1, 11 (2016), citing *People v. Colentava*, 753 Phil. 361, 372-373 (2015); and *People v. Candellada*, 713 Phil. 623, 635 (2013).

Q: To clarify, it was only you and your father inside your house?
A: Yes, sir. (sic)

Q: You said you were watching t.v. what happened?
A: He called me inside the room.

Q: Who called you inside the room?
A: My father.

Q: Did you go to that room?
A: I did not like to enter the room but he forced me to enter the room.

Q: How did he force you to enter the room?
A: He was angry and he was hurting me.

Q: How did he hurt you?
A: He slapped me.

Q: Was he able to drag you inside your parents' room?
A: He forcibly took-off my shorts but I tried to resist back and escape but he was strong.

Q: How did you try to resist?
A: I tried to shout for help at that time but he slapped me and covered my mouth.

(Witness demonstrating to the Court using her right hand covering her mouth)

Q: When he slapped you and covered your mouth and you said he removed your short pants what else did he do to you?
A: He also removed my panty.

Q: What else did he do to you?
A: He inserted his sex organ into my vagina.

x x x x x x x x x

Q: You said he removed your panty and short, what else did he do to you?
A: He removed my bra.

Q: And then after that, what happened?
A: He raped me.

Q: When you said, he raped you, can you tell us, step-by-step on how he succeeded in raping you, after he removed your shorts, your panty and your bra, what happened next?

A: He held my arms because I was trying to resist him, he slapped me and inserted his penis into my vagina.

Q: How many times did he inserted (sic) his penis?
A: He inserted his penis about an hour.

Q: When he inserted his penis into your vagina, what did you feel?
A: I felt pain.

Q: Because you felt pain, what was your reaction?
A: I was crying at that time.

Q: Aside from inserting his penis into your vagina, did he do anything else to you?
A: He was holding my breasts.

x x x x x x x x x

Q: On March 30, 2003, do you recall where were you at that time?
A: Also at the sala.

Q: About what time was this when you were at the sala?
A: Eight o'clock in the evening.

Q: Who were your companions in your sala at about 8:00 o'clock in the evening of March 30, 2003?
A: I was the only one together with my father.

Q: How about your mother where was she at that time?
A: She was in Naga.

Q: How about your brother and your sisters, where were they, if you know?
A: They were also in Naga.

Q: So on March 30, 2003, you said, you were in the sala, can you tell us, what happened when you were in the sala?
A: I was at the sala preparing the beddings at that time.

Q: What happened when you and your father were there?
A: He ordered me to undress myself.

Q: Did you follow him?
A: Yes, ma'am, because I am afraid of him.

Q: Again, why are you afraid of him?
A: He would kill me.

Q: After you undressed yourself, what did he do to you?

A: He inserted his penis into my vagina.

Q: Did he also undress himself?
A: Yes sir.

Q: You said that he inserted his penis into your vagina, where were you at that time and your father?
A: We were at the sala.

Q: For how long did he insert his penis to (sic) your vagina?
A: I think it took about an hour.

Q: Aside from inserting his penis to (sic) your vagina, what else did he do to you?
A: He was holding my breast and he was kissing me.

Q: After an hour your father inserting his penis into your vagina, what did you feel?
A: I felt bad because he is my biological father and he was doing such thing to me, "nababoy ako."

Q: After he finished what he was doing to you, what did he do next?
A: He dressed up and he went to sleep.

Q: What about you?
A: I just also went to sleep because I can not do anything.[29]

In cases of offended parties who are young and immature girls, there is considerable receptivity on the part of the courts to lend credence to their testimonies, considering not only their relative vulnerability, but also the shame and embarrassment to which such a grueling experience as a court trial, where they are called upon to lay bare what perhaps should be shrouded in secrecy, did expose them to.[30] Indeed, no woman, much less a child, 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.[31] Hence, BBB's testimony is entitled to full faith and credence.

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[29] TSN, July 28, 2004, pp. 10-17.

[30] *People v. Sumarago*, 466 Phil. 956, 978 (2004).

[31] *Id.*

All the arguments and issues raised in the appellant's brief — which the Public Attorney's Office adopted instead of filing a supplemental appeal brief[32] — have been properly addressed in full and in detail in the appealed CA decision. Appellant's denial is a self-serving defense that cannot be given greater weight than the declaration of a credible witness, like BBB, who testified on affirmative matters[33] and positively identified her father as the perpetrator of the crimes charged.

When the trial court's findings have been affirmed by the appellate court, said findings are generally binding upon the Court, unless there is a clear showing that they were reached arbitrarily or it appears from the records that certain facts of weight, substance, or value are overlooked, misapprehended or misappreciated by the lower court which, if properly considered, would alter the result of the case.[34] After a circumspect study of the records, the Court sees no compelling reason to depart from the foregoing principle.

As to the penalty for the crime charged in Criminal Case No. RTC 2003-0294, considering that BBB was under 12 years old when appellant threatened her with a knife, forcibly removed her shorts and panty, and inserted his finger into her vagina on April 13, 1998, the imposable penalty for acts of lasciviousness under Art. 336 of the RPC, in relation to Section 5(b), Art. III of R.A. No. 7610, is *reclusion temporal* in its medium period which ranges from Fourteen (14) years, Eight (8) months and One (1) day to Seventeen (17) years and Four (4) months. Since the perpetrator of the offense is the father of the victim, and such alternative circumstance of relationship was alleged in the Information and proven during trial, the same should be considered as an aggravating circumstance for the purpose of increasing the period of the imposable penalty. There being no mitigating circumstance to offset the said alternative aggravating

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[32] *Rollo*, p. 46.

[33] *People of the Philippines v. Felipe Bugho y Rompal,* G.R. No. 208360, April 6, 2016.

[34] *People v. Tuboro*, G.R. No. 220023, August 8, 2016.

circumstance, the penalty provided shall be imposed in its maximum period. This is also in consonance with Section 31(c),[35] Art. XII of R.A. No. 7610. Accordingly, appellant should be sentenced to suffer the indeterminate penalty of Fourteen (14) years and Eight (8) months of *reclusion temporal* in its minimum period, as minimum, to Seventeen (17) years and Four (4) months of *reclusion temporal* in its medium period, as maximum. A fine in the amount of ₱15,000.00 should also be imposed upon appellant in accordance with Section 31(f),[36] Art. XII of the same law. The award of civil indemnity, moral damages and exemplary damages in the amount of ₱30,000.00 each is reduced to ₱20,000.00 for civil indemnity, and to ₱15,000.00 each for moral and exemplary damages, in line with ***Quimvel v. People***.[37]

On the other hand, in Criminal Case Nos. RTC 2003-0295 and RTC 2003-0296, the imposable penalty for the two (2) counts of qualified rape under Art. 266-A(1)(d), in relation to Art. 266-B(1) of the RPC, is death. However, in view of R.A. No. 9346[38]

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[35] Section 31. *Common Penal Provisions.*—

x x x x x x x x x

(c) The penalty provided herein shall be imposed in its maximum period when the perpetrator is an ascendant, parent, guardian, stepparent or collateral relative within the second degree of consanguinity or affinity, or a manager or owner of an establishment which has no license to operate or its license has expired or has been revoked.

[36] Section. 31. *Common Penal Provisions.*—

x x x x x x x x x

(f) A fine to be imposed by the court shall be imposed and administered as a cash fund by the Department of Social Welfare and Development and disbursed for the rehabilitation of each child victim, or any immediate member of his family if the latter is the perpetrator of the offense.

[37] *Supra* note 15.

[38] AN ACT PROHIBITING THE IMPOSITION OF DEATH PENALTY IN THE PHILIPPINES. Enacted on 24 June 2006. Section 3 of R.A. No. 9346 states:

SEC. 3. Persons 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. 4103, otherwise known as the Indeterminate Sentence Law, as amended.

and A.M. No. 15-08-02-SC,[39] the CA properly sustained the RTC in imposing the penalty of *reclusion perpetua* without eligibility for parole *in lieu* of death. In light of recent jurisprudence[40] where it was held that in cases of qualified rape where the imposable penalty is death but the same is reduced to *reclusion perpetua* because of R.A. No. 9346, the award of civil indemnity, moral damages and exemplary damages should be increased from ₱75,000.00 to ₱100,000.00.[41]

WHEREFORE, premises considered, the appeal is **DISMISSED**, and the Decision dated August 8, 2014 of the Court of Appeals in CA-G.R. CR-H.C. No. 05495 is **AFFIRMED** with **MODIFICATION**:

1. In Criminal Case No. RTC-2003-0294, appellant Raul Macapagal *y* Manalo is guilty of one (1) count of **acts of lasciviousness under Article 336 of the Revised Penal Code, in relation to Section 5(b), Article III of R.A. No. 7610**, and is sentenced to suffer Fourteen (14) years and Eight (8) months of *reclusion temporal* minimum, as minimum, to Seventeen (17) years and Four (4) months of *reclusion temporal* medium, as maximum, in view of the presence of the alternative aggravating circumstance of relationship. He is, likewise, ordered to pay the victim civil indemnity in the amount of ₱20,000.00, as well as moral damages, exemplary damages and fine in the amount of ₱15,000.00 each.
2. In Criminal Case Nos. RTC-2003-0295 and RTC-2003-0296, appellant is guilty of two (2) counts of **qualified**

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[39] Guidelines For the Proper Use of the Phrase "Without Eligibility For Parole" in Indivisible Penalties dated August 4, 2015; II (2) When the circumstances are present warranting the imposition of the death penalty, but this penalty is not imposed because of R.A. No. 9346, the qualification "without eligibility for parole" shall be used to qualify *reclusion perpetu*a in order to emphasize that the accused should have been sentenced to suffer the death penalty had it not been for R.A. No. 9346.

[40] *People v. Jugueta*, G.R. No. 202124, April 5, 2016, 788 SCRA 331.

[41] *People v. Aycardo*, G.R. No. 218114, June 5, 2017.

rape, and is sentenced for each count to suffer the penalty of *reclusion perpetua* without eligibility for parole. He is also ordered to pay the victim civil indemnity, moral damages and exemplary damages in the amount of ₱100,000.00 each for both counts of qualified rape.

All damages awarded shall incur legal interest at the rate of six percent (6%) *per annum* from finality of this Decision until fully paid.

SO ORDERED.

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

Reyes, Jr., J., on wellness leave.

SECOND DIVISION

[G.R. No. 219309. November 22, 2017]

ANGELINA CHUA and HEIRS OF JOSE MA. CHENG SING PHUAN, *petitioners, vs.* **SPOUSES SANTIAGO CHENG AND AVELINA SIHIYON,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; PRE-TRIAL; A.M. NO. 03-1-09-SC (PROPOSED RULE ON GUIDELINES TO BE OBSERVED BY TRIAL COURT JUDGES AND CLERKS OF COURT IN THE CONDUCT OF PRE-TRIAL AND USE OF DEPOSITION-DISCOVERY MEASURES); PARAGRAPH (A)(2)(D) THEREOF REFERS TO DOCUMENTARY AND OBJECT EVIDENCE, NOT TO TESTIMONIAL EVIDENCE; CASE AT BAR.— Petitioners assert that the rigid application of the rules governing pre-trial will curtail the truth and frustrate the ends of justice at their

expense. To support this assertion, Petitioners quote A.M. No. 03-1-09-SC, otherwise known as the *Proposed Rule on Guidelines to be Observed by Trial Court Judges and Clerks of Court in the Conduct of Pre-Trial and Use of Deposition-Discovery Measures* (Pre-Trial Guidelines), particularly paragraph A(2)(d) thereof, which states: PRE-TRIAL A. Civil Cases x x x 2. The parties shall submit, at least three (3) days before the pre-trial, pre-trial briefs containing the following: x x x d. The documents or exhibits to be presented, stating the purpose thereof. (**No evidence shall be allowed to be presented and offered during the trial in support of a party's evidence-in-chief other than those that had been earlier identified and pre-marked during the pre-trial, except if allowed by the court for good cause shown**)[.] Petitioners' reliance on the purported exception under paragraph A(2)(d) is misplaced. As its introductory phrase clearly indicates, paragraph A(2) enumerates the matters which parties are required to state in the pre-trial brief. Since paragraph A (2) does not prescribe rules on admissibility and presentation of evidence, it should not be interpreted in this manner. In addition, paragraph (A)(2)(d) refers to documentary and object evidence, and not testimonial evidence, which, in turn, are treated separately under paragraph (A)(2)(f). Accordingly, the scope of the specific exception under paragraph A (2)(d) should not be unduly extended to cover testimonial evidence.

2. ID.; ID.; ID.; IMPORTANCE OF PRE-TRIAL RULES; RULES MAY BE RELAXED UPON SHOWING OF COMPELLING AND PERSUASIVE REASONS TO JUSTIFY THE SAME, CASE AT BAR.— The importance of pre-trial in civil cases cannot be overemphasized. Time and again, this Court has recognized "the importance of pre-trial procedure as a means of facilitating the disposal of cases by simplifying or limiting the issues and avoiding unnecessary proof of facts at the trial, and x x x to do whatever may reasonably be necessary to facilitate and shorten the formal trial." The need for strict adherence to the rules on pre-trial thus proceeds from its significant role in the litigation process. This is not to say, however, that the rules governing pre-trial should be, at all times, applied in absolute terms. While faithful compliance with these rules is undoubtedly desirable, they may be relaxed in cases where their application would frustrate, rather than facilitate, the ends of justice. The relaxation of these rules, however, is contingent upon a showing

of compelling and persuasive reasons to justify the same. It is the Court's considered view that Petitioners have failed to sufficiently show that such compelling and persuasive reasons exist in this case. Consequently, the Petition must be denied.

APPEARANCES OF COUNSEL

Nelson C. Oberas for petitioners.
Tirol & Tirol Law Office for respondents.

D E C I S I O N

CAGUIOA, *J.*:

The Case

This is a petition for review on *certiorari*[1] (Petition) filed under Rule 45 of the Rules of Court assailing the Decision[2] (Assailed Decision) dated November 27, 2014 and Resolution[3] (Assailed Resolution) dated May 25, 2015 issued by the Court of Appeals Eighteenth Division (CA) in CA-G.R. SP. No. 07194.

The Assailed Decision and Resolution dismissed the petition for *certiorari* (CA Petition) filed by Angelina Chua (Angelina) and the heirs of Jose Ma. Cheng Sing Phuan[4] (Heirs of Jose) (collectively, Petitioners) which imputed grave abuse of discretion to Judge Victorino O. Maniba, Jr. (Judge Maniba), in his capacity as Presiding Judge of the Regional Trial Court of Iloilo City, Branch 39 (RTC), for issuing the following in Civil Case No. 03-27527:

(i) Resolution (RTC Resolution) dated January 27, 2012 denying the oral motion of Petitioners to present

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[1] *Rollo,* pp. 5-40.

[2] *Id.* at 41-51. Penned by Associate Justice Gabriel T. Ingles, with Associate Justices Pamela Ann Abella Maxino and Renato C. Francisco concurring.

[3] *Id*. at 52-53.

[4] Cesar C. Cheng, Edward S. Chua, Mary Cheng Toliongco, Caroline Cheng Kiok, Helen Cheng Suyo, Hilton S. Cheng and Margaret Cheng Go; *id.* at 6.

additional witnesses other than those listed in the Pre-Trial *Order*; and

(ii) Order (RTC Order) dated June 13, 2012 denying Petitioners' motion for reconsideration (MR) of the RTC Resolution.[5]

The Facts

Jose Ma. Cheng Sing Phuan (Jose), Santiago Cheng (Santiago), and Petra Cheng Sing (Petra) are siblings.[6]

The records show that Jose, Santiago, and Petra are the registered owners of two (2) parcels of land situated in Iloilo City, covered by Transfer Certificates of Title Nos. T-53608 and T-53609 (Iloilo Lands).[7] On these lands stands a rice mill housing several pieces of milling equipment, also in the name of the Cheng siblings.[8]

RTC Proceedings

Santiago, together with his wife, Avelina Sihiyon (Avelina) (collectively, Respondents) sent Jose and his wife Angelina several written and verbal demands for the physical partition of the Iloilo Lands, the rice mill and the equipment therein (collectively, Disputed Properties).[9]

As their repeated demands were left unheeded, Respondents filed a complaint against Jose and Angelina for partition and damages (Complaint) before the RTC.[10]

In their Answer, Jose and Angelina averred that they advanced the funds necessary for the acquisition of the Disputed Properties, and that Santiago and Petra failed to reimburse them for the

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[5] *Rollo,* p. 42.

[6] See *id*. at 42, 70-71, 83.

[7] *Id*. at 83.

[8] See *id*. at 42, 84.

[9] *Id*.

[10] *Id*. at 42, 82 and 84.

cost of their respective shares.[11] On such basis, Jose and Angelina argued that Santiago, Petra, and their respective spouses do not possess any right to demand the partition of the Disputed Properties.[12]

After submission of the parties' pre-trial briefs and the conduct of a pre-trial conference, Judge Cedrick O. Ruiz (Judge Ruiz), then Presiding Judge of the RTC, issued a Pre-Trial *Order*[13] dated January 12, 2006.[14] Items VI and VIII of the Pre-Trial *Order* state, in part:

VI. EVIDENCE FOR THE PARTIES

All evidence to be adduced and presented by both parties shall be limited to those identified below. All photocopies of documentary evidence have already been pre-marked, the original copies of which will be presented in due time.

A. Evidence of [Respondents]

x x x x x x x x x

B. Evidence of [Jose and Angelina]

1. Documentary Evidence

x x x x x x x x x

2. Testimonial Evidence

a.) [Jose]; and

b.) [Petra]

x x x x x x x x x

VIII. COLATILLA

The parties are hereby directed to go over this Pre-[T]rial Order for any error that may have been committed and to take the necessary steps to correct the same within a non-extendible period

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[11] See *id*. at 42-43.

[12] See *id*.

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

[14] *Id*. at 43.

of five (5) days from receipt of a copy thereof. Thereafter, no corrections will be allowed.[15] (Emphasis and underscoring supplied)

None of the parties manifested any intent to revise the Pre-Trial *Order*. Thus, trial ensued.

Subsequently, Jose passed away after having given his direct testimony in open court. Accordingly, Jose's counsel Atty. Roberto Leong (Atty. Leong) filed a Notice of Death with Motion to Suspend Proceeding dated February 24, 2007, followed by a Motion to Withdraw as Counsel dated May 9, 2007.[16] These motions were granted.[17]

On June 15, 2007, Petitioners, through their new counsel Atty. Nelson C. Oberas (Atty. Oberas), filed a Formal Appearance of New Counsel and Notice of Substitution of Party Defendant,[18] which were duly noted by Judge Ruiz in his Order dated June 25, 2007.[19]

Later, Respondents filed an Urgent Motion dated July 13, 2007 praying that Jose's testimony be stricken from the records since he passed away before cross-examination.[20] Judge Ruiz denied the Urgent Motion and Respondents' subsequent MR.[21] Thereafter, trial continued.

During the hearing held on January 16, 2008, Petitioners orally manifested in open court that they would be presenting six (6) additional witnesses in place of Petra, and sought leave for this purpose.[22] These additional witnesses were not among those listed in the Pre-Trial *Order*, nor were they identified in

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[15] *Id*. at 86-87, 94.

[16] *Id*. at 8-9, 43.

[17] *Id*. at 43.

[18] *Id*.

[19] *Id*. at 9, 43.

[20] *Id*.

[21] *Id*. at 9-10, 43.

[22] *Id*. at 10, 44.

Jose's Pre-Trial *Brief*.[23] Respondents opposed, and later filed their written objection on March 24, 2008.[24]

In the interim, Judge Maniba assumed the position of Presiding Judge of the RTC.[25]

On January 27, 2012, Judge Maniba issued the RTC Resolution denying Petitioners' oral motion. Petitioners subsequently filed an MR, which Judge Maniba also denied in the RTC Order dated June 13, 2012.[26]

CA Proceedings

Aggrieved, Petitioners filed the CA Petition.[27] Petitioners asserted that Jose, through counsel, reserved the right to present additional witnesses in his **Pre-Trial *Brief***. By completely ignoring such reservation made by Jose prior to his death, Petitioners averred that Judge Maniba committed grave abuse of discretion amounting to lack or excess of jurisdiction.[28]

On November 27, 2014, the CA issued the Assailed Decision dismissing the CA Petition for lack of merit. The dispositive portion of said Decision reads:

> **WHEREFORE**, the instant petition is hereby **DISMISSED**. The [RTC Resolution] and the [RTC Order] x x x in Civil Case No. 03-27527 are AFFIRMED.
>
> **SO ORDERED**.[29]

Notwithstanding the reservation in Jose's Pre-Trial *Brief*, the CA held that the **Pre-Trial *Order*** categorically stated that

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[23] See *id*. at 44, 80.

[24] *Id*. at 44.

[25] The exact date of Judge Maniba's assumption of office cannot be ascertained from the records.

[26] *Rollo,* p. 42.

[27] *Id*. at 44.

[28] See *id*.

[29] *Id*. at 50-51.

only Jose's testimony, and that of Petra's, would be presented on Jose's behalf. Considering that Atty. Leong did not take any steps to amend the Pre-Trial *Order* to reflect the general reservation appearing in Jose's Pre-Trial *Brief,* Judge Maniba could not be faulted for exercising his discretion to exclude Petitioners' additional witnesses from trial.[30]

Petitioners filed an MR, which the CA denied in the Assailed Resolution dated May 25, 2015. Petitioners received the Assailed Resolution on June 26, 2015.[31]

Hence, Petitioners filed the present Petition on July 13, 2015.[32]

Respondents filed their Comment[33] on November 5, 2015, to which Petitioners filed their Reply[34] on November 13, 2015.

The Issue

The sole issue for this Court's resolution is whether the CA erred when it affirmed the RTC Resolution and Order denying Petitioners' oral motion to present witnesses not listed in the Pre-Trial *Order*.

The Court's Ruling

The Petition should be denied for lack of merit. The Court finds no ascribable error on the part of the CA in affirming the RTC Resolution and Order, as these issuances merely enforce the rules governing pre-trial.

Paragraph (A)(2)(d) of A.M. No. 03-1-09-SC does not apply.

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

[31] *Id*. at 7.

[32] *Id*. at 5, 7. Under Section 2 of Rule 45, Petitioners were given fifteen (15) days from receipt of the Assailed Resolution to file a petition for review on *certiorari*. However, since the expiration of said fifteen (15)-day period fell on July 11, 2015, a Saturday, Petitioners had until July 13, 2015, the next working day, to do so. Accordingly, the Petition was timely filed.

[33] *Id*. at 115-124.

[34] *Id*. at 134-139.

Petitioners assert that the rigid application of the rules governing pre-trial will curtail the truth and frustrate the ends of justice at their expense.[35] To support this assertion, Petitioners quote[36] A.M. No. 03-1-09-SC, otherwise known as the *Proposed Rule on Guidelines to be Observed by Trial Court Judges and Clerks of Court in the Conduct of Pre-Trial and Use of Deposition-Discovery Measures*[37] (Pre-Trial Guidelines), particularly paragraph A(2)(d) thereof, which states:

> PRE-TRIAL
>
> A. Civil Cases
>
> x x x x x x x x x
>
> 2. The parties shall submit, at least three (3) days before the pre-trial, pre-trial briefs containing the following:
>
> x x x x x x x x x
>
> d. The documents or exhibits to be presented, stating the purpose thereof. (**No evidence shall be allowed to be presented and offered during the trial in support of a party's evidence-in-chief other than those that had been earlier identified and pre-marked during the pre-trial, <u>except if allowed by the court for good cause shown</u>**)[.] (Emphasis and underscoring supplied)

Petitioners' reliance on the purported exception under paragraph A(2)(d) is misplaced. As its introductory phrase clearly indicates, paragraph A(2) enumerates the matters which parties are required to state in the pre-trial brief. Since paragraph A(2) does not prescribe rules on admissibility and presentation of evidence, it should not be interpreted in this manner.

In addition, paragraph (A)(2)(d) refers to documentary and object evidence, and not testimonial evidence, which, in turn,

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[35] See *id*. at 16.

[36] *Id*. at 30.

[37] Approved on July 13, 2004.

are treated separately under paragraph (A)(2)(f).[38] Accordingly, the scope of the specific exception under paragraph A(2)(d) should not be unduly extended to cover testimonial evidence.

Even assuming, *arguendo,* that the exception under paragraph A(2)(d) may be invoked as basis to allow the presentation of witnesses not listed in the pre-trial order, its application remains contingent upon a showing of good cause sufficient to justify the same. Petitioners attempted to satisfy this condition by citing "special and extraordinary circumstances" which they claim should have impelled the RTC to allow the presentation of their additional witnesses. The Petition summarizes these circumstances, as follows:

A. The presence of a written reservation[39] by then counsel of x x x [Jose and Angelina] to present additional witnesses x x x as shown in [their] [P]re-[T]rial [B]rief x x x[;]

B. The oral manifestation[40] of then counsel of x x x [Jose and Angelina], Atty. Leong, that he is reserving five (5) more witnesses depending on the outcome of the cross-examination

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[38] Paragraph (A)(2)(f) of the Pre-Trial Guidelines states:

A. Civil Cases

x x x x x x x x x

2. The parties shall submit, at least three (3) days before the pre-trial, pre-trial briefs containing the following:

x x x x x x x x x

f. The number and names of the witnesses, the substance of their testimonies, and the approximate number of hours that will be required by the parties for the presentation of their respective witnesses.

[39] See *rollo,* pp. 19-20. The written reservation in Jose's Pre-Trial *Brief* reads:

NUMBER AND NAMES OF WITNESSES

[Jose and Angelina] will testify on the special and affirmative defenses and the denials in their answer and will identify the documents that will be presented. If necessary, [Angelina] will corroborate the testimony of [Jose]. Depending on the development of the trial, [Jose and Angelina] reserve their right to present additional witnesses. (Emphasis and underscoring omitted)

[40] See *id*. at 13-14. The relevant portions of the TSN for the hearing dated July 17, 2006 states:

of x x x [Jose], without objection interposed by [Respondents] at that time as recorded x x x in [the Transcript of Stenographic Notes (TSN)] x x x.

C. The fact that on July 17, 2006, [Judge Ruiz, then Presiding Judge of the RTC] x x x allowed the presentation of additional witnesses for the [Petitioners] by setting six (6) additional calendar dates for the presentation of evidence of the [Petitioners] even after the Pre-Trial Order had already been issued x x x[.][41] (Emphasis and underscoring omitted)

The Court finds these circumstances grossly insufficient to support Petitioners' cause.

As correctly pointed out by the CA in the Assailed Decision, neither Jose nor his counsel Atty. Leong took the necessary

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ATTY. LEONG:

That's all with the witness.

COURT: Cross-examination please x x x.

[RESPONDENTS' COUNSEL]:

If we will be allowed, we will consolidate our notes, we will cross-examine the witness next hearing.

COURT: Any objection on the part of the counsel for [Petitioners]? The counsel for the [Respondents] has to consolidate his notes in order to prepare his intelligent cross-examination to x x x [Jose].

August 14 and 16?

x x x x x x x x x

There being no objection on the part of the counsel for [Petitioners], the motion for a continuance filed by the counsel for [Respondents] to allow him to prepare an intelligent cross-examination of the first witness for the [Petitioners], x x x [Jose], let the said cross-examination be conducted on [August 14, 2006] at 10:00 o'clock in the morning x x x.

x x x x x x x x x

Would he be your sole witness, [counsel for Petitioners]?

ATTY. LEONG:

It would depend on the cross-examination. We will be presenting five [5] more x x x.

COURT: Aside from the [August 16, 2006] setting, let this case be also heard on [September] 13, 18, 25 and 27 and [October 2,] 2006, all at 10:00 o'clock in the morning.

[41] *Id.* at 19-20.

steps to cause the revision of the Pre-Trial *Order* to reflect the general reservation in Jose's Pre-Trial *Brief*, notwithstanding the explicit directive to make such necessary corrections in the *Colatilla* portion of the Pre-Trial *Order*. This failure binds the Petitioners as substitute parties, being mere representatives of the latter's interests in the present case.[42]

Moreover, the setting of additional hearing dates following the direct examination of Jose should not be impliedly taken as a grant of leave to present Petitioners' additional witnesses. To be sure, the hearing dates in question were set on **July 17, 2006**. Petitioners do not deny that they sought leave to present their six (6) additional witnesses *only* on **January 16, 2008**,[43] one (1) year and five (5) months *after* the additional hearing dates were set. If Judge Ruiz did in fact grant Jose leave to present witnesses excluded in the Pre-Trial *Order*, Petitioners would not have sought such leave anew. Evidently, Petitioners' argument that Judge Ruiz already allowed such presentation, and that Judge Maniba was bound to honor such previous directive, is a mere afterthought.

Finally, it bears stressing that Petitioners neither furnished the Court with copies of the judicial affidavits of their additional witnesses, nor make any allegations detailing the substance of their respective testimonies. Hence, the Court is left without any opportunity to determine if the presentation of said witnesses is indeed necessary to "ferret out the whole truth,"[44] as Petitioners claim.

The rules governing pre-trial remain controlling in this case.

The importance of pre-trial in civil cases cannot be overemphasized.[45] Time and again, this Court has recognized

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[42] See generally *Regalado v. Regalado,* 665 Phil. 837 (2011).

[43] *Rollo*, p. 44.

[44] *Id*. at 23.

[45] *Spouses Salvador v. Spouses Rabaja,* 753 Phil. 175, 192 (2015).

"the importance of pre-trial procedure as a means of facilitating the disposal of cases by simplifying or limiting the issues and avoiding unnecessary proof of facts at the trial, and x x x to do whatever may reasonably be necessary to facilitate and shorten the formal trial."[46] The need for strict adherence to the rules on pre-trial thus proceeds from its significant role in the litigation process.[47]

This is not to say, however, that the rules governing pre-trial should be, at all times, applied in absolute terms. While faithful compliance with these rules is undoubtedly desirable, they may be relaxed in cases where their application would frustrate, rather than facilitate, the ends of justice.[48] The relaxation of these rules, however, is contingent upon a showing of compelling and persuasive reasons to justify the same.[49]

It is the Court's considered view that Petitioners have failed to sufficiently show that such compelling and persuasive reasons exist in this case. Consequently, the Petition must be denied.

WHEREFORE, premises considered, the petition for review on *certiorari* is **DENIED.** The Assailed Decision dated November 27, 2014 and Resolution dated May 25, 2015 issued by the Court of Appeals Eighteenth Division in CA-G.R. SP. No. 07194 are hereby **AFFIRMED.**

SO ORDERED.

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

Reyes, Jr., J., on leave.

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[46] *Lim v. Animas,* 159 Phil. 1010, 1012 (1975).

[47] *Spouses Salvador v. Spouses Rabaja, supra* note 45, at 191-192.

[48] *Vette Industrial Sales Co., Inc. v. Cheng,* 539 Phil. 37, 48, 49 and 52 (2006).

[49] See *Domingo v. Spouses Singson,* G.R. Nos. 203287 & 207936, April 5, 2017, p. 9.

FIRST DIVISION

[G.R. No. 222031. November 22, 2017]

EMILIO CALMA, *petitioner, vs.* **ATTY. JOSE M. LACHICA, JR.,**[*] *respondent.*

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; PETITION FOR REVIEW ON *CERTIORARI*; AS A RULE, FACTUAL FINDINGS OF THE TRIAL COURT WHICH ARE AFFIRMED BY THE APPELLATE COURT ARE BINDING UPON THE SUPREME COURT; CASE AT BAR.—** Both the RTC and the CA were convinced that the sale of the subject property by Ceferino to respondent was valid and as such, the latter has a valid claim of right over the same. This can be gleaned from the RTC's Decision ordering Ricardo to pay respondent damages due to the former's bad faith in the acquisition of the subject property, recognizing thus the latter's interest and right over the same. The CA upheld respondent's rights over the subject property even more by ordering, among others, the cancellation of petitioner's title and the transfer thereof to respondent's name. For this matter, thus, We adhere to the general rule of refraining to scrutinize further the factual findings of the trial court as affirmed by the appellate court. Besides, it must be noted that Ricardo did not question the liability imposed against him by the RTC and the CA anymore as only petitioner came before Us in this petition. Hence, the question as to respondent's right or the lack thereof in connection with Ricardo's liability cannot be dealt with by this Court. Consequently, We are constrained to uphold respondent's claimed right over the subject property.

2. **CIVIL LAW; LAND TITLES AND DEEDS; LAND REGISTRATION; TORRENS SYSTEM; EVERY PERSON DEALING WITH REGISTERED LAND MAY SAFELY RELY ON THE CORRECTNESS OF THE CERTIFICATE OF TITLE ISSUED THEREFOR; EXCEPTIONS.—** The Torrens system was adopted to "obviate possible conflicts of

[*] Sometimes referred to as Atty. Jose M. Lachica in other pleadings.

title by giving the public the right to rely upon the face of the Torrens certificate and to dispense, as a rule, with the necessity of inquiring further." From this sprung the doctrinal rule that every person dealing with registered land may safely rely on the correctness of the certificate of title issued therefor and is in no way obliged to go beyond the certificate to determine the condition of the property. To be sure, this Court is not unaware of the recognized exceptions to this rule, to wit: *(1.)* when the party has actual knowledge of facts and circumstances that would impel a reasonably cautious man to make further inquiry; *(2.)* when the buyer has knowledge of a defect or the lack of title in his vendor; or *(3.)* when the buyer/mortgagee is a bank or an institution of similar nature as they are enjoined to exert a higher degree of diligence, care, and prudence than individuals in handling real estate transactions.

3. ID.; ID.; ID.; PRESIDENTIAL DECREE NO. 1529 (PROPERTY REGISTRATION DECREE); INNOCENT PURCHASER FOR VALUE REFERS TO SOMEONE WHO BUYS THE PROPERTY OF ANOTHER PAYING IN FULL THE PRICE AT THE TIME OF THE PURCHASE AND WITHOUT NOTICE OF ANOTHER PERSON'S CLAIM; CASE AT BAR.— Complementing this doctrinal rule is the concept of an innocent purchaser for value, which refers to someone who buys the property of another without notice that some other person has a right to or interest in it, and who pays in full and fair the price at the time of the purchase or without receiving any notice of another person's claim. Section 44 of Presidential Decree No. 1529 or the Property Registration Decree recognizes innocent purchasers for value and their right to rely on a clean title: x x x Every registered owner receiving certificate of title in pursuance of a decree of registration, and **every subsequent purchaser of registered land taking a certificate of title for value and good faith, shall hold the same free from all encumbrances except those noted in said certificate. x x x** Guided by the foregoing, We find that the circumstances obtaining in this case show that petitioner is an innocent purchaser for value who exercised the necessary diligence in purchasing the property, contrary to the CA's findings. The following facts are clear and undisputed: (1) petitioner acquired the subject property through sale from Ricardo as evidenced by a Deed of Absolute Sale dated July 10, 1998, duly notarized on even date; (2) said sale was registered in the Registry of Deeds, Cabanatuan City on December 22, 1998 as evidenced by TCT No. T-96168; (3) petitioner made inquiries with the Register of Deeds and

the bank where the subject property was mortgaged by Ricardo as regards the authenticity and the status of Ricardo's title before proceeding with the purchase thereof; and (4) petitioner was able to ascertain that Ricardo's title was clean and free from any lien and encumbrance as the said title, together with his inquiries, showed that the only annotations in the said title were respondent's 1981 adverse claim and its cancellation in 1994. From the foregoing factual backdrop, there was no *indicia* that could have aroused questions in the petitioner's mind regarding the title of the subject property. Hence, We do not find any cogent reason not to apply the general rule allowing the petitioner to rely on the face of the title. For one, it is clearly manifest in the records that while respondent's adverse claim appears in Ricardo's title, it also appears therein that the said adverse claim had already been cancelled on April 26, 1994 or more than four years before petitioner puchased the subject property. As correctly found by the RTC, thus, Ricardo's title is already clean on its face, way before petitioner puchased the same.

4. **REMEDIAL LAW; CIVIL PROCEDURE; ALLEGATIONS IN PLEADINGS; AN ALLEGATION OF FRAUD MUST BE SUPPORTED BY CLEAR AND CONVINCING EVIDENCE; CASE AT BAR.—** [R]espondent's allegation of fraud and petitioner's knowledge of the transaction between him and Ceferino are not supported by any evidence except bare allegations. It is basic that an allegation of fraud must be substantiated. Section 5, Rule 8 provides that in all averments of fraud, the circumstances constituting the same must be stated with particularity. Moreover, fraud is a question of fact which must be proved by clear and convincing evidence.

5. **CIVIL LAW; SPECIAL CONTRACTS; SALES; RULE ON DOUBLE SALE; THE RIGHT OF AN INNOCENT PURCHASER FOR VALUE WHO WAS ABLE TO REGISTER HIS/HER ACQUISITION OF THE SUBJECT PROPERTY SHOULD PREVAIL OVER THE RIGHT OF ANOTHER WHO WAS NOT ABLE TO REGISTER THE SALE OF THE SAME PROPERTY.—** Applying now the rule on double sale under Article 1544 of the Civil Code, petitioner's right as an innocent purchaser for value who was able to register his acquisition of the subject property should prevail over the unregistered sale of the same to the respondent. Article 1544 states: **If the same thing should have been sold**

> **to different vendees,** the ownership shall be transferred to the person who may have first taken possession thereof in good faith, if it should be movable property. **Should it be immovable property, the ownership shall belong to the person acquiring it who in good faith first recorded it in the Registry of Property.**

APPEARANCES OF COUNSEL

Feliciano V. Buenaventura and *Sabino Jose C. Facunla* for petitioner.

Valentino F.P. Alberto for respondent.

D E C I S I O N

TIJAM, *J.*:

For Our resolution is a Petition for Review on *Certiorari*[1] under Rule 45, assailing the Decision[2] dated April 28, 2015 of the Court of Appeals (CA) in CA-G.R. CV No. 93329, which reversed and set aside the Decision[3] dated January 20, 2009 of the Regional Trial Court (RTC) of Cabanatuan City, Branch 30 in Civil Case No. 4355.

Factual Antecedents

Respondent Atty. Jose M. Lachica, Jr. filed a complaint for Annulment of Void Deeds of Sale, Annulment of Titles, Reconveyance, and Damages originally against Ricardo Tolentino (Ricardo) and petitioner Emilio Calma, and later on, Pablo Tumale (Pablo) was impleaded as additional defendant in a Second Amended Complaint.[4]

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[1] *Rollo,* pp. 53-93.

[2] Penned by CA Associate Justice Victoria Isabel A. Paredes with Justices Isaias P. Dicdican and Elihu A. Ybañez concurring.; *id*. at 117-130.

[3] Penned by Judge Virgilio G. Caballero; *id.* at 97-115.

[4] *Id*. at 172-181.

Subject of the said complaint was a 20,000-square meter parcel of land situated in Sumacabeste, Cabanatuan City covered by Transfer Certificate of Title (TCT) No. T-28380.[5]

Respondent, in his complaint, alleged that he was the absolute owner and actual physical possessor of the subject property, having acquired the same sometime in 1974 for PhP15,000 through sale from Ceferino Tolentino (Ceferino) married to Victoria Calderon, who are Ricardo's parents. Consequently, the subject property's title was delivered to respondent also in 1974. Allegedly, he and his tenant/helper Oscar Justo (Oscar) has been in actual physical possession and cultivation of the said land continuously since its acquisition up to present.[6]

Unfortunately, however, the 1974 Deed of Sale was allegedly lost. Hence, sometime in 1979, respondent and Ceferino agreed to execute another deed of sale. Spouses Tolentino allegedly took advantage of the situation and demanded an additional PhP15,000 from respondent to which the latter heeded. Thus, in the new Deed of Sale executed on April 29, 1979, the consideration for the sale of the subject property was increased to PhP30,000.[7]

After the notarization of the 1979 Deed of Sale on April 29, 1986, respondent requested Spouses Tolentino to execute an Affidavit of Non-Tenancy and other documents required by the Department of Agrarian Reform for the transfer of the title in respondent's name. Again, taking advantage of the situation, Ceferino and his son Ricardo allegedly requested respondent to allow them to cultivate the 5,000-square meter portion of the subject land. The father and son allegedly offered to process the transfer of the title to respondent's name to persuade the latter to grant their request. According to the respondent, because of the trust, confidence, love, and respect that his family had for Ceferino's family, he entrusted the notarized Deed of Sale,

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[5] *Id*. at 98-99.

[6] *Id*.

[7] *Id*. at 99.

TCT No. T-28380, and the other documents on hand for the transfer of the title to his name and waited for the Tolentinos to make good on their promise.[8]

In the meantime, respondent, through Oscar, allegedly continued to possess the entire subject property.[9]

Respondent's employment in the government required him to travel to several distant places within the country.[10] Hence, on May 25, 1981, before leaving Nueva Ecija again and being assigned to a far-away province, respondent caused the annotation of a Notice of Adverse Claim on TCT No. T-28380 to protect his claimed rights and interest in the subject property.[11]

Due to respondent's employment and also because of an illness, he lost contact with the Tolentinos for a long period of time.[12]

Sometime in March 2001, respondent returned to Cabanatuan City and learned that Ceferino had already passed away. Ricardo, on the other hand, was nowhere to be located despite efforts to do so.[13] He also found Pablo to have been placed in possession of the 5,000-square meter portion of the subject property by the Tolentinos sometime in 1986.[14]

Upon checking with the Office of the Register of Deeds as regards to the processing of his title over the subject property, he discovered that the same was transferred under the name of Ricardo, which had been later on transferred to the petitioner upon Ricardo's sale thereof to the latter. In fine, TCT No. T-28380 under Ceferino's name was cancelled and replaced by TCT No. T-68769 under Ricardo's name, which was then

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[8] *Id*.

[9] *Id*.

[10] *Id*.

[11] *Id*. at 293.

[12] *Id*. at 99.

[13] *Id*.

[14] *Id*. at 61.

also cancelled and replaced by TCT No. T-96168 now under petitioner's name.[15]

Respondent argued that the sale between Ceferino and Ricardo was null and void for being executed with fraud, deceit, breach of trust, and also for lack of lawful consideration. Respondent emphasized that not only was Ricardo in full knowledge of the sale of the subject property to him by Ceferino, but also his adverse claim was evidently annotated in the latter's title and carried over to Ricardo's title. Respondent also alleged that petitioner is an alien, a full-blooded Chinese citizen, hence, not qualified to own lands in the Philippines, and is likewise a buyer in bad faith.[16]

Respondent, thus, prayed for the annulment of the Deed of Sale between Ceferino and Ricardo, as well as the Deed of Sale between Ricardo and petitioner. TCT No. T-68769 under Ricardo's name and TCT No. T-96168 under petitioner's name were likewise sought to be annulled. Respondent further prayed for the ejectment of Pablo from the 5,000-square meter portion of the subject property and the reconveyance of the entire property to him. Exemplary damages, actual damages, litigation expenses and attorney's fees were also prayed for.[17]

To prove his case, respondent presented his testimony, the testimonies of Oscar Justo and Herminiano Tinio, Sr., and documentary evidence comprising of TCT No. T-28380 with the annotation of his Notice of Adverse Claim dated May 25, 1981, the April 29, 1979 Deed of Sale, TCT-T-68769 with the annotation of the same Notice of Adverse Claim and an entry regarding the cancellation thereof albeit the validity of such cancellation was challenged by the respondent, TCT No. T-96168 dated December 22, 1998, March 6, 1989 Deed of Absolute Sale, which he alleged to be certified copies thereof, and the alleged original copy of the certificate to file action.[18]

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[15] *Id*. at 99-100.

[16] *Id*. at 100.

[17] *Id*. at 179-180.

[18] *Id*. at 256-260.

For their part, defendants before the trial court averred in their Amended Answer[19] that petitioner is a buyer in good faith and for value, having acquired the subject property on July 10, 1998 through sale from Ricardo. They argued, among others, that petitioner, despite merely relying on the correctness of Ricardo's TCT, is duly protected by the law. It was stated in Ricardo's title that respondent's adverse claim had already been cancelled more than four years before the sale or on April 26, 1994. Thus, defendants argued that petitioner had no notice of any defect in Ricardo's title before purchase of the subject property.[20]

Petitioner presented the July 10, 1998 Deed of Absolute Sale, TCT No. T-68769 with the annotation of the cancellation of respondent's adverse claim, TCT No. T-96168, to prove good faith in the acquisition of the subject property, and a copy of his passport, Marriage Certificate, and Certificate of Live Birth to prove his Filipino citizenship, contrary to respondent's allegation.[21]

The RTC Ruling

The RTC ruled that petitioner is an innocent purchaser for value and that he had already acquired his indefeasible rights over the title. According to the trial court, while it may be true that respondent's adverse claim was annotated in Ricardo's title, the same title also shows that such adverse claim had already been cancelled more than four years before he bought the property. Moreover, the RTC ruled that respondent's cause of action had already prescribed.[22] The trial court also noted that respondent failed to present any evidence on the alleged fraud in the transfer of the title of subject property to petitioner.[23]

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[19] *Id*. at 183-191.

[20] *Id*. at 100.

[21] *Id*. at 64, 66, and 68-69.

[22] *Id*. at 113.

[23] *Id*. at 114.

Ricardo was, however, held liable for the value of the property, damages, and attorney's fees in favor of respondent as, according to the RTC, Ricardo cannot claim good faith because of the existence of the adverse claim.[24]

Lastly, the RTC ruled that respondent has no recourse against Pablo, who is liable to petitioner as the lawful owner.

The RTC disposed, thus:

WHEREFORE, premises considered, judgment is hereby rendered:

1. In favor of [respondent] and against Defendant Ricardo Tolentino.

The latter is hereby ordered to pay:

a) Forty Thousand Pesos (₱40,000.00), the estimated assessed value of the property formerly covered by TCT No. NT-68769 [sic], as actual damages;

b) One Hundred Thousand Pesos (₱100,000.00) as moral damages;

c) Fifty Thousand Pesos (₱50,000.00) as exemplary damages;

d) Eighty Thousand Pesos (₱80,000.00) as attorney's fees and litigation expenses; and

2. Against [respondent] and in favor of the [petitioner] Emilio Calma and Pablo Tumale dismissing this complaint against them.

No evidence having been offered by Defendant's [sic] to prove their Counterclaim, the same is, as it is, **DISMISSED.**

SO ORDERED.[25]

Respondent moved for the reconsideration of the said Decision, but the RTC denied the motion on March 24, 2009.[26]

Thus, respondent appealed before the CA.

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[24] *Id*.

[25] *Id*. at 114-115.

[26] *Id*. at 120.

The CA Ruling

In its assailed Decision, the CA reversed the RTC's ruling, finding that both Ricardo and petitioner were in bad faith in their respective acquisitions of the subject property. Hence, both their titles should be annulled. While upholding the RTC's finding that the registration of title in Ricardo's name was null and void as he had prior knowledge of the sale between his father and respondent, the CA added that because of such bad faith, Ricardo's title must be annulled. Consequently, as Ricardo had no valid title to the subject property, he had nothing to convey to petitioner.[27]

The CA then proceeded to discuss its finding of bad faith against petitioner. The appellate court concluded that the investigation conducted by petitioner on the title of the subject property before purchase was not sufficient to consider him to be a buyer in good faith. The CA noted petitioner's knowledge of the annotation of an adverse claim on Ricardo's title and that his act of asking assurance from Ricardo, the Register of Deeds, and the bank where the subject property was mortgaged prior to the sale to petitioner cannot be considered as diligent efforts to protect his rights as a buyer.[28]

The CA explained that petitioner should not have just relied on the face of the title as the notice of adverse claim annotated on Ceferino's title carried over to Ricardo's title for a total of 13 years before its cancellation should have alerted him to conduct an actual inspection of the title.[29] If only petitioner had conducted an actual inspection of the property, the CA opined, petitioner would have readily found that Oscar, respondent's alleged tenant, had been occupying and tilling the land.[30] Thus, despite the fact that petitioner registered his acquisition of the subject property, since he was considered to

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[27] *Id*. at 122.

[28] *Id*. at 123.

[29] *Id*. at 124.

[30] *Id*. at 125.

be in bad faith, such registration did not confer any right upon him.[31] Applying the rule on double sale under Article 1544[32] of the Civil Code, as his registration is deemed to be no registration at all because of his bad faith, the buyer who took prior possession of the property in good faith shall be preferred.[33]

The CA then disposed of the appeal as follows:

WHEREFORE, the appeal is hereby **GRANTED**. The appealed Decision dated January 20, 2009 of the Regional Trial Court of Cabanatuan City, Branch 30, in Civil Case No. 4355 for *Annulment of Void Deeds of Sale, Cancellation of Titles, Reconveyance,* and *Damages* is hereby **REVERSED** and **SET ASIDE**, and a **NEW DECISION** is hereby entered to read, thus:

"*WHEREFORE, judgment is hereby rendered in favor of [respondent] Atty. Jose M. Lachica, Jr. and against x x x Ricardo Tolentino and [petitioner] Emilio Calma, declaring [respondent] as the rightful owner of the subject land covered under Transfer Certificate of Title No. T-96168 of the Registry of Deeds of Cabanatuan City, and ordering:*

1) the annulment of the Deed of Sale between Ricardo Tolentino and Ceferino Tolentino;

2) the annulment of the Deed of Absolute Sale between Ricardo Tolentino and Emilio Calma dated July 10, 1998;

3) the Register of Deeds of Cabanatuan City to cancel Transfer Certificate of Title No. T-96168 and to issue a new one in the name of Jose M. Lachica, Jr. married to Warlita Ordonio;

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[31] *Id*. at 122.

[32] Art. 1544. If the same thing should have been sold to different vendees, the ownership shall be transferred to the person who may have first taken possession thereof in good faith, if it should be movable property.

Should it be immovable property, the ownership shall belong to the person acquiring it who in good faith first recorded it in the Registry of Property.

Should there be no inscription, the ownership shall pertain to the person who in good faith was first in the possession; and, in the absence thereof, to the person who presents the oldest title, provided there is good faith.

[33] *Rollo*, p. 122.

4) x x x Ricardo Tolentino to pay [respondent] Atty. Jose M. Lachica, Jr. the amounts of One Hundred Thousand Pesos (₱100,000.00) as moral damages and Fifty Thousand Pesos (₱50,000.00) as exemplary damages, the monetary awards to earn interest at six percent (6%) per annum from finality of this Decision until fully paid; and

5) costs against x x x Ricardo Tolentino and Emilio Calma."

SO ORDERED.[34]

Hence, this petition.

The Issue

The resolution of the instant controversy boils down to who between the petitioner and the respondent has better right over the subject property.

The Ruling of the Court

We rule for the petitioner.

Both the petitioner and the respondent claim ownership over the subject property by virtue of acquisition through sale. To resolve the present controversy, thus, it is necessary to look into the basis of each party's claimed rights.

Sale from Ceferino to respondent

Respondent's claimed right over the subject property is grounded upon his alleged acquisition of the same from Ceferino by sale.

Both the RTC and the CA were convinced that the sale of the subject property by Ceferino to respondent was valid and as such, the latter has a valid claim of right over the same. This can be gleaned from the RTC's Decision ordering Ricardo to pay respondent damages due to the former's bad faith in the acquisition of the subject property, recognizing thus the latter's interest and right over the same. The CA upheld respondent's

[34] *Id.* at 128-129.

rights over the subject property even more by ordering, among others, the cancellation of petitioner's title and the transfer thereof to respondent's name.

For this matter, thus, We adhere to the general rule of refraining to scrutinize further the factual findings of the trial court as affirmed by the appellate court.[35] Besides, it must be noted that Ricardo did not question the liability imposed against him by the RTC and the CA anymore as only petitioner came before Us in this petition. Hence, the question as to respondent's right or the lack thereof in connection with Ricardo's liability cannot be dealt with by this Court. Consequently, We are constrained to uphold respondent's claimed right over the subject property.

Sale from Ricardo to petitioner

Petitioner's claimed right over the subject property, on the other hand, is grounded upon his acquisition of the same from Ricardo by sale. Unlike the sale from Ceferino to respondent, the Deed of Sale in petitioner's favor was registered with the Registry of Deeds, giving rise to the issuance of a new certificate of title in the name of the petitioner.

However, in ruling that respondent is the rightful owner of the subject property, the CA ruled that no right was conferred upon the petitioner by such sale primarily due to his predecessor's bad faith in the acquisition of the subject property. The CA also found that petitioner, like his predecessor, cannot be considered as a buyer in good faith. These findings are grounded on the fact that respondent's Notice of Adverse Claim appears in Ceferino's title and carried over to Ricardo's title, which according to the CA is sufficient notice to both Ricardo and the petitioner of respondent's interests over the subject property. The CA opined that such adverse claim should have alerted petitioner to conduct an actual inspection of the property, otherwise, he cannot be considered to be a buyer in good faith.

We do not agree.

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[35] *Gepulle-Garbo v. Spouses Garbato*, 750 Phil. 846, 855 (2015).

The Torrens system was adopted to "obviate possible conflicts of title by giving the public the right to rely upon the face of the Torrens certificate and to dispense, as a rule, with the necessity of inquiring further."[36] From this sprung the doctrinal rule that every person dealing with registered land may safely rely on the correctness of the certificate of title issued therefor and is in no way obliged to go beyond the certificate to determine the condition of the property.[37] To be sure, this Court is not unaware of the recognized exceptions to this rule, to wit: *(1.)* when the party has actual knowledge of facts and circumstances that would impel a reasonably cautious man to make further inquiry; *(2.)* when the buyer has knowledge of a defect or the lack of title in his vendor;[38] or *(3.)* when the buyer/mortgagee is a bank or an institution of similar nature as they are enjoined to exert a higher degree of diligence, care, and prudence than individuals in handling real estate transactions.[39]

Complementing this doctrinal rule is the concept of an innocent purchaser for value, which refers to someone who buys the property of another without notice that some other person has a right to or interest in it, and who pays in full and fair the price at the time of the purchase or without receiving any notice of another person's claim.[40]

Section 44 of Presidential Decree No. 1529 or the Property Registration Decree[41] recognizes innocent purchasers for value and their right to rely on a clean title:

Section 44. *Statutory liens affecting title.* — Every registered owner receiving certificate of title in pursuance of a decree of

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[36] *Leong, et al. v. See*, 749 Phil. 314, 323 (2014).

[37] *Locsin v. Hizon, et al.*, 743 Phil. 420, 429-430 (2014).

[38] *Id*. at 430.

[39] *Arguelles, et al. v. Malarayat Rural Bank, Inc.*, 730 Phil. 226, 237 (2014).

[40] *Leong, et al. v. See, supra* note 36, at 324-325.

[41] Effective June 11, 1978.

registration, and **every subsequent purchaser of registered land taking a certificate of title for value and good faith, shall hold the same free from all encumbrances except those noted in said certificate** and any of the following encumbrances which may be subsisting, namely:

First. Liens, claims or rights arising or existing under the laws and Constitution of the Philippines which are not by law required to appear of record in the Registry of Deeds in order to be valid against subsequent purchasers or encumbrances of record.

Second. Unpaid real estate taxes levied and assessed within two years immediately preceding the acquisition of any right over the land by an innocent purchaser for value, without prejudice to the right of the government to collect taxes payable before that period from the delinquent taxpayer alone.

Third. Any public highway or private way established or recognized by law, or any government irrigation canal or lateral thereof, if the certificate of title does not state that the boundaries of such highway or irrigation canal or lateral thereof have been determined.

Fourth. Any disposition of the property or limitation on the use thereof by virtue of, or pursuant to, Presidential Decree No. 27 or any other law or regulations on agrarian reform. (emphasis supplied)

Guided by the foregoing, We find that the circumstances obtaining in this case show that petitioner is an innocent purchaser for value who exercised the necessary diligence in purchasing the property, contrary to the CA's findings.

The following facts are clear and undisputed: (1) petitioner acquired the subject property through sale from Ricardo as evidenced by a Deed of Absolute Sale dated July 10, 1998, duly notarized on even date; (2) said sale was registered in the Registry of Deeds, Cabanatuan City on December 22, 1998 as evidenced by TCT No. T-96168; (3) petitioner made inquiries with the Register of Deeds and the bank where the subject property was mortgaged by Ricardo as regards the authenticity and the status of Ricardo's title before proceeding with the purchase thereof; and (4) petitioner was able to ascertain that Ricardo's title was clean and free from any lien and encumbrance as the said title, together with his inquiries, showed that the

only annotations in the said title were respondent's 1981 adverse claim and its cancellation in 1994.

From the foregoing factual backdrop, there was no *indicia* that could have aroused questions in the petitioner's mind regarding the title of the subject property. Hence, We do not find any cogent reason not to apply the general rule allowing the petitioner to rely on the face of the title.

For one, it is clearly manifest in the records that while respondent's adverse claim appears in Ricardo's title, it also appears therein that the said adverse claim had already been cancelled on April 26, 1994 or more than four years before petitioner puchased the subject property. As correctly found by the RTC, thus, Ricardo's title is already clean on its face, way before petitioner puchased the same.

Further, respondent's allegation of fraud and petitioner's knowledge of the transaction between him and Ceferino are not supported by any evidence except bare allegations. It is basic that an allegation of fraud must be substantiated.[42] Section 5[43], Rule 8 provides that in all averments of fraud, the circumstances constituting the same must be stated with particularity. Moreover, fraud is a question of fact which must be proved by clear and convincing evidence.[44]

At any rate, contrary to the CA's ruling, petitioner was never remiss in his duty of ensuring that the property that he was going to purchase had a clean title. Despite Ricardo's title being clean on its face, petitioner still conducted an investigation of his own by proceeding to the Register of Deeds, as well as to the bank where said title was mortgaged, to check on the authenticity and the status of the title. Thus, petitioner was

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[42] *Leong, et al. v. See, supra* note 36, at 328.

[43] SEC. 5. Fraud, mistake, condition of the mind. – In all averments of fraud or mistake, the circumstances constituting fraud or mistake must be stated with particularity. Malice intent, knowledge or other condition of the mind of a person may be averred generally.

[44] *ECE Realty and Development, Inc. v. Mandap*, 742 Phil. 164, 170 (2014).

proven to be in good faith when he dealt with Ricardo and relied on the title presented and authenticated to him by the Register of Deeds and confirmed by the mortgagee-bank. Respondent, on the other hand, failed to proffer evidence to prove otherwise.

Notably, the CA's conclusions to the contrary are merely based on assumptions and conjectures, such as that the bank's advice for petitioner to buy the subject property was meant only for the protection of the bank's interest; and that the annotation of the adverse claim on Ceferino's title and carried over to Ricardo's title for a total of 13 years before it was cancelled should have aroused suspicion.[45] These conclusions have no factual or legal basis. What is essential on the matter of petitioner's good faith in the acquisition of the subject property is the cancellation of such adverse claim, which clearly appears on the face of Ricardo's title.

As the fact that petitioner is an innocent purchaser for value had been established, the validity and efficacy of the registration, as well as the cancellation, of respondent's adverse claim is immaterial in this case. What matters is that the petitioner had no knowledge of any defect in the title of the property that he was going to purchase and that the same was clean and free of any lien and encumbrance on its face by virtue of the entry on the cancellation of adverse claim therein. Thus, petitioner may safely rely on the correctness of the entries in the title.

Even the defect in Ricardo's title due to his bad faith in the acquisition of the subject property, as found by both the RTC and the CA, should not affect petitioner's rights as an innocent purchaser for value. The CA patently erred in ruling that since Ricardo had no valid title on the subject property due to his bad faith, he had nothing to convey to the petitioner. It is settled that a defective title may still be the source of a completely legal and valid title in the hands of an innocent purchaser for value.[46]

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[45] *Rollo*, p. 124.

[46] *Leong, et al. v. See, supra* note 36, at 328.

Petitioner has a better right of ownership over the subject property

Applying now the rule on double sale under Article 1544 of the Civil Code, petitioner's right as an innocent purchaser for value who was able to register his acquisition of the subject property should prevail over the unregistered sale of the same to the respondent. Article 1544 states:

> **If the same thing should have been sold to different vendees,** the ownership shall be transferred to the person who may have first taken possession thereof in good faith, if it should be movable property.
>
> **Should it be immovable property, the ownership shall belong to the person acquiring it who in good faith first recorded it in the Registry of Property.**
>
> Should there be no inscription, the ownership shall pertain to the person who in good faith was first in the possession; and, in the absence thereof, to the person who presents the oldest title, provided there is good faith. *(emphasis supplied)*

With that, We find no necessity to belabor on the other issues raised in the petition.

WHEREFORE, premises considered, the Decision dated April 28, 2015 of the Court of Appeals is **REVERSED and SET ASIDE**. Accordingly, the Decision dated January 20, 2009 of the Regional Trial Court of Cabanatuan City, Branch 30, is hereby **REINSTATED**.

SO ORDERED.

Sereno, C.J. (Chairperson), Leonardo-de Castro, del Castillo, and *Jardeleza, JJ.,* concur.

SECOND DIVISION

[G.R. No. 222180. November 22, 2017]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **ELEUTERIO BRAGAT,** *accused-appellant,* **JUNDIE BALVEZ and TWO (2) JOHN DOES,** *accused.*

SYLLABUS

1. CRIMINAL LAW; REVISED PENAL CODE; ROBBERY WITH RAPE; ELEMENTS; ESTABLISHED IN CASE AT BAR.— Both the RTC of Toledo City, Cebu, Branch 29, and the Court of Appeals correctly found the appellant guilty beyond reasonable doubt of the special complex crime of robbery with rape under Article 294 of the Revised Penal Code, as amended by Section 9 of Republic Act No. 7659. Robbery with rape contemplates a situation where the original intent of the accused was to take, with intent to gain, personal property belonging to another and rape is committed on the occasion thereof or as an accompanying crime, and not the other way around. After a careful review of the records of the case, this Court finds that there is no basis to disturb the findings of the RTC as affirmed by the Court of Appeals. The prosecution's evidence satisfactorily established the following essential elements of the crime: (a) the taking of personal property is committed with violence or intimidation against persons; (b) the property taken belongs to another; (c) the taking is done with *animo lucrandi;* and (d) the robbery is accompanied by rape.

2. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; DENIAL AND ALIBI; NEGATIVE, SELF-SERVING, AND UNDESERVING OF ANY WEIGHT IN LAW, UNLESS SUBSTANTIATED BY CLEAR AND CONVINCING PROOF; CASE AT BAR.— [The] Court agrees with the RTC and the Court of Appeals that the testimonies of the prosecution witnesses were sufficient and credible to sustain the conviction of appellant. Appellant not only failed to discredit the testimonies of the prosecution witnesses, but also failed to strengthen his *alibi.* Appellant did not introduce as witnesses his alleged companions that night, his employer, Celestino Jojo Andales, Jr. and the other two *trisikad* drivers,

Federico Casas and Berto Bensolan, to testify that it was physically impossible for appellant to be in the spouses' house because appellant was with them in another municipality. Here, absent any showing of ill motive on the part of the witnesses, a categorical, consistent, and positive identification of the appellant prevails over the appellant's *alibi* that "he was somewhere else when the crime was committed and that it was physically impossible for him to have been at the scene of the crime." Unless substantiated by clear and convincing proof, *alibi* and denial are negative, self-serving, and undeserving of any weight in law.

3. CRIMINAL LAW; REVISED PENAL CODE; RAPE; A MEDICAL EXAMINATION AND A MEDICAL CERTIFICATE ARE MERELY CORROBORATIVE AND ARE NOT INDISPENSABLE TO THE PROSECUTION OF A RAPE CASE; CASE AT BAR.— This Court also agrees with the Court of Appeals that the negative results of a physical examination conducted by a certified doctor do not at all negate the commission of rape. We have consistently ruled that a medical examination and a medical certificate are merely corroborative and are not indispensable to the prosecution of a rape case. We agree with the ruling of the Court of Appeals that: While Dr. Amadora testified in court that the results of the physical examinations conducted on AAA were negative, such fact does not at all negate the commission of rape. It has been ruled that the absence of fresh lacerations does not prove that the victim was not raped. A freshly broken hymen is not an essential element of rape and healed lacerations do not negate rape. Hence, the presence of healed hymenal lacerations the day after the victim was raped does not negate the commission of rape by the accused when the crime was proven by the combination of highly convincing pieces of circumstantial evidence x x x.

4. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; AS A RULE, THE SUPREME COURT WILL NOT INTERFERE WITH THE JUDGMENT OF THE TRIAL COURT IN PASSING ON THE CREDIBILITY OF THE OPPOSING WITNESSES; EXCEPTIONS.— [The] Court has consistently ruled that the determination by a trial judge who could weigh and appraise the testimonies of the witnesses as to the facts duly proved is entitled to the highest respect, unless it could be shown that the trial judge ignored or disregarded circumstances of weight or influence sufficient

to call for a different finding. This Court will not interfere with the judgement of the trial court in passing on the credibility of the opposing witnesses, unless there appears in the record facts or circumstances of weight and influence which have been overlooked or the significance of which has been misinterpreted. Here, we find no cogent reason to depart from the ruling of the RTC.

5. CIVIL LAW; DAMAGES; INCREASE OF THE AWARD OF CIVIL INDEMNITY, MORAL DAMAGES, AND EXEMPLARY DAMAGES TO ₱75,000,00 EACH IS PROPER IN CASE AT BAR.— [T]he award of civil indemnity, moral damages, and exemplary damages should be increased to ₱75,000.00 each, pursuant to prevailing jurisprudence. Interest at the rate of 6% *per annum* is imposed on all damages awarded from the date of finality of this Resolution until fully paid.

APPEARANCES OF COUNSEL

Office of the Solicitor General for plaintiff-appellee.
Public Attorney's Office for accused-appellant.

R E S O L U T I O N

CARPIO, *J.*:

The Case

This is an appeal from the 12 August 2015 Decision[1] of the Court of Appeals in CA-G.R. CEB CR-H.C. No. 01433 which affirmed with modification the 19 January 2012 Decision[2] of the Regional Trial Court (RTC) of Toledo City, Cebu, Branch 29.

The Charge

Criminal Case No. TCS-5344, entitled *People of the Philippines v. Eleuterio Bragat, Jundie Balvez, and Two (2) John Does,* was

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[1] *Rollo,* pp. 4-16. Penned by Associate Justice Germano Francisco D. Legaspi, with Associate Justices Pamela Ann Abella Maxino and Jhosep Y. Lopez concurring.

[2] CA *rollo,* pp. 30-41. Penned by Presiding Judge Ruben F. Altubar.

filed against Eleuterio Bragat (appellant) for the special complex crime of robbery with rape under Article 294 of the Revised Penal Code, as amended, alleged to have been committed as follows:

> That on the 9th day of February, 2005 at 7:00 in the evening, more or less, x x x, Province of Cebu, Philippines and within the jurisdiction of this Honorable Court, accused Eleuterio Bragat and Jundie Balves and their two (2) other companions herein designated as "John Does" who are still at-large and whose real names are yet to be ascertained, armed with firearms and a bladed weapon, with intent [to] gain, conspiring, confederating and mutually helping one another, and by means of violence against and force and intimidation upon persons, did then and there willfully, unlawfully and feloniously enter the house of SPOUSES AAA and BBB[3] inhabited by them with their children and thereafter take, steal and carry away their money in the amount of [₱]600.00 and a pair of earrings worth ₱3,000.00, to the damage and prejudice of said spouses in the total amount of THREE THOUSAND SIX HUNDRED ([₱]3,600.00) PESOS; That by reason or on the occasion of said robbery, accused ELEUTERIO BRAGAT, moved by lewd design and by means of force, violence and intimidation, did then and there willfully, unlawfully and feloniously have sexual intercourse with AAA, against her will.
>
> CONTRARY TO LAW.[4]

Only appellant was arraigned on 26 January 2006 and he pleaded not guilty. Jundie Balvez was initially detained but escaped from the Tabuelan Municipal Jail in March 2005. He still remains at large up to this day.[5]

Version of the Facts of the Prosecution

On 9 February 2005, at around 7:00 in the evening, spouses AAA (wife) and BBB (husband) were in their house with their

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[3] The real name of the victim [of rape], her personal circumstances and other information which tend to establish or compromise her identity, as well as those of her immediate family or household members, shall not be disclosed to protect her privacy and fictitous initials shall instead be used in accordance with Supreme Court Amended Administrative Circular No. 83-15 dated 5 September 2017.

[4] *Rollo*, p. 6.

[5] CA *rollo*, p. 31.

10-month-old child when someone called from outside, "[B], we are thirsty. Will you please give us water?"[6] B is BBB's nickname.

BBB recognized that the caller was Jundie Balvez, a classmate of their child and someone who would usually drop by their house. AAA signalled to BBB not to open the door. When the spouses went to the kitchen to lock their door, four armed and masked men had already barged into their kitchen. The four armed and masked men, consisting of appellant and three other companions, hogtied the spouses with nylon rope and asked them where they kept their money. When BBB told them they had no money, appellant and his companions beat him up and pointed a gun to his head. Two men brought BBB to the spouses' bedroom and proceeded to ransack their house. Appellant brought AAA to the back of the kitchen and directed one of his companions to watch over the 10-month-old baby.

At the back of the kitchen, appellant told AAA to lie on her side. Appellant took off AAA's shorts and underwear, and unbuttoned his own pants. He laid on top of her. When AAA tried to resist and told him that she had menstruation, appellant pointed a gun at her and threatened to kill her, her husband, and their child if she did not give in. Appellant removed his bonnet, kissed AAA and had sexual intercourse with her.

After appellant was done raping AAA, he brought AAA to the bedroom where BBB and the other men were because BBB refused to cooperate and tell them where they kept their money.

When AAA told appellant and his companions that they did not keep their money in the bedroom, the spouses were brought to the kitchen. AAA pointed to a small box in their kitchen where they kept all their money amounting to Six Hundred (₱600.00) Pesos. When appellant and his companions demanded for more, AAA also gave them the only piece of jewelry she had, a small pair of gold earrings worth Three Thousand (₱3,000.00) Pesos.

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[6] *Id.*

AAA testified that after appellant and his companions took the money and her earrings, they left. On the other hand, BBB testified that after appellant and his companions took their money and the earrings, they brought the spouses back to the bedroom and searched their things one last time before leaving.

On 10 February 2005, at 4:00 in the morning, the spouses went to the barangay captain and informed him about the incident.

The spouses subsequently proceeded to the Women and Children Friendly Center of the Vicente Sotto Memorial Medical Center in Cebu City to have AAA checked. Dra. Madeline Amadora (Dra. Amadora) physically examined AAA and conducted sperm identification on her. Dra. Amadora testified in the RTC that the tests yielded negative results because of three possible reasons: (a) studies show that only 30% of sperm identification is positive within 24 hours because of the patient's post-sexual activities like washing the genitalia, urinating or bathing; (b) there was no penetration and/or ejaculation; and (c) AAA had menstruation when she was raped by appellant. A Medical Certificate which she and Dra. Michelle Ann Dy, an OB-Gyne resident, had signed was presented to the RTC as Exhibit "C."

Version of the Facts of the Defense

Appellant testified that he did not know his co-accused, Jundie Balvez and the spouses.

On 9 February 2005, appellant was in the house of his employer, Celestino Jojo Andales, Jr. in Poblacion, Tuburan, Cebu. His employer owns the *trisikad* appellant was driving since 2004 until he was arrested.

At around 7:00 that evening, appellant had just returned the *trisikad* to his employer's garage. After an hour of talking to his employer, appellant slept in his employer's house together with two other *trisikad* drivers, Federico Casas and Berto Bensolan. Appellant only goes home on weekends to his family in another town named Tabuelan, Cebu.

On 10 February 2005, AAA pointed to appellant while appellant was waiting for passengers. Appellant was subsequently

arrested by two policemen who were not in uniform and were not armed with a warrant of arrest. The policemen brought appellant to the Tabuelan Police Station.

Appellant claims that he is innocent.

The Ruling of the RTC

In its Decision dated 19 January 2012, the RTC found appellant guilty beyond reasonable doubt of the crime of robbery with rape. The dispositive portion reads:

> WHEREFORE, in the light of all the foregoing, judgement is hereby rendered finding accused Eleuterio Bragat guilty beyond reasonable doubt of the crime of Robbery with Rape, and he is hereby sentenced to suffer the penalty of Reclusion Perpetua with all the accessory penalties provided by law and to indemnify private complainant, AAA joined by her husband, BBB the following amounts:
>
> a. Seventy-Five Thousand Pesos (₱75,000.00) by way of civil indemnity;
>
> b. Seventy-Five Thousand Pesos (₱75,000.00) by way of moral damages; and
>
> c. Thirty Thousand Pesos (₱30,000.00) by way of exemplary damages.
>
> Accused is also ordered to pay complainants the amount of Six Hundred Pesos (₱600.00) representing the money taken and to return to complainants the pair of earrings, and if the return is already impossible, to pay complainants the value thereof which is Three Thousand Pesos (₱3,000.00).
>
> Further, all the said monetary awards shall bear interest at six percent (6%) per annum from the finality of this Decision until fully paid.
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> x x x x x x x x x
>
> With costs against accused.
>
> SO ORDERED.[7]

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

The Ruling of the Court of Appeals

The Court of Appeals denied the appeal of appellant. The dispositive portion of its Decision reads:

> WHEREFORE, the appeal is DENIED. The Decision dated January 19, 2012 rendered by Branch 29 of the Regional Trial Court (RTC) of Toledo City finding accused-appellant Eleuterio Bragat guilty of robbery with rape is AFFIRMED with MODIFICATION. The award of civil indemnity is reduced to ₱50,000.00 and the award of moral damages is also reduced to ₱50,000.00.
>
> SO ORDERED.[8]

Hence, this appeal.

The Issue

The issue in this case is whether appellant Eleuterio Bragat is guilty of the crime of robbery with rape.

The Ruling of the Court

The appeal lacks merit.

Both the RTC of Toledo City, Cebu, Branch 29, and the Court of Appeals correctly found the appellant guilty beyond reasonable doubt of the special complex crime of robbery with rape under Article 294 of the Revised Penal Code,[9] as amended

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[8] *Rollo*, p. 15.

[9] Article 294 of the Revised Penal Code, as amended, provides:

Art. 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, or when the robbery shall have been accompanied by rape or intentional mutilation or arson.
2. The penalty of *reclusion temporal* in its medium period to *reclusion perpetua*, when 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.

by Section 9 of Republic Act No. 7659.[10] Robbery with rape contemplates a situation where the original intent of the accused was to take, with intent to gain, personal property belonging to another and rape is committed on the occasion thereof or as an accompanying crime, and not the other way around.[11]

After a careful review of the records of the case, this Court finds that there is no basis to disturb the findings of the RTC as affirmed by the Court of Appeals. The prosecution's evidence satisfactorily established the following essential elements of the crime: (a) the taking of personal property is committed with violence or intimidation against persons; (b) the property taken belongs to another; (c) the taking is done with *animo lucrandi*; and (d) the robbery is accompanied by rape. The Court of Appeals held:

> In this case, the prosecution established that accused-appellant and his three companions took the cash and gold earrings of the spouses AAA and BBB by means of violence and intimidation. Accused-appellant and his cohorts barged into the house of the spouses armed with firearms and tied their hands behind their backs using a nylon rope. The assailants then asked for the location of the spouses'

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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 when 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 subdivisions 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.

[10] An Act to Impose the Death Penalty on Certain Heinous Crimes, Amending for that Purpose the Revised Penal Laws, As Amended, Other Special Penal Laws, and for Other Purposes.

[11] *People v. Belmonte*, G.R. No. 220889, 5 July 2017, citing *People v. Tamayo,* 434 Phil. 642, 654 (2002).

money. When BBB did not reveal where they kept their money, accused-appellant's companions then poked a gun at him and punched him in the stomach. Intent to gain, or *animus lucrandi*, as an element of the crime of robbery, is an internal act; hence, presumed from the unlawful taking of things. Having established that the personal properties of the victims were unlawfully taken by accused-appellant, intent to gain was sufficiently proven. Thus, the first three elements of the crime were clearly established.

We shall now discuss the last element of the crime charged. Accused-appellant argues that AAA's lone testimony is not sufficient to prove that rape was committed on the occasion of the robbery. We disagree. The Supreme Court has consistently ruled that the sole testimony of the rape victim may be sufficient to convict the accused. If her testimony meets the test of credibility, such is sufficient to convict the accused. The credibility of the victim is almost always the single most important issue to hurdle. x x x.[12]

This Court agrees with the RTC and the Court of Appeals that the testimonies of the prosecution witnesses were sufficient and credible to sustain the conviction of appellant. Appellant not only failed to discredit the testimonies of the prosecution witnesses, but also failed to strengthen his *alibi.* Appellant did not introduce as witnesses his alleged companions that night, his employer, Celestino Jojo Andales, Jr. and the other two *trisikad* drivers, Federico Casas and Berto Bensolan, to testify that it was physically impossible for appellant to be in the spouses' house because appellant was with them in another municipality. Here, absent any showing of ill motive on the part of the witnesses, a categorical, consistent, and positive identification of the appellant prevails over the appellant's *alibi* that "he was somewhere else when the crime was committed and that it was physically impossible for him to have been at the scene of the crime."[13] Unless substantiated by clear and convincing proof, *alibi* and denial are negative, self-serving, and undeserving of any weight in law.[14]

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[12] *Rollo,* p. 12.

[13] *Id.* at 14.

[14] *Id*., citing *People v. Catuiran*, 397 Phil. 325, 350 (2000).

This Court also agrees with the Court of Appeals that the negative results of a physical examination conducted by a certified doctor do not at all negate the commission of rape. We have consistently ruled that a medical examination and a medical certificate are merely corroborative and are not indispensable to the prosecution of a rape case.[15] We agree with the ruling of the Court of Appeals that:

> While Dr. Amadora testified in court that the results of the physical examinations conducted on AAA were negative, such fact does not at all negate the commission of rape. It has been ruled that the absence of fresh lacerations does not prove that the victim was not raped. A freshly broken hymen is not an essential element of rape and healed lacerations do not negate rape. Hence, the presence of healed hymenal lacerations the day after the victim was raped does not negate the commission of rape by the accused when the crime was proven by the combination of highly convincing pieces of circumstantial evidence. x x x.[16]

This Court has consistently ruled that the determination by a trial judge who could weigh and appraise the testimonies of the witnesses as to the facts duly proved is entitled to the highest respect, unless it could be shown that the trial judge ignored or disregarded circumstances of weight or influence sufficient to call for a different finding.[17] This Court will not interfere with the judgement of the trial court in passing on the credibility of the opposing witnesses, unless there appears in the record facts or circumstances of weight and influence which have been overlooked or the significance of which has been misinterpreted.[18] Here, we find no cogent reason to depart from the ruling of the RTC.

However, the award of civil indemnity, moral damages, and exemplary damages should be increased to ₱75,000.00 each,

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[15] *People v. Evangelio,* 672 Phil. 229, 245 (2011), citing *People v. Orilla,* 467 Phil. 253, 274 (2004).

[16] *Rollo,* p. 13.

[17] *People v. Carandang,* 152 Phil. 237, 246-247 (1973).

[18] *Id*.

pursuant to prevailing jurisprudence.[19] Interest at the rate of 6% *per annum* is imposed on all damages awarded from the date of finality of this Resolution until fully paid.

WHEREFORE, the Decision dated 12 August 2015 of the Court of Appeals in CA-G.R. CEB CR H.C. 01433 finding appellant Eleuterio Bragat guilty of robbery with rape is **AFFIRMED** with **MODIFICATION.** The award of civil indemnity, moral damages, and exemplary damages is increased to ₱75,000.00 each. Interest at the rate of 6% *per annum* is imposed on all damages. awarded from the date of finality of this Resolution until fully paid.

SO ORDERED.

Peralta, Perlas-Bernabe, and *Caguioa, JJ.,* concur.

Reyes, Jr., J., on official leave.

THIRD DIVISION

[G.R. No. 224888. November 22, 2017]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **RODERICK R. RAMELO,** *accused-appellant.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; BURDEN OF PROOF; WHEN THE ACCUSED PLEADS SELF-DEFENSE AND EFFECTIVELY ADMITS THAT HE KILLED THE VICTIM, THE BURDEN OF EVIDENCE SHIFTS TO HIM.— It is settled that when the accused pleads self-defense and effectively admits that he killed the victim, the burden of evidence shifts to him. He must, therefore, rely on the strength of his own evidence and not on the weakness of that of the prosecution. It becomes incumbent upon him to prove his innocence by clear and convincing evidence.

[19] *People vs. Jugueta*, G.R. No. 202124, 5 April 2016, 788 SCRA 331.

2. CRIMINAL LAW; REVISED PENAL CODE; JUSTIFYING CIRCUMSTANCES; SELF-DEFENSE; ELEMENTS; TO APPRECIATE UNLAWFUL AGGRESSION, THERE MUST BE AN ACTUAL, SUDDEN AND UNEXPECTED ATTACK OR IMMINENT DANGER, NOT MERELY A THREATENING OR INTIMIDATING ATTITUDE; NOT ESTABLISHED IN CASE AT BAR.— To successfully claim self-defense, the accused must satisfactorily prove that: (1) the victim mounted an unlawful aggression against the accused; (2) that the means employed by the accused to repel or prevent the aggression were reasonable and necessary; and (3) the accused did not offer any sufficient provocation. The most important of these elements is unlawful aggression because without it, there could be no self-defense, whether complete or incomplete. For unlawful aggression to be appreciated there must be an actual, sudden and unexpected attack or imminent danger thereof, not merely a threatening or intimidating attitude. After a thorough review of the records, the Court is convinced that Ramelo did not act in self-defense. x x x [I]t is clear that prior to the stabbing incident, an altercation ensued between Nelson and Ramelo. However, the confrontation ceased due to Pilapil's intervention. Ramelo even apologized to Nelson after they were separated. Evidently, any unlawful aggression which Nelson may have perpetrated had effectively terminated. When the unlawful aggression which has begun no longer exists, the one making the defense has no more right to kill or even wound the former aggressor. Furthermore, it could be gathered from Pilapil's account of the incident that Ramelo was actively looking for his alleged assailants, Yokyok, Topi, and Naji, with whom he might have had a score to settle after his previous scuffle with them. This, coupled with the fact that Ramelo brought a weapon and cleverly concealed it in his shoe, negates the unlawful aggression on Nelson's part.

3. ID.; ID.; QUALIFYING CIRCUMSTANCES; TREACHERY; ELEMENTS; NOT ESTABLISHED IN CASE AT BAR.— There is treachery when the offender commits any of the crimes against persons, employing means, methods or forms in their execution, and tending directly and specially to insure their execution without risk to himself arising from any defense which the offended party might make. Moreover, the essence of treachery is the sudden and unexpected attack by the aggressor on the unsuspecting victim, depriving the latter of any real chance to defend himself, thereby ensuring its commission without risk to the aggressor and without the slightest provocation on

the part of the victim. For treachery to be appreciated, two concurring conditions must be established: *first*, the employment of means of execution that gives the person attacked no opportunity to defend himself or to retaliate; and *second*, the means of execution was deliberately or consciously adopted. x x x While Vega's testimony may have suggested the suddenness of the attack, there was no showing that Ramelo consciously and deliberately adopted the means and manner employed by him in stabbing and killing Nelson. Besides, Vega stated that the attack employed was frontal, which indicates that the victim was not totally without opportunity to defend himself. Likewise, Pilapil's testimony would show that the encounter between Nelson and Ramelo was only casual and not purposely sought by the latter. Based on Pilapil's account, Ramelo was apparently looking for Topi, Yokyok, and Naji when he stumbled upon Nelson. Given these considerations and considering the rule that treachery cannot be presumed, the presence of treachery could not be appreciated.

4. ID.; ID.; MITIGATING CIRCUMSTANCES; VOLUNTARY SURRENDER; REQUISITES; PROVEN IN CASE AT BAR.— For voluntary surrender to mitigate the penal liability of the accused, the following requisites must be established: *first*, the accused has not been actually arrested; *second*, the accused surrenders himself to a person in authority or the latter's agent; and *third*, the surrender is voluntary. The said requisites were sufficiently proven by Ramelo. Immediately after stabbing Nelson, Ramelo voluntarily yielded the knife he used to Pilapil, who turned it over to Vega. Moreover, approximately nine (9) hours after the stabbing incident, Ramelo voluntarily surrendered himself to the police authorities as evidenced by the Certification of Voluntary Surrender (Exhibit "2") issued by the PNP-Baybay. It must be noted that the surrender preceded the actual death of Nelson and the filing of the Information on 20 May 2009. There is every indication that the surrender was spontaneous indicating Ramelo's intent to unconditionally submit himself to the authorities, either because he acknowledged his guilt or he wished to save the government the trouble and the expenses necessary for his search and capture.

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.*:

On appeal is the 29 January 2016 Decision[1] of the Court of Appeals (*CA*) in CA-G.R. CEB-CR HC No. 01935 which affirmed with modification the 28 September 2014 Judgment[2] of the Regional Trial Court, Branch 14, Baybay City, Leyte (*RTC*), in Criminal Case No. B-09-05-55. The RTC found accused-appellant Roderick R. Ramelo *(Ramelo)* guilty beyond reasonable doubt of the crime of murder. On appeal, the CA found him guilty of homicide.

THE FACTS

On 20 May 2009, Ramelo was charged before the RTC with the crime of murder committed against Nelson Peña (*Nelson*). The Information reads:

> That on or about May 17, 2009, at about 1:55 o'clock in the morning in the City of Baybay, Province of Leyte, Philippines, within the jurisdiction of this Honorable Court, the above-named accused with intent to kill, employing treachery and evident premeditation did then and there willfully, unlawfully and feloniously attack, assault and suddenly stab NELSON PEÑA with a bladed weapon, a kitchen knife, which the accused provided themselves for the purpose thereby inflicting upon NELSON PEÑA stab wound (L) upper quadrant abdomen penetrating abdominal cavity which caused his untimely death, to the damage and prejudice of the heirs of the victim NELSON PEÑA.
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> Contrary to law.[3]

On 16 June 2009, Ramelo was arraigned and pleaded not guilty to the charge against him.[4] Pre-trial and trial ensued.

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[1] *Rollo*, pp. 5-21. Penned by Associate Justice Marilyn B. Lagura-Yap, with Associate Justice Gabriel T. Ingles, and Associate Justice Germano Francisco D. Legaspi, concurring.

[2] Records, pp. 273-284. Penned by Presiding Judge Carlos O. Arguelles.

[3] *Id*. at 1.

[4] *Id*. at 52.

Evidence for the Prosecution

The prosecution presented four (4) witnesses, namely: Gilberto Ortega (*Ortega*), the Barangay Captain of Barangay San Isidro, Baybay City; Samuel Vega (*Vega*), a barangay *tanod* of the same barangay and Nelson's uncle; Alfredo Peña (*Alfredo*), Nelson's father; and Dr. Nelson Udtujan (*Dr. Udtujan*). Their combined testimonies tended to establish the following:

On 17 May 2009, at around 1:55 a.m., Nelson was standing outside the basketball court of Barangay San Isidro, Baybay City, which was then being used as a venue for a dancing or disco event,[5] when Ramelo suddenly appeared before him and stabbed him.[6]

After witnessing what transpired, Vega immediately confronted the assailant and confiscated the weapon used, a knife. Ramelo, however, was able to run away. Vega turned over the weapon to his chief *tanod*.[7] Thereafter, Ortega and the chief *tanod* reported the incident to the police station and turned over the confiscated knife.[8]

Meanwhile, Nelson was brought to the Western Leyte Provincial Hospital for immediate medical treatment. He was transferred to the Ormoc District Hospital where he was attended to by Dr. Udtujan, but died the next day on 18 May 2009.[9]

The Post-Mortem Examination Report[10] prepared by Dr. Udtujan revealed that Nelson sustained an eight centimeter (8 cm)-deep stab wound on the left side of his abdomen. Dr. Udtujan testified that the stab perforated his stomach and caused massive bleeding[11] that led to Nelson's death.[12] Dr. Udtujan further

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[5] TSN, 4 November 2010, pp. 24-25.

[6] *Id.* at 25.

[7] *Id.* at 27.

[8] TSN, 12 August 2010, p. 10.

[9] TSN, 18 November 2010, pp. 6-7.

[10] Records, p. 34.

[11] TSN, 27 October 2011, p. 29.

[12] *Id.* at 33.

theorized that the weapon could have been a wide sharp-bladed instrument more or less two inches wide.[13]

Evidence for the Defense

The defense presented Ramelo himself and Rey Pilapil (*Pilapil*) as witnesses. Their testimonies tended to establish that Ramelo acted in self-defense, as follows:

On 16 May 2009, at or between 11:00 p.m. and 12:00 midnight, Ramelo was at a store near the dancing hall of Barangay San Isidro, Baybay City. He noticed Nelson having a drinking spree with three other persons identified as Yokyok, Naji, and Tope. While Ramelo was smoking, he was approached by Nelson's three companions and was suddenly slapped by Naji without any provocation on his part.[14] Because of this, a scuffle soon followed.[15]

After the three walked away from Ramelo, Nelson approached him, held him by his collar, strangled him, and pulled him towards the dance area. There he was further manhandled by Nelson and his three companions who rushed towards them. The assault continued even after Ramelo fell to the ground.

Nelson sat on Ramelo's abdomen and proceeded to punch his face while his companions and three others including Vega hit him on other parts of his body including his legs.[16] Ramelo recalled that seven (7) persons had mauled him including Nelson, his three companions, and Vega. Nelson also tried to smash Ramelo's head with a stone but the latter was able to evade it. Fearing that they intended to kill him, Ramelo pulled out his knife which was concealed in his right shoe and stabbed Nelson with it.[17]

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[13] *Id*. at 34.

[14] TSN, 7 May 2013, p. 8.

[15] *Id*. at 9.

[16] *Id*. at 10-12.

[17] *Id*. at 13.

Thereafter, Ramelo handed his knife to Pilapil and ran away. Pilapil gave the knife to Vega.[18] On 17 May 2009, at about 11:00 a.m., Ramelo surrendered to the Philippine National Police in Baybay City (*PNP-Baybay*).[19]

The RTC Ruling

In its judgment, the RTC found Ramelo guilty beyond reasonable doubt of murder, unconvinced by Ramelo's submission of self-defense noting the incredibility of his testimony which did not even jibe with Pilapil's account. The trial court gathered from Pilapil's testimony that no unlawful aggression came from Nelson and that Ramelo was the one who initiated the attack. Further, the trial court ruled that treachery attended the killing as the manner and mode of attack employed by Ramelo against Nelson gave the latter no opportunity to defend himself. The dispositive portion of the decision reads:

> WHEREFORE, PREMISES CONSIDERED, this Court finds the accused GUILTY BEYOND REASONABLE DOUBT of the crime charged, and he is hereby sentenced to RECLUSION PERPETUA.
>
> He is further condemned to indemnify the heirs of the victim the amount of One Hundred Thousand (₱100,000.00) Pesos as civil indemnity and Fifty Thousand (₱50,000.00) Pesos as actual damages which will earn 6% annual interest from the finality of this judgment up to its satisfaction.[20]

Aggrieved, Ramelo appealed before the CA.

The CA Ruling

In its assailed decision, the CA affirmed with modifications the RTC's judgment. It concurred with the trial court's assessment that no unlawful aggression attended the killing noting Pilapil's claim that he was able to defuse the hostilities between Nelson and Ramelo. Thus, it opined that the defense failed to prove self-defense.

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[18] TSN, 20 August 2014, p. 55.

[19] TSN, 7 May 2013, p. 16; records, Exhibit "2", p. 44.

[20] Records, p. 283.

Nevertheless, the CA modified Ramelo's conviction to homicide and not murder ratiocinating that the attendance of treachery was not duly established. It gleaned from the testimonies of the witnesses that there was a prior confrontation between Nelson and Ramelo; and that the latter approached the former from the front. Hence, Nelson was forewarned of an impending danger and could have foreseen the attack by Ramelo.

The appellate court, however, credited the mitigating circumstance of voluntary surrender in favor of Ramelo as it was satisfied that the requisites for its appreciation were sufficiently proven. The dispositive portion of the assailed decision reads:

> WHEREFORE, the Judgment rendered by the Regional Trial Court, Branch 14 of Baybay City, Leyte, in Criminal Case No. B-09-05-55 is AFFIRMED with MODIFICATION, in that:
>
> 1. Accused-appellant Roderick R. Ramelo is declared guilty beyond reasonable doubt of homicide defined and penalized under Article 249 of the Revised Penal Code and is sentenced to suffer an indeterminate penalty of eight (8) years and 1 day of prision mayor, as minimum, to fourteen (14) years of reclusion temporal, as maximum.
>
> 2. He is ordered to pay the Heirs of the Late Nelson Peña ₱50,000.00 as civil indemnity, ₱50,000.00 as moral damages and ₱25,000.00 as temperate damages.
>
> 3. Further, he shall pay interest at the rate of six percent (6%) per annum on the civil indemnity, moral damages and temperate damages from the finality of this decision until fully paid.
>
> SO ORDERED.[21]

Hence, this appeal.

THE ISSUE

WHETHER THE TRIAL AND APPELLATE COURTS ERRED WHEN THEY FAILED TO APPRECIATE THE JUSTIFYING CIRCUMSTANCE OF SELF-DEFENSE IN FAVOR OF RAMELO.

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[21] *Rollo*, pp. 20-21.

THE COURT'S RULING

The appeal is bereft of merit.

Self-defense not established

It is settled that when the accused pleads self-defense and effectively admits that he killed the victim, the burden of evidence shifts to him. He must, therefore, rely on the strength of his own evidence and not on the weakness of that of the prosecution.[22] It becomes incumbent upon him to prove his innocence by clear and convincing evidence.[23]

To successfully claim self-defense, the accused must satisfactorily prove that: (1) the victim mounted an unlawful aggression against the accused; (2) that the means employed by the accused to repel or prevent the aggression were reasonable and necessary; and (3) the accused did not offer any sufficient provocation.[24] The most important of these elements is unlawful aggression because without it, there could be no self-defense, whether complete or incomplete.[25]

For unlawful aggression to be appreciated there must be an actual, sudden and unexpected attack or imminent danger thereof, not merely a threatening or intimidating attitude.[26]

After a thorough review of the records, the Court is convinced that Ramelo did not act in self-defense.

Ramelo claims that Nelson, who he admitted to be taller and bulkier than him, sat on his abdomen and proceeded to hit him on his face while his companions hit and kicked his legs. He further avers that to get his knife tucked in his right shoe, he parried Nelson's punches with his left hand, reached for the knife with his right hand, and then stabbed Nelson. This story is absurd. It is incredulous how Ramelo, with his back and legs against the ground and the force of Nelson's weight on

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[22] *People v. Duavis,* 678 Phil. 166, 175 (2011).

[23] *People v. Samson*, 768 Phil. 487, 496 (2015).

[24] *People v. Roxas*, G.R. No. 218396, 10 February 2016, 784 SCRA 47, 55.

[25] *Flores v. People*, 705 Phil. 119, 134 (2013).

[26] *People v. Arnante*, 439 Phil. 754, 758 (2002).

him, could have reached for his knife. It would take a contortionist to accomplish such feat under the circumstances. Also, it is inconceivable for Nelson's companions — all six of them — to have done nothing when Ramelo allegedly reached for his knife while they were kicking at his legs. Ramelo's version of the incident deserves scant consideration.

Moreover, as aptly stated by the appellate court, any unlawful aggression which Nelson may have directed against Ramelo had already ceased when the latter stabbed the former. Pilapil, who was offered as a witness for the defense, testified in this wise:

ATTY. SANTIAGO:

Q. When you arrived there, what did you see if any?
A. I saw that Roderick was held by Nelson at the neck.[27]

x x x x x x x x x

Q. And while Roderick was being held [by] the neck by Nelson, what did you do if any?
A. I pacified them, sir.

Q. Did they heed your efforts?
A. Yes, sir, they heeded my advice, and he let go of him.

Q. What did you say to them if any?
A. I told them not to make any commotion at the place because that will disrupt the disco.

Q. By the way, did this happen inside the disco or outside the disco place?
A. Outside.

Q. And after you told them what you said, what did they say to each othe or to you if any?
A. Roderick said, "I'm sorry, Kuya. You are not the one I'm looking for. It's Topi, Yokyok and Naji."

Q. To whom did Roderick say those words, to you or to Nelson?
A. To Nelson.[28]

x x x x x x x x x

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[27] TSN, 20 August 2014, p. 52.

[28] *Id.* at 52-53.

Q. And, after that, what happened?
A. I thought they would no longer quarrel and I left.

Q. And when you left, what happened next if any?
A. I almost arrived at my motorcycle, I heard again shouts.

Q. And after hearing those shouts, what did you do?
A. I went back, sir, and I saw that Roderick was ganged up.

Q. And, after that, what did you do if any?
A. I helped Roderick because they were already grappling for the possession of the knife with the uncle of Nelson.[29] (emphases supplied)

From the foregoing testimony, it is clear that prior to the stabbing incident, an altercation ensued between Nelson and Ramelo. However, the confrontation ceased due to Pilapil's intervention. Ramelo even apologized to Nelson after they were separated. Evidently, any unlawful aggression which Nelson may have perpetrated had effectively terminated. When the unlawful aggression which has begun no longer exists, the one making the defense has no more right to kill or even wound the former aggressor.[30]

Furthermore, it could be gathered from Pilapil's account of the incident that Ramelo was actively looking for his alleged assailants, Yokyok, Topi, and Naji, with whom he might have had a score to settle after his previous scuffle with them. This, coupled with the fact that Ramelo brought a weapon and cleverly concealed it in his shoe, negates the unlawful aggression on Nelson's part.

While Pilapil stated that Ramelo was attacked by the group, he clarified during cross-examination that he did not personally witness the stabbing incident.[31] Considering that the alleged beating by Nelson's group happened just moments before the

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[29] *Id.* at 53-54.

[30] *People v. Caguing*, 400 Phil. 1161, 1169-1170 (2000).

[31] TSN, 20 August 2014, p. 58.

stabbing incident, it would be highly improbable for Pilapil not to have witnessed the stabbing if he really saw Ramelo being ganged up on.

In addition, Pilapil did not offer any particulars regarding this incident. Instead, when asked about the actions he took after seeing Ramelo being beaten up, he answered that he went to his aid when the latter was grappling with Vega for the possession of the knife. This sudden transition of events from being beaten up by a group of persons to grappling with a single individual is rather odd; thus, it could be reasonably surmised that Pilapil witnessed the incident only from two periods in time: (1) from the time Nelson was choking Ramelo up to the time they were pacified; and (2) from the time Ramelo and Vega were grappling for the knife up to the time the former fled. Thus, any testimony offered by him regarding Ramelo being ganged up on which supposedly transpired between these two events should be considered feeble at best.

Based on the foregoing, the Court concurs with the trial and appellate courts that the evidence adduced by the defense falls short of being clear, satisfactory, and convincing as to warrant the appreciation of self-defense.

Attendance of treachery not established

There is treachery when the offender commits any of the crimes against persons, employing means, methods or forms in their execution, and tending directly and specially to insure their execution without risk to himself arising from any defense which the offended party might make.[32] Moreover, the essence of treachery is the sudden and unexpected attack by the aggressor on the unsuspecting victim, depriving the latter of any real chance to defend himself, thereby ensuring its commission without risk to the aggressor and without the slightest provocation on the part of the victim.[33]

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[32] *People v. De Leon*, 428 Phil. 556, 581 (2002).

[33] *People v. Samson*, 427 Phil. 248, 262 (2002).

For treachery to be appreciated, two concurring conditions must be established: *first*, the employment of means of execution that gives the person attacked no opportunity to defend himself or to retaliate; and *second*, the means of execution was deliberately or consciously adopted.[34] Stated differently, mere suddenness and unexpectedness of the assault does not necessarily give rise to treachery. It must be shown that the means employed for the commission of the crime have been consciously or deliberately adopted by the accused.[35] For this reason, it has been held that when the meeting between the accused and the victim was casual and the attack was done impulsively, treachery could not be appreciated even if the attack was sudden and unexpected.[36]

With respect to Ramelo's actual stabbing of Nelson, Vega testified as follows:

PROSECUTOR VIVERO:

Q. Now, at about 1:00 o'clock or 1:55 o'clock in the early dawn of May 17, 2009 do you recall if there [was] any unusual incident that took place involving a certain Nelson Peña?
A. What I saw, sir, was that my neighbor Nelson Peña was just standing then he was stabbed by this person.

Q. So you saw a certain person stabbed Nelson Peña?
A. Yes.

x x x x x x x x x

Q. You said that that person approached Nelson Peña and stabbed him, from what part of the body of Mr. Peña did this person approach the latter, meaning to say Mr. Peña?
A. In front of Nelson Peña.[37] (emphases supplied)

While Vega's testimony may have suggested the suddenness of the attack, there was no showing that Ramelo consciously

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[34] *People v. De Gracia*, 765 Phil. 386, 396 (2015).

[35] *Id.*; *People v. Tuardon*, G.R. No. 225644, 01 March 2017.

[36] *People v. Magaro*, 353 Phil. 862, 870 (1998).

[37] TSN, 4 November 2010, pp. 24-26.

and deliberately adopted the means and manner employed by him in stabbing and killing Nelson. Besides, Vega stated that the attack employed was frontal, which indicates that the victim was not totally without opportunity to defend himself.[38]

Likewise, Pilapil's testimony would show that the encounter between Nelson and Ramelo was only casual and not purposely sought by the latter. Based on Pilapil's account, Ramelo was apparently looking for Topi, Yokyok, and Naji when he stumbled upon Nelson. Given these considerations and considering the rule that treachery cannot be presumed,[39] the presence of treachery could not be appreciated.

Mitigating circumstance of voluntary surrender was properly appreciated.

For voluntary surrender to mitigate the penal liability of the accused, the following requisites must be established: *first*, the accused has not been actually arrested; *second*, the accused surrenders himself to a person in authority or the latter's agent; and *third*, the surrender is voluntary.[40] The said requisites were sufficiently proven by Ramelo.

Immediately after stabbing Nelson, Ramelo voluntarily yielded the knife he used to Pilapil, who turned it over to Vega. Moreover, approximately nine (9) hours after the stabbing incident, Ramelo voluntarily surrendered himself to the police authorities as evidenced by the Certification of Voluntary Surrender (Exhibit "2") issued by the PNP-Baybay. It must be noted that the surrender preceded the actual death of Nelson and the filing of the Information on 20 May 2009. There is every indication that the surrender was spontaneous indicating Ramelo's intent to unconditionally submit himself to the authorities, either because he acknowledged his guilt or he wished to save the government the trouble and the expenses necessary for his search and capture.

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[38] *People v. Tugbo, Jr.*, 273 Phil. 346, 352 (1991).

[39] *People v. Calinawan*, G.R. No. 226145, 13 February 2017.

[40] *Roca v. Court of Appeals*, 403 Phil. 326, 337-338 (2001).

Thus, taking into consideration the mitigating circumstance of voluntary surrender, the imposable penalty is the minimum of *reclusion temporal*, that is from twelve (12) years and one (1) day to fourteen (14) years and eight (8) months.[41] Consequently, the range of the indeterminate penalty under the Indeterminate Sentence Law is *prision mayor* in any of its periods, as minimum, to the minimum period of *reclusion temporal*, as maximum.

WHEREFORE, the assailed Decision, dated 29 January 2016 of the Court of Appeals in CA-G.R. CEB-CR HC No. 01935 which affirmed with modification the 28 September 2014 Judgment of the Regional Trial Court, Branch 14, Baybay City (*RTC*), in Criminal Case No. B-09-05-55 is hereby **AFFIRMED.** Accused-appellant Roderick R. Ramelo is found **GUILTY** beyond reasonable doubt of the crime of homicide and is sentenced to suffer the indeterminate penalty of eight (8) years and one (1) day of *prision mayor*, as minimum, to fourteen (14) years of *reclusion temporal*, as maximum. He is further ordered to pay the heirs of the deceased Nelson Peña the following amounts: (1) ₱50,000.00, as civil indemnity; (2) ₱50,000.00, as moral damages; and (3) ₱25,000.00 as temperate damages in lieu of the award of actual damages which the prosecution failed to prove. All monetary awards shall earn interest at the rate of six percent (6%) per annum reckoned from the finality of this decision until their full payment.[42]

SO ORDERED.

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

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[41] Revised Penal Code, Article 64(2).

[42] *Nacar v. Gallery Frames*, 716 Phil. 267, 283 (2013).

SECOND DIVISION

[G.R. No. 227069. November 22, 2017]

HILARIO LAMSEN, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES**, *respondent.*

SYLLABUS

1. **CRIMINAL LAW; REVISED PENAL CODE; FALSIFICATION OF PUBLIC DOCUMENT; ELEMENTS.—** The elements of the x x x crime [of falsification of public document under Article 172 of the Revised Penal Code] are as follows: (*a*) the offender is a private individual; (*b*) the offender committed any of the acts of falsification enumerated in Article 171; and (*c*) the falsification was committed in a public document

2. **REMEDIAL LAW; EVIDENCE; FACT OF FORGERY CAN ONLY BE ESTABLISHED BY A COMPARISON BETWEEN THE ALLEGED FORGED SIGNATURE AND THE AUTHENTIC AND GENUINE SIGNATURE OF THE PERSON WHOSE SIGNATURE IS THEORIZED TO HAVE BEEN FORGED; CASE AT BAR.—** [T]he prosecution must likewise establish the fact of falsification or forgery by clear, positive, and convincing evidence, as the same is never presumed. Withal, the fact of forgery can only be established by a comparison between the alleged forged signature and the authentic and genuine signature of the person whose signature is theorized to have been forged. x x x In this case, the prosecution presented an expert witness, Batiles, to prove its allegation of falsification or forgery. While Batiles testified during cross-examination that the questioned signatures were not written by one and the same person, and that there is a certainty that the subject deed was falsified, the Court, however, finds this declaration unreliable and inconclusive, as it is inconsistent with the Questioned Document Report No. 130-03. In the said Report, which Batiles himself issued after examining the allegedly falsified subject deed, Batiles found that no definite conclusion can be rendered because the documents submitted by the prosecution were mere photocopies of the original, x x x Batiles further clarified that there are other handwriting elements which could not be determined in the photocopy, such

as minor details which could not be visibly detected by the naked eye, *i.e.*, handwriting movement, line quality, and emphasis. Notably, the genuineness and due execution of a photocopy could not be competently established without a copy of the original. Photocopies are considered secondary evidence which can be rendered inadmissible absent any proof that the original was lost, destroyed, or in the custody or under the control of the party against whom the evidence is offered. Here, not only did the prosecution fail to present the original copy of the subject deed in court, it likewise did not provide ample proof that the same was lost, destroyed, or in the custody or under the control of Lamsen. Since mere photocopies of the subject deed were used to examine the questioned and standard signatures of spouses Tandas, no valid comparison can be had between them, thereby rendering Batiles' declaration inconclusive to support a finding of guilt beyond reasonable doubt against Lamsen.

3. ID.; ID.; CIRCUMSTANTIAL EVIDENCE; CONSISTS OF PROOF OF COLLATERAL FACTS AND CIRCUMSTANCES FROM WHICH THE MAIN FACT IN ISSUE MAY BE INFERRED BASED ON REASON AND COMMON EXPERIENCE; WHEN SUFFICIENT FOR CONVICTION; CASE AT BAR.— Aside from the findings of Batiles, the courts *a quo* also relied on circumstantial evidence to convict Lamsen of the crime of falsification of public document. x x x Circumstantial evidence consists of proof of collateral facts and circumstances from which the main fact in issue may be inferred based on reason and common experience. It 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. The circumstantial evidence presented must therefore constitute an unbroken chain which leads one to a fair and reasonable conclusion pointing to the accused, to the exclusion of the others, as the guilty person. While it is true that the courts can rely on circumstantial evidence in order to establish the guilt of the accused, the circumstantial evidence which the courts *a quo* relied upon in this case did not sufficiently create moral certainty, since they appear to be too insignificant and unconvincing. x x x By and large, the prosecution presented no adequate circumstantial evidence which would warrant Lamsen's conviction for the crime of Falsification of Public Document.

APPEARANCES OF COUNSEL

Jeremiah V. Villanueva for petitioner.
Office of the Solicitor General for respondent.

D E C I S I O N

PERLAS-BERNABE, *J.*:

Before the Court is a petition for review on *certiorari*[1] filed by petitioner Hilario Lamsen (Lamsen) assailing the Decision[2] dated January 30, 2015 of the Court of Appeals (CA) in CA-G.R. CR No. 35283, which affirmed the Decision[3] dated March 28, 2012 of the Regional Trial Court of Manila, Branch 34 (RTC) in Crim. Case No. 11-288590 sustaining the Judgment[4] dated July 5, 2011 of the Metropolitan Trial Court of Manila, Branch 21 (MeTC) in Crim. Case No. 400192-CB finding Lamsen guilty beyond reasonable doubt of the crime of falsification of public documents, as defined and penalized under Article 172 (1) of the Revised Penal Code (RPC).

The Facts

An Information[5] dated September 30, 2003 was filed before the MeTC, charging Lamsen of the crime of Falsification of Public Documents, the accusatory portion of which reads:

That on or about April 21, 1993, and for sometime prior or subsequent thereto, in the City of Manila, Philippines, the said accused, being then a private individual, did then and there willfully, unlawfully and feloniously commit acts of falsification of public/official document, in the following manner, to wit: the said accused prepared, forged

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[1] *Rollo*, pp. 9-30.

[2] *Rollo*, pp. 35-45. Penned by Associate Justice Romeo F. Barza with Associate Justices Rosmari D. Carandang and Agnes Reyes-Carpio concurring.

[3] CA *rollo*, pp. 37-43. Penned by Presiding Judge Liwliwa S. Hidalgo-Bucu.

[4] *Id*. at 29-36. Penned by Acting Presiding Judge Jaime B. Santiago.

[5] *Id*. at 66.

and falsified, or caused to be prepared, forged and falsified, a Deed of Absolute Sale dated April 21, 1993 notarized and acknowledged before Santiago R. Reyes, Notary Public for and in the City of Manila and docketed in his notarial registry Book as Doc. No. 88 Book No. 133, Page No. 19 and Series of 1993, and therefore a public document, by then and there stating therein[,] among others[,] that spouses Aniceta Dela Cruz and Nestor Tandas, the registered owner of a parcel of land containing an area of 43 square meters, more or less, located in Barrio Malabo, Municipality of Valenzuela, Metro Manila, covered by Transfer Certificate of Title No. V-16641 was sold[,] transferred and coveyed to the said accused for and in consideration of 150,000.00, by feigning, simulating and counterfeiting the signatures of said spouses Aniceta Dela Cruz and Nestor Tandas appearing on the lower left portion of said document[,] above the typewritten words "ANICETA DELA CRUZ" and "NESTOR TANDAS" thus making it appear as it did appear that said spouses Aniceta Dela Cruz and Nestor Tandas had transferred ownership of the said parcel of land subject matter of said deed of sale of herein accused, and that the said spouses Aniceta Dela Cruz and Nestor Tandas participated and intervened in the signing of the said document, when in truth and in fact, as the said accused well knew that such was not the case[,] and that the said spouses Aniceta Dela Cruz and Nestor Tandas did not sell the said property to the said accused and that they did not participate and intervene in the signing of the said deed of sale, much less did they authorized the said accused or anybody else to sign their names or affix their signatures thereon, to the damage and prejudice of public interest.

Contrary to law.[6]

The prosecution alleged that Aniceta dela Cruz (Aniceta) owned a parcel of land with an area of around forty-three (43) square meters located at Barrio Malabo, Valenzuela City, covered by Transfer Certificate of Title No. V-16641, and registered under the name of "Aniceta dela Cruz, married to Nestor Tandas" (subject property).[7] On September 7, 2001,[8] Aniceta passed away, leaving behind her nieces and surviving heirs, Teresita dela Cruz Lao (Teresita) and Carmelita Lao Lee

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[6] *Id*.

[7] See CA *rollo*, pp. 37 and 66.

[8] Erroneously dated as "September 7, 2011" in the RTC Decision.

(Carmelita).[9] After Aniceta's death, Teresita went to the former's house to look for the owner's duplicate title of the subject property, but the same was allegedly nowhere to be found. Accordingly, Teresita executed an affidavit of loss, which was annotated on the title on file with the Registry of Deeds of Valenzuela City (RD) on October 19, 2001.[10] Concurrently, Teresita and Carmelita executed an extrajudicial settlement of the estate of Aniceta.[11] Teresita also filed a petition for the issuance of second owner's duplicate copy before the Regional Trial Court of Valenzuela City, Branch 75. The said petition, however, was dismissed on the basis of the opposition of Lamsen, who claimed that the original copy of the owner's duplicate title could not have been lost because it was with him. Meanwhile, the RD informed Teresita through a letter dated May 9, 2002 that somebody requested for the registration of a deed of sale (subject deed) involving the subject property. Thus, she proceeded to the RD but was informed that the requesting party had withdrawn all the papers; hence, she asked for the Book of the RD to photocopy the withdrawal aforementioned. Thereafter, she went to the Notarial Section of Manila to get a certified true copy of the subject deed but was given a mere photocopy thereof, since the original was no longer on file. She then submitted the photocopy of the deed to the Philippine National Police (PNP) Crime Laboratory for examination, as the signatures of Aniceta and Nestor Tandas (Nestor) thereon appeared to be forged. Upon examination, Document Examiner II Alex Batiles (Batiles) confirmed that the subject deed was indeed falsified. He revealed that there were dissimilarities between the questioned and standard signatures of Aniceta and Nestor (spouses Tandas), and that they were not written by one and the same person.[12]

For his part, Lamsen interposed the defense of denial, claiming that while he was renting the place of his uncle Nestor sometime

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[9] See CA *rollo*, pp. 30 and 38.

[10] Erroneously dated as "October 19, 2011" in the RTC Decision. (See *id.*)

[11] *Rollo*, p. 37.

[12] *Id.* at 38.

in 1993, he validly bought and acquired the subject property from spouses Tandas in the amount of ₱150,000.00. He added that the subject deed was executed, signed, and notarized by spouses Tandas in the presence of a certain Nicasio Cruz and Francisco Capinpin in the GSIS Office, Manila. He averred that he subsequently left a xerox copy of the subject deed at the Notary Public and took the original with him. Ultimately, he contended that he no longer informed the relatives of Aniceta about the sale, as they already have a gap.[13]

The MeTC Ruling

In a Decision[14] dated July 5, 2011, the MeTC found Lamsen guilty beyond reasonable doubt of the crime of Falsification of Public Document and, accordingly, sentenced him to suffer the indeterminate penalty of *arresto mayor* in its maximum period, as minimum period of imprisonment (*i.e.*, two [2] years and four [4] months), to *prision correccional* in its medium and maximum period (*i.e.*, four [4] years, nine [9] months, and ten [10] days), as maximum period of imprisonment, and to pay a fine of ₱5,000.00.[15] It ruled that the prosecution was able to prove that the signatures of spouses Tandas were forged on account of the expert testimony of Batiles.[16] Conversely, Lamsen failed to establish by clear and convincing evidence the genuineness and authenticity of Aniceta's signature on the subject deed.[17]

With the subsequent denial[18] of his motion for reconsideration,[19] Lamsen filed an appeal[20] before the RTC.

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[13] *Id.* at 39.

[14] CA *rollo*, pp. 29-36.

[15] *Id.* at 35.

[16] See *id.* at 33-34.

[17] See *id.* at 34-35.

[18] See *id.* at 37.

[19] Dated July 16, 2011. *Id.* at 67-79.

[20] See Memorandum on Appeal for Accused dated February 7, 2012; *id.* at 80-98.

The RTC Ruling

In a Decision[21] dated March 28, 2012, the RTC affirmed the MeTC ruling *in toto*.[22] Prefatorily, it discredited Lamsen's claim that the offense had already prescribed, given that the ten (10)-year prescriptive period only commenced from the time the supposed forgery was discovered on May 9, 2002, the date of receipt of the letter of even date from the RD, and not from the time the Notary Public submitted the Notarial Report with the Office of the Clerk of Court of Manila sometime in April 1993. The submission of the Notarial Report is not considered an act of registration which would operate as a constructive notice to the whole world, since the Office of the Clerk of Court is not a public registry in the first place.[23]

Apart from the findings of the handwriting expert, the RTC also relied on the following circumstantial evidence in convicting Lamsen of the crime charged: (*a*) the subject deed was notarized in Manila even if Lamsen and spouses Tandas were residents of Valenzuela; (*b*) Lamsen failed to show when the alleged witnesses signed the subject deed; (*c*) the subject deed was executed and notarized sometime in April 1993, but was registered with the RD only after the death of Aniceta sometime in May 2002; (*d*) the corresponding capital gains and documentary stamp taxes were paid only on April 11, 2002; and (*e*) the original copy of the subject deed, which was purportedly retained by Lamsen, was neither presented nor produced during trial.[24]

Undaunted, Lamsen filed a motion for reconsideration,[25] which was, however, denied in an Order[26] dated May 31, 2012. Aggrieved, he filed an appeal[27] before the CA.

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[21] *Id*. at 37-43.

[22] *Id*. at 43.

[23] See *id*. at 40-41. See also *rollo*, pp. 39-40.

[24] See *id*. at 42-43. See also *rollo*, pp. 40-41.

[25] Dated February 7, 2012. *Id*. at 99-104.

[26] *Id*. at 105.

[27] See Memorandum for the Petitioner dated July 18, 2014; *id*. at 198-216.

The CA Ruling

In a Decision[28] dated January 30, 2015, the CA affirmed the RTC ruling, holding that all the elements of the crime of falsification of public document were attendant.[29]

Expectedly, Lamsen filed a motion for reconsideration[30] dated February 26, 2015. On September 7, 2015, Teresita and Carmelita filed a Manifestation[31] containing their joint affidavit of desistance and retraction. On the same day, Lamsen filed a Supplement to the motion for reconsideration dated February 26, 2015 (Supplement)[32] asking the court to dismiss the case in light of the aforesaid joint affidavit.

In a Resolution[33] dated September 4, 2015, the CA denied the motion for reconsideration dated February 26, 2015. Subsequently, it received the Manifestation and Supplement and noted the same without action.[34]

Unyielding, Lamsen filed a motion for new trial[35] on October 19, 2015, which was denied in a Resolution[36] dated May 31, 2016. The CA held that the original copy of the subject deed could not be considered newly discovered evidence, considering that Lamsen had every opportunity to produce and present it during trial.[37]

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[28] *Rollo*, pp. 35-45.

[29] *Id.* at 43.

[30] CA *rollo*, 236-246.

[31] *Id.* at 257-259.

[32] *Id.* at 260-263.

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

[34] *Rollo*, pp. 49 and 53.

[35] CA *rollo*, pp. 268-280.

[36] *Rollo*, pp. 49-54. Penned by Associate Justice Romeo F. Barza with Associate Justices Rosmari D. Carandang and Agnes Reyes-Carpio concurring.

[37] *Id.* at 52-54.

With the subsequent denial of his motion for reconsideration/new trial[38] on August 8, 2016,[39] Lamsen filed the instant petition[40] before the Court.

Issue Before the Court

The issue for the Court's resolution is whether or not Lamsen's conviction for the crime of falsification of public documents, as defined and penalized under Article 172 (1) of the RPC, should be upheld.

The Court's Ruling

The petition is meritorious.

At the outset, it must be stressed that an appeal in criminal cases opens the entire case for review and, thus, it is the duty of the reviewing tribunal to correct, cite, and appreciate errors in the appealed judgment whether they are assigned or unassigned.[41] "The appeal confers the appellate court full jurisdiction over the case and renders such court competent to examine records, revise the judgment appealed from, increase the penalty, and cite the proper provision of the penal law."[42]

"In every criminal case, the accused is entitled to acquittal unless his guilt is shown beyond reasonable doubt. Proof beyond reasonable doubt does not mean such a degree of proof as, excluding possibility of error, produces absolute certainty. Only moral certainty is required, or that degree of proof which produces conviction in an unprejudiced mind."[43]

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[38] CA *rollo*, pp. 314-319.

[39] See Resolution dated August 8, 2016 penned by Associate Justice Romeo F. Barza with Associate Justices Rosmari D. Carandang and Agnes Reyes-Carpio concurring; *rollo*, pp. 56-57.

[40] *Id.* at 9-33.

[41] See *People v. Dahil*, 750 Phil. 212, 225 (2015).

[42] See *People v. Comboy*, G.R. No. 218399, March 2, 2016, 785 SCRA 512, 521.

[43] See *People v. Claro y Mahinay*, G.R. No. 199894, April 5, 2017, citing Section 2, Rule 133 of the Rules of Court.

Here, Lamsen was charged of the crime of falsification of public document under Article 172 (1) of the RPC:

> Article 172. *Falsification by private individual and use of falsified documents.* – x x x:
>
> 1. Any private individual who shall commit any of the falsifications enumerated in the next preceding article in any public or official document or letter of exchange or any other kind of commercial document;
>
> x x x x x x x x x

The elements of the said crime are as follows: (*a*) the offender is a private individual; (*b*) the offender committed any of the acts of falsification enumerated in Article 171; and (*c*) the falsification was committed in a public document.[44]

Relatedly, the prosecution must likewise establish the fact of falsification or forgery by clear, positive, and convincing evidence, as the same is never presumed. Withal, the fact of forgery can only be established by a comparison between the alleged forged signature and the authentic and genuine signature of the person whose signature is theorized to have been forged.[45] "Under Rule 132, Section 22 of the Rules of Court, the genuineness of handwriting may be proved in the following manner: (1) by any witness who believes it to be the handwriting of such person because he has seen the person write; or he has seen writing purporting to be his upon which the witness has acted or been charged; (2) by a comparison, made by the witness or the court, with writings admitted or treated as genuine by the party, against whom the evidence is offered, or proved to be genuine to the satisfaction of the judge. Corollary thereto, jurisprudence states that the presumption of validity and regularity prevails over allegations of forgery and fraud. As against direct evidence consisting of the testimony of a witness

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[44] See *Guillergan v. People*, 656 Phil. 527, 534 (2011).

[45] See *Ambray v. Tsourous*, G.R. No. 209264, July 5, 2016, 795 SCRA 627, 637-638.

who was physically present at the signing of the contract and who had personal knowledge thereof, the testimony of an expert witness constitutes indirect or circumstantial evidence at best."[46]

In this case, the prosecution presented an expert witness, Batiles, to prove its allegation of falsification or forgery. While Batiles testified during cross-examination that the questioned signatures were not written by one and the same person, and that there is a certainty that the subject deed was falsified,[47] the Court, however, finds this declaration unreliable and inconclusive, as it is inconsistent with the Questioned Document Report No. 130-03. In the said Report, which Batiles himself issued after examining the allegedly falsified subject deed, Batiles found that no definite conclusion can be rendered because the documents submitted by the prosecution were mere photocopies of the original, *viz.*:

1. Scientific comparative examination and analysis of the questioned and the standard signatures of ANICETA TANDAS reveal dissimilarities in stroke structures, slant, lateral spacing, a strong indication that they were not by one and the same person. **However, no definite conclusion can be rendered due to the fact the questioned signatures are photocopies (Xerox) wherein minute details are not clearly manifested**.

2. Scientific comparative examination and analysis of the questioned and the standard signatures of NESTOR TANDAS reveal dissimilarities in stroke structure, slant, lateral spacing, a strong indication that they were not by one and the same person. **However, no definite conclusion can be rendered due to the fact the questioned signatures are photocopies (Xerox) wherein minute details are not clearly manifested**.[48] (Emphases and underscoring supplied)

Batiles further clarified that there are other handwriting elements which could not be determined in the photocopy, such

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[46] *Id.* at 638-639.

[47] See *rollo*, pp. 38-39. See also CA *rollo*, p. 34.

[48] See *rollo*, p. 38. See also CA *rollo*, p. 33.

as minor details which could not be visibly detected by the naked eye, *i.e.*, handwriting movement, line quality, and emphasis.[49]

Notably, the genuineness and due execution of a photocopy could not be competently established without a copy of the original. Photocopies are considered secondary evidence which can be rendered inadmissible absent any proof that the original was lost, destroyed, or in the custody or under the control of the party against whom the evidence is offered.[50] Here, not only did the prosecution fail to present the original copy of the subject deed in court, it likewise did not provide ample proof that the same was lost, destroyed, or in the custody or under the control of Lamsen. Since mere photocopies of the subject deed were used to examine the questioned and standard signatures of spouses Tandas, no valid comparison can be had between them, thereby rendering Batiles' declaration inconclusive to support a finding of guilt beyond reasonable doubt against Lamsen.

Aside from the findings of Batiles, the courts *a quo* also relied on circumstantial evidence to convict Lamsen of the crime of falsification of public document. It was pointed out that: (*a*) the subject deed was notarized in Manila even if Lamsen and spouses Tandas were residents of Valenzuela; (*b*) Lamsen failed to show when the alleged witnesses signed the subject deed; (*c*) the subject deed was executed and notarized sometime in April 1993, but was registered with the RD only after the death of Aniceta sometime in May 2002; (*d*) the corresponding capital gains and documentary stamp taxes were paid only on April 11, 2002; and (*e*) the original copy of the subject deed, which was purportedly retained by Lamsen, was neither presented nor produced during trial.[51] Circumstantial evidence consists of proof of collateral facts and circumstances from which the main fact in issue may be inferred based on reason and common

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[49] See *rollo*, p. 38.

[50] See Section 3, Rule 130 of the Rules of Court.

[51] See *rollo*, pp. 40-41. See also CA *rollo*, pp. 42-43.

experience. It 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. The circumstantial evidence presented must therefore constitute an unbroken chain which leads one to a fair and reasonable conclusion pointing to the accused, to the exclusion of the others, as the guilty person. Stated differently, the test to determine whether or not the circumstantial evidence on record is sufficient to convict the accused is that the series of circumstances duly proven must be consistent with each other and that each and every circumstance must be consistent with the accused's guilt and inconsistent with his innocence.[52]

While it is true that the courts can rely on circumstantial evidence in order to establish the guilt of the accused, the circumstantial evidence which the courts *a quo* relied upon in this case did not sufficiently create moral certainty, since they appear to be too insignificant and unconvincing. *Firstly*, the Notarial Law does not require the parties to have the subject deed notarized in the place of their residence. *Secondly,* the issue on the date when the supposed witnesses signed the subject deed is immaterial. In fact, Section 30, Rule 132 of the Rules of Court provides that an instrument, such as a notarized document, may be presented in evidence without further proof, the certificate of acknowledgment being prima facie evidence of the execution of the instrument or document involved. *Thirdly,* having the subject deed registered with the RD after an unreasonable length of time from its execution and notarization does not necessarily imply that the subject deed was actually forged. *Lastly*, the supposed belated payment of the corresponding capital gains and documentary stamp taxes has no relevance at all with the supposed act of falsification. By and large, the prosecution presented no adequate circumstantial evidence which would warrant Lamsen's conviction for the crime of Falsification of Public Document.

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[52] *Atienza v. People*, G.R. No. 188694, February 12, 2014, 726 Phil. 570, 582-583.

As the Court finds the above-stated reasons already sufficient to grant the present petition, it is henceforth unnecessary to delve on the other ancillary issues raised herein.

WHEREFORE, the petition is **GRANTED**. The Decision dated January 30, 2015 of the Court of Appeals in CA-G.R. CR No. 35283 is hereby **REVERSED** and **SET ASIDE**. Petitioner Hilario Lamsen is **ACQUITTED** of the crime of Falsification of Public Document on the ground of reasonable doubt. The bail bonds posted for his provisional liberty are consequently cancelled and released.

SO ORDERED.

Carpio (Chairperson), Peralta, and *Caguioa, JJ.,* concur.

Reyes, Jr., J., on official leave.

THIRD DIVISION

[G.R. No. 227544. November 22, 2017]

COMMISSIONER OF INTERNAL REVENUE, *petitioner, vs.* **TRANSITIONS OPTICAL PHILIPPINES, INC.,** *respondent.*

SYLLABUS

1. TAXATION; NATIONAL INTERNAL REVENUE CODE (NIRC); INTERNAL REVENUE TAXES SHALL BE ASSESSED WITHIN THREE (3) YEARS AFTER THE LAST DAY PRESCRIBED BY LAW FOR THE FILING OF THE RETURN; EXCEPTION.— As a general rule, petitioner has three (3) years to assess taxpayers from the filing of the return. x x x An exception to the rule of prescription is found in Section 222(b) and (d) of this Code. x x x [T]he period to assess and collect taxes may be extended upon the

Commissioner of Internal Revenue and the taxpayer's written agreement, executed before the expiration of the three (3)-year period.

2. CIVIL LAW; OBLIGATIONS AND CONTRACTS; ESTOPPEL; APPLIES AGAINST A TAXPAYER WHO DID NOT ONLY RAISE AT THE EARLIEST OPPORTUNITY ITS REPRESENTATIVE'S LACK OF AUTHORITY TO EXECUTE TWO (2) WAIVERS OF DEFENSE OF PRESCRIPTION, BUT WAS ALSO ACCORDED, THROUGH THESE WAIVERS, MORE TIME TO COMPLY WITH THE AUDIT REQUIREMENTS OF THE BUREAU OF INTERNAL REVENUE.— Indeed, the Bureau of Internal Revenue was at fault when it accepted respondent's Waivers despite their non-compliance with the requirements of RMO No. 20-90 and RDAO No. 05-01. Nonetheless, respondent's acts also show its implied admission of the validity of the waivers. *First,* respondent never raised the invalidity of the Waivers at the earliest opportunity, either in its Protest to the PAN, Protest to the FAN, or Supplemental Protest to the FAN. It thereby impliedly recognized these Waivers' validity and its representatives' authority to execute them. Respondent only raised the issue of these Waivers' validity in its Petition for Review filed with the Court of Tax Appeals. In fact, as pointed out by Justice Del Rosario, respondent's Protest to the FAN clearly recognized the validity of the Waivers, when it stated: This has reference to the Final Assessment Notice ("[F]AN") issued by your office, dated November 28, 2008. The said letter was received by Transitions Optical Philippines[,] Inc. (TOPI) on December 5, 2008, **five days after the waiver we issued which was valid until November 30, 2008 had prescribed.** *Second*, respondent does not dispute petitioner's assertion that respondent repeatedly failed to comply with petitioner's notices, directing it to submit its books of accounts and related records for examination by the Bureau of Internal Revenue. Respondent also ignored the Bureau of Internal Revenue's request for an Informal Conference to discuss other "discrepancies" found in the partial documents submitted. The Waivers were necessary to give respondent time to fully comply with the Bureau of Internal Revenue notices for audit examination and to respond to its Informal Conference request to discuss the discrepancies. Thus, having benefitted from the Waivers

executed at its instance, respondent is estopped from claiming that they were invalid and that prescription had set in.

3. TAXATION; NATIONAL INTERNAL REVENUE CODE (NIRC); A TAX ASSESSMENT SERVED BEYOND THE EXTENDED PERIOD IS VOID.— The First Division of the Court of Tax Appeals found that "the date indicated in the envelope/mail matter containing the FAN and the FLD is December 4, 2008, which is considered as the date of their mailing." Since the validity period of the second Waiver is only until November 30, 2008, prescription had already set in at the time the FAN and the FLD were actually mailed on December 4, 2008. For lack of adequate supporting evidence, the Court of Tax Appeals rejected petitioner's claim that the FAN and the FLD were already delivered to the post office for mailing on November 28, 2008 but were actually processed by the post office on December 2, 2008, since December 1, 2008 was declared a Special Holiday. The testimony of petitioner's witness, Dario A. Consignado, Jr., that he brought the mail matter containing the FAN and the FLD to the post office on November 28, 2008 was considered self-serving, uncorroborated by any other evidence. Additionally, the Certification presented by petitioner certifying that the FAN issued to respondent was delivered to its Administrative Division for mailing on November 28, 2008 was found insufficient to prove that the actual date of mailing was November 28, 2008. This Court finds no clear and convincing reason to overturn these factual findings of the Court of Tax Appeals.

4. ID.; ID.; PRELIMINARY ASSESSMENT NOTICE; A REQUIREMENT OF DUE PROCESS THAT INFORMS THE TAXPAYER OF THE INITIAL FINDINGS OF THE BUREAU OF INTERNAL REVENUE.— [P]etitioner's contention that the assessment required to be issued within the three (3)-year or extended period provided in Sections 203 and 222 of the National Internal Revenue Code refers to the PAN is untenable. Considering the functions and effects of a PAN *vis à vis* a FAN, it is clear that the assessment contemplated in Sections 203 and 222 of the National Internal Revenue Code refers to the service of the FAN upon the taxpayer. A PAN merely informs the taxpayer of the initial findings of the Bureau of Internal Revenue. It contains the proposed assessment, and the facts, law, rules, and regulations or jurisprudence on which

the proposed assessment is based. It does not contain a demand for payment but usually requires the taxpayer to reply within 15 days from receipt. Otherwise, the Commissioner of Internal Revenue will finalize an assessment and issue a FAN. The PAN is a part of due process. It gives both the taxpayer and the Commissioner of Internal Revenue the opportunity to settle the case at the earliest possible time without the need for the issuance of a FAN.

5. **ID.; ID.; FINAL ASSESSMENT NOTICE; CONTAINS NOT ONLY A COMPUTATION OF TAX LIABILITIES BUT ALSO A DEMAND FOR PAYMENT WITHIN A PRESCRIBED PERIOD.—** [A] FAN contains not only a computation of tax liabilities but also a demand for payment within a prescribed period. As soon as it is served, an obligation arises on the part of the taxpayer concerned to pay the amount assessed and demanded. It also signals the time when penalties and interests begin to accrue against the taxpayer. Thus, the National Internal Revenue Code imposes a 25% penalty, in addition to the tax due, in case the taxpayer fails to pay the deficiency tax within the time prescribed for its payment in the notice of assessment. Likewise, an interest of 20% per annum, or such higher rate as may be prescribed by rules and regulations, is to be collected from the date prescribed for payment until the amount is fully paid. Failure to file an administrative protest within 30 days from receipt of the FAN will render the assessment final, executory, and demandable.

APPEARANCES OF COUNSEL

Office of the Solicitor General for petitioner.
Esquivias & Arbues Law Firm for respondent.

D E C I S I O N

LEONEN, *J.*:

Estoppel applies against a taxpayer who did not only raise at the earliest opportunity its representative's lack of authority to execute two (2) waivers of defense of prescription, but was also accorded, through these waivers, more time to comply with the audit requirements of the Bureau of Internal Revenue.

Nonetheless, a tax assessment served beyond the extended period is void.

This Petition for Review on Certiorari[1] seeks to nullify and set aside the June 7, 2016 Decision[2] and September 26, 2016 Resolution[3] of the Court of Tax Appeals En Banc in CTA EB No. 1251. The Court of Tax Appeals En Banc affirmed its First Division's September 1, 2014 Decision,[4] cancelling the deficiency assessments against Transitions Optical Philippines, Inc. (Transitions Optical).

On April 28, 2006, Transitions Optical received Letter of Authority No. 00098746 dated March 23, 2006 from Revenue Region No. 9, San Pablo City, of the Bureau of Internal Revenue. It was signed by then Officer-in-Charge-Regional Director Corazon C. Pangcog and it authorized Revenue Officers Jocelyn Santos and Levi Visaya to examine Transition Optical's books of accounts for internal revenue tax purposes for taxable year 2004.[5]

On October 9, 2007, the parties allegedly executed a Waiver of the Defense of Prescription (First Waiver).[6] In this supposed First Waiver, the prescriptive period for the assessment of

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[1] *Rollo*, pp. 30-63.

[2] *Id*. at 71-84. The Decision was penned by Associate Justice Ma. Belen M. Ringpis-Liban and concurred in by Presiding Justice Roman G. Del Rosario (with separate concurring opinion, pp. 85-92) and Associate Justices Juanito C. Castañeda, Jr., Lovell R. Bautista, Erlinda P. Uy, Caesar A. Casanova, Esperanza R. Fabon-Victorino, Cielito N. Mindaro-Grulla, and Amelia R. Contangco-Manalastas of the Court of Tax Appeals, Quezon City.

[3] *Id.* at 94-96. The Resolution was penned by Associate Justice Ma. Belen M. Ringpis-Liban and concurred in by Presiding Justice Roman G. Del Rosario and associate Justices Juanito C. Castañeda, Jr., Lovell R. Bautista, Erlinda P. Uy, Caesar A. Casanova, Esperanza R. Fabon-Victorino, and Cielito N. Mindaro-Grulla of the Court of Tax Appeals, Quezon City.

[4] *Id.* at 97-121. The Decision, docketed as CTA Case No. 8442, was penned by Associate Justice Erlinda P. Uy and concurred in by Presiding Justice Roman G. Del Rosario and Associate Justice Cielito N. Mindaro-Grulla.

[5] *Id*. at 72.

[6] *Id*.

Transition Optical's internal revenue taxes for the year 2004 was extended to June 20, 2008.[7] The document was signed by Transitions Optical's Finance Manager, Pamela Theresa D. Abad, and by Bureau of Internal Revenue's Revenue District Officer, Myrna S. Leonida.[8]

This was followed by another supposed Waiver of the Defense of Prescription (Second Waiver) dated June 2, 2008. This time, the prescriptive period was supposedly extended to November 30, 2008.[9]

Thereafter, the Commissioner of Internal Revenue, through Regional Director Jaime B. Santiago (Director Santiago), issued a Preliminary Assessment Notice (PAN) dated November 11, 2008, assessing Transitions Optical for its deficiency taxes for taxable year 2004. Transitions Optical filed a written protest on November 26, 2008.[10]

The Commissioner of Internal Revenue, again through Director Santiago, subsequently issued against Transitions Optical a Final Assessment Notice (FAN) and a Formal Letter of Demand (FLD) dated November 28, 2008 for deficiency income tax, value-added tax, expanded withholding tax, and final tax for taxable year 2004 amounting to ₱19,701,849.68.[11]

In its Protest Letter dated December 8, 2008 against the FAN, Transitions Optical alleged that the demand for deficiency taxes had already prescribed at the time the FAN was mailed on December 2, 2008. In its Supplemental Protest, Transitions Optical pointed out that the FAN was void because the FAN indicated 2006 as the return period, but the assessment covered calendar year 2004.[12]

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[7] *Id*. at 32.

[8] *Id*. at 150-151.

[9] *Id*. at 32-33 and 152-153.

[10] *Id*. at 72.

[11] *Id*. at 73.

[12] *Id*.

Years later, the Commissioner of Internal Revenue, through Regional Director Jose N. Tan, issued a Final Decision on the Disputed Assessment dated January 24, 2012, holding Transitions Optical liable for deficiency taxes in the total amount of ₱19,701,849.68 for taxable year 2004, broken down as follows:

Tax	**Amount**
Income Tax	₱ 3,153,371.04
Value-Added Tax	1,231,393.47
Expanded Withholding Tax	175,339.51
Final Tax on Royalty	14,026,247.90
Final Tax on Interest Income	1,115,497.76
Total	₱ 19,701,849.68[13]

On March 16, 2012, Transitions Optical filed a Petition for Review before the Court of Tax Appeals.[14]

In her Answer, the Commissioner of Internal Revenue interposed that Transitions Optical's claim of prescription was inappropriate because the executed Waiver of the Defense of Prescription extended the assessment period. She added that the posting of the FAN and FLD was within San Pablo City Post Office's exclusive control. She averred that she could not be faulted if the FAN and FLD were posted for mailing only on December 2, 2008, since November 28, 2008 fell on a Friday and the next supposed working day, December 1, 2008, was declared a Special Holiday.[15]

After trial and upon submission of the parties' memoranda, the First Division of the Court of Tax Appeals (First Division) rendered a Decision on September 1, 2014.[16] It held:

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[13] *Id.* at 73 and 158-159. The total sum indicated in the Formal Letter of Demand is ₱19,614,438.97 but the correct total sum is ₱19,701,849.68.

[14] *Id.* at 34.

[15] *Id.* at 73.

[16] *Id.* at 74.

In summary therefore, the Court hereby finds the subject Waivers to be defective and therefore void. Nevertheless, granting for the sake of argument that the subject Waivers were validly executed, for failure of respondent however to present adequate supporting evidence to prove that it issued the FAN and the FLD within the extended period agreed upon in the 2nd Waiver, the subject assessment must be cancelled for being issued beyond the prescriptive period provided by law to assess.

WHEREFORE, in light of the foregoing considerations, the instant Petition for Review is hereby **GRANTED**. Accordingly, the Final Assessment Notice, Formal Letter of Demand and Final Decision on Disputed Assessment finding petitioner Transitions Optical Philippines, Inc. liable for deficiency income tax, deficiency expanded withholding tax, deficiency value-added tax and deficiency final tax for taxable year 2004 in the total amount of **₱19,701,849.68** are hereby **CANCELLED** and **SET ASIDE.**

SO ORDERED.[17] (Emphasis in the original)

The Commissioner of Internal Revenue filed a Motion for Reconsideration, which was denied by the First Division in its Resolution[18] dated November 7, 2014.

The Court of Tax Appeals En Banc affirmed the First Division Decision[19] and subsequently denied the Commissioner of Internal Revenue's Motion for Reconsideration.[20]

Hence, this Petition was filed before this Court. Transitions Optical filed its Comment.[21]

Petitioner contends that "[t]he two Waivers executed by the parties on October 9, 2007 and June 2, 2008 substantially complied with the requirements of Sections 203 and 222 of the [National Internal Revenue Code]."[22] She adds that technical

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[17] *Id*. at 120.

[18] *Id*. at 123-127.

[19] *Id*. at 83.

[20] *Id*. at 96.

[21] *Id*. at 283-313.

[22] *Id*. at 37.

rules of procedure of administrative bodies, such as those provided in Revenue Memorandum Order (RMO) No. 20-90 issued on April 4, 1990 and Revenue Delegation Authority Order (RDAO) No. 05-01 issued on August 2, 2001, must be liberally applied to promote justice.[23] At any rate, petitioner maintains that respondent is estopped from questioning the validity of the waivers since their execution was caused by the delay occasioned by respondent's own failure to comply with the orders of the Bureau of Internal Revenue to submit documents for audit and examination.[24]

Furthermore, petitioner argues that the assessment required to be issued within the three (3)-year period provided in Sections 203 and 222 of the National Internal Revenue Code refer to petitioner's actual issuance of the notice of assessment to the taxpayer or what is usually known as PAN, and not the FAN issued in case the taxpayer files a protest.[25]

On the other hand, respondent contends that the Court of Tax Appeals properly found the waivers defective, and therefore, void. It adds that the three (3)-year prescriptive period for tax assessment primarily benefits the taxpayer, and any waiver of this period must be strictly scrutinized in light of the requirements of the laws and rules.[26] Respondent posits that the requirements for valid waivers are not mere technical rules of procedure that can be set aside.[27]

Respondent further asserts that it is not estopped from questioning the validity of the waivers as it raised its objections at the earliest opportunity.[28] Besides, the duty to ensure compliance with the requirements of RMO No. 20-90 and RDAO

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[23] *Id*. at 38.

[24] *Id*. at 37-38.

[25] *Id*. at 56-57.

[26] *Id*. at 297.

[27] *Id*. at 300.

[28] *Id*. at 302-303.

No. 05-01, including proper authorization of the taxpayer's representative, fell primarily on petitioner and her revenue officers. Thus, petitioner came to court with unclean hands and cannot be permitted to invoke the doctrine of estoppel.[29] Respondent insists that there was no clear showing that the signatories in the waivers were duly sanctioned to act on its behalf.[30]

Even assuming that the waivers were valid, respondent argues that the assessment would still be void as the FAN was served only on December 4, 2008, beyond the extended period of November 30, 2008.[31] Contrary to petitioner's stance, respondent counters that the assessment required to be served within the three (3)-year prescriptive period is the FAN and FLD, not just the PAN.[32] According to respondent, "it is the FAN and FLD that formally notif[y] the taxpayer, and categorically [demand] from him, that a deficiency tax is due."[33]

The issues for this Court's resolution are:

First, whether or not the two (2) Waivers of the Defense of Prescription entered into by the parties on October 9, 2007 and June 2, 2008 were valid; and

Second, whether or not the assessment of deficiency taxes against respondent Transitions Optical Philippines, Inc. for taxable year 2004 had prescribed.

This Court denies the Petition. The Court of Tax Appeals committed no reversible error in cancelling the deficiency tax assessments.

I

As a general rule, petitioner has three (3) years to assess taxpayers from the filing of the return. Section 203 of the National Internal Revenue Code provides:

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[29] *Id*. at 304 and 309.

[30] *Id*. at 302.

[31] *Id*. at 304-305.

[32] *Id*. at 308.

[33] *Id*. at 307.

Section 203. Period of Limitation Upon Assessment and Collection. — Except as provided in Section 222, internal revenue taxes shall be assessed within three (3) years after the last day prescribed by law for the filing of the return, and no proceeding in court without assessment for the collection of such taxes shall be begun after the expiration of such period: Provided, That in a case where a return is filed beyond the period prescribed by law, the three (3)-year period shall be counted from the day the return was filed. For purposes of this Section, a return filed before the last day prescribed by law for the filing thereof shall be considered as filed on such last day.

An exception to the rule of prescription is found in Section 222(b) and (d) of this Code, *viz*:

> Section 222. Exceptions as to Period of Limitation of Assessment and Collection of Taxes. —
>
> . . . .
>
> (b) If before the expiration of the time prescribed in Section 203 for the assessment of the tax, both the Commissioner and the taxpayer have agreed in writing to its assessment after such time, the tax may be assessed within the period agreed upon. The period so agreed upon may be extended by subsequent written agreement made before the expiration of the period previously agreed upon.
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> . . . .
>
> (d) Any internal revenue tax, which has been assessed within the period agreed upon as provided in paragraph (b) hereinabove, may be collected by distraint or levy or by a proceeding in court within the period agreed upon in writing before the expiration of the five (5) -year period. The period so agreed upon may be extended by subsequent written agreements made before the expiration of the period previously agreed upon.

Thus, the period to assess and collect taxes may be extended upon the Commissioner of Internal Revenue and the taxpayer's written agreement, executed before the expiration of the three (3)-year period.

In this case, two (2) waivers were supposedly executed by the parties extending the prescriptive periods for assessment

of income tax, value-added tax, and expanded and final withholding taxes to June 20, 2008, and then to November 30, 2008.

The Court of Tax Appeals, both its First Division and En Banc, declared as defective and void the two (2) Waivers of the Defense of Prescription for non-compliance with the requirements for the proper execution of a waiver as provided in RMO No. 20-90 and RDAO No. 05-01. Specifically, the Court of Tax Appeals found that these Waivers were not accompanied by a notarized written authority from respondent, authorizing the so-called representatives to act on its behalf. Likewise, neither the Revenue District Office's acceptance date nor respondent's receipt of the Bureau of Internal Revenue's acceptance was indicated in either document.[34]

However, Presiding Justice Roman G. Del Rosario (Justice Del Rosario) in his Separate Concurring Opinion[35] in the Court of Tax Appeals June 7, 2016 Decision, found that respondent is estopped from claiming that the waivers were invalid by reason of its own actions, which persuaded the government to postpone the issuance of the assessment. He discussed:

> In the case at bar, respondent performed acts that induced the BIR to defer the issuance of the assessment. Records reveal that to extend the BIR's prescriptive period to assess respondent for deficiency taxes for taxable year 2004, respondent executed two (2) waivers. The first Waiver dated October 2007 extended the period to assess until June 20, 2008, while the second Waiver, which was executed on June 2, 2008, extended the period to assess the taxes until November 30, 2008. As a consequence of the issuance of said waivers, petitioner delayed the issuance of the assessment.
>
> Notably, when respondent filed its protest on November 26, 2008 against the Preliminary Assessment Notice dated November 11, 2008, it merely argued that it is not liable for the assessed deficiency taxes and did not raise as an issue the invalidity of the waiver and the prescription of petitioner's right to assess the deficiency taxes. In its protest dated December 8, 2008 against the FAN, respondent argued

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[34] *Id*. at 77 and 112-115.

[35] *Id*. at 85-92.

that the year being audited in the FAN has already prescribed at the time such FAN was mailed on December 2, 2008. Respondent even stated in that protest that it received the letter (referring to the FAN dated November 28, 2008) on December 5, 2008, which accordingly is five (5) days after the waiver it issued had prescribed. The foregoing narration plainly does not suggest that respondent has any objection to its previously executed waivers. By the principle of estoppel, respondent should not be allowed to question the validity of the waivers.[36]

In *Commissioner of Internal Revenue v. Next Mobile, Inc. (formerly Nextel Communications Phils., Inc.)*,[37] this Court recognized the doctrine of estoppel and upheld the waivers when both the taxpayer and the Bureau of Internal Revenue were *in pari delicto*. The taxpayer's act of impugning its waivers after benefitting from them was considered an act of bad faith:

> In this case, respondent, after deliberately executing defective waivers, raised the very same deficiencies it caused to avoid the tax liability determined by the BIR during the extended assessment period. It must be remembered that by virtue of these Waivers, respondent was given the opportunity to gather and submit documents to substantiate its claims before the [Commissioner of Internal Revenue] during investigation. It was able to postpone the payment of taxes, as well as contest and negotiate the assessment against it. Yet, after enjoying these benefits, respondent challenged the validity of the Waivers when the consequences thereof were not in its favor. In other words, respondent's act of impugning these Waivers after benefiting therefrom and allowing petitioner to rely on the same is an act of bad faith.[38]

This Court found the taxpayer estopped from questioning the validity of its waivers:

> Respondent executed *five* Waivers and delivered them to petitioner, one after the other. It allowed petitioner to rely on them and did not raise any objection against their validity until petitioner assessed

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[36] *Id.* at 90-91.

[37] 774 Phil. 428 (2015) [Per *J.* Velasco, Jr., Third Division].

[38] *Id*. at 442.

taxes and penalties against it. Moreover, the application of estoppel is necessary to prevent the undue injury that the government would suffer because of the cancellation of petitioner's assessment of respondent's tax liabilities.[39] (Emphasis in the original)

Parenthetically, this Court stated that when both parties continued to deal with each other in spite of knowing and without rectifying the defects of the waivers, their situation is "dangerous and open to abuse by unscrupulous taxpayers who intend to escape their responsibility to pay taxes by mere expedient of hiding behind technicalities."[40]

Estoppel similarly applies in this case.

Indeed, the Bureau of Internal Revenue was at fault when it accepted respondent's Waivers despite their non-compliance with the requirements of RMO No. 20-90 and RDAO No. 05-01.

Nonetheless, respondent's acts also show its implied admission of the validity of the waivers. *First,* respondent never raised the invalidity of the Waivers at the earliest opportunity, either in its Protest to the PAN, Protest to the FAN, or Supplemental Protest to the FAN.[41] It thereby impliedly recognized these Waivers' validity and its representatives' authority to execute them. Respondent only raised the issue of these Waivers' validity in its Petition for Review filed with the Court of Tax Appeals.[42] In fact, as pointed out by Justice Del Rosario, respondent's Protest to the FAN clearly recognized the validity of the Waivers,[43] when it stated:

> This has reference to the Final Assessment Notice ("[F]AN") issued by your office, dated November 28, 2008. The said letter was received by Transitions Optical Philippines[,] Inc. (TOPI) on December 5, 2008, **five days after the waiver we issued which was valid until November 30, 2008 had prescribed.**[44] (Emphasis supplied)

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[39] *Id.* at 444-445.

[40] *Id.* at 445.

[41] *Rollo*, p. 124.

[42] *Id.* at 184-188.

[43] *Id.* at 91.

[44] *Id.* at 167.

Second, respondent does not dispute petitioner's assertion[45] that respondent repeatedly failed to comply with petitioner's notices, directing it to submit its books of accounts and related records for examination by the Bureau of Internal Revenue. Respondent also ignored the Bureau of Internal Revenue's request for an Informal Conference to discuss other "discrepancies" found in the partial documents submitted. The Waivers were necessary to give respondent time to fully comply with the Bureau of Internal Revenue notices for audit examination and to respond to its Informal Conference request to discuss the discrepancies.[46] Thus, having benefitted from the Waivers executed at its instance, respondent is estopped from claiming that they were invalid and that prescription had set in.

II

But, even as respondent is estopped from questioning the validity of the Waivers, the assessment is nonetheless void because it was served beyond the supposedly extended period.

The First Division of the Court of Tax Appeals found that "the date indicated in the envelope/mail matter containing the FAN and the FLD is December 4, 2008, which is considered as the date of their mailing."[47] Since the validity period of the second Waiver is only until November 30, 2008, prescription had already set in at the time the FAN and the FLD were actually mailed on December 4, 2008.

For lack of adequate supporting evidence, the Court of Tax Appeals rejected petitioner's claim that the FAN and the FLD were already delivered to the post office for mailing on November 28, 2008 but were actually processed by the post office on December 2, 2008, since December 1, 2008 was declared a Special Holiday.[48] The testimony of petitioner's witness, Dario

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

[46] *Id*. at 45.

[47] *Id*. at 118.

[48] *Id*. at 119.

A. Consignado, Jr., that he brought the mail matter containing the FAN and the FLD to the post office on November 28, 2008 was considered self-serving, uncorroborated by any other evidence. Additionally, the Certification presented by petitioner certifying that the FAN issued to respondent was delivered to its Administrative Division for mailing on November 28, 2008 was found insufficient to prove that the actual date of mailing was November 28, 2008.

This Court finds no clear and convincing reason to overturn these factual findings of the Court of Tax Appeals.

Finally, petitioner's contention that the assessment required to be issued within the three (3)-year or extended period provided in Sections 203 and 222 of the National Internal Revenue Code refers to the PAN is untenable.

Considering the functions and effects of a PAN *vis à vis* a FAN, it is clear that the assessment contemplated in Sections 203 and 222 of the National Internal Revenue Code refers to the service of the FAN upon the taxpayer.

A PAN merely informs the taxpayer of the initial findings of the Bureau of Internal Revenue.[49] It contains the proposed assessment, and the facts, law, rules, and regulations or jurisprudence on which the proposed assessment is based.[50] It does not contain a demand for payment but usually requires the taxpayer to reply within 15 days from receipt. Otherwise, the Commissioner of Internal Revenue will finalize an assessment and issue a FAN.

The PAN is a part of due process.[51] It gives both the taxpayer and the Commissioner of Internal Revenue the opportunity to settle the case at the earliest possible time without the need for the issuance of a FAN.

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[49] TAX CODE, Sec. 228; *Commissioner of Internal Revenue v. Menguito,* 587 Phil. 234 (2008) [Per *J.* Austria-Martinez, Third Division].

[50] Revenue Regulation No. 12-99, Sec. 3.1.2.

[51] See *Commissioner of Internal Revenue v. Metro Star Superama, Inc.,* 652 Phil. 172 (2010) [Per *J.* Mendoza, Second Division].

On the other hand, a FAN contains not only a computation of tax liabilities but also a demand for payment within a prescribed period.[52] As soon as it is served, an obligation arises on the part of the taxpayer concerned to pay the amount assessed and demanded. It also signals the time when penalties and interests begin to accrue against the taxpayer. Thus, the National Internal Revenue Code imposes a 25% penalty, in addition to the tax due, in case the taxpayer fails to pay the deficiency tax within the time prescribed for its payment in the notice of assessment.[53] Likewise, an interest of 20% per annum, or such higher rate as may be prescribed by rules and regulations, is to be collected from the date prescribed for payment until the amount is fully paid.[54] Failure to file an administrative protest within 30 days from receipt of the FAN will render the assessment final, executory, and demandable.

WHEREFORE, the Petition is **DENIED.** The June 7, 2016 Decision and September 26, 2016 Resolution of the Court of Tax Appeals En Banc in CTA EB No. 1251 are **AFFIRMED.**

SO ORDERED.

Bersamin[*] *(Acting Chairperson), Martires,* and *Gesmundo, JJ.,* concur.

Velasco, Jr., J., on official leave.

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[52] Revenue Regulation No. 12-99, Sec. 3.1.4.

[53] TAX CODE, Sec. 248 (A)(3).

[54] TAX CODE, Sec. 249.

[*] Designated Acting Chairperson per S.O. No. 2514 dated November 8, 2017.

THIRD DIVISION

[G.R. No. 229256. November 22, 2017]

MARIETTA MAGLAYA DE GUZMAN, *petitioner, vs.* **THE OFFICE OF THE OMBUDSMAN and BESTFORMS, INCORPORATED,** *respondents.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; THE GOVERNMENT PROCUREMENT REFORM ACT (RA 9184); MANDATES THAT ALL GOVERNMENT ACQUISITION OF GOODS AND SERVICES AND THE CONTRACTING FOR INFRASTRUCTURE PROJECTS SHALL BE DONE THROUGH COMPETITIVE PUBLIC BIDDING; ALTERNATIVE MODES OF PROCUREMENT ARE ALLOWED UNDER EXCEPTIONAL CASES AND SUBJECT TO CERTAIN CONDITIONS.— Section 10, Article IV, in relation to Section 5, pars. (n) and (o), Article I, of RA 9184 mandates that all acquisition of goods, consulting services, and the contracting for infrastructure projects by any branch, department, office, agency, or instrumentality of the government, including state universities and colleges, government-owned and/or -controlled corporations, government financial institutions, and local government units shall be done through competitive bidding. This is in consonance with the law's policy and principle of promoting transparency in the procurement process, implementation of procurement contracts, and competitiveness by extending equal opportunity to enable private contracting parties who are eligible and qualified to participate in public bidding. x x x Alternative methods of procurement, however, are allowed under RA 9184 which would enable dispensing with the requirement of open, public and competitive bidding, but only in highly exceptional cases and under the conditions set forth in Article XVI thereof. These alternative modes of procurement include Limited Source Bidding and Negotiated Procurement[.]

2. ID.; ID.; ID.; THE REQUIREMENTS OF A PRE-BID CONFERENCE, WRITTEN INVITATION TO OBSERVERS AND POSTING OF THE INVITATION TO APPLY FOR

ELIGIBILITY TO BID (IAEB) MUST STILL BE FOLLOWED IN ALTERNATIVE MODES OF PROCUREMENT; THE NATIONAL PRINTING OFFICE BIDS AND AWARDS COMMITTEE (NPO-BAC) FAILED TO COMPLY WITH THESE REQUIREMENTS FOR LIMITED SOURCE BIDDING AND NEGOTIATED PROCUREMENT.— Section 13, Article V of RA 9184 and Section 13, Rule V of IRR-A underscore that **written invitations should be sent to a COA representative and to at least two (2) other observers to sit in its proceedings**. It should be emphasized that both the law and the IRR-A categorically state that these observers shall be invited to observe **in all stages of the procurement**[.] x x x On the other hand, Sections 20 and 22 of Article VII of RA 9184 mandate the BAC to hold a pre-procurement and pre-bid conference **on each and every procurement**, without making any qualifications nor exceptions as to which mode of procurement these requirements are applicable to[.] x x x Contrary to De Guzman's position, the language of the law and the IRR-A is clear: **such requirements must be followed in any and all types of procurement**. Not all procedures followed in competitive biddings are dispensed with when an agency or office resorts to any of the alternative modes of procurement. Regardless of whether the June biddings were just a re-bid of the March and April biddings, it was incumbent upon the NPO-BAC to observe the aforestated procedural requirements for the latter biddings. x x x The records are bereft of any evidence showing compliance with the foregoing requirements.

3. ID.; ID.; GRAVE MISCONDUCT, CONCEPT OF; MISCONDUCT BECOMES GRAVE WHEN IT INVOLVES CORRUPTION OR WILLFUL INTENT TO VIOLATE THE LAW OR DISREGARD ESTABLISHED RULES.— Misconduct is a transgression of some established and definite rule of action, more particularly, unlawful behavior or gross negligence by a public officer. The misconduct is grave if it involves additional elements such as corruption or willful intent to violate the law or to disregard established rules, which must be proven by substantial evidence; otherwise, the misconduct is only simple. Corruption, as an element of grave misconduct, consists in the act of an official or fiduciary person who unlawfully and wrongfully uses his station or character to procure some benefit for himself or for another person, contrary to duty

and the rights of others. In grave misconduct, the elements of corruption, clear intent to violate the law, or flagrant disregard of an established rule must be evident.

4. ID.; ID.; GRAVE MISCONDUCT, COMMITTED; FAILURE TO COMPLY WITH THE REQUIREMENTS FOR LIMITED SOURCE BIDDING AND NEGOTIATED PROCUREMENT CONSTITUTES GRAVE MISCONDUCT; GROSS DISREGARD WITH THE DIRECTIVES OF RA 9184 AMOUNTS TO WILLFUL INTENT TO SUBVERT THE POLICY OF THE LAW FOR TRANSPARENCY AND ACCOUNTABILITY IN GOVERNMENT CONTRACTS; DISMISSAL FROM THE SERVICE, IMPOSED.— [T]he Court finds no reason to overturn the findings of the Ombudsman, as affirmed by the CA, that De Guzman, along with the other members of the NPO-BAC, committed grave misconduct when they conducted the bid process of and awarded the subject contracts without compliance with the other requirements for limited source bidding and negotiated procurement. The lack of official documents proving compliance with the bidding requirements constitutes the substantial evidence that sufficiently establishes De Guzman's liability for grave misconduct. x x x De Guzman and the other members of the NPO-BAC grossly disregarded the law and were manifestly remiss in their duties in strictly observing the directives of RA 9184, which resulted in undue benefits to RFI. Such gross disregard of the law is so blatant and palpable that the same amounts to a willful intent to subvert the clear policy of the law for transparency and accountability in government contracts. This merits her dismissal from service under Section 46, Rule 10 of the Revised Rules on Administrative Cases in the Civil Service.

APPEARANCES OF COUNSEL

Rolando K. Javier for petitioner.

D E C I S I O N

VELASCO, JR., *J.*:

Nature of the Case

This petition for review under Rule 45 of the Rules of Court seeks to reverse and set aside the April 20, 2016 Decision[1] and January 11, 2017 Resolution[2] of the Court of Appeals (CA) in CA G.R. SP No. 129712, which affirmed the Decision of the Office of the Ombudsman (Ombudsman) in OMB-C-A-06-0427-H finding petitioner Marietta Maglaya De Guzman (De Guzman) guilty of grave misconduct and dismissing her from government service.

Factual Antecedents

The facts, as culled from the records, are as follows:

On March 30, 2006 and April 12, 2006, the National Printing Office Bids & Awards Committee (NPO-BAC) conducted competitive public biddings for, among others, the printing of accountable forms of the Land Transportation Office (LTO). Private respondent Bestforms, Inc. and Readyform, Inc. (RFI) secured the awards in the said public biddings.[3] For the March 30, 2006 bidding, Bestforms, Inc. and RFI were accordingly issued their respective Notices of Award on April 17 and April 25, 2006. RFI was likewise issued a Notice of Award for the April 12, 2006 bidding.

However, prior to the issuance of a Notice of Award to Bestforms, Inc. for the April 12 bidding, the NPO discovered that the said corporation violated NPO rules on security printing based on an inspection conducted by the NPO Accreditation Committee and NPO-BAC at its printing facilities.[4] In addition

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[1] *Rollo*, pp. 40-51. Penned by Associate Justice Jhosep Y. Lopez, with the concurrence of Associate Justices Ramon R. Garcia and Leoncia R. Dimagiba.

[2] *Id*. at 63-64.

[3] *Id*. at 41.

[4] *Id*.

to the discovery of Bestforms, Inc.'s violations, the LTO called the attention of the NPO regarding the substandard paperstock used by Bestforms, Inc. for the printing of LTO Certificates of Registration.[5] To verify this allegation, the NPO submitted samples of the materials used by Bestforms, Inc. to the Philippine National Police (PNP) Crime Laboratory. On May 17, 2006, the PNP Crime Laboratory issued Report No. 046-06 stating that the paper sample from Bestforms, Inc. was made of low-quality materials.[6]

Consequently, the NPO issued two Show Cause Letters[7] to Bestforms, Inc. to enable it to explain the findings of the NPO Accreditation Committee. Thereafter, the Accreditation Committee revoked Bestforms, Inc.'s accreditation as a private security printer of NPO. Resultantly, Bestforms, Inc. was disqualified to participate in any bidding conducted by the NPO and its ongoing printing transactions were likewise cancelled.[8] Bestforms, Inc. did not appeal the decision of the Accreditation Committee revoking its accreditation.

Resultantly, the contracts awarded to Bestforms, Inc. during the March 30, 2006 bidding were subjected to a re-bidding through Limited Source Bidding on June 13 to 14, 2006. RFI won in these biddings and subsequently secured two Notices of Award both dated June 16, 2006 for the contracts.[9] Aside from these two awards, the NPO similarly awarded to RFI, this time through Negotiated Procurement, the supply of LTO forms since the contracts awarded to Bestforms, Inc. on April 17, 2006 was cancelled and considering further that RFI submitted the same bid price as that of private respondent.[10]

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[5] *Id*. at 13.

[6] *Id*.

[7] *Id*. at 108.

[8] *Id*. at 41.

[9] *Id*. at 184.

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

Subsequently, Bestforms, Inc. instituted an administrative complaint against the NPO officer-in-charge, Felipe Evardone, and the members of the NPO-BAC before the Office of the Ombudsman, alleging that the NPO officers and RFI knowingly and willfully conspired, colluded, and connived with each other to manipulate the award of the printing contracts to the latter. De Guzman held the position of Sales & Promotion Supervisor V in the NPO and simultaneously served as the Chairperson of the NPO-BAC.

Ruling of the Office of the Ombudsman

In a Decision[11] issued on June 17, 2011, the Ombudsman found De Guzman and her co-respondents guilty of grave misconduct and ordered them dismissed from service with forfeiture of benefits, except accrued leave credits, and with prejudice to re-employment in the government or any subdivision, instrumentality, or agency thereof, including government-owned or controlled corporations. The decretal portion of the Ombudsman's Decision reads:

> WHEREFORE, premises considered, respondents Felipe Pagaran Evardone, Marietta Maglaya De Guzman, Evelyn Ramos Perlado, Miguel Doyungan Arcadio, Vicente Monteros Lago, Jr. and Recto Salmo Tomas, Jr., are hereby found GUILTY of the administrative offense of GRAVE MISCONDUCT and ordered DISMISSED from the service with forfeiture of all benefits, except accrued leave credits, and with prejudice to reemployment in the Government or any subdivision, instrumentality or agency thereof, including government-owned or controlled corporations.
>
> Pursuant to Section 7, Administrative Order No. 17 of the Office of the Ombudsman and the Ombudsman Memorandum Circular No. 01, Series of 2006, the Honorable Press Secretary is hereby directed to implement this Decision and to submit promptly a Compliance Report within five (5) days from receipt indicating the OMB case number, to this Office, thru the Central Records Division, 2nd Floor, Office of the Ombudsman Building, Agham Road, Diliman, Quezon City.
>
> SO ORDERED.[12]

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[11] *Id.* at 174-194.

[12] *Id.* at 193-194.

The Ombudsman based its judgment on the failure of the NPO-BAC to observe the procedures laid down in Republic Act No. (RA) 9184, otherwise known as the "Government Procurement Reform Act," for the Limited Source Biddings that it conducted on June 13 and 14, 2006, and in entering into a Negotiated Procurement with RFI.

According to the Ombudsman, the NPO-BAC failed to show that it: a) conducted a pre-procurement conference prior to the biddings pursuant to Section 20 of the Implementing Rules and Regulations Part A (IRR-A) of RA 9184; b) sent written invitations to the Commission on Audit (COA) and to two (2) observers to attend the biddings in accordance with Section 13.1 of the IRR-A; c) advertised the Invitation to Apply for Eligibility to Bid (IAEB) in a newspaper of general nationwide circulation for the period mandated by the law; d) posted the said IAEB at the website of the Government Electronic Procurement Services (GEPS) and at a conspicuous place reserved for the said purpose in the premises of the NPO; and e) included the mandated contents of the IAEB in the advertisement and periods of posting, specifically, the Approved Budget for the Contract (ABC) or Ceiling Rate, required specifications for the forms to be printed, as well as the pertinent dates that should have been provided or made available to prospective bidders.[13]

Aggrieved, De Guzman questioned the Decision of the Ombudsman via a petition for review under Rule 43 with the CA.

Ruling of the Court of Appeals

On April 20, 2016, the CA rendered its Decision affirming the findings of the Office of the Ombudsman, thus:

> WHEREFORE, premises considered, the instant Petition is DENIED. The decision of the Office of the Ombudsman in OMB Case No. OMB-C-A-06-0427-H finding petitioner Marietta Maglaya De Guzman guilty of grave misconduct is AFFIRMED.
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> SO ORDERED.[14]

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[13] *Id*. at 185-186.

[14] *Id*. at 50.

Citing the Revised Implementing Rules and Regulations of RA 9184 that took effect on September 2, 2009 (Revised IRR), the appellate court noted that the procedures for competitive bidding laid down in the law should likewise be observed in Limited Source Bidding, specifically in Section 13 thereof. Echoing the Ombudsman's observation, the CA held that the NPO-BAC failed to invite the COA or its representatives, as well as observers from a duly recognized private group in a sector or discipline relevant to the procurement. In addition, the CA ruled that the NPO-BAC failed to sufficiently justify why it resorted to Negotiated Procurement with RFI instead of competitive public bidding.

De Guzman moved for reconsideration of the Decision, but the same was denied by the CA in its assailed January 11, 2017 Resolution. Hence, this petition with the following assignment of errors:

I.

> Whether or not the [CA] violated the Constitution when it retroactively applied a rule that was non-existent at the time [De Guzman] committed the acts or omissions complained of.

II.

> Whether or not the [CA] seriously erred in finding that [De Guzman] and her co-respondents committed grave misconduct when they failed to strictly observe the two-failed bidding rule in negotiated procurement under RA 9184 for the award of the second set of LTO accountable forms.

III.

> Whether or not the [CA] gravely erred in sustaining the assailed Decision of the Office of the Ombudsman finding [De Guzman] guilty of grave misconduct.

IV.

> Whether or not dismissal from service is too harsh a penalty for the purported infraction committed by [De Guzman].[15]

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[15] *Id.* at 16-17.

In the main, De Guzman argues that the NPO-BAC complied with all the requirements of the law when it resorted to alternative modes of procurement in the questioned procurements. In support, De Guzman cites Memorandum Order No. 38,[16] issued by then Executive Secretary Ronaldo B. Zamora on November 19, 1998, which prescribes the guidelines in contracting the services of private security printers for the printing of accountable forms with money value and other specialized accountable forms which the NPO has no capability to undertake. In accordance with the directive of Memorandum Order No. 38, the NPO conducts annual accreditation of private security printers to ensure the security of government forms with money value.[17] Considering the necessity of prior accreditation of private security printers, as well as the fact that government accountable forms are not ordinary printing materials, the NPO utilizes limited-source bidding[18] in the procurement of printing services.

To De Guzman, the CA erred in holding that the NPO-BAC violated the law when it failed to comply with Sec. 49.4 of the Revised IRR respecting the sending out of direct invitations to all suppliers in the pre-selected list and the compliance with the procedure for competitive bidding. She points out that these requirements were not yet in existence when the said limited source biddings were conducted in 2006.[19]

In addition, De Guzman asserts that the June 13 and 14, 2006 biddings were merely a re-bid of the March 30 and April 12, 2006 biddings; accordingly, a pre-bid conference was no longer necessary since all information about the projects had already been discussed with and made known to interested accredited bidders.[20] Stated otherwise, De Guzman posits that the pre-bid

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[16] *Id*. at 80.

[17] *Id*. at 18.

[18] *Id*.

[19] *Id*. at 21.

[20] *Id*. at 204.

conference for the March 30 and April 12 biddings served as the pre-bid conference for the June 2006 biddings. Insofar as why a re-bid was conducted instead of awarding the contract to the second lowest bidder, De Guzman explains that the second and third bidders submitted bid offers beyond the ABC, which in effect automatically disqualified them from being considered in a negotiated procurement according to Section 54.2 of the IRR-A.[21]

Anent the allegation of noncompliance by the NPO-BAC with the requirements for negotiated procurement, De Guzman argues that RA 9184 and the Rules clearly allow the BAC to resort to this type of procurement in case of a take-over of a previously awarded contract, contrary to the CA's conclusion that a prior two-failed biddings is a condition *sine qua non* before the BAC could resort to negotiated procurement. As proof thereof, the NPO-BAC issued a Resolution on June 2, 2006 explaining that the resort to negotiated procurement with RFI is based on a take-over of Bestforms, Inc.'s contract due to the revocation of the latter's accreditation.

Issue

The pertinent issue for the resolution of this Court is whether or not De Guzman is liable for grave misconduct for the failure of the NPO-BAC to comply with the requirements under RA 9184 for limited-source bidding and negotiated procurement.

The Court's Ruling

At the outset, De Guzman correctly points out that it is the IRR-A, which took effect in October 2003, which is applicable to the extant case. It was clearly erroneous for the CA to have applied the Revised IRR considering that the questioned actions were committed in 2006.

Nevertheless, for the reasons that will be discussed below, the petition is denied for lack of merit.

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[21] *Id.* at 29.

Section 10,[22] Article IV, in relation to Section 5, pars. (n) and (o), Article I, of RA 9184 mandates that all acquisition of goods, consulting services, and the contracting for infrastructure projects by any branch, department, office, agency, or instrumentality of the government, including state universities and colleges, government-owned and/or -controlled corporations, government financial institutions, and local government units shall be done through competitive bidding. This is in consonance with the law's policy and principle of promoting transparency in the procurement process, implementation of procurement contracts, and competitiveness by extending equal opportunity to enable private contracting parties who are eligible and qualified to participate in public bidding. This principle is elucidated by this Court in *Lagoc v. Malaga*, thus:

> [A] competitive public bidding aims to protect the public interest by giving the public the best possible advantages thru open competition. Another self-evident purpose of public bidding is to avoid or preclude suspicion of favoritism and anomalies in the execution of public contracts.[23]

Alternative methods of procurement, however, are allowed under RA 9184 which would enable dispensing with the requirement of open, public and competitive bidding,[24] but only in highly exceptional cases and under the conditions set forth in Article XVI thereof. These alternative modes of procurement include Limited Source Bidding and Negotiated Procurement:

> SEC. 49. Limited Source Bidding. — Limited Source Bidding may be resorted to only in any of the following conditions:
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> (a) **Procurement of highly specialized types of Goods** and Consulting Services which are known to be **obtainable only from a limited number of sources**; or

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[22] Section 10. Competitive Bidding.— All Procurement shall be done through Competitive Bidding, except as provided for in Article XVI of this Act.

[23] G.R. No. 184785, July 9, 2014, 729 SCRA 421, 427, citing *Danville Maritime, Inc. v. Commission on Audit*, 256 Phil. 1092, 1103 (1989).

[24] *Capalla v. Commission on Elections*, G.R. No. 201112, October 23, 2012, 684 SCRA 367, 389.

(b) Procurement of major plant components where it is deemed advantageous to limit the bidding to known eligible bidders in order to maintain an optimum and uniform level of quality and performance of the plant as a whole.

x x x x x x x x x

SEC. 53. Negotiated Procurement. – Negotiated Procurement shall be allowed only in the following instances:

(a) In cases of two failed biddings, as provided in Section 35 hereof;

(b) In case of imminent danger to life or property during a state of calamity, or when time is of the essence arising from natural or man-made calamities or other causes where immediate action is necessary to prevent damage to or loss of life or property, or to restore vital public services, infrastructure facilities and other public utilities;

(c) **Take-over of contracts**, **which have been rescinded or terminated for causes provided for in the contract and existing laws, where immediate action is necessary to prevent damage to or loss of life or property, or to restore vital public services, infrastructure facilities and other public utilities**;

(d) Where the subject contract is adjacent or contiguous to an on-going infrastructure project, as defined in the IRR: Provided, however, That the original contract is the result of a Competitive Bidding; the subject contract to be negotiated has similar or related scopes of work; it is within the contracting capacity of the contractor; the contractor uses the same prices or lower unit prices as in the original contract less mobilization cost; the amount involved does not exceed the amount of the ongoing project; and, the contractor has no negative slippage: Provided, further, That negotiations for the procurement are commenced before the expiry of the original contract. Whenever applicable, this principle shall also govern consultancy contracts, where the consultants have unique experience and expertise to deliver the required service; or,

(e) Subject to the guidelines specified in the IRR, purchases of Goods from another agency of the Government, such as the Procurement Service of the DBM, which is tasked with a centralized procurement of commonly used Goods for the government in accordance with Letters of Instruction No. 755 and Executive Order No. 359, series of 1989. (Emphasis supplied)

Corollary thereto, the IRR-A expounds on the definition of Limited Source Bidding and Negotiated Procurement in this wise:

Section 49. Limited Source Bidding

Limited Source Bidding, otherwise known as selective bidding, is a method of procurement of goods and consulting services that involves **direct invitation to bid by the concerned procuring entity from a set of pre-selected suppliers or consultants with known experience and proven capability on the requirements of the particular contract**. The pre-selected suppliers or consultants shall be those appearing in a list maintained by the relevant Government authority that has expertise in the type of procurement concerned, which list should have been submitted to, and maintained updated with, the GPPB. The BAC of the concerned procuring entity shall directly send to the pre-selected bidders the invitation to bid, which shall already indicate the relevant information required to enable the bidders to prepare their bids as prescribed under the pertinent provisions of this IRR-A. **Limited source bidding may be employed by concerned procuring entities under any of the following conditions**:

a) **Procurement of highly specialized types of goods** (e.g. sophisticated defense equipment, complex air navigation systems, coal) and consulting services where only a few suppliers or consultants are known to be available, such that resorting to the public bidding method will not likely result in any additional suppliers or consultants participating in the bidding; or x x x

x x x x x x x x x

Section 53. Negotiated Procurement

Negotiated Procurement is a method of procurement of goods, infrastructure projects and consulting services, whereby the procuring entity **directly negotiates a contract with a technically, legally and financially capable supplier, contractor or consultant only in the following cases**: x x x (Emphasis supplied)

The requirements of a pre-bid conference, written invitation to observers, and posting of the IAEB must still be followed in alternative modes of procurement

The foregoing provisions, however, should be read in relation to other provisions of RA 9184 pertinent to the conduct of any procurement activity. These include (1) the conduct of pre-procurement and pre-bid conferences; (2) the presence of observers throughout the whole bidding process; and (3) publication and/or posting of the IAEB, and other notices.

Section 13, Article V of RA 9184 and Section 13, Rule V of IRR-A underscore that **written invitations should be sent to a COA representative and to at least two (2) other observers to sit in its proceedings**. It should be emphasized that both the law and the IRR-A categorically state that these observers shall be invited to observe **in all stages of the procurement**:

SEC. 13. Observers. — To enhance the transparency of the process, the **BAC shall, in all stages of the procurement process, invite, in addition to the representative of the Commission on Audit, at least two (2) observers to sit in its proceedings, one (1) from a duly recognized private group in a sector or discipline relevant to the procurement at hand, and the other from a non-government organization**: Provided, however, That they do not have any direct or indirect interest in the contract to be bid out. The observers should be duly registered with the Securities and Exchange Commission and should meet the criteria for observers as set forth in the IRR.

x x x x x x x x x

Section 13. Observers

13.1. To enhance the transparency of the process, the BAC shall, **in all stages of the procurement process**, invite, in addition to the representative of the COA, at least two (2) observers to sit in its proceedings:

1. At least one (1) shall come from a duly recognized private group in a sector or discipline relevant to the procurement at hand, for example:

x x x x x x x x x

b) For goods –

A specific relevant chamber-member of the Philippine Chamber of Commerce and Industry (PCCI).

2. The other observer shall come from a non-government organization (NGO).

On the other hand, Sections 20 and 22 of Article VII of RA 9184 mandate the BAC to hold a pre-procurement and pre-bid conference **on each and every procurement**, without making any qualifications nor exceptions as to which mode of procurement these requirements are applicable to:

SEC. 20. Pre-Procurement Conference. — **Prior to the issuance of the Invitation to Bid**, **the BAC is mandated to hold a pre-procurement conference** **on each and every procurement**, except those contracts below a certain level or amount specified in the IRR, in which case, the holding of the same is optional. x x x

SEC. 22. Pre-Bid Conference. — At least one pre-bid conference shall be conducted **for each procurement**, unless otherwise provided in the IRR.[25] Subject to the approval of the BAC, a pre-bid conference may also be conducted upon the written request of any prospective bidder.

The pre-bid conference(s) shall be held within a reasonable period before the deadline for receipt of bids to allow prospective bidders to adequately prepare their bids, which shall be specified in the IRR. (Emphasis and underscoring supplied)

As regards the publication and posting requirements, the IRR-A instructs that the advertisement or publication of the IAEB in a newspaper of general circulation may be dispensed with for alternative modes of procurement. The Rules, however, explicitly states that the IAEB shall still be posted at a conspicuous place in the premises of the procuring entity concerned:

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[25] Section 22. Pre-bid Conference.

22.1. For contracts to be bid with an approved budget of one million pesos (₱1,000,000.00) or more, the BAC shall convene at least one (1) pre-bid conference to clarify and/or explain any of the requirements, terms, conditions and specifications stipulated in the bidding documents. For contracts to be bid costing less than one million pesos (₱1,000,000.00), pre-bid conferences may be conducted at the discretion of the BAC. Subject to the approval of the BAC, a pre-bid conference may also be conducted upon written request of any prospective bidder.

Section 21. Advertising and Contents of the Invitation to Bid x x x

21.2.4. **For alternative methods of procurement as provided for in Rule XVI of this IRR-A, advertisement in a newspaper as required in this Section may be dispensed with**: Provided, however, That **posting shall be made** in the website of the procuring entity concerned, if available, the G-EPS, and posted **at any conspicuous place reserved for this purpose in the premises of the procuring entity concerned**, as certified by the head of the BAC Secretariat of the procuring entity concerned, during the same period as above. (Emphasis supplied)

The NPO-BAC failed to comply with the procedural requirements for limited source bidding and negotiated procurement

Contrary to De Guzman's position, the language of the law and the IRR-A is clear: **such requirements must be followed in any and all types of procurement**. Not all procedures followed in competitive biddings are dispensed with when an agency or office resorts to any of the alternative modes of procurement. Regardless of whether the June biddings were just a re-bid of the March and April biddings, it was incumbent upon the NPO-BAC to observe the aforestated procedural requirements for the latter biddings.

De Guzman could have easily refuted the allegations levelled against her by presenting a certification of the head of the BAC Secretariat attesting to the fact of posting of the IAEB, or a copy of the written invitations sent to the observers as required in Section 13.1, Rule V of the IRR-A. Yet, she opted to rebut the allegations without any concrete proof. Her bare claim that written invitations were in fact sent by the NPO-BAC to the COA and two other observers[26] remains unsubstantiated. Moreover, her allegation that representatives from the COA and National Printing Office Workers Association were regularly invited to attend to witness the bidding, without more, is

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[26] *Rollo*, p. 57.

insufficient proof of compliance.[27] Save from her general averments and denials, she failed to sufficiently prove that all the requirements of the law for the conduct of limited source bidding and negotiated procurement were met.

The Ombudsman and the CA similarly found that none of the conditions for negotiated procurement obtained that could have justified the resort thereto.

While De Guzman counters that the Rules allows the BAC to resort to Negotiated Procurement based on a take-over of a previously awarded contract, her own assertion that the transaction was not purely a Negotiated Procurement but an award to a bidder who offered the same lowest calculated bid during the same bidding held on March 30, 2006[28] all the more highlights the circumvention of RA 9184 by the NPO-BAC. There is nothing in the law that allows the procuring entity to directly award a contract to a participating bidder, even one who offered the best bid, whenever there is a failure of bidding. On the contrary, the IRR-A specifically directs that, for purposes of a negotiated procurement based on a take-over of contract, the procuring entity must negotiate first with the second and third lowest calculated bidders, and in the event that the negotiations fail, the procuring entity is still precluded from directly awarding the contract. It must still produce a list of three eligible contractors to negotiate with:

> Section 54. Terms and Conditions for the use of Alternative Methods
>
> x x x x x x x x x
>
> 54.2. In addition to the specific terms, conditions, limitations and restrictions on the application of each of the alternative methods specified in Sections 48 to 53 of this IRR-A, the following shall also apply: x x x
>
> (e) For item (c) of Section 53 of the Act and this IRR-A, the contract may be negotiated starting with the second lowest

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[27] *Id.* at 204-205.

[28] *Id.* at 28.

> calculated bidder for the project under consideration at the bidder's original bid price. If negotiation fails, then negotiation shall be done with the third lowest calculated bidder at his original price. If the negotiation fails again, a short list of at least three (3) eligible contractors shall be invited to submit their bids, and negotiation shall be made starting with the lowest bidder. Authority to negotiate contracts for projects under these exceptional cases shall be subject to prior approval by the heads of the procuring entities concerned, within their respective limits of approving authority.

The records are bereft of any evidence showing compliance with the foregoing requirements.

Bestforms, Inc.'s allegation that there was non-compliance with the bidding procedures partakes of a negative allegation. Negative allegations need not be proved even if essential to one's cause of action or defense if they constitute a denial of the existence of a document the custody of which belongs to the other party.[29]

Under Section 5,[30] Rule 133 of the Rules of Court, a fact may be deemed established in cases filed before administrative or quasi-judicial bodies if it is supported by substantial evidence. Substantial evidence is defined as such amount of relevant evidence which a reasonable mind might accept as adequate to support a conclusion. It is more than a mere scintilla of evidence.[31] The standard of substantial evidence is satisfied when there is reasonable ground to believe that a person is responsible for the misconduct complained of, even if such evidence might

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[29] *Philippine Savings Bank v. Geronimo*, G.R. No. 170241, April 19, 2010, 618 SCRA 368, 376, citing *Spouses Pulido v. Court of Appeals*, 321 Phil. 1064, 1069 (1995).

[30] Section 5. Substantial evidence. — In cases filed before administrative or quasi-judicial bodies, a fact may be deemed established if it is supported by substantial evidence, or that amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion.

[31] *Office of the Ombudsman v. Mallari*, G.R. No. 183161, December 3, 2014, 743 SCRA 587, 606.

not be overwhelming or even preponderant.[32] Its absence is not shown by stressing that there is contrary evidence, direct or circumstantial, on record.[33]

Based from the above disquisition, the Court finds no reason to overturn the findings of the Ombudsman, as affirmed by the CA, that De Guzman, along with the other members of the NPO-BAC, committed grave misconduct when they conducted the bid process of and awarded the subject contracts without compliance with the other requirements for limited source bidding and negotiated procurement. The lack of official documents proving compliance with the bidding requirements constitutes the substantial evidence that sufficiently establishes De Guzman's liability for grave misconduct.

Misconduct is a transgression of some established and definite rule of action, more particularly, unlawful behavior or gross negligence by a public officer. The misconduct is grave if it involves additional elements such as corruption or willful intent to violate the law or to disregard established rules, which must be proven by substantial evidence; otherwise, the misconduct is only simple. Corruption, as an element of grave misconduct, consists in the act of an official or fiduciary person who unlawfully and wrongfully uses his station or character to procure some benefit for himself or for another person, contrary to duty and the rights of others.[34] In grave misconduct, the elements of corruption, clear intent to violate the law, or flagrant disregard of an established rule must be evident.[35]

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[32] *Office of the Ombudsman v. Castro*, G.R. No. 172637, April 22, 2015, 757 SCRA 73, 83, citing *Nacu v. Civil Service Commission*, G.R. No. 187752, November 23, 2010, 635 SCRA 766.

[33] *Gupilan-Aguilar v. Office of the Ombudsman*, G.R. No. 197307, February 26, 2014, 717 SCRA 503, 532, citing *Picardal v. Lladas*, G.R. No. L-21309, December 29, 1967, 21 SCRA 1483.

[34] *Office of the Ombudsman v. Mallari*, *supra* note 31, at 609, citing *Miro v. Mendoza Vda. de Erederos*, G.R. Nos. 172532, 172544-45, November 20, 2013, 710 SCRA 371, 397-398.

[35] *Office of the Ombudsman v. Agustino*, G.R. No. 204171, April 15, 2015, 755 SCRA 568, 585, citing *Seville v. Commission on Audit*, G.R. No. 177657, November 20, 2012, 686 SCRA 28, 32.

The foregoing discourse greatly tilts the balance towards the administrative liability of the members of the NPO-BAC for grave misconduct. De Guzman and the other members of the NPO-BAC grossly disregarded the law and were manifestly remiss in their duties in strictly observing the directives of RA 9184, which resulted in undue benefits to RFI. Such gross disregard of the law is so blatant and palpable that the same amounts to a willful intent to subvert the clear policy of the law for transparency and accountability in government contracts. This merits her dismissal from service under Section 46,[36] Rule 10 of the Revised Rules on Administrative Cases in the Civil Service.

It bears reiteration that public biddings are held for the best protection of the public and to give the public the best possible advantages by means of open competition among the bidders, and to change them without complying with the bidding requirement would be against public policy. What are prohibited are modifications or amendments which give the winning bidder an edge or advantage over the other bidders who took part in the bidding, or which make the signed contract unfavorable to the government.[37]

WHEREFORE, the Petition for Review is **DENIED**. The April 20, 2016 Decision and January 11, 2017 Resolution of the Court of Appeals in CA G.R. SP No. 129712 are hereby **AFFIRMED**.

SO ORDERED.

Bersamin, Leonen, Jardeleza,[*] and *Martires, JJ.,* concur.

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

A. The following grave offenses shall be punishable by dismissal from the service:

1. Serious Dishonesty;

2. Gross Neglect of Duty;

3. Grave Misconduct; x x x

[37] *Capalla v. Commission on Elections*, G.R. No. 201112, October 23, 2012, *supra* note 24, at 385, citing *San Diego v. The Municipality of Naujan, Province of Mindoro*, 107 Phil. 118 (1960) and *Power Sector Assets and Liabilities Management Corporation v. Pozzolanic Philippines Incorporated*, G.R. No. 183789, August 24, 2011, 656 SCRA 214, 232.

[*] Designated Additional Member per Raffle dated November 20, 2017.

THIRD DIVISION

[G.R. No. 193228. November 27, 2017]

BOSTON EQUITY RESOURCES, INC., and WILLIAM HERNANDEZ, *petitioners, vs.* **EDGARDO D. DEL ROSARIO,** *respondent.*

CHRISTINA G. DEL ROSARIO, PETER DEL ROSARIO, PAUL DEL ROSARIO, in their personal capacity and as representative of the ESTATE OF ROSIE GONZALES DEL ROSARIO, *respondents-in-intervention.*

SYLLABUS

1. CIVIL LAW; ACT 3135 (AN ACT TO REGULATE THE SALE OF PROPERTY UNDER SPECIAL POWERS INSERTED OR ANNEXED TO REAL ESTATE MORTGAGES); EXTRAJUDICIAL FORECLOSURE OF MORTGAGE; PARTICIPATION OF AT LEAST TWO BIDDERS AT THE PUBLIC AUCTION IS NOT REQUIRED; CASE AT BAR.— That only Boston Equity had participated in the bidding during the foreclosure sale did not constitute a defect that nullified or voided the foreclosure sale considering that the Court had already dispensed with the two-bidder rule for purposes of the foreclosure sale of private properties. The extrajudicial foreclosure of a mortgage with the special power of attorney to sell the security being inserted in or attached to the deed of mortgage is governed by Act No. 3135. x x x Act No. 3135 does not require the participation of *at least* two bidders at the public auction. In A.M. No. 99-10-05-0 dated January 30, 2001 *(Re: Procedure in Extra-Judicial Foreclosure of Mortgage),* therefore, the Court, acting on letters containing observations and proposals about the rules of procedure to be undertaken in the extrajudicial foreclosure of mortgages as embodied in Circular A.M. No. 99-10-05-0 (inclusive of the bidding requirements, and the publication of notices), expressly resolved: x x x **Neither Act No. 3135 nor the previous circulars issued by the Court governing extrajudicial foreclosures provide for a similar requirement. The two-bidder rule is provided under P.D. No. 1594 and its implementing rules with respect to contracts for government infrastructure projects because of the public**

interest involved. Although there is a public interest in the regularity of extrajudicial foreclosure of mortgages, the private interest is predominant. The reason, therefore, for the requirement that there must be at least two bidders is not as exigent as in the case of contracts for government infrastructure projects. On the other hand, the new requirement will necessitate re-publication of the notice of auction sale in case only one bidder appears at the scheduled auction sale. This is not only costly but, more importantly, it would render naught the binding effect of the publication of the originally scheduled sale. Prior publication of the extrajudicial foreclosure sale in a newspaper of general circulation operates as constructive notice to the whole world.

2. **ID.; ID.; ID.; PUBLICATION OF THE NOTICE OF THE FORECLOSURE SALE SHALL BE MADE IN A NEWSPAPER OF GENERAL CIRCULATION IN THE PLACE WHERE THE PUBLIC AUCTION HAS TO BE HELD; CASE AT BAR.—** The respondents, as the parties alleging the non-compliance with the requisite of publication in the extrajudicial foreclosure of the mortgage pursuant to Act No. 3135, had the burden of proving their allegation. They failed in that regard, for a reading of the ruling in *Metropolitan Bank and Trust Company, Inc. v. Peñafiel* only indicates that Maharlika Pilipinas was not considered a newspaper of general circulation in Mandaluyong City, the place where the public auction of the property in question took place. With the public auction involved herein having been held in Quezon City, and there being no showing by the respondents that Maharlika Pilipinas was not a newspaper of general circulation in Quezon City, the publication undertaken by Boston Equity was presumed as compliant with Section 3 of Act No. 3135.

3. **ID.; ID.; ID.; ONCE THE DEBTOR HAS INCURRED DEFAULT OR DELAY IN PERFORMING HIS OBLIGATION, FORECLOSURE OF THE REAL ESTATE MORTGAGE IS PROPER; THREE REQUISITES TO SUPPORT A FINDING OF DEFAULT.—** The foreclosure of the REM is proper once the debtor has incurred default or delay in performing his obligation. *Mora solvendi,* or debtor's default, is defined as the delay in the fulfillment of an obligation by reason of a cause imputable to the debtor. Three requisites are necessary to support a finding of default — first, the obligation is already demandable and liquidated; second, the

debtor delays his performance; and third, the creditor judicially or extrajudicially requires the debtor's performance. "A debt is liquidated when the amount is known or is determinable by inspection of the terms and conditions of the relevant promissory notes and related documentation." Thus, the failure of Boston Equity to furnish the detailed statement of account to Edgardo did not *ipso facto* result in his obligation being still unliquidated. Indeed, the terms and conditions of his obligation were readily ascertainable and determinable from the REM and its amendment; hence, the petitioners had properly considered him in default upon his having failed to settle his obligation despite their demand. For this reason, any discrepancy in the amounts stated in the demand letters of Boston Equity did not genuinely hinder the legitimate effort to recover on the obligation.

4. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; PETITION FOR REVIEW ON *CERTIORARI*; ISSUES NOT RAISED BEFORE THE TRIAL COURT CANNOT BE RAISED FOR THE FIRST TIME ON APPEAL; EXCEPTION; CASE AT BAR.— The submission by the petitioners regarding Rosie's having consented to the REM and its amendment by virtue of her signature thereon as an instrumental witness was not among the issues framed and joined by the parties during the trial in the RTC. For the petitioners to make the submission only now is impermissible. Questions raised on appeal must be within the issues the parties framed at the start; hence, issues not raised before the trial court cannot be raised for the first time on appeal. The Court will not deal with and resolve issues not properly raised and ventilated in the lower courts. To allow such new issues on appeal contravenes the basic rule of fair play and justice, and is violative of the adverse party's constitutional right to due process. Verily, points of law, theories, issues, and arguments not brought to the attention of the trial court are barred by estoppels, and cannot be considered by a reviewing court. x x x The application of the exception allowing a change of theory on appeal provided no additional evidence was necessary, has been explained in *Philippine Geothermal, Inc. Employees Union v. Unocal Philippines, Inc. (now known as Chevron Geothermal Philippines Holdings, Inc.)* thusly: Respondent's contention that it falls within the exception to the rule likewise does not lie. Respondent cites *Quasha Ancheta Pena and Nolasco Law Office v. LCN Construction Corp.* and claims that it falls within the exception since it did

not present any additional evidence on the matter: In the interest of justice and within the sound discretion of the appellate court, a party may change his legal theory on appeal, only when the factual bases thereof would not require presentation of any further evidence by the adverse party in order to enable it to properly meet the issue raised in the new theory. However, this paragraph states that it is the *adverse party* that should no longer be required to present additional evidence to contest the new claim, and not the party presenting the new theory on appeal. Thus, it does not matter that respondent no longer presented additional evidence to support its new claim. The petitioner, as the adverse party, should not have to present further evidence on the matter before the new issue may be considered. x x x The exception is still not proper. Although the respondents, who are considered the adverse party, could belie the petitioners' claim by merely maintaining their position that Rosie had not consented to the REM and its amendment, the petitioners' new contention would still entail the presentation of additional evidence by the respondents to enable them to properly meet and respond to the new theory. As such, allowing the petitioners to raise the new theory was still not permissible.

APPEARANCES OF COUNSEL

P.C. Nolasco & Associates for petitioners.

Gonzales Batiller Leabres & Reyes for respondent E. Del Rosario.

Fidel Thaddeus Borja for respondents Christina G. Del Rosario, *et al*.

Raymundo G. Hipolito III, collaborating counsel for respondents Christina Del Rosario, *et al.*

D E C I S I O N

BERSAMIN, *J.*:

The two-bidder rule is not applicable during the public auction of the mortgaged assets foreclosed pursuant to Act No. 3135.[1]

[1] Entitled *An Act to Regulate the Sale of Property under Special Powers Inserted In or Annexed To Real-Estate Mortgages*.

But the mortgage itself and the extrajudicial foreclosure thereof should nonetheless be nullified for lack of the written consent to the mortgage of conjugal assets by the spouse of the mortgagor.

The Case

Petitioner Boston Equity Resources, Inc. (Boston Equity), the mortgagee who was also the highest bidder of the assets under mortgage, hereby seeks the review and reversal of the adverse decision promulgated on April 28, 2010,[2] whereby the Court of Appeals (CA) annulled the real estate mortgage (REM), its amendment and the foreclosure proceedings taken pursuant to the REM.

Antecedents

The assailed decision of the CA recited the following factual and procedural antecedents, *viz.*:

> Plaintiff-appellant Edgardo Del Rosario . . . was married to herein plaintiff-intervenor-appellant Rosie Gonzales Del Rosario on March 9, 1968 and their marriage has been blessed with three children, herein plaintiffs-intervenors-appellants, Christina, Peter and Paul, all surnamed Del Rosario.
>
> Defendant-appellee Boston Equity Resources, Inc., . . . is a private corporation duly registered and operating under the laws of the Philippines with defendant-appellee William Hernandez as its president.
>
> Defendant Mercedes Gatmaitan is impleaded in her capacity as Ex-Officio Sheriff of the Quezon City Regional Trial Court.
>
> On April 12, 1999, Del Rosario and Boston entered into a Real Estate Mortgage whereby the former, representing himself as single, mortgaged six (6) parcels of land located at 300 Kanlaon St., Sta Mesa Heights, Quezon City to the latter for Seventeen Million Pesos (Php17,000,000.00) at an interest rate of 4 per centum (4%) monthly within a period of six (6) months. Said parcels of land registered under the name of Del Rosario has a total land area of four thousand

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[2] *Rollo,* pp. 57-74; penned by Associate Justice Elihu A. Ybañez and concurred in by Associate Justice Estela M. Perlas-Bernabe (now a Member of this Court) and Associate Justice Mario V. Lopez.

five hundred thirty three and 60/100 (4,533.60) square meters and are covered by transfer certificates of title numbered as follows: RT-71666 (375141), RT-71665 (375139), RT-71668 (375142), RT-71669 (375140), RT-71667 (375138) and RT-72517 (129992). The fair market value of the said parcels of land is One Hundred Thirteen Million and Three Hundred Forty Five Thousand Pesos (Php113,345,000.00).

However, records indicated that only two certificates of title were attached. On May 3, 1968, the Register of Deeds of Quezon City issued TCT No. RT-72517 (129992) covering Six Hundred Thirty Seven Square Meters and Eighty Square Decimeters (637.8) to Edgardo del Rosario. Likewise, TCT No.RT-71665 (375139) was issued to Edgardo del Rosario on February 3, 1988. This title covered Five Hundred Forty Seven Square Meters and Ninety Square Decimeters (547.9).

Thereafter, additional loan obligations amounting to Fifteen Million Pesos (Php15,000,000.00) was obtained by Del Rosario. Thus, on September 8, 1999, the Real Estate Mortgage previously executed was amended to include the Fifteen Million Pesos additional loan and adopting therein all the terms and conditions stated in the Real Estate Mortgage.

On various dates, Del Rosario paid a total amount of Three Million One Hundred Seventy Eight Thousand Six Hundred Sixty Seven Pesos (Php3,178,667.00) represented by encashed Checks and Twenty Five Million Pesos (Php25,000,000.00) on December 8, 1999, as evidenced by the Official Receipt No. 14019 in favor of Boston to obtain a release from the Thirty Two Million Pesos (Php32,000,000.00) loan as stated in the Certification issued by Josephine Sha, Finance Manager of Boston.

On December 9, 1999, Boston issued a Cash Voucher to Del Rosario representing the excess payment by the latter of Seven Million Two Hundred Fifty Seven Thousand and Two Hundred Pesos (Php 7,257,200.00) on the Thirty Two Million Peso[s] loan.

On various dates in the year 2000, Del Rosario again obtained several loans totaling Thirty Four Million Four Hundred Thousand Pesos (Php 34,400,000.00) but because Boston made an advanced deduction of interest (Php 11,660,347.00), he was able to receive only Twenty Two Million Seven Hundred Thirty Nine Thousand and Six Hundred Fifty Three Pesos (Php22,739,653.00) from the said loan.

Thereafter, on February 21, 2001, Boston sent a Demand Letter to Del Rosario for the payment of Fifty Two Million and Nine Hundred Thousand Pesos (Php 52,900,000.00), claiming it to be the principal amount Del Rosario owed to the former excluding penalties and other charges. In response to Boston's demand letter, Del Rosario sent a Letter dated March 8, 2001 asking Boston to furnish him an accurate and specific statement of account, so that he can properly settle his obligation as the amount alleged in the demand letter was not accurate since it included the commission of Nelia So.

Instead of heeding Del Rosario's requests for an accurate statement of account, on March 13, 2001, Boston sent another Demand Letter to Del Rosario this time seeking the payment for the amount of Fifty One Million Four Hundred Thousand Pesos (Php 51,400,000.00). Through a Letter dated May 31, 2001, Del Rosario asked for [an] additional time to settle his obligation.

Boston did not grant Del Rosario's request for time to settle his loan but proceeded to foreclose Del Rosario's properties by causing the publication of the Notice of Foreclosure in Maharlika Pilipinas on May 31, June 7 and June 14, 2001.

As a consequence, the Ex-Officio Sheriff of Quezon City sent a Notice of Extra-Judicial Sale of Real Property Under Act 3135 (As Amended) dated May 28, 2001 to Del Rosario saying that the parcels of land shall be sold at a public auction on June 27, 2001 in order to satisfy his Php 52.9 Million debt with Boston. In the said sale, Boston was declared the sole bidder for the properties in the amount of Seventy Five Million Pesos (Php 75,000,000.00).[3]

As the offshoot of the foregoing antecedents, Edgardo brought his complaint for the declaration of the nullity of the extrajudicial foreclosure of the REM and the sheriff's sale on May 8, 2002 against Boston Equity in the Regional Trial Court in Quezon City (RTC). The case, docketed as Civil Case No. Q-02-46788, was initially assigned to Branch 78.[4]

On May 14, 2002, the RTC granted Edgardo's prayer for the issuance of the temporary restraining order (TRO), and

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[3] *Id*. at 58-63.

[4] *Id*.

enjoined Boston Equity from consolidating title and from obtaining a writ of possession respecting the mortgaged properties.[5]

On May 21, 2002, the late Rosie Gonzales Del Rosario (Rosie), the spouse of Edgardo, and their children, namely: Christina, Peter and Paul, all surnamed Del Rosario, filed in the RTC their motion to admit their complaint-in-intervention on the basis that they had a legal interest as the co-owners of the mortgaged properties by reason of the same forming part of the conjugal partnership of gains of Rosie and Edgardo. They joined the prayer of Edgardo for the declaration of the nullity of the promissory notes, the REM and its amendment, and the extrajudicial foreclosure of the REM and the ensuing sheriff's sale.[6]

On August 27, 2007,[7] the RTC dismissed Edgardo's complaint, disposing thusly:

> WHEREFORE, in view of the foregoing, the instant Complaint for Declaration of Nullity of Extrajudicial Foreclosure & Sheriff's Sale is hereby DISMISSED for lack of merit. Accordingly, the Writ of Preliminary Injunction issued on June 19, 2002 is hereby lifted.
>
> SO ORDERED.[8]

Edgardo, Rosie and the Del Rosario children separately appealed to the CA, which ultimately overturned the RTC's ruling through the assailed decision of April 28, 2010, decreeing as follows:

> **WHEREFORE,** premises considered, the instant appeal is hereby **GRANTED**. The Decision of RTC Branch 224 of Quezon City in Civil Case No. Q-02-46788 is **REVERSED AND SET ASIDE** and a new one entered declaring the nullity of the subject Real Estate Mortgage and its Amendment, and all the proceedings emanating therefrom.
>
> **SO ORDERED.**[9]

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[5] *Id*. at 63-64.

[6] *Id*. at 64.

[7] *Id*. at 97-104; penned by Judge Tita Marilyn Payoyo-Villordon.

[8] *Id*. at 104.

[9] *Supra* note 1.

The CA opined that the REM, having involved conjugal properties, had required the written consent of Rosie for its validity; that the REM and its amendment were consequently null and void; that the extrajudicial foreclosure sale was further null and void for failure to comply with the procedure mandated by A.M. No. 99-10-05-0 (*Procedure in Extra-Judicial Foreclosure of Mortgage*) requiring at least two bidders during the public auction; and that Boston Equity could not validly consider Edgardo's loan account to be in default without first giving him a proper accounting.[10]

With the CA denying their motion for reconsideration on August 6, 2010,[11] the petitioners appeal.

Issues

The petitioners insist on the following errors:

I

THE COURT OF APPEALS ERRED IN RULING THAT THE MORTGAGE EXECUTED BY EDGARDO IS NULL AND VOID BECAUSE OF THE ALLEGED LACK OF CONSENT OF ROSIE, WIFE OF EDGARDO IN THE MORTGAGE CONTRACT AND ITS AMENDMENT.

II

THE COURT OF APPEALS ERRED IN HOLDING THAT THE EXTRAJUDICIAL FORECLOSURE SALE OF THE PROPERTIES MORTGAGED WAS NULL AND VOID FOR ITS FAILURE TO COMPLY WITH A.M. NO. 99-10-05-0 WHICH ALLEGEDLY REQUIRES AT LEAST TWO OR MORE PARTICIPATING BIDDERS IN THE AUCTION SALE.

III

THE COURT OF APPEALS, WITH ALL DUE RESPECT, COMMITTED AN ERROR WHEN IT DECLARED THAT PLAINTIFF-APPELLANT IS ENTITLED TO A "PROPER ACCOUNTING" OF HIS OUTSTANDING OBLIGATION.[12]

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[10] *Id.* at 67-73.

[11] *Rollo,* pp. 77-79.

[12] *Id.* at 37-38.

Ruling of the Court

The appeal, albeit meritorious on the non-applicability of the two-bidder rule and the efficacy of the publication of the public auction, should fail on the ground that the REM and its amendment were void for lack of the written consent to the mortgage of Rosie, the spouse.

I.

The CA erred in annulling the extrajudicial foreclosure sale for failure to have at least two bidders during the foreclosure sale

That only Boston Equity had participated in the bidding during the foreclosure sale did not constitute a defect that nullified or voided the foreclosure sale considering that the Court had already dispensed with the two-bidder rule for purposes of the foreclosure sale of private properties.[13]

The extrajudicial foreclosure of a mortgage with the special power of attorney to sell the security being inserted in or attached to the deed of mortgage is governed by Act No. 3135, particularly the following provisions:

> Sec. 3. Notice shall be given by posting notices of the sale for not less than twenty days in at least three public places of the municipality or city where the property is situated, and **if such property is worth more than four hundred pesos, such notice shall also be published once a week for at least three consecutive weeks in a newspaper of general circulation in the municipality or city**.
>
> Sec. 4. The sale shall be made **at public auction, between the hours or nine in the morning and four in the afternoon**; and shall be under the direction of the sheriff of the province, the justice or auxiliary justice of the peace of the municipality in which such sale has to be made, or a notary public of said municipality, who shall be entitled to collect a fee of five pesos each day of actual work performed, in addition to his expenses.
>
> Sec. 5. At any sale, the creditor, trustee, or other persons authorized to act for the creditor, may participate in the bidding and purchase

[13] *Id.* at 46-51.

under the same conditions as any other bidder, unless the contrary has been expressly provided in the mortgage or trust deed under which the sale is made.

Sec. 6. In all cases in which an extrajudicial sale is made under the special power hereinbefore referred to, the debtor, his successors in interest or any judicial creditor or judgment creditor of said debtor, or any person having a lien on the property subsequent to the mortgage or deed of trust under which the property is sold, may redeem the same at any time within the term of one year from and after the date of the sale; and such redemption shall be governed by the provisions of sections four hundred and sixty-four to four hundred and sixty-six, inclusive, of the Code of Civil Procedure, in so far as these are not inconsistent with the provisions of this Act.

As its aforequoted provisions indicate, Act No. 3135 does not require the participation of *at least* two bidders at the public auction. In A.M. No. 99-10-05-0 dated January 30, 2001 (*Re*: *Procedure in Extra-Judicial Foreclosure of Mortgage*), therefore, the Court, acting on letters containing observations and proposals about the rules of procedure to be undertaken in the extrajudicial foreclosure of mortgages as embodied in Circular A.M. No. 99-10-05-0 (inclusive of the bidding requirements, and the publication of notices), expressly resolved:

After due deliberation on the points raised by the parties and considering the report of the OCA, the Court resolved as follows:

1. Paragraph 5 of the Circular A.M. No. 99-10-05-0 provides:

> No auction sale shall be held unless there are at least two (2) participating bidders, otherwise the sale shall be postponed to another date. If on the new date set for the sale there shall not be at least two bidders, the sale shall then proceed. The names of the bidders shall be reported by the sheriff or the notary public who conducted the sale to the Clerk of Court before the issuance of the certificate of sale.

It is contended that this requirement is not found in Act No. 3135 and that it is impractical and burdensome, considering that not all auction sales are commercially attractive to prospective bidders.

The observation is well taken. Neither Act No. 3135 nor the previous circulars issued by the Court governing extrajudicial

foreclosures provide for a similar requirement. The two-bidder rule is provided under P.D. No. 1594 and its implementing rules with respect to contracts for government infrastructure projects because of the public interest involved. Although there is a public interest in the regularity of extrajudicial foreclosure of mortgages, the private interest is predominant. The reason, therefore, for the requirement that there must be at least two bidders is not as exigent as in the case of contracts for government infrastructure projects.

On the other hand, the new requirement will necessitate re-publication of the notice of auction sale in case only one bidder appears at the scheduled auction sale. This is not only costly but, more importantly, it would render naught the binding effect of the publication of the originally scheduled sale. Prior publication of the extrajudicial foreclosure sale in a newspaper of general circulation operates as constructive notice to the whole world. (Bold underscoring supplied for emphasis only)

Conformably with the foregoing, the foreclosure sale of the mortgaged properties at the public auction held on June 27, 2007 could not be invalidated for its non-compliance with the two-bidder rule.

II.

Publication of the notice of the foreclosure sale in Maharlika Pilipinas was not void

The respondents submit that the publication of the notice of the foreclosure sale in the newspaper Maharlika Pilipinas was ineffectual because Maharlika Pilipinas was not a newspaper of general circulation as required by Section 3 of Act No. 3135, *supra*.[14] In support of their submission, they cite *Metropolitan Bank and Trust Company, Inc. v. Peñafiel,*[15] where the Court held that Maharlika Pilipinas was not a newspaper of general circulation. The petitioners counter that the publication had been made in a newspaper of general circulation in Quezon City.

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[14] *Id.* at 146-150.

[15] G.R. No. 173976, February 27, 2009, 580 SCRA 352.

The submission of the respondents fails to persuade.

The respondents, as the parties alleging the non-compliance with the requisite of publication in the extrajudicial foreclosure of the mortgage pursuant to Act No. 3135, had the burden of proving their allegation. They failed in that regard, for a reading of the ruling in *Metropolitan Bank and Trust Company, Inc. v. Peñafiel* only indicates that Maharlika Pilipinas was not considered a newspaper of general circulation in Mandaluyong City, the place where the public auction of the property in question took place.[16] With the public auction involved herein having been held in Quezon City, and there being no showing by the respondents that Maharlika Pilipinas was not a newspaper of general circulation in Quezon City, the publication undertaken by Boston Equity was presumed as compliant with Section 3 of Act No. 3135.[17]

III.

There was no need for an accounting of Edgardo's obligation before he could be held in default

The CA concluded that the petitioners had hastily considered Edgardo to have been already in default despite the discrepancy in the amount demandable from him; and that he was entitled to a proper accounting in order to properly inform him of his outstanding obligation.

The petitioners disagree with the CA's conclusions, and contend that the discrepancy as to the amount of Edgardo's obligation between the two demand letters given by Boston Equity to him was reconcilable as ruled by the RTC. They dismiss the CA's conclusions as predicated on surmises, conjectures, and suppositions to the effect that he had not really known his total obligations.[18]

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[16] *Id*. at 360.

[17] *Bank of the Philippine Islands v. Puzon*, G.R. No. 160046, November 27, 2009, 606 SCRA 51, 62-63.

[18] *Rollo,* pp. 51-53.

The CA's conclusions were legally and factually unwarranted.

The foreclosure of the REM is proper once the debtor has incurred default or delay in performing his obligation. *Mora solvendi*, or debtor's default, is defined as the delay in the fulfillment of an obligation by reason of a cause imputable to the debtor. Three requisites are necessary to support a finding of default — first, the obligation is already demandable and liquidated; second, the debtor delays his performance; and third, the creditor judicially or extrajudicially requires the debtor's performance.[19]

"A debt is liquidated when the amount is known or is determinable by inspection of the terms and conditions of the relevant promissory notes and related documentation."[20] Thus, the failure of Boston Equity to furnish the detailed statement of account to Edgardo did not *ipso facto* result in his obligation being still unliquidated. Indeed, the terms and conditions of his obligation were readily ascertainable and determinable from the REM and its amendment; hence, the petitioners had properly considered him in default upon his having failed to settle his obligation despite their demand. For this reason, any discrepancy in the amounts stated in the demand letters of Boston Equity did not genuinely hinder the legitimate effort to recover on the obligation.

IV.

The petitioners could not raise for the first time on appeal the issue of Rosie's consent to the mortgage contract and its amendment

The petitioners are submitting for the first time in this appeal that Rosie had consented to the REM and its amendment by affixing her signature as a witness thereto, as Edgardo's spouse;

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[19] *Selegna Management and Development Corp. v. United Coconut Planters Bank,* G.R. No. 165662, May 3, 2006, 489 SCRA 125, 138.

[20] *Id*. at 141; citing *Pacific Mills, Inc. v. Court of Appeals*, G.R. No. 87182, February 17, 1992, 206 SCRA 317, 329.

and that the proceeds of the loan obtained by Edgardo had redounded to the benefit of the family, and thus rendered the mortgaged properties, albeit conjugal in character, liable for the obligation. They argue that changing the legal theory of one's defense was not altogether prohibited as long as the factual basis of such theory would not require the presentation of evidence that was not yet part of the records of the case.[21]

The respondents posit, however, that the documentary evidence belatedly submitted by the petitioners to prove the supposed consent of Rosie to the REM and its amendment was inadmissible for lack of proper authentication;[22] that the petitioners' insistence that Rosie had known of the REM and its amendment was a factual matter that went beyond the purview of the Court's review in this appeal; that the petitioners thereby changed their theory for the first time in this appeal; and that the REM and its amendment were null and void for lack of the written consent of Rosie as the mortgagor's spouse.[23]

We uphold the respondents' position.

The submission by the petitioners regarding Rosie's having consented to the REM and its amendment by virtue of her signature thereon as an instrumental witness was not among the issues framed and joined by the parties during the trial in the RTC. For the petitioners to make the submission only now is impermissible. Questions raised on appeal must be within the issues the parties framed at the start; hence, issues not raised before the trial court cannot be raised for the first time on appeal. The Court will not deal with and resolve issues not properly raised and ventilated in the lower courts. To allow such new issues on appeal contravenes the basic rule of fair play and justice, and is violative of the adverse party's constitutional right to due process.[24] Verily,

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[21] *Rollo,* pp. 39-46.

[22] *Id.* at 141-145.

[23] *Id.* at 159-176.

[24] *Union Bank of the Philippines v. Regional Agrarian Reform Officer, et al.,* G.R. Nos. 200369 & 203330-31, March 1, 2017.

points of law, theories, issues, and arguments not brought to the attention of the trial court are barred by estoppels, and cannot be considered by a reviewing court.[25]

The petitioners propose that this case falls within the exception, and urge the Court to allow the change of legal theory on appeal because the factual bases for the new theory would not require the presentation of further evidence by the adverse party as to enable it to properly meet the issue raised under the new theory. They argue that their new theory could be verified from documents already forming part of the records of the case. They cite in support of their urging the ruling in *Homeowners Savings & Loan Bank v. Dailo.*[26]

The petitioners' proposition is unacceptable.

The application of the exception allowing a change of theory on appeal provided no additional evidence was necessary, has been explained in *Philippine Geothermal, Inc. Employees Union v. Unocal Philippines, Inc. (now known as Chevron Geothermal Philippines Holdings, Inc.)*[27] thusly:

> Respondent's contention that it falls within the exception to the rule likewise does not lie. Respondent cites *Quasha Ancheta Pena and Nolasco Law Office v. LCN Construction Corp.* and claims that it falls within the exception since it did not present any additional evidence on the matter:
>
> > In the interest of justice and within the sound discretion of the appellate court, a party may change his legal theory on appeal, only when the factual bases thereof would not require presentation of any further evidence by the adverse party in order to enable it to properly meet the issue raised in the new theory.
>
> However, this paragraph states that it is the *adverse party* that should no longer be required to present additional evidence to contest the new claim, and not the party presenting the new theory on appeal.

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[25] *Garcia v. Sandiganbayan,* G.R. No. 197204, March 26, 2014, 720 SCRA 155, 171.

[26] G.R. No. 153802, March 11, 2005, 453 SCRA 283.

[27] G.R. No. 190187, September 28, 2016, 804 SCRA 286, 302-303.

Thus, it does not matter that respondent no longer presented additional evidence to support its new claim. The petitioner, as the adverse party, should not have to present further evidence on the matter before the new issue may be considered. x x x

The exception is still not proper. Although the respondents, who are considered the adverse party, could belie the petitioners' claim by merely maintaining their position that Rosie had not consented to the REM and its amendment, the petitioners' new contention would still entail the presentation of additional evidence by the respondents to enable them to properly meet and respond to the new theory. As such, allowing the petitioners to raise the new theory was still not permissible. Moreover, to allow the new theory to be pursued would also necessarily involve the Court in the consideration and ascertainment of factual issues, a task that the Court could not discharge through this mode of appeal that is limited to the consideration and determination of questions of law.

As a consequence, the findings of the CA on the lack of Rosie's written consent to the REM and its amendment stand unrefuted. Such findings warrant the nullification not only of the REM and its amendment, but also of all the proceedings taken to foreclose the REM. Such invalidity applied to the entire mortgage, even to the portion corresponding to the share of Edgardo in the conjugal estate.[28] Article 124 of the *Family Code* clearly so provides:

Art. 124. The administration and enjoyment of the conjugal partnership shall belong to both spouses jointly. In case of disagreement, the husband's decision shall prevail, subject to recourse to the court by the wife for proper remedy, which must be availed of within five years from the date of the contract implementing such decision.

In the event that one spouse is incapacitated or otherwise unable to participate in the administration of the conjugal properties,

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[28] See *Homeowners Savings & Loan Bank v. Dailo*, *supra* note 26, at 289-290; citing *Guiang v. Court of Appeals*, G.R. No. 125172, June 26, 1998, 291 SCRA 372.

the other spouse may assume sole powers of administration. These powers do not include disposition or encumbrance without authority of the court or the written consent of the other spouse. In the absence of such authority or consent, the disposition or encumbrance shall be void. However, the transaction shall be construed as a continuing offer on the part of the consenting spouse and the third person, and may be perfected as a binding contract upon the acceptance by the other spouse or authorization by the court before the offer is withdrawn by either or both offerors. (165a)

The petitioners' assertion that the mortgaged properties could be made liable for the obligation contracted solely by Eduardo on the basis that the proceeds of the loan had redounded to the benefit of the family is also unwarranted. The mortgage was but an accessory agreement, and was distinct from the principal contract of loan. What the CA declared void was the REM. Since the REM was an encumbrance on the conjugal properties, the contracting thereof by Edgardo sans the written consent of Rosie rendered only the REM void and legally inexistent.[29] The petitioners could still recover the loan from the conjugal partnership in a proper case for the purpose.[30] Where the mortgage was not valid, the principal obligation that the mortgage guaranteed was not thereby rendered null and void. The liability of the debtor under the principal contract of the loan subsisted despite the illegality of the REM. That obligation matured and became demandable in accordance with the stipulation pertaining to it. What was lost was only the right to foreclose the REM as a special remedy for satisfying or settling the debt that was the principal obligation. In case of its nullity, the mortgage deed remained as evidence or proof of the debtor's personal obligation, and the amount due to the creditor could be enforced in an ordinary action.[31]

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[29] *Philippine National Bank v. Reyes, Jr.,* G.R. No. 212483, October 5, 2016, 805 SCRA 327, 335.

[30] *Philippine National Bank v. Banatao*, G.R. No. 149221, April 7, 2009, 584 SCRA 95, 108-109.

[31] *Rural Bank of Cabadbaran, Inc. v. Melecio-Yap,* G.R. No. 178451, July 30, 2014, 731 SCRA 244, 259-260; citing *Flores v. Spouses Lindo, Jr.,* G.R. No. 183984, April 13, 2011, 648 SCRA 772, 780.

WHEREFORE, the Court **DENIES** the petition for review on *certiorari*; **AFFIRMS** the decision promulgated on April 28, 2010; and **ORDERS** the petitioners to pay the costs of suit.

SO ORDERED.

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

Gesmundo, J., on leave.

THIRD DIVISION

[G.R. No. 208614. November 27, 2017]

SIMEON TRINIDAD PIEDAD (deceased) survived and assumed by his heirs, namely: ELISEO PIEDAD (deceased)[*], JOEL PIEDAD, PUBLIO PIEDAD, JR., GLORIA PIEDAD, LOT PIEDAD, ABEL PIEDAD, ALI PIEDAD, and LEE PIEDAD, *petitioners, vs.* **CANDELARIA LINEHAN BOBILLES and MARIANO BOBILLES,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; PARTIES; REAL PARTY IN INTEREST, DEFINED; PETITIONERS' PERSONALITY TO FILE THE PETITION FOR REVIVAL OF JUDGMENT, UPHELD.— Rule 3, Section 2 of the Rules of Civil Procedure provides who may be a party in interest in a civil action: 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,

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[*] Substituted by his heirs Remedios Veloso Cascon, Ronald C. Piedad, Janus C. Piedad and Ralph C. Piedad. See *Rollo*, p. 106.

every action must be prosecuted or defended in the name of the real party in interest. Rule 3, Section 16 then provides for the process of substitution of parties when the original party to a pending action dies and death does not extinguish the claim. Petitioners claim to be Piedad's children; thus, they assert that they are the real parties in interest to the action begun by their father. On the other hand, respondents claim that petitioners did not properly substitute Piedad upon his death; hence, they failed to substantiate their personality to move for the revival of judgment. Respondents fail to convince. Petitioners have been repeatedly recognized as Piedad's rightful heirs not only by the Court of Appeals but also by this Court. In *Heirs of Simeon Piedad v. Exec. Judge Estrera*, petitioners filed an administrative case in their capacity as Piedad's heirs and this Court acknowledged their standing to sue in this capacity. The same is also true in the assailed Court of Appeals September 15, 1998 Decision where petitioners filed their appeal as Piedad's heirs and their personality to represent their father was never questioned or assailed. This Court upheld petitioners' personality to sue in *Heirs of Simeon Piedad* and sees no reason to deny them the same recognition in the case at bar when the current case is merely an offshoot of their father's original complaint for nullity of deed of sale.

2. LEGAL ETHICS; ATTORNEYS; CODE OF PROFESSIONAL RESPONSIBILITY; COUNSELS, AS OFFICERS OF THE LAW, ARE MANDATED TO NOT UNDULY DELAY A CASE, IMPEDE THE EXECUTION OF A JUDGMENT OR MISUSE COURT PROCESSES; THUS, WHILE COUNSELS ARE EXPECTED TO SERVE THEIR CLIENTS TO THE UTMOST OF THEIR ABILITY, THEIR DUTY TO THEIR CLIENTS DOES NOT INCLUDE DISRESPECTING THE LAW BY SCHEMING TO IMPEDE THE EXECUTION OF A FINAL AND EXECUTORY JUDGMENT.— [T]his Court takes judicial notice of how respondents, through their counsels, deliberately and maliciously delayed the execution of a final and executory judgment by filing patently dilatory actions. x x x. Counsels for respondents are reminded that as officers of the law, they are mandated by Rule 12.04 of the Code of Professional Responsibility to "not unduly delay a case, impede the execution of a judgment or misuse court processes." While counsels for respondents are expected to serve their clients to the utmost of their ability, their duty to their clients does not include disrespecting the

law by scheming to impede the execution of a final and executory judgment. As members of the Bar, counsels for respondents are enjoined to represent their clients "with zeal within the bounds of the law." Thus, counsels for respondents are given a ***stern warning*** to desist from committing similar acts which undermine the law and its processes. Any similar infractions in the future from counsels for respondents will be dealt with more severely.

3. REMEDIAL LAW; CIVIL PROCEDURE; JUDGMENTS; EXECUTION AND SATISFACTION OF JUDGMENT; EXECUTION BY MOTION OR BY INDEPENDENT ACTION; THE PREVAILING PARTY MAY MOVE FOR THE EXECUTION OF A FINAL AND EXECUTORY JUDGMENT AS A MATTER OF RIGHT WITHIN FIVE (5) YEARS FROM THE ENTRY OF JUDGMENT, IF NO MOTION IS FILED WITHIN THIS PERIOD, THE JUDGMENT IS CONVERTED TO A MERE RIGHT OF ACTION AND CAN ONLY BE ENFORCED BY INSTITUTING A COMPLAINT FOR THE REVIVAL OF JUDGMENT IN A REGULAR COURT WITHIN 10 YEARS FROM FINALITY OF JUDGMENT.— Rule 39, Section 6 of the Rules of Civil Procedure provides the two (2) ways of executing a final and executory judgment x x x. Rule 39, Section 6 of the Rules of Court must be read in conjunction with Articles 1144(3) and 1152 of the Civil Code x x x. Thus, the prevailing party may move for the execution of a final and executory judgment as a matter of right within five (5) years from the entry of judgment. If no motion is filed within this period, the judgment is converted to a mere right of action and can only be enforced by instituting a complaint for the revival of judgment in a regular court within 10 years from finality of judgment.

4. ID.; ID.; ID.; ID.; WHEN THE DELAY IN FILING A MOTION OR ACTION FOR EXECUTION COULD NOT BE ATTRIBUTED TO THE PREVAILING PARTY, A LIBERAL INTERPRETATION OF THE RULES OF PROCEDURE SHOULD BE RESORTED TO WHERE A LITERAL AND STRICT ADHERENCE WILL MOST LIKELY RESULT IN MISCARRIAGE OF JUSTICE; DISMISSAL OF PETITIONERS' MOTION FOR REVIVAL, NOT PROPER.— In dismissing the motion for revival, the Regional Trial Court adopted a strict interpretation of Rule 39,

Section 6 of the Rules of Court because the proper remedy was supposedly an action for revival of judgment, not just a mere motion. The Court of Appeals, in turn, also dismissed the petition for being the wrong remedy. The lower courts are mistaken. In *David v. Ejercito*, for reasons of equity, this Court treated the motion for execution, alias writ of execution, and motion for demolition as substantial compliance with the requirement to file an action to revive judgment if no motion for execution is filed within five (5) years from the date of its entry of judgment. *David* pointed out that petitioner's deliberate efforts at delaying the execution of a final and executory judgment should not be condoned x x x. This Court , in a long line of cases, has allowed for the execution of a final and executory judgment even if prescription has already set in, if the delay was caused by the judgment obligor for his or her benefit or advantage. x x x. It is not disputed that the deed of absolute sale between Piedad and respondents was declared null and void for being a forgery, and that the Court of Appeals September 15, 1998 Decision became final and executory as early as November 1, 1998. However, due to respondents' schemes and maneuvers, they managed for many years to prevent Piedad and his heirs from enjoying what had already been decreed to be rightfully theirs, leading to an empty victory and petitioners' continued struggle for their rights. Considering that the Regional Trial Court May 15, 2012 Order dismissing petitioners' motion for revival was utterly devoid of legal or factual basis, it is clear that it was attended by grave abuse of discretion for being issued capriciously and with a gross misapprehension of the facts. [J]urisprudence is consistent that when the delay in filing a motion or action for execution could not be attributed to the prevailing party, a liberal interpretation of the rules of procedure should be resorted to where a literal and strict adherence will most likely result in miscarriage of justice.

APPEARANCES OF COUNSEL

Grenardo O. Macapobre for petitioners.

Anacleto L. Caminade and *Herculene RH Rizon,* collaborating counsels for petitioners.

Arendain Pareja Soco Law Offices for respondents.

D E C I S I O N

LEONEN, *J.*:

Courts should take to heart the principle of equity if the strict application of the statute of limitations or laches would result in manifest wrong or injustice.

This resolves the Petition for Review[1] filed by Eliseo Piedad, Joel Piedad, Publio Piedad, Jr., Gloria Piedad, Lot Piedad, Abel Piedad, Ali Piedad, and Lee Piedad (the Heirs of Piedad) assailing the Resolutions dated December 10, 2012[2] and July 10, 2013[3] of the Court of Appeals in CA-G.R. SP No. 07176.

The facts as established by the pleadings of the parties are as follows:

Sometime in 1974, Simeon Piedad (Piedad) filed a case for annulment of an absolute deed of sale against Candelaria Linehan Bobilles (Candelaria) and Mariano Bobilles (Mariano). The case was docketed as Civil Case No. 435-T and raffled to Branch 9, Regional Trial Court, Cebu City, presided over by Judge Benigno Gaviola (Judge Gaviola).[4]

On March 19, 1992, the trial court ruled in Piedad's favor and declared the deed of sale as null and void for being a forgery.[5] The *fallo* of this Decision read:

WHEREFORE, premises considered and by preponderance of evidence, the Court hereby renders a Decision in favor of herein

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[1] *Rollo,* pp. 37-43.

[2] *Id*. at 59-60. The Resolution was penned by Associate Justice Gabriel T. Ingles and concurred in by Associate Justices Pampio A. Abarintos and Pedro B. Corales of the Eighteenth Division, Court of Appeals, Cebu City.

[3] *Id*. at 23-24. The Resolution was penned by Associate Justice Gabriel T. Ingles and concurred in by Associate Justices Pampio A. Abarintos and Maria Luisa Quijano Padilla of the Special Former Eighteenth Division, Court of Appeals, Cebu City.

[4] *Id*. at 11.

[5] *Id*.

plaintiff Simeon Piedad and against defendants Candelaria Linehan-Bobilles and Mariano Bobilles, by declaring the deed of sale in question (Exhibit "A" or "5") to be NULL and VOID for being a mere forgery, and ordering herein defendants, their heirs and/or assigns to vacate the house and surrender their possession of said house and all other real properties which are supposed to have been covered by the voided deed of sale (Exhibit "A" or "5") to the administrator of the estate of spouses Nemesio Piedad and Fortunata Nillas. Furthermore, herein defendants are hereby ordered to pay plaintiff or his heirs the following: (1) ₱3,000.00 Moral Damages; (2) ₱2,000.00 Exemplary Damages; and (3) ₱800.00 attorney's fees, plus costs.

SO ORDERED.[6]

Candelaria and Mariano appealed the trial court Decision, but on September 15, 1998, the Court of Appeals in CA-G.R. CV No. 38652 dismissed the appeal and affirmed the trial court ruling.[7]

The Court of Appeals Decision became final and executory on November 1, 1998.[8] On October 22, 2001, Judge Gaviola issued an order for the issuance of a writ of demolition.[9] The dispositive portion of this Order read:

WHEREFORE, let a writ of demolition issue against Candelaria Linehan Bobilles and Mariano Bobilles. The sheriff implementing the writ is ordered to allow the defendants 10 days to remove their improvements in the premises and for them to vacate. Should defendant still fail to do so within the period aforestated, the sheriff may proceed with the demolition of the improvements without any further order from this Court.

SO ORDERED.[10]

On November 26, 2001, Judge Gaviola denied Candelaria's Motion for Reconsideration.[11]

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[6] *Id*.

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

[8] *Id*. at 12.

[9] *Id*.

[10] *Id*.

[11] *Id*.

On December 4, 2001, Judge Gaviola issued a Writ of Demolition against Candelaria and Mariano and referred it to Sheriff Antonio A. Bellones (Sheriff Bellones) for its implementation.[12]

That same day,[13] in the same case, Candelaria filed a Petition for the Probate of the Last Will and Testament of Simeon Piedad. Judge Gaviola ordered that the petition be heard independently and that it be raffled to another branch.[14]

Candelaria's Petition for the Probate of the Last Will and Testament of Simeon Piedad was eventually docketed as S.P. Proc. No. 457-T and raffled to Branch 59, Regional Trial Court, Toledo City, presided over by Judge Gaudioso D. Villarin (Villarin).[15]

On May 16, 2002, Candelaria also filed a verified petition for the issuance of a temporary restraining order and/or preliminary injunction against Sheriff Bellones to restrain him from enforcing the writ of demolition. This was docketed as S.P. Proc. No. 463-T.[16]

Judge Cesar O. Estrera (Judge Estrera), Executive Judge of the Regional Trial Court of Toledo City and Presiding Judge of Branch 29, ordered the raffle of the petition against Sheriff Bellones. A few days later, after summarily hearing the case, Judge Estrera issued a restraining order against Sheriff Bellones.[17]

Upon Candelaria's motion, Judge Estrera consolidated S.P. Proc. No. 457-T with S.P. Proc. No. 463-T before Branch 59, Regional Trial Court, Toledo City.[18]

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[12] *Id.* at 13.

[13] *Id.* at 38.

[14] *Id.* at 13.

[15] *Id.*

[16] *Id.*

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

[18] *Id.* at 14.

On May 27, 2002, again upon Candelaria's motion, Judge Villarin of Branch 59 extended the temporary restraining order against Sheriff Bellones for 17 days.[19]

The following motions were eventually filed before Judge Villarin, but he never resolved them: (1) a motion to dismiss, as amended; (2) a motion requesting the issuance of an order lifting the injunction order; and (3) a joint motion to resolve the motions.[20]

On February 28, 2007, the Heirs of Piedad filed an administrative complaint against Judges Estrera and Villarin. The administrative complaint charged them with Issuing an Unlawful Order Against a Co-Equal Court and Unreasonable Delay in Resolving Motions.[21]

On December 16, 2009, this Court found both Judges Estrera and Villarin administratively liable for gross ignorance of the law, and Judge Villarin liable for undue delay in rendering an order.[22] The *fallo* of this Court's Decision read:

> **WHEREFORE**, the Court finds Judge Cesar O. Estrera and Judge Gaudioso D. Villarin of the RTC in Toledo City, Cebu, Branches 29 and 59, respectively, **GUILTY** of **GROSS IGNORANCE OF THE LAW** and imposes upon them a **FINE** in the amount of twenty [-]one thousand pesos (PhP 21,000) each, with the stern warning that a repetition of similar or analogous infractions in the future shall be dealt with more severely. Also, the Court finds Judge Gaudioso D. Villarin **GUILTY** of **UNDUE DELAY IN RENDERING AN ORDER** and imposes upon him a **FINE** in the additional amount of eleven thousand pesos (PhP 11,000)[.]
>
> **SO ORDERED.**[23]

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[19] *Id*.

[20] *Id*.

[21] *Id*. at 10-11.

[22] *Id*. at 10-20. *Heirs of Simeon Piedad v. Exec. Judge Estrera,* 623 Phil. 178 (2009) [Per *J*. Velasco, Jr., *En Banc*].

[23] *Id*. at 19.

Civil Case No. 435-T before Branch 9, Regional Trial Court, Cebu City was eventually transferred to Branch 29, Regional Trial Court, Toledo City.[24]

On July 12, 2010, the Heirs of Piedad filed their Motion Praying that an Order Be Issued to Sheriff Antonio Bellones to Resume the Unfinished Writ of Execution and/or Writ of Demolition before Regional Trial Court, Branch 29, Toledo City.[25]

In his Order[26] dated May 15, 2012, Presiding Judge Ruben F. Altubar (Judge Altubar) of Branch 29, Regional Trial Court, Toledo City denied the motion.

Judge Altubar opined that since more than 12 years had passed since the Court of Appeals September 15, 1998 Decision became final and executory, the execution should have been pursued through a petition for revival of judgment, not a mere motion.[27]

On August 16, 2012, Judge Altubar denied the Motion for Reconsideration of the Heirs of Piedad.[28]

The Heirs of Piedad appealed the denial of their motions with a petition under Rule 42 of the Rules of Court. On December 10, 2012, the Court of Appeals[29] dismissed the appeal for being the wrong remedy:

> *First,* assailed in the instant petition are Orders denying petitioners' motion to enforce a writ of execution and writ of demolition in Civil Case No. 435-T.
>
> *Second,* the Orders assailed in this petition were not rendered in the exercise of the RTC's appellate jurisdiction. In fact, Civil Case No[.] 435-T is an original action for annulment of a Deed of Absolute Sale.

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[24] *Id.* at 66.

[25] *Id.* at 67.

[26] *Id.* at 66-70.

[27] *Id.* at 69.

[28] *Id.* at 38.

[29] *Id.* at 59-60.

Under the Rules, appeals 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 under Rule 42.

The appropriate course of action for the petitioner was to file a Petition for Certiorari under Rule 65 alleging grave abuse of discretion amounting to lack or excess of jurisdiction committed by the presiding judge who issued the assailed Orders dated May 15, 2012 and August 16, 2012.[30]

On July 10, 2013, the Court of Appeals[31] denied the Heirs of Piedad's Motion for Reconsideration.

On September 27, 2013, petitioners Heirs of Piedad filed a Petition for Review on Certiorari[32] before this Court, where they adopted the findings of fact in the administrative case against Judges Estrera and Villarin.[33]

Petitioners assert that the Court of Appeals committed grave abuse of discretion when it denied their motion for the resumption of the writ of demolition and their motion for reconsideration.[34]

Petitioners chide Judge Altubar for being equally ignorant of the law as Judges Estrera and Villarin. They also point out that Court of Appeals Justice Gabriel T. Ingles, who penned the dismissal of their appeal, presided over S.P. Proc No. 463-T when he was still the acting Regional Trial Court Judge of Branch 59, Toledo City[35] and even issued an Order[36] dated July 9, 2008.

Petitioners pray for the resumption of the writ of demolition issued by Branch 9, Regional Trial Court, Cebu City.[37]

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[30] *Id*.

[31] *Id*. at 23-24.

[32] *Id*. at 37-43

[33] *Id*. at 37.

[34] *Id*. at 39.

[35] *Id*. at 39-40.

[36] *Id*. at 57.

[37] *Id*. at 40.

In its October 21, 2013 Resolution,[38] this Court granted petitioners' motion for extension and directed respondents to comment on the Petition.

On January 15, 2014, respondents filed their Comment[39] to the Petition where they claim that it cannot be determined if the Petition falls under Rule 45 or Rule 65.[40] Nonetheless, whether viewed as a petition under Rule 65 or an appeal under Rule 45, respondents assert that the Petition was still devoid of merit.[41]

Respondents opine that petitioners' motion for the implementation of the writ of demolition was already barred by prescription since it was filed 12 years after the Court of Appeals September 15, 1998 Decision, which upheld the validity of the writ of demolition, became final and executory.[42]

Respondents further claim that the ruling in the administrative case against Judges Estrera and Villarin cannot bind them since they were not parties to the case and the issue resolved was the administrative liability of these judges. They emphasize that this Court did not rule on the validity of Judges Estrera's and Villarin's issuances and orders in S.P. Proc No. 463-T and S.P. Proc. No. 457-T.[43]

Respondents also question the personality of petitioners to institute the case on Piedad's behalf.[44]

Finally, respondents put petitioners to task for their disrespectful tone towards the judges and justice involved in this case.[45]

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[38] *Id*. at 72.

[39] *Id*. at 80-93.

[40] *Id*. at 81-82.

[41] *Id*. at 82-83

[42] *Id*. at 84-85.

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

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

[45] *Id*. at 90.

On February 12, 2014, petitioners filed a Motion for Substitution of Heirs,[46] alleging that petitioner Eliseo Piedad died on January 8, 2014 and would be substituted by his surviving spouse and their children.[47]

In its July 14, 2014 Resolution,[48] this Court required petitioners to file a reply to the Comment.

In their Reply,[49] petitioners assert that their Petition was filed under Rule 65 because it alleges grave abuse of discretion[50] on the part of the Court of Appeals.

Petitioners apologized for the confusion created by their former counsel in filing the appeal before the Court of Appeals. They claimed that their former counsel, now deceased, was almost 100 years old when he filed the appeal before the Court of Appeals and Petition before this Court. However, petitioners insist that considering the merit of their case, the Court of Appeals should not have dismissed their appeal on mere technicalities.[51]

Petitioners ask this Court for liberality for the procedural lapses committed by their former counsel.[52]

The issues submitted for this Court's resolution are:

First, whether or not petitioners have duly established their personality to file the petition as heirs of Simeon Piedad; and

Second, whether or not the motion to revive judgment was timely filed.

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[46] *Id*. at 106-109.

[47] *Id*. at 106.

[48] *Id*. at 117.

[49] *Id*. at 158-168.

[50] *Id*. at 158-160.

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

[52] *Id*. at 163.

I

Rule 3, Section 2 of the Rules of Civil Procedure provides who may be a party in interest in a civil action:

> 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.

Rule 3, Section 16[53] then provides for the process of substitution of parties when the original party to a pending action dies and death does not extinguish the claim.

Petitioners claim to be Piedad's children; thus, they assert that they are the real parties in interest to the action begun by their father. On the other hand, respondents claim that petitioners did not properly substitute Piedad upon his death; hence, they failed to substantiate their personality to move for the revival of judgment.[54]

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[53] RULES OF COURT, Rule 3, Sec. 16 provides:

> Section 16. *Death of party; duty of counsel.*- Whenever a party to a pending action dies, and the claim is not thereby extinguished, it shall be the duty of his counsel to inform the court within thirty (30) days after such death of the fact thereof, and to give the name and address of his legal representative or representatives. Failure of counsel to comply with his duty shall be a ground for disciplinary action.
>
> The heirs of the deceased may be allowed to be substituted for the deceased, without requiring the appointment of an executor or administrator and the court may appoint a guardian *ad litem* for the minor heirs.
>
> The court shall forthwith order said legal representative or representatives to appear and be substituted within a period of thirty (30) days from notice.
>
> If no legal representative is named by the counsel for the deceased party, or if the one so named shall fail to appear within the specified period, the court may order the opposing party, within a specified time to procure the appointment of an executor or administrator for the estate of the deceased and the latter shall immediately appear for and on behalf of the deceased. The court charges in procuring such appointment, if defrayed by the opposing party, may be recovered as costs.

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

Respondents fail to convince. Petitioners have been repeatedly recognized as Piedad's rightful heirs not only by the Court of Appeals but also by this Court.

In *Heirs of Simeon Piedad v. Exec. Judge Estrera*,[55] petitioners filed an administrative case in their capacity as Piedad's heirs and this Court acknowledged their standing to sue in this capacity. The same is also true in the assailed Court of Appeals September 15, 1998 Decision where petitioners filed their appeal as Piedad's heirs and their personality to represent their father was never questioned or assailed.

This Court upheld petitioners' personality to sue in *Heirs of Simeon Piedad* and sees no reason to deny them the same recognition in the case at bar when the current case is merely an offshoot of their father's original complaint for nullity of deed of sale.

Furthermore, this Court takes judicial notice of how respondents, through their counsels,[56] deliberately and maliciously delayed the execution of a final and executory judgment by filing patently dilatory actions. These actions include the Petition for the Probate of the Last Will and Testament of Simeon Piedad,[57] filed in the same case as Piedad's complaint for annulment of absolute deed of sale. The Petition for Probate of the Last Will and Testament of Simeon Piedad was filed in response to the Writ of Demolition issued on December 4, 2001, pursuant to the final and executory Court of Appeals September 15, 1998 Decision in CA-G.R. CV No. 38652.[58]

Respondents, through their counsels, further delayed the execution of the judgment by filing a petition against Sheriff Bellones of Branch 9, Regional Trial Court, Cebu City to restrain him from enforcing the writ of demolition.[59]

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[55] 623 Phil. 178 (2009) [Per *J.* Velasco, Jr.*, En Banc*].

[56] Attys. Roberto R. Arendain, Randy M. Pareja and Patrina T. Soco of the Arendain Pareja and Soco Law Offices.

[57] *Heirs of Simeon Piedad v. Exec. Judge Estrera,* 623 Phil. 178, 184 (2009) [Per *J.* Velasco, Jr.*, En Banc*].

[58] *Id.* at 182-184.

[59] *Id.* at 184.

The extent of the insidious machinations employed by respondents and their counsels were highlighted when they assailed petitioners' motion for execution for purportedly being filed beyond the prescriptive period of 10 years, when they themselves were part of the reason for the delay in execution.

Counsels for respondents are reminded that as officers of the law, they are mandated by Rule 12.04 of the Code of Professional Responsibility to "not unduly delay a case, impede the execution of a judgment or misuse court processes." While counsels for respondents are expected to serve their clients to the utmost of their ability, their duty to their clients does not include disrespecting the law by scheming to impede the execution of a final and executory judgment. As members of the Bar, counsels for respondents are enjoined to represent their clients "with zeal within the bounds of the law."[60]

Thus, counsels for respondents are given a ***stern warning*** to desist from committing similar acts which undermine the law and its processes. Any similar infractions in the future from counsels for respondents will be dealt with more severely.

II

Rule 39, Section 6 of the Rules of Civil Procedure provides the two (2) ways of executing a final and executory judgment:

> Section 6. Execution by motion or by independent action. — A final and executory judgment or order may be executed on motion within five (5) years from the date of its entry. After the lapse of such time, and before it is barred by the statute of limitations, a judgment may be enforced by action. The revived judgment may also be enforced by motion within five (5) years from the date of its entry and thereafter by action before it is barred by the statute of limitations.

Rule 39, Section 6 of the Rules of Court must be read in conjunction with Articles 1144(3) and 1152 of the Civil Code, which provide:

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[60] CODE OF PROFESSIONAL RESPONSIBILITY, Canon 19.

Article 1144. The following actions must be brought within ten years from the time the right of action accrues:

. . . . . .

(3) Upon a judgment.

. . . . . .

Article 1152. The period for prescription of actions to demand the fulfillment of obligation declared by a judgment commences from the time the judgment became final.

Thus, the prevailing party may move for the execution of a final and executory judgment as a matter of right within five (5) years from the entry of judgment. If no motion is filed within this period, the judgment is converted to a mere right of action and can only be enforced by instituting a complaint for the revival of judgment in a regular court within 10 years from finality of judgment.[61]

In the case at bar, the Court of Appeal's ruling on the nullity of the deed of absolute sale executed between Piedad and respondents became final and executory on November 1, 1998. Judge Gaviola, upon motion, then issued an order for the issuance of a writ of demolition on October 22, 2001.[62]

However, the writ of demolition was never served on respondents due to their dilatory tactics and the gross ignorance of the law and undue delay caused by Judges Estrera and Villarin. The case only began to gain traction on July 12, 2010,[63] when petitioners filed their motion for the revival of judgment. But by this time, almost 12 years had passed since the Court of Appeals September 15, 1998 Decision became final and executory. This led Branch 29, Regional Trial Court, Toledo City, where the case was transferred from Branch 9, Regional Trial Court, Cebu City, to deny the motion in its Order dated

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[61] *Villeza v. German Management and Services, Inc.*, 641 Phil. 544, 550 (2010) [Per *J.* Mendoza, Second Division].

[62] *Rollo,* p. 12.

[63] *Id.* at 67.

May 15, 2012 for being the wrong remedy. The Regional Trial Court stated:

> In the instant case, reckoned from November 1, 1998, the date when the Decision of the Court of Appeals became final and executory, 12 years and 1 day had already elapsed when the instant motion was filed on November 2, 2010. There may be instances that execution may still pursue despite the lapse of ten years from finality of judgment but it should be a result of a well-justified action for revival of judgment, not a mere motion, as can be found in the cited Supreme Court Decision.[64]

The Regional Trial Court likewise referred to *Bausa v. Heirs of Dino*[65] to support its denial of petitioners' motion, claiming that the case at bar is very similar[66] with *Bausa.* However, a careful reading of *Bausa* shows that while it contains similarities with the case at bar, the factual circumstances and ruling in *Bausa* tend to support petitioners' motion for revival, not its denial.

In *Bausa,* the Decision declaring petitioners as the rightful owners of the disputed property became final and executory on January 28, 1987. On May 8, 1987, petitioners filed a motion for execution which was granted by the trial court but was not served on the respondent.[67]

Petitioners in *Bausa* subsequently applied for the issuance of an alias writ of execution, which was likewise granted. The sheriff then executed a Delivery of Possession, but respondents refused to sign the Delivery of Possession and refused to vacate the premises. This prompted petitioners to apply for a writ of demolition, which was again granted but could not be implemented due to respondents' continued resistance. Finally, petitioners filed an action to revive[68] the judgment of the trial court, which respondents asserted was not timely filed.

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[64] *Id.* at 69.

[65] 585 Phil. 526 (2008) [Per *J.* Ynares-Santiago, Third Division].

[66] *Rollo,* p. 70.

[67] 585 Phil. 526, 534-535 (2008) [Per *J.* Ynares-Santiago, Third Division].

[68] *Id.* at 535.

Bausa stated that the law set time limitations in the enforcement of judgments "to prevent obligors from sleeping on their rights."[69] *Bausa* then held that considering petitioners' diligent efforts in the enforcement of what was already rightfully theirs and respondents' machinations that prevented petitioners from possessing their property, it cannot be said that petitioners slept on their rights:

> Despite diligent efforts and the final and executory nature of the Decision, petitioners have yet to regain possession of what is legally their own. These circumstances clearly demonstrate that the failure to execute the judgment was due to respondents' refusal to follow the several writs ordering them to vacate the premises. It would be unfair for the Court to allow respondents to profit from their defiance of valid court orders.[70]

Bausa likewise emphasized that if manifest wrong or injustice would result with the strict adherence to the statute of limitations or doctrine of laches, it would be better for courts to rule under the principle of equity:

> It is a better rule that courts, under the principle of equity, will not be guided or bound strictly by the statute of limitations or the doctrine of laches when to do so, manifest wrong or injustice would result. It would be more in keeping with justice and equity to allow the revival of the judgment rendered by Branch 52 of the Regional Trial Court of Sorsogon in Civil Case No. 639. To rule otherwise would result in an absurd situation where the rightful owner of a property would be ousted by a usurper on mere technicalities. Indeed, it would be an idle ceremony to insist on the filing of another action that would only unduly prolong respondents' unlawful retention of the premises which they had, through all devious means, unjustly withheld from petitioners all these years.[71]

Just like in *Bausa,* it also cannot be said that petitioners slept on their rights. Petitioners filed a motion for execution well

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[69] *Id*. at 534.

[70] *Id*. at 535.

[71] *Id*. at 535 citing *Spouses Santiago v. Court of Appeals,* 343 Phil. 612, 627 (1997) [Per J. Hermosisima, Jr., First Division] and *David v. Ejercito,* 163 Phil. 509 (1976) [Per J. Martin, First Division].

within the five (5)-year period prescribed by Rule 39, Section 6 of the Rules of Court. However, their efforts were thwarted by respondents' machinations and Judges Estrera's and Villarin's illegal acts of issuing restraining orders against a co-equal court. Nonetheless, petitioners continued to persevere and filed several motions[72] before Judge Villarin, which the judge proceeded to ignore. This Court recognized the illegality of the acts committed by Judges Estrera and Villarin when this Court held them administratively liable for gross ignorance of the law and undue delay in rendering an order, imposing upon them a fine and a stern warning that a repetition of a similar act will be dealt with more severely.[73]

In dismissing the motion for revival, the Regional Trial Court adopted a strict interpretation of Rule 39, Section 6 of the Rules of Court because the proper remedy was supposedly an action for revival of judgment, not just a mere motion.[74] The Court of Appeals, in turn, also dismissed the petition for being the wrong remedy.[75]

The lower courts are mistaken.

In *David v. Ejercito,*[76] for reasons of equity, this Court treated the motion for execution, alias writ of execution, and motion for demolition as substantial compliance with the requirement to file an action to revive judgment if no motion for execution is filed within five (5) years from the date of its entry of judgment.[77] *David* pointed out that petitioner's deliberate efforts at delaying the execution of a final and executory judgment should not be condoned:

It would be an idle ceremony to insist on the filing of a separate action that would only unduly prolong petitioner's unlawful retention

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[72] *Rollo,* p. 14.

[73] *Id*. at 19.

[74] *Id*. at 69.

[75] *Id*. at 59-60.

[76] 163 Phil. 509 (1976) [Per *J.* Martin, First Division].

[77] *Id*. at 515.

of the premises which he has through all devious means unjustly withheld from respondents all these years.[78]

This Court, in a long line of cases,[79] has allowed for the execution of a final and executory judgment even if prescription has already set in, if the delay was caused by the judgment obligor for his or her benefit or advantage. The reason behind this exception was explained in *Camacho v. Court of Appeals*:[80]

> The purpose of the law in prescribing time limitations for enforcing judgments or actions is to prevent obligors from sleeping on their rights. Far from sleeping on their rights, respondents persistently pursued their rights of action. It is revolting to the conscience to allow petitioner to further avert the satisfaction of her obligation because of sheer literal adherence to technicality. After all, the Rules of Court mandates that a liberal construction of the Rules be adopted in order to promote their object and to assist the parties in obtaining just, speedy and inexpensive determination of every action and proceeding. This rule of construction is especially useful in the present case where adherence to the letter of the law would result in absurdity and manifest injustice.[81]

This Court has also interrupted[82] the tolling of the prescriptive period or deducted[83] from the prescriptive period when the

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[78] *Id*.

[79] *Rizal Commercial Banking Corporation v. Serra,* 713 Phil. 722, 726 (2013) [Per *J*. Carpio, Second Division]; *Yau v. Silverio,* 567 Phil. 493, 502–503 (2008) [Per *J.* Sandoval-Gutierrez, First Division]; *Francisco Motors Corp. v. Court of Appeals,* 535 Phil. 736, 751-752 (2006) [Per *J*. Velasco, Jr., Third Division]; *Republic v. Court of Appeals,* 329 Phil. 115, 123-124 (1996) [Per *J*. Panganiban, Third Division]; *Camacho v. Court of Appeals,* 351 Phil. 108, 114-115 (1998) [Per *J*. Bellosillo, First Division].

[80] 351 Phil. 108 (1998) [Per *J*. Bellosillo, First Division].

[81] *Id*. at 115.

[82] *Republic v. Court of Appeals,* 329 Phil. 115, 123-124 [Per *J*. Panganiban, Third Division]; *Francisco Motors Corp. v. Court of Appeals,* 535 Phil. 736, 751-752 (2006) [Per *J*. Velasco, Third Division]; *Lancita v. Magbanua,* 117 Phil. 39, 44 (1963) [Per *J*. Paredes, *En Banc*].

[83] *Villaruel v. Court of Appeals,* 254 Phil. 305, 314–315 (1989) [Per *J.* Padilla, Second Division]; *Gonzales v. Court of Appeals*, 287 Phil. 656,

peculiar circumstances of the case or the dictates of equity called for it. This Court held in *Lancita v. Magbanua:*[84]

> In computing the time limited for suing out of an execution, although there is authority to the contrary, the general rule is that there should not be included the time when execution is stayed, either by agreement of the parties for a definite time, by injunction, by the taking of an appeal or writ of error so as to operate as a supersedeas, by the death of a party, or otherwise. Any interruption or delay occasioned by the debtor will extend the time within which the writ may be issued without *scire facias.*[85]

It is not disputed that the deed of absolute sale between Piedad and respondents was declared null and void for being a forgery, and that the Court of Appeals September 15, 1998 Decision became final and executory as early as November 1, 1998. However, due to respondents' schemes and maneuvers, they managed for many years to prevent Piedad and his heirs from enjoying what had already been decreed to be rightfully theirs, leading to an empty victory and petitioners' continued struggle for their rights.

Considering that the Regional Trial Court May 15, 2012 Order dismissing petitioners' motion for revival was utterly devoid of legal or factual basis, it is clear that it was attended by grave abuse of discretion for being issued capriciously and with a gross misapprehension of the facts.[86]

To reiterate, jurisprudence is consistent that when the delay in filing a motion or action for execution could not be attributed to the prevailing party, a liberal interpretation of the rules of procedure should be resorted to where a literal

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666 (1992) [Per *J.* Bellosillo, First Division]; *Provincial Government of Sorsogon v. Vda de Villaroya,* 237 Phil. 280 (1987) [Per *J.* Gutierrez, Jr., Third Division].

[84] 117 Phil. 39 (1963) [Per *J.* Paredes, *En Banc*].

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

[86] *United Coconut Planters Bank v. Looyuko,* 560 Phil. 581, 591-592 (2007) [Per *J.* Austria-Martinez, Third Division].

and strict adherence will most likely result in miscarriage of justice.[87]

WHEREFORE, this Court resolves to **GRANT** the Petition. The assailed Resolutions of the Court of Appeals dated December 10, 2012 and July 10, 2013 in CA-G.R. SP No. 07176 are **REVERSED** and **SET ASIDE.** The Writ of Demolition issued on December 4, 2001 by Branch 9, Regional Trial Court, Cebu City is **ORDERED SERVED** on Candelaria Linehan Bobilles and/or Mariano Bobilles or any of their heirs, successors, or assigns to resume the execution process against them.

SO ORDERED.

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

Gesmundo, J., on leave.

SECOND DIVISION

[G.R. No. 213039. November 27, 2017]

POLYTECHNIC UNIVERSITY OF THE PHILIPPINES, *petitioner, vs.* **NATIONAL DEVELOPMENT COMPANY,** *respondent.*

SYLLABUS

REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; AN EXTRAORDINARY PREROGATIVE WRIT MEANT

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[87] *Republic v. Court of Appeals,* 221 Phil. 685, 693 (1985) [Per *J.* Cuevas, Second Division]; *Philippine Veterans Bank v. Solid Homes,* 607 Phil. 14, 26-27 (2009) [Per *J.* Corona, First Division]; *Villeza v. German Management and Services, Inc*., 641 Phil. 544, 551–552 (2010) [Per *J.* Mendoza, Second Division].

TO CORRECT ONLY ERRORS OF JURISDICTION AND NOT ERRORS OF JUDGMENT COMMITTED IN THE EXERCISE OF THE DISCRETION OF A TRIBUNAL OR AN OFFICER; ABUSE OF DISCRETION MUST BE SO PATENT AND GRAVE TO WARRANT THE ISSUANCE THEREOF; CASE AT BAR.— [T]he appellate court correctly found that no grave abuse of discretion attended the RTC's issuance of the February 2, 2012 resolution as the same merely clarified what was seemingly confusing in the November 25, 2004 decision of the RTC. Even assuming that the appellate court made erroneous judgment on the issue of whether the trial court committed grave abuse of discretion in its issuance of the February 2, 2012 Order, We must stress that *certiorari* is an extraordinary prerogative writ that is never demandable as a matter of right. It is meant to correct only errors of jurisdiction and ***not*** errors of judgment committed in the exercise of the discretion of a tribunal or an officer. To warrant the issuance thereof, the abuse of discretion must have been so gross or grave, as when there was such capricious and whimsical exercise of judgment equivalent to lack of jurisdiction; or the exercise of power was done in an arbitrary or despotic manner by reason of passion, prejudice, or personal hostility. The abuse must have been committed in a manner so patent and so gross as to amount to an evasion of a positive duty or to a virtual refusal to perform the duty enjoined or to act at all in contemplation of law.

APPEARANCES OF COUNSEL

Office of the Solicitor General for petitioner.
Benjamin Rabucco III for respondent.

D E C I S I O N

PERALTA, *J.*:

This is a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court seeking the reversal of the Decision[1] dated

[1] Penned by Court of Appeals Associate Justice Sesinando E. Villon, with Associate Justices Florito S. Macalino and Melchor C. Sadang, concurring; *rollo*, pp. 32-41.

February 19, 2014 and Resolution[2] dated June 16, 2014, respectively, of the Court of Appeals (*CA*) in CA-G.R. SP No. 124575 which dismissed Polytechnic University of the Philippines's (*PUP*) petition for *certiorari* and prohibition under Rule 65 of the 1997 Rules of Civil Procedure, as amended, for lack of merit.[3]

The instant case is an offshoot of the consolidated cases: *Polytechnic University of the Philippines v. Golden Horizon Realty Corporation; National Development Company vs. Golden Horizon Realty Corporation,*[4] decided on March 15, 2010 where this Court affirmed Golden Horizon Realty Corporation's *(GHRC*) right of first refusal under the latter's lease contract with National Development Company (*NDC*). In the same decision, the Court likewise ordered PUP to reconvey the subject portion of the property in favor of GHRC. The crux of the instant controversy arose in the implementation of the November 25, 2004 decision of the RTC which this Court affirmed in the same case.

To recapitulate, the antecedent facts of the case are as follows:

In the early sixties, NDC had in its disposal a ten (10)-hectare property located along Pureza St., Sta. Mesa, Manila. The estate was popularly known as the NDC Compound and covered by Transfer Certificate of Title Nos. 92885, 110301 and 145470.

On September 7, 1977, NDC entered into a contract of lease with GHRC over a portion of the property. Later, a second contract of lease covering additional portions of the property was executed between NDC and GHRC where the latter was also given the option to purchase the leased area on the property.

On August 12, 1988, before the expiration of the ten-year period under the second contract of lease, GHRC informed NDC

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[2] *Id*. at 43.

[3] *Polytechnic University of the Philippines v. Hon. Andres Bartolome and Hon. Georgina D. Hidalgo, and National Development Company*.

[4] G.R. Nos. 183612 and 184260, March 15, 2010.

of its desire to renew the contract and thereafter exercise the option to purchase the leased areas. NDC, however, gave no reply thereon. Later, GHRC discovered that NDC was trying to dispose of the property in favor of a third party. Thus, on October 21, 1988, GHRC filed with the trial court, a complaint for specific performance and damages against NDC, docketed as Civil Case No. 88-2238.

Meanwhile, on January 6, 1989, then President Corazon C. Aquino issued Memorandum Order No. 214, ordering the transfer of the whole NDC Compound to the National Government, which in turn would convey the said property in favor of PUP at acquisition cost. The order of conveyance of the 10.31-hectare property would automatically result in the cancellation of NDCs total obligation in favor of the National Government.

On November 25, 2004, the RTC rendered a Decision sustaining GHRC's right to purchase the leased areas on the subject lot, disposing as follows:

> WHEREFORE, premises considered, judgment is hereby rendered in favor of the plaintiff and against the defendants ordering the plaintiff to cause immediate ground survey of the premises subject of the leased contract under Lease Contract No. C-33-77 and C-12-78 measuring 2,407 and 3,222.8 square meters, respectively, by a duly licensed and registered surveyor at the expense of the plaintiff within two months from receipt of this Decision and thereafter, the plaintiff shall have six (6) months from receipt of the approved survey within which to exercise its right to purchase the leased property at ₱554.74 per square meter. And finally, **the defendant PUP, in whose name the property is titled, is hereby ordered to reconvey the aforesaid property to the plaintiff** in the exercise of its right of its option to buy or first refusal upon payment of the purchase prices thereof.
>
> The defendant NDC is hereby further ordered to pay the plaintiff attorney's fees in the amount of ₱100,000.00.
>
> The case against defendant Executive Secretary is dismissed and this decision shall bind defendant Metropolitan Trial Court, Branch 20 of Manila.
>
> With costs against defendant NDC and PUP.

SO ORDERED. (Underscoring ours)[5]

NDC and PUP interposed their respective appeals before the appellate court. On June 25, 2008, the appellate court in CA-G.R. CV No. 84399, rendered judgment affirming *in toto* the decision of the RTC.

The case was then elevated to this Court where it was docketed as G.R. Nos. 183612 and 184260.[6] On March 15, 2010,[7] the Court resolved the issues raised by the parties in the following manner:

WHEREFORE, the petitions are DENIED. The Decision dated November 25, 2004 of the Regional Trial Court of Makati City, Branch 144 in Civil Case No. 88-2238, as affirmed by the Court of Appeals in its Decision dated June 25, 2008 in CA-G.R. CV No. 84399, is hereby **AFFIRMED** with **MODIFICATION** in that the price to be paid by respondent Golden Horizon Realty Corporation for the leased portion of the NDC compound under Lease Contract Nos. C-33-77 and C-12-78 is hereby increased to ₱1,500.00 per square meter.

No pronouncement as to costs.

SO ORDERED.[8]

On July 23, 2010, the decision of this Court in the above-mentioned G.R. Nos. 183612 and 184260 became final and executory. Accordingly, GHRC filed before the RTC a motion for execution which was granted in an Order[9] dated January 11, 2011. Pursuant to the writ of execution, GHRC deposited with the Clerk of Court a cashier's check dated March 30, 2011 for the amount of ₱8,479,875.00 representing the purchase price

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[5] CA *rollo*, pp. 14-15.

[6] *Polytechnic University of the Philippines v. Golden Horizon Realty Corporation*; *National Development Company v. Golden Horizon Realty Corporation*, decided on March 1, 2010.

[7] *Supra* note 4.

[8] CA *rollo*, p. 16. (Emphasis in the original)

[9] *Rollo,* pp. 52-54.

of the leased areas of the subject lot. GHRC then sought for the delivery of the said parcel of land.

On May 23, 2011, PUP filed a Manifestation claiming that instead of NDC, it was entitled to the purchase price of the leased premises.

Subsequently, the RTC issued its assailed September 5, 2011 Order[10] as follows:

> In view of the foregoing, there is reasonable ground to grant the prayer of the plaintiff. Wherefore, the defendants are directed to simultaneously withdraw the purchase price deposited with the Office of the Clerk of Court, execute a Deed of Conveyance to plaintiff and deliver the Owner's Duplicate Copies of TCT Nos. 197748 and 197798 covering the litigated property and its tax declarations.
>
> SO ORDERED.

On September 20, 2011, NDC sought a clarification/ reconsideration of the above Order. PUP also filed its own motion for reconsideration on September 22, 2011.

On February 2, 2012, the RTC rendered its assailed Resolution[11] modifying its September 5, 2011 Order.[12] The dispositive portion of which reads as follows:

> WHEREFORE, with our discussions above, the assailed Order is modified as regards the provision on NDC and PUP simultaneously withdrawing the amount deposited with the Clerk of Court, execute the deed of conveyance and delivery of TCT Nos. 197748 and 197798. And, in order to settle the controversy between the parties and ultimately for the decision of this Court which was affirmed by the Supreme Court with finality to be fully implemented, the Court, in resolving the two Motions for Reconsideration, hereby:
>
> 1. GRANTS the Motion for Reconsideration of the National Development Company only in so far as to its prayer that it be

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[10] *Id*. at 163-164.

[11] *Id*. at 92-102.

[12] *Supra* note 8.

allowed to withdraw the purchase price deposited by Golden Harvest Realty Corporation.

2. DIRECTS National Development Company to deliver TCT Nos. 197748 and 197798 to Polytechnic University of the Philippines and cause the annotation of this Resolution on the said titles.

3. Directs the Office of the Register of Deeds of Manila to cancel Transfer Certificates of Title Nos. 197748 and 197798 in the name of NDC and in substitution, issue another Certificate/s of Title, covering the subject property in the name of PUP [representing the National Government for purposes of transfer to GHRC only].

4. ORDERS Polytechnic University of the Philippines [representing the National Government] to execute a Deed of Conveyance in favor of Golden Horizon Realty Corporation.

5. ORDERS the Clerk of Court, Regional Trial Court, City of Makati to release the purchase price of the subject property, deposited by the Golden Horizon Realty Corporation, to the National Development Corporation - after the property is transferred to the name of Golden Horizon Realty Corporation.

SO ORDERED.

In the said Order, the RTC asserted that its modification was in accordance to this Court's ruling in G.R. Nos. 183612 and 184260. It explained that upon verification with the Memorandum of Agreement (MOA) entered by the NDC and the Republic of the Philippines, it appeared that there are indeed properties of NDC which were not transferred to the National Government, among which are the subject properties covered by TCT Nos. 197748 and 197798 because at the time of the execution of the MOA, said properties were subject of a pending court litigation. The pertinent portion of the MOA reads as follows:

x x x x x x x x x

WHEREAS, there are at present **pending court actions affecting certain areas of the NDC estate, more particularly those covered by TCT No. 145470 (Annex "A"), TCT. No. 197798 (Annex "A-2"), and TCT No. 197748 (Annex "A-3"),** as follows:

x x x x x x x x x

WHEREAS, the parties hereto have agreed, under the terms and conditions hereinafter set forth, on the transfer of the NDC Estate to the National Government **excluding those areas subject of pending court litigations.**

NOW, THEREFORE, the parties have agreed as they hereby agree as follows:

1. NDC hereby transfers to the National Government and the National Government, thru the BTR, hereby accepts the NDC Estate, together with the improvements thereon, save and **except those areas thereof presently involved in litigation as aforesaid.** For this purpose, the parties agree that the total area of the NDC Estate hereunder transferred consists of FIFTY-THREE THOUSAND, TWO HUNDRED SIXTY-ONE SQUARE METERS AND FIFTY-NINE SQUARE DECIMETERS (53,261.59 sq. m.), hereinafter referred to as the "Net NDC Estate" arrived at **by subtracting the total area under litigation from the total area of the NDC Estate.**

x x x x x x x x x

4. It is understood and agreed that **the transfer to the National Government of the balance of the NDC Estate now subject of litigation be made upon final and executory resolution in favor of NDC of the pending case aforementioned** and at the prevailing price of the remaining estate to be determined by the Commission on Audit at the date of transfer.

x x x x x x x x x[13]

Moreover, the RTC also pointed out that while Presidential Memorandum No. 214 enumerated the properties of NDC which were transferred to the National Government, it, however, did not mention the subject property which is covered by TCT Nos. 197748 and 197798. Thus, given the above-mentioned circumstances, PUP, indeed, cannot reconvey the property to GHRC because the property in issue is still registered in the name of NDC.

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[13] *Rollo*, pp. 88-90. (Emphasis ours)

Aggrieved, before the appellate court, PUP filed a petition for *certiorari* and prohibition under Rule 65 of the Rules on Civil Procedure invoking grave abuse of discretion resulting in lack or in excess of jurisdiction on the part of the RTC for issuing the Order dated September 5, 2011 and the Resolution dated February 2, 2012.

On February 19, 2014, the appellate court dismissed the petition, the dispositive portion of which reads:

> **WHEREFORE**, in light of all the foregoing, the petition is hereby **DISMISSED** for lack of merit. The assailed issuances of Branch 144, Regional Trial Court of Makati City in Civil Case No. 88-2238 are hereby AFFIRMED.
>
> **SO ORDERED**.[14]

PUP moved for reconsideration but was denied in a Resolution[15] dated June 16, 2014.

Thus, the instant petition for review on *certiorari* under Rule 45 of the Rules of Court raising the following issues:

I

WHETHER THE APPELLATE COURT ERRED ON A QUESTION OF LAW WHEN IT DISMISSED THE PETITION IN CA-G.R. SP NO. 124575 FOR THE IMPUTED FAILURE OF PUP TO FILE A MOTION FOR RECONSIDERATION OF THE TRIAL COURT'S RESOLUTION DATED FEBRUARY 2, 2012 IN CIVIL CASE NO. 88-2238

II

WHETHER THE APPELLATE COURT ERRED ON A QUESTION OF LAW WHEN IT UPHELD THE TRIAL COURT'S ORDER DATED SEPTEMBER 5, 2011 AND RESOLUTION DATED FEBRUARY 2, 2012 IN CIVIL CASE NO. 88-2238

At the onset, it must be clarified that what petitioners seek for us to review is the resolution of the appellate court in the

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[14] *Rollo*, p. 40. (Emphasis in the original)

[15] *Id.* at 43.

petition for *certiorari* under Rule 65 of the Rules of Court which PUP filed before the appellate court. Thus, We are constrained to touch only those issues relevant in determining whether the CA correctly ruled on the issue of whether or not the trial court committed grave abuse of discretion in the process of deducing its conclusions. Suffice it to say that a petition for *certiorari* under Rule 65 is a special civil action confined solely to questions of jurisdiction because a tribunal, board or officer exercising judicial or quasi-judicial functions has acted without jurisdiction or in excess of jurisdiction or with grave abuse of discretion amounting to lack of jurisdiction. Consequently, the present petition's issue is: *Whether the CA was correct in its finding that the RTC committed no grave abuse of discretion in issuing the assailed Order dated September 5, 2011 and the Resolution dated February 2, 2012*.[16]

We rule in the affirmative.

In the instant petition, nowhere does it show that the issuance of the disputed Decision dated February 19, 2014 of the appellate court was patently erroneous and gross that would warrant striking it down. Records reveal that PUP failed to substantiate its imputation of grave abuse of discretion on the part of the RTC. No argument was advanced to show that the RTC, in their issuance of the assailed Order dated September 5, 2011 and the Resolution dated February 2, 2012, exercised judgment capriciously, whimsically, arbitrarily or despotically by reason of passion and hostility. PUP did not even discuss how or why the conclusions of the RTC were made with grave abuse of discretion.

In its assailed Decision, the appellate court pointed out that when the RTC rendered the questioned February 2, 2012 resolution, it laid out the premises for modifying the September 5, 2011 order. It merely sought to give resolution on the seemingly impossibility of complying with the Court's order of reconveyance considering that the subject property was not under PUP's name.

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[16] *Montoya v. Transmed Manila Corporation*, 613 Phil. 696, 708 (2009); *Century Iron Works v. Banas*, 711 Phil. 576, 587 (2013).

It explained why it was only NDC that should be allowed to withdraw the amount deposited by GHRC with the Clerk of Court. It merely reiterated how impossible it was for PUP to convey the subject properties to GHRC when the same were never part of the lands conveyed by NDC to the National Government.

The appellate court's decision affirmed the RTC's finding that because the leased subject properties were under litigation at the time of the implementation of Memorandum Order No. 214, the ownership thereof was never transferred to the National Government, thus, it necessarily follows that the same were never conveyed to PUP.

We, thus, conclude that the appellate court correctly found that no grave abuse of discretion attended the RTC's issuance of the February 2, 2012 resolution as the same merely clarified what was seemingly confusing in the November 25, 2004 decision of the RTC.

Even assuming that the appellate court made erroneous judgment on the issue of whether the trial court committed grave abuse of discretion in its issuance of the February 2, 2012 Order, We must stress that *certiorari* is an extraordinary prerogative writ that is never demandable as a matter of right.[17] It is meant to correct only errors of jurisdiction and ***not*** errors of judgment committed in the exercise of the discretion of a tribunal or an officer. To warrant the issuance thereof, the abuse of discretion must have been so gross or grave, as when there was such capricious and whimsical exercise of judgment equivalent to lack of jurisdiction; or the exercise of power was done in an arbitrary or despotic manner by reason of passion, prejudice, or personal hostility.[18] The abuse must have been committed in a manner so patent and so gross as to amount to an evasion of a positive duty or to a virtual refusal to perform the duty enjoined or to act at all in contemplation of law.[19]

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[17] *Nuque v. Aquino*, 763 Phil. 362, 370 (2015).

[18] *Yu v. Judge Reyes-Carpio*, 667 Phil. 474, 482 (2011).

[19] *Id.*

PUP failed in its duty to demonstrate with definiteness the grave abuse of discretion that would justify the proper availment of a petition for certiorari under Rule 65 of the Rules of Court. We, thus, find that the appellate court correctly found that the RTC committed no grave abuse of discretion in issuing the February 2, 2012 Order as the same lacks the arbitrariness that characterizes excess of jurisdiction.

WHEREFORE, premises considered, the petition is hereby **DENIED** for lack of merit.

SO ORDERED.

Carpio (Chairperson), Caguioa, and *Reyes, Jr., JJ.,* concur.

Perlas-Bernabe, J., on leave.

SECOND DIVISION

[G.R. No. 213748. November 27, 2017]

RICARDO G. SY and HENRY B. ALIX, *petitioners, vs.* **NEAT, INC., BANANA PEEL and PAUL VINCENT NG,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; BURDEN OF PROOF; IN ILLEGAL DISMISSAL CASES, THE BURDEN OF PROOF IS UPON THE EMPLOYER TO SHOW THAT THE EMPLOYEE'S TERMINATION FROM SERVICE IS FOR A JUST AND VALID CAUSE.— It is well settled that in illegal dismissal cases, "the burden of proof is upon the employer to show that the employee's termination from service is for a just and valid cause. The employer's case succeeds or fails on the

strength of its evidence and not on the weakness of that adduced by the employee, in keeping with the principle that the scales of justice should be tilted in favor of the latter in case of doubt in the evidence presented by them. Often described as more than a mere scintilla, the quantum of proof is substantial evidence which is understood as such relevant evidence as a reasonable mind might accept as adequate to support a conclusion, even if other equally reasonable minds might conceivably opine otherwise. Failure of the employer to discharge the foregoing onus would mean that the dismissal is not justified and therefore illegal."

2. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; TERMINATION OF EMPLOYMENT; EMPLOYER FAILED TO PROVE BY SUBSTANTIAL EVIDENCE THAT THE TOTALITY OF INFRACTIONS COMMITTED BY EMPLOYEE CONSTITUTES A JUST CAUSE FOR DISMISSAL; PREVIOUS OFFENSES MAY BE USED AS A VALID JUSTIFICATION FOR DISMISSAL ONLY IF THEY ARE RELATED TO SUBSEQUENT OFFENSE UPON WHICH THE BASIS FOR TERMINATION IS DECREED OR IF THEY HAVE A BEARING ON THE PROXIMATE OFFENSE WARRANTING DISMISSAL.— A closer look into the entirety of the violations imputed against Sy shows that respondents failed to prove with substantial evidence that the totality of infractions committed by him constitutes as a just cause for his dismissal under the Labor Code. x x x Contrary to respondents' contention, however, the past 3 infractions in 2009 for wearing of improper uniform can no longer be taken against Sy, because he was already warned and penalized for them, and he has, in fact, reformed his errors in that regard. x x x Where an employee had already suffered the corresponding penalties for his infraction, to consider the same offenses as justification for his dismissal would be penalizing the employee twice for the same offense. Significantly, the infractions of Sy for wearing of improper uniform are not related to his latest infractions of insubordination and purported poor performance evaluation. Previous offenses may be used as valid justification for dismissal only if they are related to the subsequent offense upon which the basis of termination is decreed, or if they have a bearing on the proximate offense warranting dismissal.

3. ID.; ID.; ID.; ELEMENTS OF MISCONDUCT AND INSUBORDINATION TO BE VALID GROUNDS FOR DISMISSAL.— Misconduct is defined as the "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." In order for serious misconduct to justify dismissal, these requisites must be present: (a) it 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. On the other hand, to be considered as a just cause for terminating an employee's services, "*insubordination*" requires that the orders, regulations or instructions of the employer or representative must be (a) reasonable and lawful; (b) sufficiently known to the employee; (c) in connection with the duties which the employee has been engaged to discharge; and (d) the employee's assailed conduct must have been willful or intentional, the willfulness being characterized by a wrongful and perverse attitude.

4. ID.; ID.; ID.; ID.; WHERE EMPLOYEE'S MISCONDUCT WAS NOT SERIOUS AND WILLFUL AND HIS DISOBEDIENCE CANNOT BE DEEMED TO DEPICT A WRONGFUL ATTITUDE, DISMISSAL IS NOT WARRANTED.— Sy's insubordination of changing his delivery utility without permission from the operations manager is no doubt a misconduct, but not a serious and willful one as to cost him his livelihood. Concededly, Sy's act of unilaterally assigning to himself another delivery utility *in lieu* of the one designated to him, reflects his attitude problem and disregard of a lawful order of a representative of the employer. Be that as it may, such willful disobedience cannot be deemed to depict a wrongful attitude, because it was prompted by his desire to carry out his duty without distractions. It is not farfetched that Sy's annoyance with the delivery utility assigned to him, who annoyed him earlier in the day by blocking his way to the daily time record, could have prevented him from performing his task, or worst, could have resulted in fisticuffs with the said co-worker.

5. ID.; ID.; ID.; FOR NEGLECT OF DUTIES TO BE A VALID GROUND FOR DISMISSAL, IT MUST BE BOTH GROSS AND HABITUAL; A SINGLE OR ISOLATED ACT OF

NEGLIGENCE DOES NOT CONSTITUTE A JUST CAUSE FOR DISMISSAL.— As a just cause for termination of employment, on the other hand, the neglect of duties must not only be gross but habitual as well. Gross negligence means an absence of that diligence that a reasonably prudent man would use in his own affairs, and connotes want of care in the performance of one's duties. Habitual neglect implies repeated failure to perform one's duties for a period of time, depending upon the circumstances. A single or isolated act of negligence does not constitute a just cause for the dismissal of the employee. Suffice it to state that by no stretch of reasoning can the 5 infractions — wearing of improper uniform, insubordination and poor performance evaluation — imputed against Sy be collectively deemed as gross and habitual negligence.

6. **ID.; ID.; ID.; TOTALITY OF INFRACTIONS PRINCIPLE, APPLIED; IN LIGHT OF THE TOTALITY OF EMPLOYEE'S INFRACTIONS, SUCH AS HABITUAL TARDINESS, WASTING TIME DURING WORKING HOURS AND POOR PERFORMANCE, THE COURT AGREES THAT THERE IS JUST CAUSE TO DISMISS SAID EMPLOYEE.—** On the other hand, in light of the totality of petitioner Alix's infractions against the company rules and regulations, the Court cannot extend the same magnanimity it has accorded to Sy. Respondents have proven with substantial evidence said infractions through 7 written warnings[.] x x x It does not escape the attention of the Court that the third (3rd) to sixth (6th) warnings were all received by petitioner Alix only on May 20, 2011, and that the seventh (7th) warning was received on the very day of his termination, May 31, 2011, prompting him to make separate handwritten explanations on the same date of receipt of said warnings. Respondents' perfunctory observance of Alix's right to notice and hearing, however, does not detract from the veracity of the violations of company rules and regulation imputed against him. Habitual tardiness alone, as aptly noted by the CA, is a just cause for termination of Alix's employment. Punctuality is a reasonable standard imposed on every employee, whether in government or private sector, whereas habitual tardiness is a serious offense that may very well constitute gross or habitual neglect of duty, a just cause to dismiss a regular employee. Habitual tardiness manifests lack of initiative, diligence and discipline that are inimical to the

employer's general productivity and business interest. Respondents have substantiated habitual tardiness by presenting Alix's daily time card, showing that in 2011 alone prior to his dismissal, he was late fourteen (14) times in January, seven (7) times in February, eight (8) times in March, and five (5) times in April. Having in mind the work productivity-related infractions he incurred in a span of 5 months from January to May 2011 — consisting of habitual tardiness, 2 warnings for wasting time during working hours and 2 more warnings for poor performance evaluation — the Court must agree with the CA that respondents have a just cause to terminate Alix's employment.

7. **ID.; ID.; ID.; AN EMPLOYEE WHO IS DISMISSED WITHOUT JUST CAUSE AND DUE PROCESS IS ENTITLED TO EITHER REINSTATEMENT OR SEPARATION PAY IF REINSTATEMENT IS NOT VIABLE, AND FULL BACK WAGES AND OTHER BENEFITS; WHERE EMPLOYEE IS NOT ENTIRELY FAULTLESS, THE COURT LIMITS THE AWARD OF SEPARATION PAY, BACKWAGES AND OTHER BENEFITS.—** An employee who is dismissed without just cause and due process is entitled to either reinstatement if viable or separation pay if reinstatement is no longer viable, and payment of full backwages and other benefits. Specifically prayed for by petitioner Sy, the NLRC correctly awarded separation pay, which is proper when reinstatement is no longer viable due to the antagonism and strained relationship between the employer and the employee as a consequence of the litigation, not to mention the considerable length of time that the latter has been out of the former's employ. Nevertheless, the Court limits the award of separation pay, backwages and other benefits, because Sy is not entirely faultless. Since the latest infraction of Sy relating to attitude problem at work does not constitute serious misconduct, willful disobedience to lawful orders of the employer or gross and habitual negligence in the performance of duties, as to merit the harsh penalty of dismissal, the Court holds that Sy is entitled to the award of (1) separation pay equivalent to 1 month salary for every year of service computed from May 5, 2008 when he was hired up to December 27, 2012 when the NLRC ruled that he was illegally dismissed; and (2) backwages and other benefits, computed from the time of his termination on August 4, 2012 until December 27, 2012.

8. ID.; ID.; ID.; WHEN THE WAIVER AND RELEASE WAS MADE UNDER THE CIRCUMSTANCES WHERE VOLUNTARINESS OF SUCH AGREEMENT IS QUESTIONABLE AND EMPLOYER FAILED TO PROVE THAT IT IS A CREDIBLE AND REASONABLE SETTLEMENT, SUCH QUITCLAIM DOES NOT BAR AN EMPLOYEE FROM DEMANDING WHAT IS DUE HIM.— Anent the Waiver and Release dated June 10, 2011 where Alix stated that he has no claim of whatever kind and nature against Neat, Inc., the Court sustains the CA that such quitclaim does not bar an employee from demanding what is legally due him, especially when it is made under circumstances where the voluntariness of such agreement is questionable. While quitclaims are, at times, considered as valid and binding compromise agreements, the rule is settled that the burden rests on the employer to prove that the quitclaim constitutes a credible and reasonable settlement of what an employee is entitled to recover, and that the one accomplishing it has done so voluntarily and with a full understanding of its import. Respondents failed to discharge such burden. Recognizing that the subordinate position of individual rank-and-file employees *vis-a-vis* management renders the former vulnerable to the latter's blandishments, importunings and even intimidation that may well result in the improvident if reluctant signing over of benefits to which the employees are entitled, the Court has consistently held that quitclaims of workers' benefits will not bar them from asserting these benefits on the ground that public policy prohibits such waivers.

9. CIVIL LAW; CIVIL CODE; DAMAGES; NOMINAL DAMAGES AWARDED IN VIEW OF DEPRIVATION OF PETITIONERS' RIGHT TO NOTICE AND HEARING PRIOR TO THEIR TERMINATION.— The Court likewise upholds the award of nominal damages awarded in favor of petitioners Sy and Alix. Nominal damages are "adjudicated in order that a right of the plaintiff, which has been violated or invaded by the defendant, may be vindicated or recognized, and not for the purpose of indemnifying the plaintiff for any loss suffered by him." Jurisprudence holds that such indemnity to be imposed should be stiffer to discourage the abhorrent practice of "dismiss now, pay later." The sanction should be in the nature of indemnification or penalty and should depend on the facts of each case, taking into special consideration the

gravity of the due process violation of the employer. Considering that petitioners were deprived of their right to notice and hearing prior to their termination, the Court affirms the CA's award of ₱30,000.00 as nominal damages.

10. ID.; ID.; ID.; MORAL AND EXEMPLARY DAMAGES CANNOT BE AWARDED IN THE ABSENCE OF CLEAR AND CONVINCING EVIDENCE.— To be entitled to an award of moral damages, it is not enough for an employee to prove that he was dismissed without just cause or due process. Moral damages are recoverable only where the dismissal or suspension of the employee was attended by bad faith or fraud, or constituted an act oppressive to labor, or was done in a manner contrary to morals, good customs or public policy. "The person claiming moral damages must prove the existence of bad faith by clear and convincing evidence for the law always presumes good faith." Awarded in accordance with the sound discretion of the court, on the other hand, exemplary damages are imposed as a corrective measure when the guilty party has acted in a wanton, fraudulent, reckless and oppressive manner. In this case, apart from petitioners' bare allegation of entitlement thereto, no proof was presented to justify an award of moral and exemplary damages.

11. ID.; ID.; ID.; CORPORATE OFFICERS CANNOT BE HELD SOLIDARILY LIABLE WITH THE CORPORATION FOR ILLEGAL DISMISSAL OF ITS EMPLOYEES IN THE ABSENCE OF PROOF THAT THEY ARE GUILTY OF MALICE AND BAD FAITH.— Finally, as to the liability of respondent Paul Vincent Ng as President and Chief Executive Officer of Neat, Inc., for the illegal dismissal of petitioner Sy and the dismissal of Alix without due process, it has been held that a corporation, being a juridical entity, may act only through its directors, officers and employees, and that obligations incurred by these officers, acting as such corporate agents, are not theirs but the direct accountability of the corporation they represent. Solidary liability may at times be incurred, but only under exceptional circumstances. In labor cases, corporate directors and officers are solidarily liable with the corporation for the termination of employment of employees only if such is done with malice or in bad faith. There being no proof that he was guilty of malice and bad faith in Sy's illegal dismissal, respondent Ng, as its President and CEO, cannot be held solidarily liable with Neat, Inc.

APPEARANCES OF COUNSEL

Public Attorney's Office for petitioners.
Ang & Associates for respondents.

D E C I S I O N

PERALTA, *J.*:

This is a Petition for Review on *Certiorari* of the Court of Appeals Decision[1] dated March 27, 2014, which reversed and set aside the Decision[2] dated December 27, 2012 issued by the National Labor Relations Commission in NLRC LAC Case No. 08-002451-12 and, accordingly, entered a new judgment finding that petitioners Ricardo Sy and Henry Alix were terminated from employment for just causes, but ordered respondents Neat, Inc., Banana Peel and Paul Vincent Ng to pay petitioners ₱30,000.00 each as nominal damages for the denial of their right to procedural due process.

Respondent Neat, Inc. is a corporation existing by virtue of Philippine laws, and the owner/distributor of rubber slippers known as "*Banana Peel,*" while respondent Paul Vincent Ng is its President and Chief Executive Officer. Petitioner Ricardo Sy was hired on May 5, 2008 as company driver and was dismissed from work on August 4, 2011. Petitioner Henry Alix was hired on November 30, 2005 as a delivery helper/utility and was dismissed from work on May 31, 2011.

Recounting how he was dismissed from work, petitioner Sy alleged that on July 28, 2011, his co-worker Jeffrey Enconado blocked his way to the daily time record of the company, which

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[1] Penned by Associate Justice Isaias P. Dicdican, with Associate Justices Michael P. Elbinias and Victoria Isabel A. Paredes, concurring; *rollo,* pp. 488-504.

[2] Penned by Commissioner Numeriano D. Villena with Commissioner Herminio V. Suelo concurring, and Commissioner Angelo Ang Palaña dissenting; *id.* at 65-73.

annoyed him as he was going to be late for work. When he learned from the delivery schedule that Enconado would be his partner, Sy requested the company assistant operations manager, Cesca Abuan, to assign him another "*pahinante*" or delivery utility, but the request was not acted upon. In order to avoid confrontation with Enconado, Sy assigned to himself a new delivery utility. Abuan reported the incident to the human resources department, for which Sy was required to submit a written explanation. The next day, Sy was informed that he would be suspended due to insubordination for three (3) days starting July 29, 2011 until August 2, 2011. Meantime, Sy was supposedly issued 3 other memoranda, covering violations of company rules and regulations on wearing of improper office uniform, which were committed in 2009. On August 3, 2011, Sy reported for work but was not allowed to log in/time in. Human Resource (*HR*) Manager Anabel Tetan informed Sy that his services will be terminated effective August 4, 2011 due to poor performance. Sy disagreed, claiming that for the 3 years that he worked with the company, he received bonuses for excellent performance.

For his part, petitioner Alix averred that sometime in February 2011, he was ordered to assist a newly-hired clerk. After helping his co-worker, Alix sat down for a while. Respondent Ng saw Alix, and thought that he was doing nothing during working hours. On May 19, 2011, Alix was assigned to clean at the company warehouse. After working, Ng saw Alix resting again. Alix was suspended for 3 days, and was thereafter dismissed. A month after his dismissal, Alix went back to the company to ask for his salary. Before being allowed to receive his salary, Alix was asked to sign a document. In dire need of money, he was left with no option but to sign the document, which he later discovered to be a waiver.

On August 10, 2011, petitioners Sy and Alix filed a Complaint[3] for illegal dismissal and payment of money claims.

Respondents Neat, Inc. and Ng countered that during the period that petitioners were employed, they were both problem

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[3] *Rollo*, pp. 85-86.

employees. They alleged that Sy was the recipient of numerous disciplinary actions, namely:

Date of Memorandum	Nature of Offense	Penalty Imposed
30 January 2009	Improper uniform (wearing earrings)	Warning
29 May 20009	Improper uniform	Warning
01 June 2009	Improper uniform	3-day suspension
28 July 2011	Insubordination	3-day suspension
05 August 2011	Poor Performance valuation	Warning

In a notice dated August 4, 2011, respondent Neat, Inc., through HR Manager Tetan, terminated Sy's services effective on even date, thus:

> We regret to inform you that Neat, Inc. has terminated your employment effective August 04, 2011. Your dismissal is due to the offenses made; according to our record you have been issued 5 written warnings that are subjected to your dismissal.
>
> Neat, Inc. would like to take this opportunity to thank you for your service that you rendered in our company. Please report to the head office HR Department for your clearance and return any company properties that are in your possession.[4]

Alix was also a recipient of many disciplinary actions:

Date of Memorandum	Nature of Offense	Penalty Imposed
21 July 2007	Negligence in work	Warning
29 May 2009	Improper Uniform	Warning
01 February 2011	Wasting Time	Warning
01 February 2011	Poor Performance Evaluation	Warning
19 May 2011	Wasting Time	3-day suspension
20 May 2011	Frequent Tardiness	Warning
30 May 2011	Poor Performance	Warning

In a Memorandum[5] dated May 31, 2011, Neat, Inc., through HR Manager Tetan, terminated Alix's services on even date, thus:

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[4] *Id.* at 354; Marked as Annex "377".

[5] *Id.* at 379.

We regret to inform you that your employment with Neat, Inc. has terminated effective as of May 31, 2011. Your dismissal is due to the offense made; according to our record you have been issued 6 written warnings that are subjected to your dismissal.

Reason for your termination are as follows:

1st warning (issued on July 21, 2008) – negligence in performing his work
2nd warning (issued on May 29, 2009) – Not wearing complete uniform
3rd warning (issued on February 1, 2011) – Wasting time during working hours
4th warning (issued on February 1, 2011) – Poor performance evaluation from Production Supervisor, Noel Jabagat
5th warning (issued on May 19, 2011) – Wasting time during working hours
6th warning (issued on May 20, 2011) – Tardiness for the month of January, February, March, April 2011
7th warning (issued on May 30, 2011) – Poor performance evaluation from operation[s] head.

Respondents contended that because of petitioners' continued and repeated commission of various offenses and violations of company rules and regulations, they were terminated for a just cause. They added that petitioners were paid wages, overtime pay, 13th month pay and other benefits in accordance with the Labor Code and other laws, as shown in the payslips attached as Annexes "1" to "354" of their position paper.

As the parties failed to reach a settlement, the Labor Arbiter[6] (*LA*) directed them to submit their respective position papers. Both parties submitted their Position Papers on October 13, 2011, their Replies on November 15, 2011, and their Rejoinders on November 28, 2011.

On July 25, 2012, the LA rendered a Decision, the dispositive portion of which states:

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[6] Penned by Labor Arbiter Arden S. Anni.

WHEREFORE, premises considered, the complaint for illegal dismissal is dismissed for lack of merit. But, the respondents are hereby ordered to pay complainants Alix and Sy the amount of ₱15,000.00 each, or a total of ₱30,000.00 for both, as financial assistance.

All other claims of complainants are dismissed for lack of merit.

SO ORDERED.[7]

The LA found that petitioners Sy and Alix were dismissed due to serious misconduct, gross neglect of duty and insubordination. It held that these offenses were duly proven by the respondents, as can be gleaned from the case records, and noted that Alix even signed a Waiver and Release on June 10, 2011, releasing respondents from any liabilities whatsoever in connection with his employment. The LA ruled that the evidence on record shows that respondents gave petitioners opportunity to defend themselves, and have thus complied with the procedural due process required by the Labor Code. Nonetheless, for compassionate reasons and considering that petitioners have rendered services which somehow contributed to the growth of the company, the LA deemed it proper to award them financial assistance in the amount of ₱15,000.00 each.

Dissatisfied with the Labor Arbiter decision, petitioners filed an appeal before the National Labor Relations Commission (*NLRC*).

On December 27, 2012, the NLRC rendered a Decision, the dispositive portion of which reads:

WHEREFORE, complainants' APPEAL is hereby GRANTED. Respondents are hereby ordered to pay complainants full backwages and separation pay equivalent to one (1) month salary for every year of service. The award of financial assistance is deleted.

The attached computation shall form part of the decision.

SO ORDERED.[8]

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[7] *Rollo,* p. 83.

[8] *Id.* at 73.

The NLRC reversed the LA's Decision, finding that the records failed to support the grounds of serious misconduct, gross neglect of duty and insubordination cited by respondents as bases in terminating petitioners' employment. It held that records show that petitioners were suspended after a single incident and thereafter, they were served notices of termination which denied them their rights to defend themselves. The NLRC noted that Sy was suspended after changing his "*pahinante*" despite not being allowed to do so, and was then issued 3 memos for infractions committed in 2009, while Alix was suspended after being caught resting and not working, and was thereafter served with a notice of termination.

The NLRC stressed that past infractions cannot be collectively taken as justification for dismissal of an employee from service. The NLRC pointed out that in the matrix submitted by respondents, corresponding penalties for past infractions were already imposed, and petitioners were further suspended for their latest infractions; thus, there is no valid justification on the part of respondents to consider the past infractions in terminating petitioners. Anent the waiver and release signed by Alix, the NLRC rejected it, stating that his wage is his only source of income to sustain his family, and that any person in a similar situation would sign any document to get the withheld salary. Since petitioners were illegally dismissed, the NLRC held that they are entitled to payment of backwages and payment of separation pay *in lieu* of reinstatement on account of the strained relations between the parties, but the award of financial assistance is considered moot and academic.

Respondents filed a motion for reconsideration, which the NLRC denied for lack of merit in the Resolution dated June 20, 2013.

Aggrieved by the NLRC Decision, respondents filed before the Court of Appeals (*CA*) a petition for *certiorari* under Rule 65 of the Rules of Court.

On March 27, 2014, the CA rendered the assailed Decision, finding that the NLRC gravely abused its discretion in reversing the decision of the LA, and disposing as follows:

WHEREFORE, in view of the foregoing premises, the petition is hereby partially **GRANTED**. The Resolution dated June 20, 2013 and the Decision dated December 27, 2012 issued by the National Labor Relations Commission (Fourth Division) in NLRC LAC Case No. 08-002451-12 are **REVERSED AND SET ASIDE.**

Accordingly, a **NEW JUDGMENT** is entered finding that private respondents were terminated from employment for just cause. However, the petitioners are ordered to pay private respondents ₱30,000.00 each as nominal damages for the former's denial of their right to procedural due process.

SO ORDERED.[9]

The CA held that the dismissal of petitioners was justified under Article 282 (a) and (b) of the Labor Code, as amended, on the grounds of serious misconduct or willful disobedience of the lawful order of the employer or representative in connection with the employee's work, and gross and habitual neglect of the employee's duties.

With respect to petitioner Sy, the CA stressed that his repeated violations of the company's rules and regulation, as reflected in the several warnings found on record, amounted to just cause for termination, and that his act of insubordination alone when he changed his "*pahinante*" in direct contravention of the orders of his superior, amounts to serious misconduct or willful disobedience. As for petitioner Alix, the CA said that aside from his frequent tardiness, the six (6) warnings issued to him provide a just cause for his dismissal. While there are just causes for the termination of petitioners' employment, the CA ruled that failure to comply with the procedural requirements of notice [specifying the ground/s for termination, and giving to the employee reasonable opportunity to be heard] and hearing, constitutes denial of due process, which entitles them to an award of nominal damages in the amount of ₱30,000.00 each. As regards the Waiver and Release signed by Alix, the CA said that it cannot bar him from demanding what is legally due, because an employee does not stand on equal footing with the employer, and in desperate situations may even

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[9] *Id.* at 503. (Emphasis is the original)

be willing to bargain away his rights. Finally, there being no basis for the grant of backwages and separation pay, the CA no longer discussed the monetary award computed by the NLRC.

Unconvinced with the CA Decision, petitioners filed this petition for review on *certiorari* under Rule 45, arguing in the affirmative of the following issues:

I.

WHETHER THE PETITIONERS' ALLEGED PAST INFRACTIONS IS DETERMINATIVE IN IMPOSING THE PENALITY FOR THEIR SUPPOSED RECENT INFRACTION.

II.

WHETHER RESPONDENTS ILLEGALLY DISMISSED PETITIONERS.

III.

WHETHER PETITIONERS ARE ENTITLED TO MORAL AND EXEMPLARY DAMAGES AND ATTORNEY'S FEES.[10]

The petition is partly impressed with merit.

In resolving the issue of whether or not respondents were able to establish that petitioners were validly terminated on the ground of serious misconduct and willful disobedience of the lawful orders of the employer, and gross and habitual neglect of duties, the Court is called upon to re-examine the facts and evidence on record. Given that the Court is not a trier of facts, and the scope of its authority under Rule 45 of the Rules of Court is confined only to errors of law and does not extend to questions of fact, which are for labor tribunals to resolve,[11] one of the recognized exceptions to the rule is when the factual findings and conclusion of the labor tribunals are contradictory or inconsistent with those of the CA.[12] Departure from the settled

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[10] *Id.* at 19.

[11] *Raza v. Daikoku Electronic Phils., Inc., et al.*, 765 Phil. 61, 75 (2015).

[12] *Philippine Long Distance Telephone Company, et al. v. Estrañero*, 745 Phil. 543, 550 (2014).

rule is warranted and a review of the records and the evidence presented by the opposing parties shall be made in order to determine which findings should be preferred as more conformable with evidentiary facts.

After a circumspect study of the records, the Court rules that the CA erred in finding that respondents were able to prove that the totality of Sy's violations of company rules and regulations constitute a just cause for termination of employment.

It is well settled that in illegal dismissal cases, "the burden of proof is upon the employer to show that the employee's termination from service is for a just and valid cause. The employer's case succeeds or fails on the strength of its evidence and not on the weakness of that adduced by the employee, in keeping with the principle that the scales of justice should be tilted in favor of the latter in case of doubt in the evidence presented by them. Often described as more than a mere scintilla, the quantum of proof is substantial evidence which is understood as such relevant evidence as a reasonable mind might accept as adequate to support a conclusion, even if other equally reasonable minds might conceivably opine otherwise. Failure of the employer to discharge the foregoing onus would mean that the dismissal is not justified and therefore illegal."[13]

In determining the sanction imposable on an employee, the employer may consider the former's past misconduct and previous infractions. Also known as the principle of totality of infractions, the Court explained such concept in *Merin v. National Labor Relations Commission, et al.*,[14] thus:

> The totality of infractions or the number of violations committed during the period of employment shall be considered in determining the penalty to be imposed upon an erring employee. The offenses committed by petitioner should not be taken singly and separately. Fitness for continued employment cannot be compartmentalized into

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[13] *Blue Sky Trading Co., Inc. v. Blas*, *et al.*, 683 Phil. 689, 706 (2007), citing *Functional, Inc. v. Granfil*, 676 Phil. 279, 287 (2011).

[14] 590 Phil. 596, 602-603 (2008).

tight little cubicles of aspects of character, conduct and ability separate and independent of each other. While it may be true that petitioner was penalized for his previous infractions, this does not and should not mean that his employment record would be wiped clean of his infractions. After all, the record of an employee is a relevant consideration in determining the penalty that should be meted out since an employee's past misconduct and present behavior must be taken together in determining the proper imposable penalty. Despite the sanctions imposed upon petitioner, he continued to commit misconduct and exhibit undesirable behavior on board. Indeed, the employer cannot be compelled to retain a misbehaving employee, or one who is guilty of acts inimical to its interests. It has the right to dismiss such an employee if only as a measure of self-protection.

A closer look into the entirety of the violations imputed against Sy shows that respondents failed to prove with substantial evidence that the totality of infractions committed by him constitutes as a just cause for his dismissal under the Labor Code. In fact, even by its own standards, respondents' dismissal of Sy fails to measure up to Neat, Inc.'s Guide to the Administration of Code of Conduct,[15] which states that the "termination of employment of the employee by the Company is usually imposed when the employee's record over the period of time shows clearly that the amount of warnings and other disciplinary actions has not made the employee understand the error of his ways and/or for the first offense which is such a serious error that cannot be ignored."[16]

There is no dispute that Sy was properly warned twice and aptly sanctioned with a 3-day suspension for violation of the company dress code which he committed on January 29, 2009, May 28, 2009 and May 30, 2009.[17] There is also no question that Sy is guilty of insubordination for not following the instruction of Operation Assistant Cesca Abuan on July 28,

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[15] *Id.* at 309-312.

[16] *Id.* at 310.

[17] *Rollo*, pp. 313, 315, and 317; Marked as Annexes "356", "358" and "360", respectively.

2011 as to the swapping of his assigned delivery utility, and for insisting on his preferred delivery utility. Because of such incident, a Memorandum[18] dated July 29, 2011 was issued to Sy (1) suspending him for 3 days starting on even date until August 2, 2011; (2) requiring him to report to the head office on August 3, 2011 to discuss the grounds and degree of violation, and (3) warning him that further violation of policies will result in disciplinary action up to and including immediate termination of employment. Unfortunately, Sy was terminated the following day, August 4, 2011, due to the 5 written warnings previously issued to him — 3 of which were due to wearing of improper uniform in 2009, 1 for insubordination on July 28, 2011, and the last for supposed poor performance evaluation on August 3, 2011.

Based on a Memorandum[19] dated August 5, 2011, HR Manager Tetan met with Sy on August 3, 2011 to discuss his work performance, particularly his attitude problem. On said date, Tetan discussed Sy's performance evaluation by his Operation Manager, Ricky Jamlid, who said that on several instances Sy was not following instruction, despite being given verbal warning. Tetan also pointed out that such concern has already been raised by the previous Operations Manager, Marianne De Leon, and aside from not following instruction, complaints were also received that Sy keeps on arguing and did not show respect to his superior. Tetan added that based on Sy's written explanation with regard to his performance evaluation, he did not take the criticism positively and blamed someone else for his mistake. Tetan stated that Sy just realized and acknowledged his mistake after having a closed door meeting together with his operation manager last August 3, 2011, and promised to take the necessary steps to improve his performance. In closing, Tetan informed Sy that the meeting was held to give appropriate action for the complaints of his operations manager on his poor performance.

Contrary to respondents' contention, however, the past 3 infractions in 2009 for wearing of improper uniform can no

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[18] *Id.* at 318, Marked as Annex "361".

[19] *Id.* at 321, Marked as Annex "363".

longer be taken against Sy, because he was already warned and penalized for them, and he has, in fact, reformed his errors in that regard. Notably, in the Performance Appraisal dated August 3, 2011 for the criteria of "Personal Appearance — personal impression of an individual makes on others. (Consider cleanliness, grooming, neatness and appropriateness of dress on the job,"[20] Operations Manager Jamlid gave Sy a grade of 80 points for "Good — Competent and dependable level of performance. Meets standards at the job,"[21] and commented that Sy report[s] to work in complete uniform. Where an employee had already suffered the corresponding penalties for his infraction, to consider the same offenses as justification for his dismissal would be penalizing the employee twice for the same offense.[22]

Significantly, the infractions of Sy for wearing of improper uniform are not related to his latest infractions of insubordination and purported poor performance evaluation. Previous offenses may be used as valid justification for dismissal only if they are related to the subsequent offense upon which the basis of termination is decreed,[23] or if they have a bearing on the proximate offense warranting dismissal.[24]

Neither can respondents fault Sy's sole act of insubordination as amounting to serious misconduct, willful disregard of the lawful orders of the employer, or gross and habitual negligence.

Misconduct is defined as the "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."[25] In order for serious

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[20] *Id.* at 323.

[21] *Id.*

[22] *Salas v. Aboitiz One, Inc.*, 578 Phil. 915, 929 (2008).

[23] *Id.*

[24] *McDonalds (Katipunan Branch), etc. v. Alba*, 595 Phil. 44, 54 (2008).

[25] *Imasen Philippine Manufacturing Corporation v. Alcon, et al.,* 746 Phil. 172*,* 181 (2014).

misconduct to justify dismissal, these requisites must be present: (a) it 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.[26] On the other hand, to be considered as a just cause for terminating an employee's services, "*insubordination*" requires that the orders, regulations or instructions of the employer or representative must be (a) reasonable and lawful; (b) sufficiently known to the employee; (c) in connection with the duties which the employee has been engaged to discharge; and (d) the employee's assailed conduct must have been willful or intentional, the willfulness being characterized by a wrongful and perverse attitude.[27]

Sy's insubordination of changing his delivery utility without permission from the operations manager is no doubt a misconduct, but not a serious and willful one as to cost him his livelihood. Concededly, Sy's act of unilaterally assigning to himself another delivery utility *in lieu* of the one designated to him, reflects his attitude problem and disregard of a lawful order of a representative of the employer. Be that as it may, such willful disobedience cannot be deemed to depict a wrongful attitude, because it was prompted by his desire to carry out his duty without distractions. It is not farfetched that Sy's annoyance with the delivery utility assigned to him, who annoyed him earlier in the day by blocking his way to the daily time record, could have prevented him from performing his task, or worst, could have resulted in fisticuffs with the said co-worker.

As a just cause for termination of employment, on the other hand, the neglect of duties must not only be gross but habitual as well. Gross negligence means an absence of that diligence that a reasonably prudent man would use in his own affairs, and connotes want of care in the performance of one's duties.[28]

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[26] *Id.*

[27] *Nissan Motors Phils., Inc. v. Angelo,* 673 Phil. 150, 160 (2011).

[28] *Nissan Motors Philippines, Inc. v. Angelo*, *supra* note 27, at 162.

Habitual neglect implies repeated failure to perform one's duties for a period of time, depending upon the circumstances.[29] A single or isolated act of negligence does not constitute a just cause for the dismissal of the employee. Suffice it to state that by no stretch of reasoning can the 5 infractions — wearing of improper uniform, insubordination and poor performance evaluation — imputed against Sy be collectively deemed as gross and habitual negligence.

A careful perusal of the Memorandum dated August 5, 2011 regarding Sy's poor performance evaluation further reveals that such unfavorable conclusion is not consistent with the Performance Appraisal dated August 3, 2011. Instead of being given an "Unsatisfactory" rating, Operations Manager Jamlid merely stated that Sy "needed improvement" in terms of "People Interaction," "Cooperativeness" and "Judgment" mainly because he is very emotional when dealing with his superior and co-workers. In citing poor performance as a ground for termination, respondents cannot also ignore the other factors where Sy was rated "Good," namely: "Quality," "Productivity," "Job Knowledge," "Availability," "Independence," "Personal Appearance," and "Attendance." Granted that the employer enjoys a wide latitude of discretion in the promulgation of policies, rules and regulations on work-related activities of the employees, those directives must always be fair and reasonable, and the corresponding penalties, when prescribed, must be commensurate to the offense involved and to the degree of the infraction.[30] To be lawful, the cause for termination must be a serious and grave malfeasance to justify the deprivation of a means of livelihood. This is merely in keeping with the spirit of our Constitution and laws which lean over backwards in favor of the working class, and mandate that every doubt must be resolved in their favor.[31] After all, an

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[29] *AFI International Trading Corp. (Zamboanga Buying Station) v. Lorenzo*, 561 Phil. 451, 457 (2007).

[30] *VH Manufacturing, Inc. v. NLRC*, 379 Phil. 444, 451, 457 (2000).

[31] *The Hongkong and Shanghai Banking Corporation v. NLRC*, 328 Phil. 1156, 1166 (1996).

employment is not merely a contractual relationship, since in the life of most workers it may spell the difference of whether or not a family will have food on their table, roof over their heads and education for their children.

With respect to Sy's attitude problem, the Court finds no evidence to substantiate such allegation. Aside from the allegations in the August 5, 2012 memorandum to the effect that the Operations Managers have complained about his attitude problem, nothing in the records show that Sy was previously warned for not following instructions, and for arguing with or disrespecting his superiors. Bare allegations, unsubstantiated by evidence, are not equivalent to proof under our Rules. To be sure, unsubstantiated suspicions, accusations and conclusions of employers do not provide for legal justification for dismissing an employee. Respondents failed to present reports or sworn statements of the Operations Managers, narrating the instances when he displayed attitude problems at work, as well as his previous Performance Appraisal indicating unsatisfactory evaluation of his work.

On the other hand, in light of the totality of petitioner Alix's infractions against the company rules and regulations, the Court cannot extend the same magnanimity it has accorded to Sy. Respondents have proven with substantial evidence said infractions through 7 written warnings, *viz.*:

1. July 21, 2007 – Negligence of work due to lost or receipt of Handy Man[32]
2. May 29, 2009 – Wearing of improper uniform[33]
3. February 1, 2011 – Wasting time during working hours[34]
4. February 1, 2011 – Poor Performance Evaluation[35]
5. May 19, 2011 – Wasting time during working hours[36]

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[32] *Rollo*, p. 326; Marked as Annex "365".

[33] *Id.* at 327; Marked as Annex "366".

[34] *Id.* at 330; Marked as Annex "368".

[35] *Id.* at 333; Marked as Annex "370".

[36] *Id.* at 340; Marked as Annex "372".

6. May 20, 2011 – Tardiness for the months of January, February, March and April of 2011[37]
7. May 30, 2011 – Poor Performance evaluation from operations head[38]

It does not escape the attention of the Court that the third (3rd) to sixth (6th) warnings were all received by petitioner Alix only on May 20, 2011, and that the seventh (7th) warning was received on the very day of his termination, May 31, 2011, prompting him to make separate handwritten explanations on the same date of receipt of said warnings. Respondents' perfunctory observance of Alix's right to notice and hearing, however, does not detract from the veracity of the violations of company rules and regulation imputed against him.

Habitual tardiness alone, as aptly noted by the CA, is a just cause for termination of Alix's employment. Punctuality is a reasonable standard imposed on every employee, whether in government or private sector, whereas habitual tardiness is a serious offense that may very well constitute gross or habitual neglect of duty, a just cause to dismiss a regular employee.[39] Habitual tardiness manifests lack of initiative, diligence and discipline that are inimical to the employer's general productivity and business interest.[40] Respondents have substantiated habitual tardiness by presenting Alix's daily time card, showing that in 2011 alone prior to his dismissal, he was late fourteen (14) times in January, seven (7) times in February, eight (8) times in March, and five (5) times in April.[41]

Having in mind the work productivity-related infractions he incurred in a span of 5 months from January to May 2011 — consisting of habitual tardiness, 2 warnings for wasting time during working hours and 2 more warnings for poor performance

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[37] *Id.* at 346; Marked as Annex "374".

[38] *Id.* at 351; Marked as Annex "375".

[39] *Carvajal v. Luzon Development Bank, et al.,* 692 Phil. 273, 285 (2012).

[40] *Realda v. New Age Graphics, Inc., et al.*, 686 Phil. 1110, 1121 (2012).

[41] *Rollo*, pp. 347-350.

evaluation — the Court must agree with the CA that respondents have a just cause to terminate Alix's employment. As held in *Piedad v. Lanao del Norte Electric Coop, Inc..,*[42] "fitness for continued employment cannot be compartmentalized into tight little cubicles of aspects of character, conduct and ability separate and independent of each other. A series of irregularities when put together may constitute serious misconduct, which under Article 283 [now Art. 297] of the Labor Code, is a just cause for dismissal."

More than the fact that an employee's right to security of tenure does not give him a vested right to his position,[43] Alix would also do well to bear in mind the prerogative of the employer to prescribe reasonable rules and regulations necessary or proper for the conduct of its business and to provide certain disciplinary measures in order to implement said rules and to assure that the same would be complied with.[44] Although the State affords the constitutional blanket of affording protection to labor, the rule is settled that it must also protect the right of employers to exercise what are clearly management prerogatives, so long as the exercise is without abuse of discretion.[45]

Having discussed the just causes for termination of employment, the Court may now dwell on the procedural requirements of due process as laid down in *King of Kings Transport, Inc. v. Mamac*:[46]

To clarify, the following should be considered in terminating the services of employees:

(1) The **first written notice** to be served on the employees should contain the specific causes or grounds for termination against them,

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[42] 237 Phil. 481, 488 (1987).

[43] *Exocet Security and Allied Services Corp., et al. v. Serrano*, 744 Phil. 403, 420 (2014).

[44] *Areno, Jr. v. Skycable PCC-Baguio*, 625 Phil. 561, 576-577 (2010).

[45] *Pantranco North Express, Inc. v. NLRC*, 373 Phil. 520, 529 (1999).

[46] 553 Phil. 108, 115-116 (2007). (Emphasis in the original)

and a directive that the employees are given the opportunity to submit their written explanation within a reasonable period. "Reasonable opportunity" under the Omnibus Rules means every kind of assistance that management must accord to the employees to enable them to prepare adequately for their defense. This should be construed as a period of at least five (5) calendar days from receipt of the notice to give the employees an opportunity to study the accusation against them, consult a union official or lawyer, gather data and evidence, and decide on the defenses they will raise against the complaint. Moreover, in order to enable the employees to intelligently prepare their explanation and defenses, the notice should contain a detailed narration of the facts and circumstances that will serve as basis for the charge against the employees. A general description of the charge will not suffice. *Lastly*, the notice should specifically mention which company rules, if any, are violated and/or which among the grounds under Art. 282 is being charged against the employees.

(2) After serving the first notice, the employers should schedule and conduct a **hearing** or **conference** wherein the employees will be given the opportunity to: (1) explain and clarify their defenses to the charge against them; (2) present evidence in support of their defenses; and (3) rebut the evidence presented against them by the management. During the hearing or conference, the employees are given the chance to defend themselves personally, with the assistance of a representative or counsel of their choice. Moreover, this conference or hearing could be used by the parties as an opportunity to come to an amicable settlement.

(3) After determining that termination of employment is justified, the employers shall serve the employees a **written notice of termination** indicating that: (1) all circumstances involving the charge against the employees have been considered; and (2) grounds have been established to justify the severance of their employment.

Respondents failed to afford petitioners the first written notice, containing the specific causes or grounds for termination against them, as well as the requisite hearing or conference wherein they should have been given reasonable opportunity to be heard and defend themselves. Save for the notices of termination dated August 4, 2011 and May 31, 2011[47] issued to petitioners Sy

[47] *Rollo,* pp. 354 and 379; Marked as Annexes "377" and "379".

and Alix, respectively, all the other notices given to petitioners consist of warnings, suspension, and orders to submit written explanations for specific violations of company rules and regulations. It bears stressing that prior to his termination on August 4, 2011, the last warning given to Sy on August 3, 2011 was on account of poor performance evaluation only, without mentioning his past infractions of wearing improper uniform and insubordination. As for Alix, the last warning given to him was received on the very day of his termination, May 31, 2011, for poor performance evaluation *sans* any reference to his past infractions of negligence in performing work, wearing of improper uniform, wasting time during working hours, tardiness, and poor performance evaluation. While they were given several warnings for separate offenses committed, petitioners were not given opportunity to be heard why they should not be terminated on account of the totality of their respective infractions against company rules and regulations. It bears emphasis that notice to the employee should embody the particular acts or omissions constituting the grounds for which the dismissal is sought, and that an employee may be dismissed only if the grounds cited in the pre-dismissal notice were the ones cited for the termination of employment.[48]

An employee who is dismissed without just cause and due process is entitled to either reinstatement if viable or separation pay if reinstatement is no longer viable, and payment of full backwages and other benefits. Specifically prayed for by petitioner Sy,[49] the NLRC correctly awarded separation pay, which is proper when reinstatement is no longer viable due to the antagonism and strained relationship between the employer and the employee as a consequence of the litigation, not to mention the considerable length of time that the latter has been out of the former's employ. Nevertheless, the Court limits the award of separation pay, backwages and other benefits, because

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[48] *Glaxo Wellcome Phils. Inc. v. Nagkakaisang Empleyado ng Wellcome-DFA,* 493 Phil. 410, 427 (2005).

[49] *Rollo*, p. 25, Petition for Review on *Certiorari*; p. 85, Complaint; p. 418, Notice of Appeal with Manifestation and Memorandum of Appeal.

Sy is not entirely faultless.[50] Since the latest infraction of Sy relating to attitude problem at work does not constitute serious misconduct, willful disobedience to lawful orders of the employer or gross and habitual negligence in the performance of duties, as to merit the harsh penalty of dismissal, the Court holds that Sy is entitled to the award of (1) separation pay equivalent to 1 month salary for every year of service computed from May 5, 2008 when he was hired up to December 27, 2012 when the NLRC ruled that he was illegally dismissed; and (2) backwages and other benefits, computed from the time of his termination on August 4, 2012 until December 27, 2012.

Anent the Waiver and Release dated June 10, 2011 where Alix stated that he has no claim of whatever kind and nature against Neat, Inc., the Court sustains the CA that such quitclaim does not bar an employee from demanding what is legally due him, especially when it is made under circumstances where the voluntariness of such agreement is questionable. While quitclaims are, at times, considered as valid and binding compromise agreements,[51] the rule is settled that the burden rests on the employer to prove that the quitclaim constitutes a credible and reasonable settlement of what an employee is entitled to recover, and that the one accomplishing it has done so voluntarily and with a full understanding of its import.[52] Respondents failed to discharge such burden. Recognizing that the subordinate position of individual rank-and-file employees *vis-a-vis* management renders the former vulnerable to the latter's blandishments, importunings and even intimidation that may well result in the improvident if reluctant signing over of benefits to which the employees are entitled, the Court has consistently held that quitclaims of workers' benefits will not bar them from asserting these benefits on the ground that public policy prohibits such waivers.[53]

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[50] *Salas v. Aboitiz One, Inc.*, 578 Phil. 915, 930 (2008); *PLDT v. National Labor Relations Commission*, 362 Phil. 352, 361 (1999).

[51] *Samaniego v. National Labor Relations Commission*, 275 Phil. 126, 135 (1991).

[52] *Plastimer Industrial Corp. v. Gopo, et al.*, 658 Phil. 627, 635 (2011).

[53] *Carmelcraft Corporation v. NLRC*, 264 Phil. 763, 769 (1990).

The Court likewise upholds the award of nominal damages awarded in favor of petitioners Sy and Alix. Nominal damages are "adjudicated in order that a right of the plaintiff, which has been violated or invaded by the defendant, may be vindicated or recognized, and not for the purpose of indemnifying the plaintiff for any loss suffered by him."[54] Jurisprudence holds that such indemnity to be imposed should be stiffer to discourage the abhorrent practice of "dismiss now, pay later."[55] The sanction should be in the nature of indemnification or penalty and should depend on the facts of each case, taking into special consideration the gravity of the due process violation of the employer."[56] Considering that petitioners were deprived of their right to notice and hearing prior to their termination, the Court affirms the CA's award of ₱30,000.00 as nominal damages.

To be entitled to an award of moral damages, it is not enough for an employee to prove that he was dismissed without just cause or due process. Moral damages are recoverable only where the dismissal or suspension of the employee was attended by bad faith or fraud, or constituted an act oppressive to labor, or was done in a manner contrary to morals, good customs or public policy.[57] "The person claiming moral damages must prove the existence of bad faith by clear and convincing evidence for the law always presumes good faith."[58] Awarded in accordance with the sound discretion of the court, on the other hand, exemplary damages are imposed as a corrective measure when the guilty party has acted in a wanton, fraudulent, reckless and oppressive manner. In this case, apart from petitioners' bare allegation of entitlement thereto, no proof was presented to justify an award of moral and exemplary damages. At any rate, all the damages awarded to petitioners shall incur interest at the rate of six percent

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[54] An Act to Ordain and Institute the Civil Code of the Philippines, Republic Act No. 386 (1950), Art. 2221.

[55] *Concepcion v. Minex Import Corporation, et al.*, 679 Phil. 491, 507 (2012), citing *Agabon v. NLRC*, 485 Phil. 248, 287 (2004).

[56] *Id.*

[57] *Montinola v. Philippine Airlines*, 742 Phil. 487, 505 (2014).

[58] *Id.*

(6%) *per annum* from finality of this Decision until fully paid, in line with *Nacar v. Gallery Frames, Inc*.[59]

In actions for recovery of wages, or where an employee was forced to litigate and thus incur expenses to protect his rights and interests, a monetary award by way of attorney's fees is justifiable under Article III of the Labor Code, Section 8, Rule VIII, Book III of its Implementing Rules; and paragraph 7, Article 2208 of the New Civil Code. Considering that petitioners were compelled to engage the services of the Public Attorney's Office to protect their rights and interests, the attorney's fees equivalent to 10% of the monetary award to which they are entitled should be deposited to the National Treasury in accordance with Republic Act No. 9406.[60]

Finally, as to the liability of respondent Paul Vincent Ng as President and Chief Executive Officer of Neat, Inc., for the illegal dismissal of petitioner Sy and the dismissal of Alix without due process, it has been held that a corporation, being a juridical entity, may act only through its directors, officers and employees, and that obligations incurred by these officers, acting as such corporate agents, are not theirs but the direct accountability of the corporation they represent.[61] Solidary liability may at times be incurred, but only under exceptional circumstances.[62] In labor cases, corporate directors and officers are solidarily liable with the corporation for the termination of employment of employees only if such is done with malice or in bad faith.[63] There being

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[59] 716 Phil. 267, 282-283 (2013).

[60] An Act Reorganizing and Strengthening the Public Attorney's Office (PAO), Republic Act No. 9406, §6 (2007):

"The costs of the suit, attorney's fees and contingent fees imposed upon the adversary of the PAO clients after a successful litigation shall be deposited in the National Treasury as trust fund and shall be disbursed for special allowances of authorized officials and lawyers of the PAO."

[61] *Alba v. Yupangco*, 636 Phil. 514, 519 (2010), quoting *MAM Realty Dev't. Corp. v. NLRC*, 314 Phil. 838, 844 (1995).

[62] *Id.*

[63] *David v. National Federation of Labor Unions, et al.*, 604 Phil. 31, 41 (2009).

no proof that he was guilty of malice and bad faith in Sy's illegal dismissal, respondent Ng, as its President and CEO, cannot be held solidarily liable with Neat, Inc.

WHEREFORE, the petition for review on *certiorari* is **PARTLY GRANTED**. The Decision of the Court of Appeals dated March 27, 2014 in CA-G.R. SP No. 131410 is **AFFIRMED WITH MODIFICATION** declaring that petitioner Ricardo Sy was dismissed without just cause and due process. Accordingly, respondent Neat, Inc. is **ORDERED** to **PAY** him:

(1) Separation pay equivalent to one (1) month salary for every year of service, computed from May 5, 2008 when he was hired up to December 27, 2012 when the National Labor Relations Commission ruled that he was illegally dismissed;

(2) Backwages and other benefits, computed from August 4, 2011 when he was illegally dismissed up to December 27, 2012; and

(3) Ten percent (10%) attorney's fees based on the total amount of the awards, which shall be deposited to the National Treasury in accordance with Republic Act No. 9406.

Legal interest is further imposed on the monetary awards at the rate of six percent (6%) *per annum* from finality of this Decision until fully paid. The records of this case is **REMANDED** to the Labor Arbiter, who is **ORDERED** to make a re-computation of the total monetary benefits awarded.

SO ORDERED.

Carpio (Chairperson), Caguioa, and *Reyes, Jr., JJ.,* concur.

Perlas-Bernabe, J., on leave.

EN BANC

[A.M. No. 14-10-314-RTC. November 28, 2017]

Anonymous Complaint dated May 3, 2013, Re: Fake Certificates of Civil Service Eligibility of MARIVIC B. RAGEL, EVELYN C. RAGEL, EMELYN B. CAMPOS, and JOVILYN B. DAWANG.

SYLLABUS

1. **REMEDIAL LAW; EVIDENCE; TESTIMONIAL EVIDENCE; DENIAL AS A DEFENSE; DENIAL IS PURELY SELF-SERVING AND WITH NO EVIDENTIARY VALUE WHICH CRUMBLES IN LIGHT OF POSITIVE IDENTIFICATION.** — Evelyn Ragel and Emelyn Campos merely denied the allegations against them and claimed that they personally affixed their signatures on the records of the said examinations. However, apart from their bare denial, they did not submit any proof to negate the accusations against them. These are all flimsy and lame excuses, which collapse in the face of the very obvious evidence to the contrary. It is well-settled that denial is an inherently weak defense. To be believed, it must be buttressed by strong evidence of non-culpability; otherwise, such denial is purely self-serving and is with no evidentiary value. Like the defense of alibi, a denial crumbles in light of positive identification.

2. **POLITICAL LAW; ADMINISTRATIVE LAW; COURT PERSONNEL; EVERY EMPLOYEE OF THE JUDICIARY SHOULD BE AN EXAMPLE OF INTEGRITY, UPRIGHTNESS, AND HONESTY; BY THEIR ACT OF DISHONESTY, HEREIN COURT PERSONNEL FAILED TO MEET THE STRINGENT STANDARDS SET FOR A JUDICIAL EMPLOYEE, WHICH DESERVES DISMISSAL FROM SERVICE; CASE AT BAR.—** In *Dasco*, the Court explained that dishonesty is a grave offense punishable by dismissal, x x x It must be stressed that every employee of the judiciary should be an example of integrity, uprightness, and honesty. Like any public servant, he or she must exhibit the highest sense of honesty and integrity not only in the performance of official duties but also in personal and private dealings with

other people, to preserve the court's good name and standing. The image of a court of justice is mirrored in the conduct, official and otherwise, of the personnel who work thereat, from the judge to the lowest of its personnel. Court personnel have been enjoined to adhere to the exacting standards of morality and decency in their professional and private conduct in order to preserve the good name and integrity of the courts of justice. By their act of dishonesty, Evelyn Ragel and Emelyn Campos failed to meet the stringent standards set for a judicial employee. As such, they do not deserve to remain part of the judiciary and must be dismissed from office.

D E C I S I O N

***PER CURIAM*:**

The Case

For the consideration of the Court is the Administrative Matter for Agenda dated July 4, 2017[1] prepared by the Office of the Court Administrator (OCA) with the following recommendation:

RECOMMENDATION: It is respectfully recommended for the consideration of the Honorable Court that Evelyn Corpus Ragel, Stenographer I, Municipal Trial Court, Sto. Domingo, Nueva Ecija, and Emelyn Borillo Campos, Stenographer III, Branch 31, Regional Trial Court, Guimba, Nueva Ecija, be DISMISSED from the service with FORFEITURE of all retirement benefits except their accrued leave credits and with prejudice to re-employment in any branch or instrumentality of the government, including government-owned and controlled corporations.

The Facts

An anonymous letter dated May 3, 2013 was received by the OCA alleging that the Certificates of Civil Service Eligibility of the following court personnel are spurious and that their

[1] Penned by Jose Midas P. Marquez and Deputy Court Administrator Jenny Lind R. Aldecoa-Delorino.

educational attainment did not meet the requirements for their respective positions:

1. Marivic Borillo Ragel, Clerk II, Municipal Trial Court (MTC), Sto. Domingo, Nueva Ecija;
2. Evelyn Corpus Ragel, Stenographer I, MTC, Sto. Domingo, Nueva Ecija;
3. Emelyn Borillo Campos, Stenographer III, Regional Trial Court (RTC), Branch 31, Guimba, Nueva Ecija; and
4. Jovilyn Borillo Dawang, Stenographer I, MTC, Talugtog, Nueva Ecija.[2]

Thereafter, in its Resolution dated December 10, 2014, the Court directed the Civil Service Commission (CSC) to verify the authenticity of the eligibility of the aforesaid court personnel. In compliance therewith, Maria Leticia G. Reyna (Reyna), Director IV, Integrated Records Management Office of the CSC, submitted a letter informing the Court that the names of the above-mentioned court personnel are in the records of the CSC. However, a comparison of the photos in the Personal Data Sheets (PDS) of Evelyn Corpus Ragel, Emelyn Borillo Campos and Jovilyn Borillo Dawang with their photos in the Picture-Seat Plans of examinees in their respective rooms where they allegedly took the Civil Service Examinations showed discrepancies in their facial features.[3]

In a Resolution dated April 18, 2016, the Court dismissed the administrative complaint against Marivic B. Ragel while it required Evelyn Ragel and Emelyn Campos to file their respective Comments on the anonymous complaint.[4]

In a separate administrative case, docketed as A.M. No. P-15-3289, Jovilyn Dawang was dismissed from the service

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[2] *Rollo*, p. 68.

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

[4] *Id*. at 69.

on the ground of serious dishonesty in an *En Banc* Resolution[5] dated February 17, 2015.

In their Comment/Answer dated October 4, 2016, Evelyn Ragel and Emelyn Campos deny the allegation in the complaint. Evelyn Ragel states that she took the Civil Service Examination at E. Rodriguez Jr. High School, Quezon City on October 20, 1996, and she personally signed her signature as examinee in the records of the said examination. On the other hand, Emelyn Campos states that she took the Civil Service Examination on January 6, 1997 at the CSC-NCR Office and that she also personally affixed her signature in the records of the said examination. They both denied committing any act of dishonesty or deceit and maintained that they took their respective examinations.[6]

OCA corresponded with the CSC to request a certified copy of the Picture-Seat Plans of Emelyn Campos and Evelyn Ragel for their respective Civil Service Examinations. On June 14, 2017, Director Reyna sent an authenticated enlarged reproduction of the requested Picture-Seat Plans in the January 6, 1997 and October 20, 1996 Civil Service Examinations.

The Court's Ruling

The Court is disposed to accept the recommendation of the OCA.

We agree with the observation of the CSC and the OCA that the persons who appeared on the Picture-Seat Plans submitted by the CSC and who took the Civil Service Examinations on January 6, 1997 and October 20, 1996 were not Evelyn Ragel and Emelyn Campos, respectively. Both their photographs in the Picture-Seat Plans and those in the PDS that they submitted on April 8, 1997 and November 28, 1996, respectively, bear distinct differences in their facial features.[7] The differences are so apparent that even an ordinary person could easily

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[5] *Id*. at 42-45.

[6] *Id*. at 56-58.

[7] *Id*. at 70.

discern it and conclude that these persons are different from one another.

The OCA also observed that the variance in the signatures of Evelyn Ragel and Emelyn Campos appearing in the Picture-Seat Plans and their signatures in their respective PDS is obvious in terms of dips and slants, strokes and fluidity.[8] This is but another evidence that the persons who took the examinations were not Evelyn Ragel and Emelyn Campos.

Evelyn Ragel and Emelyn Campos merely denied the allegations against them and claimed that they personally affixed their signatures on the records of the said examinations. However, apart from their bare denial, they did not submit any proof to negate the accusations against them. These are all flimsy and lame excuses, which collapse in the face of the very obvious evidence to the contrary. It is well-settled that denial is an inherently weak defense. To be believed, it must be buttressed by strong evidence of non-culpability; otherwise, such denial is purely self-serving and is with no evidentiary value.[9] Like the defense of alibi, a denial crumbles in light of positive identification.[10]

The records of the case clearly established that the persons who took the Civil Service Examinations on January 6, 1997 and October 20, 1996 were not Evelyn Ragel and Emelyn Campos, respectively. In *Civil Service Commission v. Dasco*,[11] which is an administrative case with a similar factual milieu as here, this Court ruled:

The only logical scenario is that another person, who matched the picture in the Picture Seating Plan, actually took the examination on 5 August 1990 in respondent's name. In the offense

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[8] *Id*.

[9] *Civil Service Commission v. Dasco*, A.M. No. P-07-2335, September 22, 2008, 566 SCRA 114.

[10] *Id*., citing *Jugueta v. Estacio,* A.M. No. CA-04-17-P, November 25, 2004, 444 SCRA 10, 16.

[11] *Supra* note 9, at 121.

of impersonation, there are always two persons involved. In the instant case, the impersonation would not have been possible without the active participation of both the respondent and the other person who took the examination in her name. **It must have only been with the permission and knowledge of respondent that the other person was able to use her name for the examinations. More importantly, respondent has been benefiting from the passing result in the said examination.** (Emphasis supplied)

Considering the foregoing, We find that Evelyn Ragel and Emelyn Campos are, indeed, guilty of dishonesty.

In *Dasco*,[12] the Court explained that dishonesty is a grave offense punishable by dismissal, to wit:

Dishonesty has been defined as intentionally making a false statement in any material fact, or practicing or attempting to practice any deception or fraud in securing his examination, registration, appointment or promotion. It is also understood to imply a disposition 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.

Under the Civil Service Rules, dishonesty is a grave offense punishable by dismissal which carries the accessory penalties of cancellation of eligibility, forfeiture of retirement benefits (except leave credits pursuant to Rule 140, Section 11[1]) **and disqualification from reemployment in the government service.** (Emphasis supplied)

It must be stressed that every employee of the judiciary should be an example of integrity, uprightness, and honesty.[13] Like any public servant, he or she must exhibit the highest sense of honesty and integrity not only in the performance of official duties but also in personal and private dealings with other people, to preserve the court's good name and standing. The image of

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[12] *Supra* at 121-122.

[13] *Office of the Court Administrator v. Sarah P. Among*, A.M. No. P-13-3132, June 4, 2014, citing *Clavite-Vidal v. Aguam*, A.M. No. SCC-10-13-P, June 26, 2012, 674 SCRA 470, 474-475.

a court of justice is mirrored in the conduct, official and otherwise, of the personnel who work thereat, from the judge to the lowest of its personnel. Court personnel have been enjoined to adhere to the exacting standards of morality and decency in their professional and private conduct in order to preserve the good name and integrity of the courts of justice.[14]

By their act of dishonesty, Evelyn Ragel and Emelyn Campos failed to meet the stringent standards set for a judicial employee. As such, they do not deserve to remain part of the judiciary and must be dismissed from office.

WHEREFORE, premises considered, Evelyn Corpus Ragel, Stenographer I, Municipal Trial Court, Sto. Domingo, Nueva Ecija and Emelyn Borillo Campos, Stenographer III, Regional Trial Court, Branch 31, Guimba, Nueva Ecija are found **GUILTY** of dishonesty. They are hereby ordered **DISMISSED** from the service with **FORFEITURE** of all retirement benefits, except their accrued leave credits, and with prejudice to re-employment in any branch or instrumentality of the government, including government-owned and controlled corporations.

SO ORDERED.

Sereno, C.J., Carpio, Velasco, Jr., Leonardo-de Castro, Peralta, Bersamin, del Castillo, Leonen, Jardeleza, Caguioa, Martires, Tijam, Reyes, Jr., and *Gesmundo, JJ.,* concur.

Perlas-Bernabe, J., on leave.

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[14] *Id.*

THIRD DIVISION

[G.R. No. 184819. November 29, 2017]

VETERANS FEDERATION OF THE PHILIPPINES, *petitioner, vs.* **EDUARDO L. MONTENEJO, MYLENE M. BONIFACIO, EVANGELINE E. VALVERDE, DEANA N. PAGAL, and VFP MANAGEMENT DEVELOPMENT CORPORATION,** *respondents.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; TERMINATION OF EMPLOYMENT; CLOSURE OF BUSINESS AS AN AUTHORIZED CAUSE FOR TERMINATION OF EMPLOYMENT, EXPLAINED; TO UNMASK THE TRUE INTENT OF AN EMPLOYER WHEN EFFECTING A CLOSURE OF BUSINESS, THE MEASURES ADOPTED PRIOR TO AND ACTIONS TAKEN AFTER THE PURPORTED CLOSURE MUST BE CONSIDERED.— One of the authorized causes for dismissal recognized under the Labor Code is the *bona fide* cessation of business or operations by the employer. Article 298 of the Labor Code explicitly sanctions terminations due to the employer's cessation of business or operations—as long as the cessation is *bona fide* or is not made "*for the purpose of circumventing the [employees' right to security of tenure]*"[.] x x x [A]n employer's closure or cessation of business or operations is regarded as an invalid ground for the termination of employment *only* when the closure or cessation is **made for the purpose of circumventing the tenurial rights of the employees**. x x x All of the instances of invalid closures of business or operations discussed above have a common and telling characteristic—**all of them were not genuine closures or cessations of businesses; they are mere simulations which make it appear that the employer intended to close its business or operations when the latter, in truth, had no such intention**. To unmask the true intent of an employer when effecting a closure of business, it is important to consider not only the measures adopted by the employer prior to the purported closure but also the actions taken by the latter *after* the fact.

For, as can be seen from the examples in the cited cases, the employer's subsequent acts of *suddenly reviving a business it had just closed* or *surreptititiously continuing with its operation after announcing a shutdown* are telltale badges that the employer had no real intent to cease its business or operations and only seeks an excuse to terminate employees capriciously.

2. ID.; ID.; ID.; THE CLOSURE OF VMDC's BUSINESS IS *BONA FIDE* AND DULY PROVEN IN CASE AT BAR; THE ACTS OF VMDC IN RELINQUISHING ALL PROPERTIES REQUIRED FOR ITS OPERATIONS AND IN DISMISSING ITS ENTIRE WORKFORCE ARE INDICATIONS THAT VMDC INDEED CEASED OPERATIONS.— Though not proclaimed in any formal document, the closure of VMDC was still duly proven in this case. The closure can be inferred from *other facts* that were established by the records and/or were not refuted by the parties. These facts are: 1. The fact that VMDC, on January 3, 2000, had **turned over possession of all buildings, equipment and other properties necessary to the operation of the VFPIA** to VFP; *and* 2. The fact that, on January 31, 2000, **VMDC had dismissed *all* of its officials and employees**, which included Montenejo, et al. The confluence of the above facts, to our mind, indicates that VMDC indeed closed shop or ceased operations following the termination of its management agreement with VFP. The acts of VMDC in *relinquishing all properties* required for its operations and in *dismissing its entire workforce* would have indubitably compromised its ability to continue on with its operations and are, thus, the practical equivalents of a business closure. Hence, in these regards, we hold that the closure of VMDC had been established. x x x Here, there is no evidence on record that shows that VMDC—after dismissing its entire workforce and ceasing to operate—had revived its business or had hired new employees to replace those dismissed. Thus, it cannot be reasonably said that VMDC's cessation of operations was just a ruse or had been implemented merely as an excuse to terminate its employees.

3. ID.; ID.; ID.; THE VALIDITY OF CLOSURE OF EMPLOYER'S BUSINESS VALIDATES THE DISMISSAL OF ITS EMPLOYEES; DISMISSED EMPLOYEES ARE ONLY ENTITLED TO SEPARATION PAY UNDER ARTICLE 298 OF THE LABOR CODE.— Since Montenejo, et al. had been validly dismissed, it becomes apparent that the

monetary awards granted to them by the NLRC, and affirmed by the CA, were not proper. We substantiate: 1. The awards for full backwages and separation pay *in lieu* of reinstatement cannot be sustained as these awards are reserved by law, and jurisprudence, for employees who were illegally dismissed. 2. The awards for 13th month pay, SILP and COLA, on the other hand, must also be invalidated as these are mere components of the award for backwages and were, thus, made by the NLRC and the CA **in consideration of the illegality of the dismissals of Montenejo, et al.** The 13th month pay, SILP and COLA that were awarded by the NLRC and the CA refer to the benefits that Montenejo, et al. would be entitled to *had they not been illegally dismissed* and are computed from the time of their dismissals up to the time the judgment declaring their dismissals illegal becomes final. The awards, in other words, were not due to any failure on the part of VMDC to pay 13th month pay, SILP and COLA to Montenejo, et al. during the subsistence of their employer-employee relationship. For having been terminated by reason of the employer's closure of operations that was not due to serious business losses or financial reverses, Montenejo, et al. are, however, entitled to be paid *separation pay* pursuant to Article 298 of the Labor Code.

4. ID.; ID.; ID.; FAILURE OF THE EMPLOYER TO FILE NOTICE OF CLOSURE WITH THE DEPARTMENT OF LABOR AND EMPLOYMENT (DOLE) DOES NOT INVALIDATE THE DISMISSAL OF EMPLOYEES; THE PROCEDURAL LAPSE ONLY GIVES RISE TO NOMINAL DAMAGES.— [T]he failure of VMDC to file a notice of closure with the DOLE does not render the dismissals of Montenejo, et al., which were based on an authorized cause, illegal. Following *Agabon* and *Jaka*, such failure only entitles Montenejo, et al. to recover *nominal damages* from VMDC in the amount of ₱50,000 each, on top of the separation pay they already received. x x x The amount of the nominal damages is ₱50,000 per person and the satisfaction thereof is the exclusive liability of VMDC, the employer of Montenejo, et al. VFP is absolved from any further liability to Montenejo, et al.

5. COMMERCIAL LAW; CORPORATIONS; PIERCING THE VEIL OF CORPORATE FICTION, CONCEPT OF; DOCTRINE, NOT APPLICABLE IN CASE AT BAR.— The doctrine of piercing the veil of corporate fiction is a legal precept

that allows a corporation's separate personality to be disregarded under certain cirumstances, so that a corporation and its stockholders or members, or a corporation and another related corporation could be treated as a single entity. The doctrine is an equitable principle, it being meant to apply only in situations where the separate corporate personality of a corporation is being abused or being used for wrongful purposes. x x x Utilizing the foregoing standards, it becomes clear that the NLRC and the CA were mistaken in their application of the doctrine to the case at bench. The sole circumstance used by both to justify their disregard of the separate personalities of VFP and VMDC is the former's alleged status as the majority stockholder of the latter. Completely absent, however, both from the decisions of the NLRC and the CA as well as from the records of the instant case itself, is any circumstance which establishes that VFP had complete control or domination over the "*finances[,]... policy and business practice*" of VMDC. Worse, even assuming that VFP had such kind of control over VMDC, there is likewise no evidence that the former had used the same to *"commit fraud or wrong, to perpetuate the violation of a statutory or other positive legal duty, or dishonest and unjust act in contravention of* [another's] *legal rights."* Given the absence of any convincing proof of misuse or abuse of the corporate shield, we, thus, find the application of the doctrine of piercing the veil of corporate fiction to the present case to be unwarranted, if not utterly improper.

APPEARANCES OF COUNSEL

Rufer D. Tolentino for petitioner.

Hector A. Villacorta for respondents Montenejo, Pagal, & Valverde.

Rodolfo M. Santos for respondent Bonifacio.

D E C I S I O N

VELASCO, JR., *J.*:

This case is an appeal[1] from the Decision dated July 29, 2008[2] and Resolution dated October 2, 2008[3] of the Court of Appeals (CA) in CA-G.R. SP No. 101041.

The Facts

VFP, VFPIA and the VMDC

Petitioner Veteran's Federation of the Philippines (VFP) is a national federation of associations of Filipino war veterans. It was created in 1960 by virtue of Republic Act No. 2640.[4]

In 1967, through the government's Proclamation No. 192, VFP was able to obtain control and possession of a vast parcel of land located in Taguig. VFP eventually developed said land into an industrial complex, which is now known as the VFP Industrial Area (VFPIA).

Respondent VFP Management and Development Corporation (VMDC), on the other hand, is a private management company organized in 1990 pursuant to the general incorporation law.

The Management Agreement and its Termination

On January 4, 1991, VFP entered into a *management agreement*[5] with VMDC. Under the said agreement, VMDC was to assume

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[1] *Rollo*, pp. 10-50. The appeal was filed as a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court.

[2] *Id*. at 56-75. The decision was penned by Associate Justice Jose Catral Mendoza (now a retired Associate Justice of this Court) with Associate Justices Andres B. Reyes, Jr. (now an Associate Justice of this Court) and Ramon M. Bato, Jr., concurring.

[3] *Id*. at 77.

[4] Entitled "*An Act To Create a Public Corporation To Be Known as the Veterans Federation of the Philippines, Defining Its Powers, And For Other Purposes*."

[5] Denominated as *Memorandum of Agreement*, *rollo*, pp. 130-133.

exclusive management and operation of the VFPIA in exchange for forty percent (40%) of the lease rentals generated from the area.

In managing and operating the VFPIA, VMDC hired its own personnel and employees. Among those hired by VMDC were respondents Eduardo L. Montenejo, Mylene M. Bonifacio, Evangeline E. Valverde and Deana N. Pagal (hereafter collectively referred to as "Montenejo, et al.").[6]

The management agreement between VFP and VMDC had a term of five (5) years, or up to 4 January 1996, and is renewable for another five (5) years.[7] Subsequently, both parties acceded to extend the agreement up to 1998.[8] After 1998, the agreement was again extended by VFP and VMDC albeit only on a month-to-month basis.

Then, in November 1999, the VFP board passed a resolution terminating the management agreement effective December 31, 1999.[9] VMDC conceded to the termination and eventually agreed to turn over to VFP the possession of all buildings, equipment and other properties necessary to the operation of the VFPIA.[10]

On January 3, 2000, the President of VMDC[11] issued a *memorandum*[12] informing the company's employees of the termination of their services effective at the close of office hours on January 31, 2000 "[*i*]*n view of the termination of the* [management agreement]." True to the memorandum's words,

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[6] *Id.* at 226. VFP-MDC hired Eduardo L. Montenejo as vice-president of operations in 1991; Evangeline E. Valverde as cashier in 1991; Deana N. Pagal as accountant in 1991; and Mylene M. Bonifacio as accounting clerk in 1993.

[7] *Id*. at 130-133.

[8] Second Whereas Clause of *Closing Agreement* between VFP and VMDC, *id.* at 100-102, 100.

[9] *Id*. at 99.

[10] See *Closing Agreement* between VFP and VMDC, *id*. at 100-102.

[11] Then one Col. Vicente O. Novales (Ret.).

[12] *Rollo*, p. 136.

on January 31, 2000, VMDC dismissed all of its employees and paid each his or her separation pay.

The Illegal Dismissal Complaint

Contending in the main that their dismissals had been effected without cause and observance of due process, Montenejo, et al. filed before the Labor Arbiter (LA) a complaint for illegal dismissal,[13] money claims and damages. They impleaded both VMDC and VFP as defendants in the complaint.

VMDC, for its part, denied the contention. It argued that the dismissals of Montenejo, et al. were valid as they were due to an authorized cause—the cessation or closure of its business. VMDC claimed that the cessation of its operations was but the necessary consequence of the termination of such agreement.

VFP, on the other hand, seconded the arguments of VMDC. In addition, however, VFP asserted that it could not, at any rate, be held liable under the complaint because it is not the employer of Montenejo, et al.

The Ruling of the LA

On November 7, 2005, the LA rendered a decision[14] disposing of the illegal dismissal complaint as follows:

> WHEREFORE, judgment is hereby made dismissing as lacking in merit the [Montenejo *et al.*'s] charge of illegal dismissal but ordering [VFP] and [VMDC] to pay, solidarily, each complainant his/her salaries for eleven (11) months. [VFP and VMDC] are so ordered to recompute their separation pay with the date January 4, 2001 as their last day of service and accordingly pay them their balance.
>
> [VFP and VMDC] are also ordered to pay, solidarily, [Montenejo *et al.*'s] proportionate 13th month pay for the year 2000.
>
> Other claims are dismissed for lack of merit.
>
> SO ORDERED.

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[13] Docketed as NLRC Case No. 30-01-00494-02.

[14] *Rollo*, pp. 203-212. The decision is penned by Labor Arbiter Arthur L. Amansec.

The LA hinged its disposition on the following findings:[15]

1. Montenejo, et al. were not illegally dismissed. Their separation was the result of the closure of VMDC, an authorized cause. Hence, Montenejo, et al. are not entitled to reinstatement and backwages.

2. Montenejo, et al. were contractual employees; they were hired for a definite term that is similar to the maximum term of the management agreement between VFP and VMDC. As the management agreement between VFP and VMDC can have a maximum term of ten (10) years from January 4, 1991, or until January 4, 2001, the employments of Montenejo, et al. also have terms of up to January 4, 2001.

In this case, however, Montenejo, et al. were dismissed on January 3, 2000—which is eleven (11) months short of their January 4, 2001 contract date. Accordingly, Montenejo, et al. are each entitled: (a) to their salary corresponding to the unexpired portion of their contract and (b) also to a separation pay computed with January 4, 2001 as their last day of employment.

3. Montenejo, et al. are not entitled to recover damages. Their dismissals were not shown to be tainted with bad faith.

4. VFP and VMDC are solidarily liable for the monetary awards in favor of Montenejo, et al. The basis of VFP's liability is the fact that it is an indirect employer of Montenejo, et al.

Montenejo, et al. and VFP filed separate appeals[16] with the National Labor Relations Commission (NLRC).

The Ruling of the NLRC

On appeal, the NLRC reversed and set aside[17] the decision of the LA. It decreed:

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[15] *Id*.

[16] Docketed as NLRC NCR Case Nos. 30-01-00494-02 and 048927-06.

[17] *Via* a Decision dated May 16, 2007 of the NLRC. The decision was penned by Presiding Commissioner Gerardo C. Nograles for the First Division of the NLRC, with Commissioners Perlita B. Velasco and Romeo L. Go concurring. *Rollo*, pp. 223-236.

WHEREFORE, premises considered, the appeal is GRANTED. The Decision of [the LA] dated November 7, 2005 is hereby REVERSED[,] SET ASIDE and a NEW ONE entered declaring that [VFP and VMDC] ILLEGALLY DISMISSED [Montenejo *et al*.]. [VFP and VMDC] are therefore ordered to pay [Montenejo *et al*.'s] separation pay in lieu of reinstatement and to pay them full backwages, 13th month pay and SLIP (*sic*), as computed below:

A. EDUARDO L. MONTENEJO-

Rate: *₱ 30,000.00* ***Pd: 1/1/91-1/4/01(GIVEN)***
*VP for Operation
Cut-off date: 8/7/06

1) SEP. PAY (1 MO.):
1/1/91-8/7/06
₱ 30,000.00 x 16 yrs. = ₱ 480,000.00

2) BACKWAGES:
1/4/01-8/7/06
₱ 30,000.00 x 67.10 = ₱ 2,013,000.00

13th MO. PAY:
₱ 2,013,000/12 = 167,750.00 2,180,750.00
₱ 2,660,750.00

Less: Amt. already rcvd. (See, Annexes "2-5," pp. 358-361, Vol. II, Records) 175,000

TOTAL: ₱ 2,485,750.00

B. MYLENE M. BONIFACIO-
Rate: *₱ 6,798.15* ***Pd: 1/1/91-1/4/01(GIVEN)***
Cut-off date: 8/7/06

1) SEP. PAY (1 MO.):
1/1/93-8/7/06
₱ 300 x 26 x 14 yrs. = ₱ 109,200.00

2) BACKWAGES:
1/4/01-8/7/06

1/4/01-6/15/05
₱ 6,789.15 x 53.37 = ₱ 362,817.26

6/16/05-7/10/06
₱ 275 x 26 x 12.80 = 91,520.00
7/11/06-8/7/06

₱ 300 x 26 x .90 7,020.00
₱ 461,357.26

13th MO. PAY:
₱ 461,357.26/12 = 38,446.43

SILP:
₱ 6,789.15 / 26 = ₱ 261.46

1/4/01-6/15/05
₱ 261.46 x 5/12 x 53.37 = ₱ 362,817.26

6/16/05-7/10/06
₱ 275 x 5/12 x 12.80 = 1,466.67

7/11/06-8/7/06
₱ 300 x 5/12 x .90 = 112.50
7,393.38

COLA:

11/5/01-1/31/02
₱ 15 x 26 x 2.87 = ₱ 1,119.30

2/1/02-7/9/04
₱ 30 x 26 x 29.27 = 22,830.60

7/10/04-7/10/06
₱ 50 x 26 x 24 = 31,200.00
55,149.90 ₱ 523,900.54
₱ 633,100.54

Less: Amt. already rcvd. (See, Annexes "6-7," pp. 362-363, Vol. II, Records) 53,661.87

TOTAL: ₱ 579,438.67

C. EVANGELINE E. VALVERDE-

Rate: *₱ 10,000.00* ***Pd: 1/1/91-1/4/01(GIVEN)***
Cut-off date: 8/7/06

1) SEP. PAY (1 MO.):

1/1/91-8/7/06
₱ 10,000.00 x 16 yrs. = ₱ 160,000.00

2) BACKWAGES:
1/4/01-8/7/06
₱ 10,000.00 x 67.10 = ₱ 671,000.00

13th MO. PAY
₱671,000.00/12 = ₱55,916.67

SILP:
₱ 10,000 / 26 = ₱ 384.61

1/4/01-8/7/06
₱ 384.61 X 5/12 X 67.10 = 10,753.05 737,669.72
₱897,669.72

Less: Amt. already rcvd. (See, Annex "17" pp. 358-361, Vol. II, Records) 32,172.61

TOTAL: ₱ 865,497.11

D. DEANA N. PAGAL
Rate: ₱ 15,000.00 ***Pd: 1/1/91-1/401(GIVEN)***
Cut-off date: 8/7/06

1) SEP. PAY (1 MO.)
1/1/91-8/7/06
₱ 15,000.00 x 16 yrs. = ₱ 240,000.00

2) BACKWAGES
1/4/01-8/7/06
₱ 15,000.00 x 67.10 = ₱ 1,060,000.00

13th MO. PAY

₱1,006,500.00/12 = 83,875.00

SILP:
₱ 15,000 / 26 = 576.92
1/4/01-8/7/06
₱ 576.92 x 5 / 12 x 67.10 = 16,129.72 1,106,504.72
₱1,346,504.72

Less: Amt. already rcvd. (See, Annex "11-15" pp. 344-350, Vol. II, Records) 199.803.96

TOTAL: ₱ 1,146,700.76

SUMMARY OF COMPUTATION:

A. EDUARDO A. MONTENEJO	**₱ 2,485,750.00**
B. MYLENE BONIFACIO	**579,438.67**
C. EVANGELINE F. VALVERDE	**865,497.11**
D. DEANA N. PAGAL	**1,146,700.76**
TOTAL AWARD:	**₱ 5,077,386.54**

The claim for damages is dismissed for lack of substantial evidence that respondents acted in bad faith.

SO ORDERED.

The reversal was premised on the NLRC's disagreement with the first two findings of the LA. For the NLRC, the dismissals of Montenejo, et al. were illegal and the latter were not merely contractual employees:[18]

1. Montenejo, et al. were illegally dismissed. Accordingly, Montenejo, et al. should be paid full backwages, separation pay *in lieu* of reinstatement, 13th month pay and service incentive leave pay (SILP). In addition, petitioner Mylene M. Bonifacio should also be awarded with cost of living allowance (COLA).

   The dismissals of Montenejo, et al. were not valid because—

   a. VMDC was not able to establish that the dismissals were based on an authorized cause. VMDC presented no evidence that it had formally closed shop and a closure cannot be inferred from the mere termination of the management agreement between it and VFP. The claim of VMDC that its very existence hinges on the management agreement is belied by its own Articles of Incorporation.[19] Under VMDC's Articles of Incorporation, VMDC is authorized, as part of its primary purpose, to "*manage, operate, lease, develop, organize,* ***any*** *and* ***all kinds*** *of business enterprises*."[20] Hence, the existence of VMDC cannot be regarded as exclusively dependent on its management agreement with VFP.

   b. Further compromising VMDC's claim of closure is the fact that it had never filed a notice of closure or

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[18] *Id*.

[19] *Id*. at 121-126.

[20] *Id*. at 121.

cessation of its operations with the Department of Labor and Employment (DOLE).

2. Montenejo, et al. are not contractual employees but regular employees of VMDC. The management agreement between VFP and VMDC is not the contract of employment of Montenejo, et al. One cannot be applied to or equated with the other.

The NLRC, however, concurred with the third finding of the LA. Like the LA, the NLRC was of the view that Montenejo, et al. are not entitled to recover any damages for the reason that there is not enough evidence showing that their dismissals were tainted with bad faith.

The NLRC also agreed with the LA regarding the solidary liability of VFP and VMDC for the monetary awards due to Montenejo, et al. However, the NLRC proffered a different opinion as to the legal basis of VFP's liability. According to the NLRC, the liability of VFP was not due to the latter being an indirect employer of Montenejo, et al. but is based on the application of the doctrine of piercing the veil of corporate fiction. The NLRC noted that there are circumstances present in the instant case that warrant a disregard of the separate personalities of VFP and VMDC insofar as the claims of Montenejo, et al. were concerned.

Aggrieved, VFP filed a *certiorari* petition[21] with the CA.

The Ruling of the CA and the Present Appeal

On July 29, 2008, the CA rendered a decision dismissing VFP's *certiorari* petition.[22] In doing so, the CA essentially agreed with the ratiocinations of the NLRC. VFP moved for reconsideration, but the CA remained steadfast.

Hence, this appeal by VFP.

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[21] *Id*. at 254-289.

[22] *Id*. at 56-75, 74. The *fallo* of the Decision of the CA reads: "*WHEREFORE, the petition is DENIED. SO ORDERED*."

VFP, in substance, raises two qualms in this appeal:[23]

First. VFP first questions the finding that Montenejo, et al. had been illegally dismissed, viz:

a. VFP insists that the dismissals of Montenejo, et al. were based on the closure of VMDC that was, in turn, occasioned by the termination of the management agreement. It maintains the decision to close shop was an exercise by VMDC's management of its prerogative, which ought to be upheld as valid in the absence of showing that the same was implemented in bad faith and/or to circumvent the rights of its employees.

b. VFP also argues that the failure of VMDC to file a notice of closure with the DOLE did not invalidate the former's closure. In support of such argument, VFP cites the ruling in *Sebuguero v. NLRC*.[24]

Second. VFP also challenges the finding that it may be held solidarily liable with VMDC for any monetary award that may be adjudged in favor of Montenejo, et al. It submits that liability for any award ought to rest exclusively on VMDC, the latter being the sole employer of Montenejo, et al. In this connection, VFP contends that it cannot be treated as one and the same corporation as VMDC. It denies the existence of circumstances in the case at bench that may justify the application of the doctrine of piercing the veil of corporate fiction.

Our Ruling

We grant the appeal.

I

The first qualm of VFP is justified. The NLRC and the CA erred in ruling that Montenejo, et al. were illegally dismissed.

Montenejo, et al. were dismissed as a result of the closure of VMDC. Contrary to the ruling of the NLRC and the CA,

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[23] *Id*. at 10-50.

[24] G.R. No. 115394, September 27, 1995, 248 SCRA 532.

there is ample support from the records to establish that VMDC did, in fact, close its operations. VMDC's closure, more importantly, qualifies as a *bona fide* cessation of operations or business as contemplated under *Article 298* of the *Labor Code*.[25]

The dismissals of Montenejo, et al. were, therefore, premised on an authorized cause. Being so, such dismissals are valid and remain to be valid even though they suffer from a procedural defect. Consequently, Montenejo, et al. are not entitled to the monetary awards (*i.e.*, full backwages, separation pay *in lieu* of reinstatement, 13th month pay, SILP and COLA) granted to them by the NLRC, but only to nominal damages on top of the separation pay under Article 298 of the Labor Code.

Concept of Illegal Dismissal; Closure of Business as an Authorized Cause for the Termination of Employment

We begin with the basics.

In our jurisdiction, the right of an employer to terminate employment is regulated by law. Both the Constitution[26] and our laws guarantee security of tenure to labor and, thus, an employee can only be validly dismissed from work if the dismissal is predicated upon any of the *just* or *authorized causes* allowed under the Labor Code.[27] Correspondingly, a dismissal that is not based on either of the said causes is regarded as illegal and entitles the dismissed employee to the payment of backwages and, in most cases, to reinstatement.[28]

One of the authorized causes for dismissal recognized under the Labor Code is the *bona fide* cessation of business or operations

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[25] Presidential Decree (PD) No. 442, as amended. Article 298 of the Labor Code was originally Article 283, before being renumbered by DOLE Department Advisory No. 1, series of 2015.

[26] *See* Article XIII, Section 3 of the 1987 CONSTITUTION.

[27] *See* Article 294 of PD No. 442, as amended. Article 294 of the Labor Code was originally Article 279, before being renumbered by DOLE Department Advisory No. 1, series of 2015.

[28] *See* Article 279 of PD No. 442, as amended.

by the employer. Article 298 of the Labor Code explicitly sanctions terminations due to the employer's cessation of business or operations—as long as the cessation is *bona fide* or is not made "*for the purpose of circumventing the [employees' right to security of tenure]*":

> *Art. 298. Closure of establishment and reduction of personnel.* **The employer may also terminate the employment of any employee due to** the installation of labor-saving devices, redundancy, retrenchment to prevent losses or the **closing or cessation of operation of the establishment or undertaking unless the closing is for the purpose of circumventing the provisions of this Title**, by serving a written notice on the workers and the Ministry of Labor and Employment at least one (1) month before the intended date thereof. In case of termination due to the installation of labor-saving devices or redundancy, the worker affected thereby shall be entitled to a separation pay equivalent to at least his one (1) month pay or to at least one (1) month pay for every year of service, whichever is higher. In case of retrenchment to prevent losses and in cases of closures or cessation of operations of establishment or undertaking not due to serious business losses or financial reverses, the separation pay shall be equivalent to one (1) month pay or at least one-half (½) month pay for every year of service, whichever is higher. A fraction of at least six (6) months shall be considered one (1) whole year.

As stated in the provision, an employer's closure or cessation of business or operations is regarded as an invalid ground for the termination of employment *only* when the closure or cessation is **made for the purpose of circumventing the tenurial rights of the employees**. A survey of relevant jurisprudence can shed light on what can be considered as an *invalid* cessation of business or operations:

1. In *Me-Shurn Corporation v. Me-Shurn Workers Union-FSM*,[29] a company that supposedly closed due to financial losses was discovered to have revived its operations barely a month after it closed. Some of the employees who were dismissed as a consequence of the company's closure challenged their terminations on the ground that such closure is not *bona fide*

[29] G.R. No. 156292, January 11, 2005, 448 SCRA 41.

and claimed that the same was only made to forestall the formation of their union. When the issue reached us, we sided with the employees—ratiocinating that the company's unusual and immediate resumption of operations had lent credence to the employees' claim that the company's earlier closure had been done in bad faith.

2. *Danzas Intercontinental, Inc. v. Daguman*,[30] on the other hand, featured a company which apparently closed one of its departments. However, in the ensuing illegal dismissal case filed by the employees terminated in the closure, it had been established that the company did not actually stop operating the concerned department as it even hired a new set of staff for the same. On these premises, we declared that the company's earlier closure of the subject department as not *bona fide* and ordered the reinstatement of the terminated employees.

3. A cross between *Me-Shurn* and *Danzas* is the case of *St. John Colleges, Inc. v. St. John Academy Faculty and Employees Union*.[31] In *St. John*, a deadlock in the Collective Bargaining Agreement negotiations between a school and its faculty union prompted the former to close its high school department and effect a mass lay-off. But barely one year after it announced such closure, the school reopened its high school department. The employees who lost their jobs in the closure of the high school department lodged an illegal dismissal complaint hinged on the argument that said closure is invalid and made in bad faith. We favored the employees and observed that the timing and the reason of both the closure of the high school department and its reopening were indicative of the school's bad faith in effecting the closure.

4. And finally, the case of *Eastridge Golf Club, Inc. v. East Ridge Golf Club, Inc. Labor Union-Super*.[32] *Eastridge* involved a company which closed one of its departments by allegedly

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[30] G.R. No. 154368, April 15, 2005, 456 SCRA 382.

[31] G.R. No. 167892, October 27, 2006, 505 SCRA 764.

[32] G.R. No. 166760, August 22, 2008, 563 SCRA 93.

transferring its operations to a concessionaire. However, in the illegal dismissal case filed by the employees laid off in the closure, it was proven that the company did not actually transfer the operations of the subject department to a concessionaire and that the former remained to be the employer of all the workers in the department. On this score, we ruled that the company's closure of its department was simulated and that the employees' dismissal by reason thereof was illegal.

All of the instances of invalid closures of business or operations discussed above have a common and telling characteristic—**all of them were not genuine closures or cessations of businesses; they are mere simulations which make it appear that the employer intended to close its business or operations when the latter, in truth, had no such intention**. To unmask the true intent of an employer when effecting a closure of business, it is important to consider not only the measures adopted by the employer prior to the purported closure but also the actions taken by the latter *after* the fact. For, as can be seen from the examples in the cited cases, the employer's subsequent acts of *suddenly reviving a business it had just closed* or *surreptititiously continuing with its operation after announcing a shutdown* are telltale badges that the employer had no real intent to cease its business or operations and only seeks an excuse to terminate employees capriciously.

Guided by the foregoing, we shall now address the issue at hand.

VMDC's Closure Was Established; The Closure Is Bona Fide; The Dismissals of Montenejo, et al. Are Based on an Authorized Cause

In this case, the NLRC and the CA both ruled against the validity of the dismissals of Montenejo, et al. for the reason that the dismissals were not proven to be based on any valid cause. The NLRC and the CA were disapproving of the claim that the dismissals were due to the closure of VMDC, lamenting the lack of any evidence showing that VMDC had formally closed its business.

We disagree.

Though not proclaimed in any formal document, the closure of VMDC was still duly proven in this case. The closure can be inferred from *other facts* that were established by the records and/or were not refuted by the parties. These facts are:

1. The fact that VMDC, on January 3, 2000, had **turned over possession of all buildings, equipment and other properties necessary to the operation of the VFPIA** to VFP;[33] *and*

2. The fact that, on January 31, 2000, **VMDC had dismissed *all* of its officials and employees**, which included Montenejo, et al.[34]

The confluence of the above facts, to our mind, indicates that VMDC indeed closed shop or ceased operations following the termination of its management agreement with VFP. The acts of VMDC in *relinquishing all properties* required for its operations and in *dismissing its entire workforce* would have indubitably compromised its ability to continue on with its operations and are, thus, the practical equivalents of a business closure. Hence, in these regards, we hold that the closure of VMDC had been established.

Moreover, we find VMDC's cessation of operations to be *bona fide*. None of the telltale badges of bad faith in closures of business, as illustrated in our jurisprudence, was shown to be present in this case. Here, there is no evidence on record that shows that VMDC—after dismissing its entire workforce and ceasing to operate—had revived its business or had hired new employees to replace those dismissed. Thus, it cannot be

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[33] This fact is established by the *Closing Agreement* between VFP and VMDC, *rollo*, pp. 100-102.

[34] This fact can be derived from the *memorandum* dated January 3, 2000 of the President of VMDC (*id*. at 136) wherein the latter informed "*all the company's officials and employees*" of the termination of their services effective at the close of office hours on January 31, 2000. Montenejo, *et al*. were among those dismissed on January 31, 2000.

reasonably said that VMDC's cessation of operations was just a ruse or had been implemented merely as an excuse to terminate its employees.

The mere fact that VMDC could have chosen to continue operating despite the termination of its management agreement with VFP is also of no consequence. The decision of VMDC to cease its operations after the termination of the management agreement is, under the law, a lawful exercise by the company's leadership of its management prerogative that must perforce be upheld where, as in this case, there is an absence of showing that the cessation was made for prohibited purposes.[35] As *Alabang Country Club, Inc. v. NLRC* reminds:[36]

> For any bona fide reason, an employer can lawfully close shop anytime. Just as no law forces anyone to go into business, no law can compel anybody to continue the same. It would be stretching the intent and spirit of the law if a court interferes with management's prerogative to close or cease its business operations just because the business is not suffering from any loss or because of the desire to provide the workers continued employment.

The validity of the closure of VMDC necessarily validates the dismissals of Montenejo, et al. that resulted therefrom. The dismissals cannot be regarded as illegal because they were predicated upon an authorized cause recognized by law.

Montenejo, et al. Are Not Entitled to Monetary Awards Adjudged in Their Favor by the NLRC; They Are Only Entitled to Separation Pay Under Article 298 of the Labor Code

Since Montenejo, et al. had been validly dismissed, it becomes apparent that the monetary awards granted to them by the NLRC, and affirmed by the CA, were not proper. We substantiate:

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[35] *Alabang Country Club, Inc. v. NLRC*, G.R. No. 157611, August 9, 2005, 466 SCRA 329.

[36] *Id*.

1. The awards for full backwages and separation pay *in lieu* of reinstatement cannot be sustained as these awards are reserved by law, and jurisprudence, for employees who were illegally dismissed.[37]

2. The awards for 13th month pay, SILP and COLA, on the other hand, must also be invalidated as these are mere components of the award for backwages and were, thus, made by the NLRC and the CA **in consideration of the illegality of the dismissals of Montenejo, et al.** The 13th month pay, SILP and COLA that were awarded by the NLRC and the CA refer to the benefits that Montenejo, et al. would be entitled to *had they not been illegally dismissed* and are computed from the time of their dismissals up to the time the judgment declaring their dismissals illegal becomes final.[38] The awards, in other words, were not due to any failure on the part of VMDC to pay 13th month pay, SILP and COLA to Montenejo, et al. during the subsistence of their employer-employee relationship.

For having been terminated by reason of the employer's closure of operations that was not due to serious business losses or financial reverses, Montenejo, et al. are, however, entitled to be paid *separation pay* pursuant to Article 298 of the Labor Code. The records in this regard, though, reveal that Montenejo, et al. have already received their respective separation pays from VMDC.[39]

Failure of VMDC to File a Notice of Closure with the DOLE Does Not Invalidate the Dismissals of Montenejo, et al.; Such Procedural Lapse Only Gives Rise to Liability for Nominal Damages

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[37] *See* Article 279 of PD No. 442, as amended.

[38] See *rollo*, pp. 233-235. The computation of the awards by the NLRC was reckoned from the dismissals up to a certain cut-off date.

[39] See Decision of the LA dated November 7, 2005, *rollo*, pp. 203-212, 208-209.

Anent the failure of VMDC to file a notice of closure with the DOLE, we find our rulings in *Agabon v. NLRC*[40] and *Jaka Food Processing Corporation v. Pacot*[41] to be apt.

To recall, *Agabon* laid out the rule that when a dismissal is based on a *just* cause but is implemented without observance of the statutory notice requirements, the dismissal should be upheld as valid but the employer must thereby pay an indemnity to the employee in the amount of ₱30,000. *Jaka*, on the other hand, expounded on *Agabon* in two (2) ways:

1. First, *Jaka* extended the application of the *Agabon* doctrine to dismissals that were based on *authorized* causes but have been effected without observance of the notice requirements. Thus, similar to *Agabon*, the dismissals under such circumstances will also be regarded as valid while the employer shall likewise be required to pay an indemnity to the employee; and

2. Second, *Jaka* increased the amount of indemnity payable by the employer in cases where the dismissals are based on *authorized* causes but have been effected without observance of the notice requirements. It fixed the amount of indemnity in the mentioned scenario to ₱50,000.

Verily, the failure of VMDC to file a notice of closure with the DOLE does not render the dismissals of Montenejo, et al., which were based on an authorized cause, illegal. Following *Agabon* and *Jaka*, such failure only entitles Montenejo, et al. to recover *nominal damages* from VMDC in the amount of ₱50,000 each, on top of the separation pay they already received.

II

The NLRC and the CA also erred in ruling that VFP may be held solidarily liable with VMDC for any monetary award that may be found due to Montenejo, et al. We find that, contrary to the holding of the NLRC and the CA, the application of the

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[40] G.R. No. 158693, November 17, 2004, 442 SCRA 573.

[41] G.R. No. 151378, March 28, 2005, 454 SCRA 119.

doctrine of piercing the veil of corporate fiction is not justified by the facts of this case.

Accordingly, the liability for the award of nominal damages—the only award that Montenejo, et al. are entitled to in this case—ought to rest exclusively upon their employer, VMDC.

Doctrine of Piercing the Veil of Corporate Fiction Does Not Apply to This Case

The NLRC and the CA's stance is based on their submission that the doctrine of piercing the veil of corporate fiction is applicable to this case, i.e., that VFP and VMDC could, for purposes of satisfying any monetary award that may be due to Montenejo, et al., be treated as one and the same entity. According to the two tribunals, the doctrine may be applied to this case because VFP apparently owns almost all of the shares of stock of VMDC. In this regard, both the NLRC and the CA cite the *Closing Agreement*[42] of VFP and VMDC which states that:

> NOW THEREFORE, for and in consideration of the foregoing premises the [VFP] and the [VMDC] hereby agree to terminate the [management agreement] for the development and management of the [VFPIA] in Taguig effective on 3 January 2000, subject to the following conditions:
>
> **1. The [VMDC] agrees that the [VFP] is the majority stockholder of the [VMDC] and that all its original incorporators have endorsed all their shares of stock to the [VFP] except one (1) qualifying share each to be able to sit as Director in the Board of Directors of the [VMDC]**. (Emphasis supplied)

We disagree with the submission.

The doctrine of piercing the veil of corporate fiction is a legal precept that allows a corporation's separate personality to be disregarded under certain cirumstances, so that a corporation and its stockholders or members, or a corporation and another

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[42] *Rollo*, pp. 100-102.

related corporation could be treated as a single entity. The doctrine is an equitable principle, it being meant to apply only in situations where the separate corporate personality of a corporation is being abused or being used for wrongful purposes.[43] As *Manila Hotel Corporation v. NLRC*[44] explains:

> Piercing the veil of corporate entity is an equitable remedy. It is resorted to when the corporate fiction is used to defeat public convenience, justify wrong, protect fraud or defend a crime. It is done only when a corporation is a mere alter ego or business conduit of a person or another corporation. (Citations omitted)

In *Concept Builders, Inc. v. NLRC*,[45] we laid down the following test to determine when it would be proper to apply the doctrine of piercing the veil of corporate fiction:

> 1. **Control, not mere majority or complete stock control, but complete domination, not only of finances but of policy and business practice** in respect to the transaction attacked so that the corporate entity as to this transaction had at the time no separate mind, will or existence of its own;
>
> 2. **Such control must have been used by the defendant to commit fraud or wrong, to perpetuate the violation of a statutory or other positive legal duty, or dishonest and unjust act in contravention of plaintiff's legal rights**; and
>
> 3. The aforesaid control and breach of duty must proximately cause the injury or unjust loss complained of.
>
> **The absence of any one of these elements prevents piercing the 0corporate veil**. In applying the instrumentality or alter ego doctrine, the courts are concerned with reality and not form, with how the corporation operated and the individual defendant's relationship to that operation. (Emphasis supplied and citations omitted).

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[43] *Livesy v. Binswanger, Philippines, Inc.*, G.R. No. 177493, March 19, 2014.

[44] G.R. No. 120077, October 13, 2000, 343 SCRA 1.

[45] G.R. No. 108734, May 29, 1996, 257 SCRA 149.

Relative to the *Concept Builders* test are the following critical ruminations from *Rufina Luy Lim v. CA*:[46]

> Mere ownership by a single stockholder or by another corporation of all or nearly all of the capital stock of a corporation is not of itself a sufficient reason for disregarding the fiction of separate corporate personalities.
>
> Moreover, to disregard the separate juridical personality of a corporation, the wrong-doing must be clearly and convincingly established. It cannot be presumed. (Citations omitted)

Utilizing the foregoing standards, it becomes clear that the NLRC and the CA were mistaken in their application of the doctrine to the case at bench. The sole circumstance used by both to justify their disregard of the separate personalities of VFP and VMDC is the former's alleged status as the majority stockholder of the latter. Completely absent, however, both from the decisions of the NLRC and the CA as well as from the records of the instant case itself, is any circumstance which establishes that VFP had complete control or domination over the "*finances[,]. . . policy and business practice*" of VMDC. Worse, even assuming that VFP had such kind of control over VMDC, there is likewise no evidence that the former had used the same to *"commit fraud or wrong, to perpetuate the violation of a statutory or other positive legal duty, or dishonest and unjust act in contravention of* [another's] *legal rights."*

Given the absence of any convincing proof of misuse or abuse of the corporate shield, we, thus, find the application of the doctrine of piercing the veil of corporate fiction to the present case to be unwarranted, if not utterly improper. Consequently, we must also reject, for being erroneous, the pronouncement that VFP may be held solidarily liable with VMDC for any monetary award that may be adjudged in favor of Montenejo, et al. in this case.

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[46] G.R. No. 124715, January 24, 2000, 323 SCRA 102.

Application: Exclusive Liability for Nominal Damages Rests on VMDC

As established in the previous discussion, the only award to which Montenejo, et al. are entitled in the instant case is for nominal damages pursuant to the *Agabon* and *Jaka* doctrines. Considering that the doctrine of piercing the veil of corporate fiction does not apply, the liability for the satisfaction of this award must be deemed to rest exclusively on the employer of Montenejo, et al., VMDC.

III

In fine—

Our finding upholding the validity of the dismissals of Montenejo, et al. warranted the nullification of the awards of full backwages, separation pay *in lieu* of reinstatement, 13th month pay, SILP and COLA that were originally adjudged in their favor by the NLRC. Thus, the assailed CA decision and resolution, for sustaining such awards, ought to be reversed and set aside. Necessarily, the NLRC decision must also be set aside *except* with respect to the finding that Montenejo, et al. were regular employees of VMDC. The statuses of Montenejo, et al. as regular employees of VMDC were not challenged in the present appeal of VFP.

In light of the failure of VMDC to file a notice of closure with the DOLE, however, we must adjudge VMDC to pay nominal damages to Montenejo, et al. pursuant to the *Agabon* and *Jaka* doctrines. The amount of the nominal damages is ₱50,000 per person and the satisfaction thereof is the exclusive liability of VMDC, the employer of Montenejo, et al. VFP is absolved from any further liability to Montenejo, et al.

WHEREFORE, premises considered, the instant petition is **GRANTED**. The Decision dated July 29, 2008 and Resolution dated October 2, 2008 of the Court of Appeals in CA-G.R. SP No. 101041 are **REVERSED** and **SET ASIDE**. Except as to the finding that respondents Eduardo L. Montenejo, Mylene M. Bonifacio, Evangeline E. Valverde and Deana N. Pagal were regular employees of the VFP Management and Development

Corporation, the Decision dated May 16, 2007 of the National Labor Relations Commission in NLRC NCR Case Nos. 30-01-00494-02 and 048927-06 is **SET ASIDE**.

Judgment is hereby made directing the VFP Management and Development Corporation to **PAY** respondents Eduardo L. Montenejo, Mylene M. Bonifacio, Evangeline E. Valverde and Deana N. Pagal the sum of ₱50,000 each as **NOMINAL DAMAGES**.

SO ORDERED.

Bersamin, Leonen, and *Martires, JJ.,* concur.

Gesmundo, J., on leave.

THIRD DIVISION

[G.R. No. 189290. November 29, 2017]

REPUBLIC OF THE PHILIPPINES represented by the ENVIRONMENTAL MANAGEMENT BUREAU, REGION VII, and NOEL C. EMPLEO, Regional Director, *petitioners, vs.* **O.G. HOLDINGS CORPORATION, represented by its Chairman, MR. FREDERICK L. ONG,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; PETITION FOR *CERTIORARI*; A MOTION FOR RECONSIDERATION IS AN INDISPENSABLE CONDITION BEFORE AN AGGRIEVED PARTY CAN RESORT TO A RULE 65 PETITION; SPECULATIVE CLAIM OF FUTILITY OF FILING A MOTION FOR RECONSIDERATION CANNOT EXCUSE A PARTY FROM NONCOMPLIANCE.— A motion for reconsideration is an indispensable condition before

an aggrieved party can resort to the special civil action for certiorari under Rule 65 of the Rules of Court. This well-established rule is intended to afford the public respondent an opportunity to correct any actual or fancied error attributed to it by way of re-examination of the legal and factual aspects of the case. O.G. Holdings no longer moved for the reconsideration of the 7 February 2007 order. To assail the order, it instead filed posthaste a petition for certiorari with the appellate court. Petitioners EMB-Region 7 and its then Officer-in-Charge Arranguez were thus deprived of the opportunity to rectify or, at the least, address the errors of jurisdiction that O.G. Holdings imputed against them before the CA. While there are well-recognized exceptions to the rule, none is said to be present here. For one thing, O.G. Holdings did not specifically plead any of them in its petition for certiorari. It pleaded before the appellate court that it would be "futile" to move for the reconsideration of the 7 February 2007 order as, allegedly, EMB-Region 7 and Arranguez had "already failed or refused to directly act on [O.G. Holdings'] letter for reconsideration of [the] previous July 6, 2006 Order, . . ." We are not persuaded, it being speculative.

2. POLITICAL LAW; ADMINISTRATIVE LAW; ADMINISTRATIVE REMEDIES, EXHAUSTION OF; CONCEPT AND RATIONALE.— The doctrine of exhaustion of administrative remedies requires that resort must first be made with the appropriate administrative authorities in the resolution of a controversy falling under their jurisdiction before the same may be elevated to the courts for review. If a remedy within the administrative machinery is still available, with a procedure pursuant to law for an administrative officer to decide a controversy, a party should first exhaust such remedy before going to court. This doctrine closely echoes the reason behind the rule providing that before resort to the special civil action of certiorari is allowed, a motion for reconsideration should first be filed with the public respondent concerned. Exhaustion of administrative remedies is obliged pursuant to comity and convenience which in turn impel courts to shy away from a dispute until the system of administrative redress has been completed and complied with. The issues that an administrative agency is authorized to decide should not be summarily taken away from it and submitted to a court without first giving the agency the opportunity to dispose of the issues.

3. ID.; ID.; ID.; THE DOCTRINE OF EXHAUSTION OF ADMINISTRATIVE REMEDIES MAY BE DISREGARDED IN CERTAIN INSTANCES BUT THE JUSTIFICATION THEREFOR MUST BE SPECIFICALLY DISCUSSED AND SUFFICIENTLY PROVED.— [T]he doctrine of exhaustion of administrative remedies may be disregarded in certain instances; as has been noted, O.G. Holdings claimed before the appellate court that four exceptions existed in its case to prevent the doctrine from being applied to its petition for certiorari. Yet in the petition for certiorari, we observe that O.G. Holdings failed to discuss, let alone prove, how public interest had any bearing in its case. Neither did it sufficiently prove how the suspension of the subject ECC would have caused irreparable injury. On this score, O.G. Holdings merely alleged that cancelled guest bookings, allegedly due to the suspension of the project's ECC, would harm its economic well-being as well as that of its employees and the Province of Bohol. Indeed, O.G. Holdings did not even present proof that the vaunted cancellations were in fact done; and it failed to describe in monetary terms the alleged losses from said cancellations.

4. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; PETITION FOR *CERTIORARI*; GRAVE ABUSE OF DISCRETION, NOT A CASE OF; NO GRAVE ABUSE OF DISCRETION COMMITTED IN THE SUSPENSION OF THE SUBJECT ENVIRONMENTAL COMPLIANCE CERTIFICATE (ECC).— [T]he CA erred in ruling that EMB-Region 7 and Arranguez had acted in *grave* abuse of discretion. Time and again we have held that a petition for certiorari will prosper only if *grave* abuse of discretion is alleged and proved to exist. Abuse of discretion is *grave* if it is so patent and gross as to amount to an evasion of a positive duty or a virtual refusal to perform a duty enjoined by law or to act at all in contemplation of law, as where the power is exercised in an arbitrary and despotic manner by reason of passion or hostility. Here, we find no grave abuse of discretion on the part of EMB--Region 7 and Arranguez when they suspended the ECC for the Panglao Island Nature Resort Corporation. Indeed, we cannot even find mere abuse of discretion in the act, as it came on the heels of a recommendation from the EIA Division and was provoked by O.G. Holdings' continuous non-compliance with Condition No. 2.2 of the ECC. Such noncompliance is a violation that the National Environmental Protection Council, now the

Environmental Management Bureau, was authorized to penalize under P.D. No. 1586[.] x x x With this penalizing law in existence, there is no basis to rule that EMB-Region 7 and Arranguez had acted in excess or lack of jurisdiction.

APPEARANCES OF COUNSEL

Office of the Solicitor General for petitioners.
Trabajo-Lim Law Office for respondent.

D E C I S I O N

MARTIRES, *J.*:

At the urging of the Republic, for review[1] under Rule 45 of the Rules of Court are the Decision[2] and the Resolution[3] of the Court of Appeals (*CA*) in CA-G.R. SP No. 02530, dated 11 June 2009 and 10 August 2009, respectively, whereby the appellate court nullified and set aside the Orders dated 6 July 2006,[4] and 7 February 2007,[5] of petitioner, the Environmental Management Bureau, Region 7 (*EMB-Region 7*), Department of Environment and Natural Resources (*DENR*), in EIA Cases Nos. VII-2006-06-019 and VII-2007-02-010.[6] With the orders, petitioner suspended the Environmental Compliance Certificate (*ECC*) it had previously issued to the beach resort project of respondent O.G. Holdings Corporation (*O.G. Holdings*).[7] The suspension was triggered by respondent's violation of Presidential Decree (*P.D.*) No. 1586, or the Philippine Environmental Impact Statement System, having failed to comply with a condition

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[1] Petition for Review on *Certiorari*, *Rollo*, pp. 19-46.

[2] *Rollo*, pp. 50- 65.

[3] *Id*. at 68-70.

[4] *Id*. at 71-73.

[5] *Id*. at 74-76.

[6] *Id*. at 71-76.

[7] *Id*. at 84-89.

set forth in the certificate. With the suspension, petitioner effectively prohibited the operations and further development of the beach resort. The CA ruled that this was in grave abuse of discretion.

We required a comment[8] and a reply.[9] The parties complied.[10]

The Facts

The records narrate:

Respondent's beach resort project, the Panglao Island Nature Resort, comprising 3.0709 hectares,[11] is located at Barangay Bingag, Municipality of Dauis, Panglao Island, Bohol Province.[12] In the resort are native-style cottages, a hotel, a clubhouse, a man-made islet with a lifeguard post, a shed, and benches. It boasts of amenities such as a business center, function rooms, sports and recreational facilities, swimming pools, a spa, wildlife sanctuaries, a marina, a full-service dive shop and novelty shops, and a beachfront bar and restaurant.[13]

On 26 July 2002, EMB-Region 7 issued an Environmental Compliance Certificate (*ECC*) to the Panglao Island Nature Resort Corporation for the beach resort project owned and operated by O.G. Holdings, with Frederick L. Ong as President (*Ong*).[14] The ECC reads:

ENVIRONMENTAL COMPLIANCE CERTIFICATE
(07 02 07-26 0226 402)

The **ENVIRONMENTAL MANAGEMENT BUREAU (EMB)** of the **Department of Environment and Natural Resources (DENR),**

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[8] *Id*. at 235, Resolution dated 23 November 2009.

[9] *Id*. at 282.

[10] *Id*. at 236-253 (Comment); *Id*. at pp. 290-305 (Reply).

[11] *Id*. at 83.

[12] *Id*. at 257.

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

[14] *Id*. at 257-258.

Region VII hereby grants this **ENVIRONMENTAL COMPLIANCE CERTIFICATE (ECC)** to **PANGLAO ISLAND NATURE RESORT CORPORATION** for its **Beach Resort project** located in Barangay Bingag, Dauis, Panglao Island, Bohol after complying with the **Environmental Impact Assessment (EIA)** requirements pursuant to P.D. 1586.

This **Certificate** is being issued subject to the following conditions:

1. That this **Certificate** is issued as one of the requirements for any permit issuances by other concerned agencies and is valid only for the beach resort project which covers a land area of three point zero seven zero nine (3.0709) hectares covered by OCT No. 75531 consisting of the following facilities/amenities;

a. Thirteen (13) units bungalows;
b. Seven (7) units duplex cottage;
c. Three (3) units quadruplex cottages;
d. Swimming pool;
e. Lobby and Restaurant;
f. Library and Function Room;
g. Gazebo and Fitness Gym; and
h. Two-hundred (200) square meter man-made island in the foreshore area.

2. That it shall be the responsibility of the proponent to secure the necessary permits/clearances and coordinate with concerned agencies to include, but not limited to the following:

2.1. Department of Health (DOH)-Region 7 and/or Municipal Health Office on provision of sewage treatment facilities and Sanitary Permits;
2.2. DENR-PENRO/CENRO on Foreshore Lease/Other Lawful Purposes Permit in case of any development in the foreshore area;
2.3. Municipal Engineer's Office on Drainage Clearance taking into consideration the provision of catch basins to prevent siltation/turbidity of seawater;
2.4. Municipal Building Official on Structural Stability and Building Permit;
2.5. Fisheries and Aquatic Resources Management Council Clearance, for development on-shore;
2.6. Municipal Government on Solid Waste Management, which shall effectively implement on solid waste management scheme,

segregation and recycling of solid waste prior to disposal in a manner that does not create nuisance or land pollution.

That it shall be the responsibility of the respective government agencies to monitor the herein stated permits/clearances;

3. That the project proponent shall be held responsible [for] damages incurred to life, property, and environment brought about by the implementation of the project. Aggrieved parties shall be justly and timely compensated. Likewise, the proponent shall set aside One Hundred Thousand Pesos (₱100,000.00) representing as Environmental Guarantee Fund (EGF) for any environmental impacts arising from the project implementation. This shall be maintained all throughout the duration of the project;

4. That buffer strip of appropriate tree species either in the form of tree parks or landscaping should be planted on any applicable areas and shall be maintained all throughout the duration of the project;

5. That overflow septic tanks from cottages should be pumped to the Centralized Sewage Treatment Facility and effluent should conform with the standards set forth in the Implementing Rules and Regulations of P.D. 984;

6. That a marine study should be conducted within the primary impact area and a report should be submitted to this Office thirty (30) days from receipt of this Certificate;

7. That information signs prohibiting coral collection should be posted on strategic locations of the project area;

8. That any expansion from the existing approved operation shall be subject to [other] EIA requirements;

9. That the project shall exit the coverage of EIS System once all the conditions have been complied with, and henceforth all regulatory activities shall be conducted by those regulatory agencies concerned, to include but not limited to those that are indicated in condition No. 2 of this Certificate. EMB, DENR-Region 7 shall be furnished a copy of the Monitoring Inspection Report of the said agencies;

10. That an on-the-spot monitoring may be conducted by DENR-PENRO concerned and/or EMB-Region VII anytime in coordination with concerned groups;

11. That transfer of ownership of this project carries the same conditions as contained in this Certification for which written

notification should be made by herein grantee to this Office within fifteen (15) days from such transfer; and

THIS ECC SHOULD NOT BE MISCONSTRUED AS A PERMIT, RATHER A SET OF CONDITIONALITIES WHICH SHOULD BE FOLLOWED BY THE PROJECT PROPONENT IN ALL STAGES OF THE PROJECT IMPLEMENTATION IN ORDER TO MITIGATE POTENTIAL ADVERSE IMPACTS [ON] THE ENVIRONMENT.

Non-Compliance [with] any of the above stipulations will be sufficient cause for the suspension or cancellation of this **Certificate** and/or imposition of a fine in an amount not to exceed Fifty Thousand Pesos (₱50,000.00) for every violation thereof, at the discretion of this **Office** (Section 9 of P.D. 1586).

Given this 26th day of July 2002.

Approved by:

AUGUSTUS L. MOMONGAN
Regional Executive Director

Recommending Approval:

BIENVENIDO L. LIPAYON
Regional Director

Conformé:

FREDERICK L. ONG
President and General Manager

Thereafter, O.G. Holdings proceeded to develop and operate the project, incurring an unspecified "millions of pesos" in the process.[15]

On 3 December 2003, EMB-Region 7 monitored the project for compliance. It found three violations of the ECC: (a) non-compliance with its Conditions Nos. 2.2, 3, and 6, or the requirements that the project obtain a foreshore lease, (b) that it establish an Environmental Guarantee Fund, and (c) that it submit a marine study on the project's primary impact area.[16]

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[15] *Id*. at 86.

[16] *Id*. at 74.

Consequently, the bureau issued a Notice of Violation, dated 15 March 2004.[17]

The following month, on 16 April 2004, EMB-Region 7 again conducted a compliance monitoring, and found that ECC again failed to comply with Conditions Nos. 2.2 and 6.[18] On 13 May 2004, it issued a Notice of Violation[19] to respondent Ong, President and General Manager of Panglao Island Nature Resort Corporation[20] and Chairperson of O.G. Holdings,[21] with an invitation to a technical conference on **16 June 2004** at the bureau's office in Mandaue City.[22] EMB-Region 7 Regional Director Bienvenido L. Lipayon signed the notice.[23]

At the conference, O.G. Holdings disclosed the difficulties it was having in securing a foreshore lease for the beach resort project. Particularly, it stated that the Municipality of Dauis could not give its favorable endorsement for the lease, as an existing ordinance, Municipal Ordinance No. 03-1991,[24] prohibited any development on the municipal shorelines. Nonetheless, it made a commitment that it would file "appropriate documents"[25] on the foreshore lease and marine study.

On 1 March 2005, O.G. Holdings submitted a marine study, finally complying with ECC Condition No. 6.[26]

The following day, 2 March 2005, EMB-Region 7 held yet another monitoring and noted the continuing violation of ECC

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[17] *Id*.

[18] *Id*.

[19] *Id*. at 259.

[20] *Id*. at 258.

[21] *Id*. at 254.

[22] *Id*. at 259.

[23] *Id*.

[24] *Id*. at 196 and 198.

[25] *Id*. at 74.

[26] *Id*. at 71.

Condition No. 2.2, *viz*, the securing of a foreshore lease.[27] At this point, it bears mentioning that the bureau had also received a complaint from a local fisherfolk organization, the Bingag Little Fishermen's Organization, that O.G. Holdings was cordoning the shoreline at the project site, affecting the right of way of the fisherfolk.[28]

On 28 April 2005, EMB-Region 7 again sent O.G. Holdings a Notice of Violation with respect to ECC Condition No. 2.2.[29] O.G. Holdings replied, in a letter sent on 10 November 2005, that compliance with the condition was legally impossible. It blamed the local government unit for allegedly failing to act[30] on its request that the Panglao Island Nature Resort Corporation be given a favorable endorsement for a foreshore lease. It informed EMB-Region 7 that it had filed, instead, an application with the Philippine Reclamation Authority (*PRA*) for the special registration of a man-made island located within the project. O.G. Holdings prayed that the bureau consider *the application* with the PRA as substantial compliance with ECC Condition No. 2.2. In support of this prayer, it submitted a letter,[31] dated 25 May 2005, issued by PRA General Manager and Chief Executive Officer Teodorico C. Taguinod acknowledging receipt of said application for the registration of O.G. Holdings' man-made island, and advising that PRA's requirements must be met.[32]

On 4 July 2006, EMB-Region 7's Environmental Impact Assessment (*EIA*) Division recommended the suspension of the ECC issued to the Panglao Island Nature Resort Corporation. Incidentally, on the following day, the Department of Tourism issued a Class "AA" accreditation to the beach resort.[33]

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[27] *Id*.

[28] *Id*.

[29] *Id*. at 72.

[30] *Id*. at 75.

[31] *Id*. at 270.

[32] *Id*. at 72.

[33] *Id*. at 255, Per Accreditation No. R-AA-169-2006.

The Orders of the Environmental Management Bureau

Acting on EIA Division's recommendation, EMB-Region 7 suspended the subject ECC in an order,[34] dated 6 July 2006, and signed by petitioner Alan C. Arranguez (*Arranguez*), Officer-in-Charge, Office of the Regional Director, EMB-Region 7, which reads:

> **WHEREFORE**, viewed from the light of the foregoing and pursuant to Section 6.0 (b) of DAO 96-37, the **Environmental Compliance Certificate (ECC 07 01 04-03 0054 402)** issued to Panglao Island Nature Resort is **SUSPENDED** for failure of the proponent to submit foreshore lease agreement and/or permit from the Philippine Reclamation Authority for the foreshore area of the project.
>
> The proponent is directed to **CEASE AND DESIST** from undertaking project expansion and other developments within the project area.
>
> The Chief of the Environmental Impact Assessment Division or his duly authorized representative is directed to implement this Order within seventy-two (72) hours and to submit report within forty-eight (48) hours from its execution stating the proceedings taken thereon.
>
> **SO ORDERED**.
>
> **(Sgd.) ALAN C. ARRANGUEZ**
> OIC, Regional Director

In a letter dated 14 July 2006, O.G. Holdings moved for reconsideration. It pleaded that the suspension of the ECC would hinder its application with the PRA, as it required an existing ECC for the special registration of the man-made island.[35]

The plea prompted the Bohol staff of EMB-Region 7 to visit the project site on 30 August 2006. The staff reported that there were no reclamation activities at the site. O.G. Holdings was nevertheless advised "not to take any activity over the area."[36]

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[34] *Id*. at 71-73, Docketed as EIA Case No. VII-2006-06-019.

[35] *Id*. at 90.

[36] *Id.* at 75.

However, local fisherfolk reported to the bureau that a guardhouse was being built at the resort, and that its foundation was already finished. The fisherfolk also reported that O.G. Holdings was cordoning seawater at the project site. On 18 January 2007, EMB-Region 7 investigated these reports, during which O.G. Holdings manifested that it would no longer proceed with the construction of the guardhouse but that its cordoning activities would continue in order to maintain the security of resort guests, following instructions from the Department of Tourism.[37]

On 7 February 2007, again, via Officer-in-Charge Arranguez, EMB-Region 7 issued the second suspensive order.[38] This time, the order included as among the beach resort project's violations the construction of a guardhouse within the foreshore area. The order reads, in part:

> We painstakingly reviewed the records as well as laws, rules and regulations in order to judiciously resolve the case. As per record, the proponent has not secured yet a tenurial instrument from the DENR nor has a permit from the Philippine Reclamation Authority (PRA). To date, proponent has failed to submit necessary permit/ clearance relevant to the foreshore area. From the date of the issuance of the Environmental Compliance Certificate (ECC) until today, a considerable length of time of more than two (2) years had lapsed for the proponent to process and secure such permit. The proponent has made a written commitment several times to comply [with] the same but it was not rectified and complied [with]. The act of continuous violation can be interpreted as seeming misrepresentation or deliberate intent to thwart the rules. The same should be taken against the proponent. The provision of Section 6.0 (b) of DENR Administrative Order No. 96-37 otherwise known as the implementing rules of EIS System Act punishes violation of ECC conditions. Considering the infraction of the proponent through the years, it would be fitting to impose a stiffer penalty. Further, the construction of the guardhouse and the laying of its foundation within the foreshore area is an apparent violation of the previous order of this Office and DENR Administrative Order No. 2003-30. Finally, in view of the suspension of the Environmental Compliance Certificate (ECC), the project is technically

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[37] *Id*.

[38] *Id*. at 74-76, Docketed as VII-2007-02-010.

operating without an ECC. Under existing policy, a project without an ECC is prohibited from further implementing /operating the same. However, the Office in the spirit of due process, gives respondent proponent the opportunity to submit the required tenurial instrument over the foreshore area in compliance [with] the ECC condition, and other pertinent documents which will be made as the basis for the imposition of appropriate penalty including the cessation of project operation.

WHEREFORE, viewed from the light of the foregoing, this Office orders respondent proponent to submit the required tenurial instrument for the foreshore area and other documents relevant thereto within seventy-two (72) hours from receipt hereof, subject to the evaluation and review of this Office. If found compliant, the Order suspending the efficacy of the ECC will be lifted, however, if the documents will be found insufficient, the **CEASE AND DESIST ORDER (CDO)** will be implemented immediately by this Office.

The Chief of the Environmental Impact Assessment Division or his duly authorized representative is directed to implement this Order within seventy two (72) hours and to submit report within forty eight (48) hours from its execution stating the proceedings taken thereon.

SO ORDERED.

(Sgd.) ALAN C. ARRANGUEZ
OIC, Regional Director

In fine, the order stated that unless O.G. Holdings submit a "tenurial instrument for the foreshore area," e.g., a foreshore lease agreement, within the specified seventy-two hours, the ECC for the Panglao Island Nature Resort Corporation would be suspended immediately, with the suspension resulting in the disallowance of the operations and further development of the resort.

O.G. Holdings no longer moved for the reconsideration of this second order.

The Petition for Certiorari before the CA

Instead, it filed a special civil action under Rule 65 of the Rules of Court before the CA. The petition for certiorari,[39] dated

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[39] *Id.* at 188-215.

22 February 2007, and docketed as CA-G.R. CEB SP No. 02530,[40] named as respondents petitioners EMB-Region 7 and Officer-in-Charge Arranguez, with the latter impleaded in his official and personal capacities. The petition for certiorari prayed for the annulment of the 6 July 2006 and 7 February 2007 orders and claimed an "extreme urgency" in the issuance of a temporary restraining order and writ of preliminary injunction[41] to restrain the implementation of the orders. The petition also asked that "a condition"[42] in the subject ECC be annulled and/or modified.

At the outset, the petition for certiorari insisted that certiorari was the proper remedy against the suspension of the project's ECC. Appealing the suspensive orders to the Secretary of the DENR, it argued, would not stay the subject suspension. The petition claimed that four exceptions existed to prevent the application of the principle of exhaustion of administrative remedies, to wit: (1) to require exhaustion of administrative remedies would be unreasonable; (2) the rule does not provide a plain, speedy and adequate remedy; (3) there are circumstances indicating the urgency of judicial intervention, as when public interest is involved; and (4) there is irreparable injury. Anent the fourth point, the petition claimed that cancellations of local and foreign guest bookings, as a consequence of the suspension, were harming the economic well-being of O.G. Holdings, its employees, and the Province of Bohol.

To impute grave abuse of discretion on EMB-Region 7 and Arranguez, the petition claimed that they had imposed "an impossible condition [to be complied with] within an impossible seventy two (72) hours."[43] It pointed out that Condition No. 2.2 came into play only when there were construction or development activities within the beach resort project's foreshore area. Thus, the petition now contended that, *first*, the resort's

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[40] *Id*. at 188.

[41] *Id*. at 209-213.

[42] *Id*. at 80.

[43] *Id*. at 76.

man-made island was the only reason why EMB-Region 7 and Arranguez were insisting on a foreshore lease; and, *second*, the man-made island was not a construction or development activity on the foreshore area, but a reclamation project located "some ninety (90) meters offshore from the resort."[44] Hence, the petition went on to argue, there was no basis to require a foreshore lease for the man-made island and the entire beach resort project. And even if it were assumed, *arguendo*, that a foreshore lease was required *for the man-made island*, it was illogical and unjust of EMB-Region 7 and Arranguez to have ordered the stoppage of the operations of the *entire* beach resort project considering that its other components were located outside its foreshore area.

The petition went on to claim that O.G. Holdings attempted in good faith to substantially comply with Condition No. 2.2, *viz*, by applying for the special registration, as reclaimed land, of the man-made island. Unfortunately, EMB-Region 7 and Arranguez made the application's approval impossible when they suspended the beach resort project's ECC. The following passage expresses the petition's interesting theory on this score:

> In effect, while initially Respondents [EMB-Region 7 and Arranguez] were open to admitting the PRA permit as substitute compliance for the foreshore lease agreement, they (respondents) have nevertheless subsequently made it impossible for Petitioner to secure the same since it has suspended its ECC instead of waiting for the processing and release of the PRA permit. In short, Respondents demand something from Petitioner but at the same time have made it impossible for Petitioner to comply with the same by putting obstacles in every step of the way in Petitioner's effort to comply with its impossible condition.[45]

In fine, the petition for certiorari concluded that EMB-Region 7 and Arranguez acted in grave abuse of discretion amounting to lack of or excess of jurisdiction in suspending the subject ECC.

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[44] *Id*. at 83.

[45] *Id*. at 99.

The Ruling of the CA

The CA found merit in the prayer for the issuance of the extraordinary writ of certiorari. The dispositive portion of the CA decision reads:

> **WHEREFORE**, in light of all the foregoing, the petition is hereby **GRANTED**. The orders dated July 6, 2006 and February 7, 2007 issued by OIC, Regional Director, Alan Arranguez, are hereby **ANNULLED** and **SET ASIDE**. Petitioner is hereby relieved of complying with condition No. 2.2, and in lieu thereof, to submit proof of registration of the reclaimed off-shore area as soon as it has been granted by the PRA in due course.[46]

The CA agreed with O.G. Holdings that it would be unreasonable to require exhaustion of administrative remedies in the case. It characterized Condition No. 2.2 of the ECC as "presently unattainable"[47] and the suspension of the ECC as arbitrary.[48] EMB-Region 7 and Arranguez, the appellate court held, had thus erred in suspending the ECC. Such error was no mere error of judgment, but of jurisdiction, and more so because the suspension also rendered futile O.G. Holdings' pending application with the PRA.[49] The CA said: "[P]etitioner [O.G. Holdings] was abruptly robbed of its opportunity to comply therewith within the legal parameters afforded by applicable laws on the matter."[50]

Interestingly, the appellate court also opined[51] that the required foreshore lease or permit may be dispensed with. There had been a "gross misappreciation of facts,"[52] the CA said, as the resort's man-made island was located offshore.[53] Thus, there

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[46] *Id*. at 64.

[47] *Id*. at 58.

[48] *Id*. at 62.

[49] *Id*. at 59.

[50] *Id*.

[51] *Id*.

[52] *Id*. at 63.

[53] *Id*. at 60.

was no need for O.G. Holdings to secure a foreshore lease.[54] We quote the CA's discussion on this score, if only so that the decision under review may speak for itself:[55]

> Be that as it may, this Court is of the opinion that condition No. 2.2 of the ECC may be dispensed with in view of the fact that the islet for which respondents sought the petitioner to secure a tenurial document, is, as found by Deputy Public Land Inspector Alfredo Galarido, within an **OFFSHORE AREA** and not on **FORESHORE AREA**; hence, for all legal intents, there is no need to secure the required foreshore lease.
>
> The definition of the term "**FORESHORE LAND**" as discussed in the case of Republic *vs*. CA, et al, is instructive, thus:
>
> > *The strip of land that lies between the high and low water marks and that is alternately wet and dry according to the flow of the tide."* [Sic] (Words and Phrases, "Foreshore")
> >
> > *"A strip of land margining a body of water (as a lake or stream); the part of a seashore between the low-water line usually at the seaward margins of a low-tide terrace and the upper limit of wave wash at high tide usually marked by a beach scarp or berm"* (Webster's Third New International Dictonary.)"
>
> A perusal of the records would clearly show that, indeed, the islet or the man-made island is found on the offshore area fronting the resort, as can be clearly seen in the pictures attached to the records. Off-shore as defined in Webster dictionary refers to seaward or at a distance from the shore. [citations omitted]

The appellate court observed that even if it were to be assumed, for the sake of argument, that the man-made island was a foreshore development, securing a lease or permit for the same would still not be possible, given the municipal proscription against such developments. On O.G. Holding's application with the PRA, the CA then declared that such application was made in O.G. Holding's "desire to comply" with Condition No. 2.2; with the PRA application cast in such light, the CA concluded that it was "unjust and inequitable" to insist on a foreshore

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[54] *Id*. at 59.

[55] *Id*. at 59-60.

lease for the beach resort project even *after* its ECC had been suspended. Finally, the CA stressed that millions of pesos had been spent on the Panglao Island Nature Resort.

In the main, the CA ruled that EMB-Region 7 and Arranguez had acted with grave abuse of discretion. EMB-Region 7 moved for reconsideration, but it was denied in a resolution dated 11 August 2009.[56]

The Petition for Review before this Court

The Court is now faced with the present petition for review, filed under Rule 45 of the Rules of Court, imputing errors on the subject ruling, *viz*:[57]

I. A writ of certiorari will not lie in the absence of grave abuse of discretion.

II. Factual Issues are not proper in a petition for certiorari.

ISSUE

The issue is whether the appellate court reversibly erred in annulling and setting aside the 6 July 2006 and 7 February 2007 Orders of the Environmental Management Bureau. Said differently, the issue is whether the CA reversibly erred in ruling that EMB-Region 7 and Arranguez had acted in grave abuse of discretion amounting to lack of or excess of jurisdiction in suspending the subject ECC, effectively disallowing the operations and further development of the Panglao Island Nature Resort. Put succinctly, the issue is whether the CA reversibly erred in granting O.G. Holdings' Petition for Certiorari.

THE RULING OF THE COURT

The petition for review is impressed with merit. There are obvious errors in the assailed ruling.

The CA erred in granting O.G. Holdings' petition when there was

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[56] *Id*. at 29.

[57] *Id*. at 30.

a failure to move for reconsideration before seeking certiorari.

A motion for reconsideration is an indispensable condition before an aggrieved party can resort to the special civil action for certiorari under Rule 65 of the Rules of Court.[58] This well-established rule is intended to afford the public respondent an opportunity to correct any actual or fancied error attributed to it by way of re-examination of the legal and factual aspects of the case.[59]

O.G. Holdings no longer moved for the reconsideration of the 7 February 2007 order. To assail the order, it instead filed posthaste a petition for certiorari with the appellate court. Petitioners EMB-Region 7 and its then Officer-in-Charge Arranguez were thus deprived of the opportunity to rectify or, at the least, address the errors of jurisdiction that O.G. Holdings imputed against them before the CA.

While there are well-recognized exceptions to the rule,[60] none is said to be present here. For one thing, O.G. Holdings did not specifically plead any of them in its petition for certiorari. It

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[58] *Audi AG v. Mejia*, 555 Phil. 348, 353 (2007); cited in *Republic rep. by the Privatization and Management Office v. Pantranco North Express, Inc.*, 682 Phil. 186, 193 (2012).

[59] *Villena v. Rupisan*, 549 Phil. 146, 158 (2007).

[60] The exceptions are: (a) where the order is a patent nullity, as where the court *a quo* has no jurisdiction; (b) where the questions raised in the *certiorari* proceeding have been duly raised and passed upon by the lower court, or are the same as those raised and passed upon by the lower court; (c) where there is an urgent necessity for the resolution of the question and any further delay would prejudice the interests of the Government or of the petitioner or the subject matter of the action is perishable; (d) where, under the circumstances, a motion for reconsideration would be useless; (e) where petitioner was deprived of due process and there is extreme urgency for relief; (f) where, in a criminal case, relief from an order of arrest is urgent and the granting of such relief by the trial court is improbable; (g) where the proceedings in the lower court are a nullity for lack of due process; (h) where the proceedings were *ex parte* or in which the petitioner had no opportunity to object; and (i) where the issue raised is one purely of law or where public interest is involved.

pleaded before the appellate court that it would be "futile" to move for the reconsideration of the 7 February 2007 order as, allegedly, EMB-Region 7 and Arranguez had "already failed or refused to directly act on [O.G. Holdings'] letter for reconsideration of [the] previous July 6, 2006 Order, . . ."[61]

We are not persuaded, it being speculative. At this point, the petition for certiorari was already fatally defective, and the CA erred in granting it.

The CA erred in granting O.G. Holdings' petition when they had failed to exhaust available administrative remedies before seeking certiorari.

The doctrine of exhaustion of administrative remedies requires that resort must first be made with the appropriate administrative authorities in the resolution of a controversy falling under their jurisdiction before the same may be elevated to the courts for review. If a remedy within the administrative machinery is still available, with a procedure pursuant to law for an administrative officer to decide a controversy, a party should first exhaust such remedy before going to court. [62]

This doctrine closely echoes the reason behind the rule providing that before resort to the special civil action of certiorari is allowed, a motion for reconsideration should first be filed with the public respondent concerned. Exhaustion of administrative remedies is obliged pursuant to comity and convenience which in turn impel courts to shy away from a dispute until the system of administrative redress has been completed and complied with.[63] The issues that an administrative

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[61] *Rollo*, p. 81; Paragraph 6 of the Petition for *Certiorari*.

[62] *Cf. Castro v. Gloria*, 415 Phil. 645, 651 (2001); cited in *Estrada, et al. v. CA and Bacnotan Cement*, 484 Phil. 730, 739 (2004).

[63] *Cf. Paat v. CA,* 334 Phil. 146, 153 (1997); cited in *Estrada, et al. v. CA and Bacnotan Cement*, 484 Phil. 730, 739-740 (2004).

agency is authorized to decide should not be summarily taken away from it and submitted to a court without first giving the agency the opportunity to dispose of the issues.[64]

O.G. Holdings failed to abide by this doctrine. Administrative remedies existed against the suspension of the subject ECC, made available via DENR Administrative Order No. 30, Series of 2003 (*A.O. No. 30*), which was prevailing at the time of the suspensive orders. A.O. No. 30 provides:

Section 6. Appeal

Any party aggrieved by the final decision on the ECC/CNC applications may, within 15 days from receipt of such decision, file an appeal on the following grounds:

a. Grave abuse of discretion on the part of the deciding authority, or

b. Serious errors in the review findings.

The DENR may adopt alternative conflict/dispute resolution procedures as a means to settle grievances between proponents and aggrieved parties to avert unnecessary legal action. Frivolous appeals shall not be countenanced.

The proponent or any stakeholder may file an appeal to the following:

Deciding Authority	**Where to file the appeal**
EMB Regional Office Director	Office of the EMB Director
EMB Central Office Director	Office of the DENR Secretary
DENR Secretary	Office of the President

O.G. Holdings thus had the opportunity to file an administrative appeal on the suspension of the beach resort project's ECC, beginning with the Office of the EMB Director. Indeed, the administrative machinery afforded even an appeal to the Office of the President, but O.G. Holdings did not avail of such.

It might be argued that Section 6, in A.O. No. 30 applied only to *final decisions* on applications for the issuance of an

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[64] Cf. *Republic v. Lacap*, 546 Phil. 87, 96-97 (2007); cited in *Special People, Inc. Foundation v. Canda, et al.*, 701 Phil. 365, 378 (2013).

ECC or CNC (Certificate of Non-Coverage), and not to the *suspension* of an ECC that had already been issued. However, the 2013 case of *Special People, Inc. Foundation v. Canda, et al.*[65] addresses this argument. The petitioner therein had applied for a CNC for its water-resource development and utilization project in the Province of Bohol. In 2003, the EMB Regional Director concerned declared the location of the project to be within an environmentally critical area, hence not entitled to the CNC applied for. To assail the EMB Regional Director's ruling, similar to the present case, the petitioner filed a special civil action before the Regional Trial Court, a petition for mandamus. The trial court dismissed the petition, prompting the petitioner's appeal before this Court. We dismissed the appeal for the reason, among others, that petitioner sought certiorari before exhausting all available administrative remedies. In our discussion, we highlighted the general rule on where to appeal the decisions and actions of the EMB Regional Directors:

> The records show that the petitioner failed to exhaust the available administrative remedies. At the time RD Lipayon denied the petitioner's application for the CNC, Administrative Order No. 42 dated November 2, 2002 had just vested the authority to grant or deny applications for the ECC in the Director and Regional Directors of the EMB. Notwithstanding the lack of a specific implementing guideline to what office the ruling of the EMB Regional Director was to be appealed, the petitioner could have been easily guided in that regard by the Administrative Code of 1987, which provides that the Director of a line bureau, such as the EMB, shall have supervision and control over all division and other units, including regional offices, under the bureau. Verily, supervision and control include the power to "review, approve, reverse or modify acts and decisions of subordinate officials or units." Accordingly, the petitioner should have appealed the EMB Regional Director's decision to the EMB Director, who exercised supervision and control over the former.[66] [citations omitted]

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[65] 701 Phil. 365-387 (2013).

[66] *Id*. at 378-379.

Certainly, the doctrine of exhaustion of administrative remedies may be disregarded in certain instances;[67] as has been noted, O.G. Holdings claimed before the appellate court that four exceptions existed in its case to prevent the doctrine from being applied to its petition for certiorari. Yet in the petition for certiorari, we observe that O.G. Holdings failed to discuss, let alone prove, how public interest had any bearing in its case. Neither did it sufficiently prove how the suspension of the subject ECC would have caused irreparable injury. On this score, O.G. Holdings merely alleged that cancelled guest bookings, allegedly due to the suspension of the project's ECC, would harm its economic well-being as well as that of its employees and the Province of Bohol. Indeed, O.G. Holdings did not even present proof that the vaunted cancellations were in fact done; and it failed to describe in monetary terms the alleged losses from said cancellations.

The claims that an administrative appeal of the suspensive orders would not be the plain, speedy, and adequate remedy, and that to require exhaustion of administrative remedies would be unreasonable are closely intertwined with the petition for certiorari's principal claim that EMB-Region 7 and Arranguez had committed grave abuse of discretion.

The CA erred in making factual findings in a certiorari proceeding.

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[67] 723 Phil. 546, 557 (2013); The exceptions are: (1) when there is a violation of due process; (2) when the issue involved is purely a legal question; (3) when the administrative action is patently illegal amounting to lack or excess of jurisdiction; (4) when there is estoppel on the part of the administrative agency concerned; (5) when there is irreparable injury; (6) 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; (7) when to require exhaustion of administrative remedies would be unreasonable; (8) when it would amount to a nullification of a claim; (9) when the subject matter is a private land in land case proceedings; (10) when the rule does not provide a plain, speedy and adequate remedy; (11) when there are circumstances indicating the urgency of judicial intervention; (12) when no administrative review is provided by law; (13) where the rule of qualified political agency applies; and (14) where the issue of non-exhaustion of administrative remedies has been rendered moot.

The failure to exhaust administrative remedies in this case partakes of a particular prominence when we consider the factual matters that O.G. Holdings brought before the appellate court on certiorari.

Factual issues are not a proper subject for certiorari, which is limited to the issue of jurisdiction and grave abuse of discretion.[68] Yet to argue grave abuse of discretion, O.G. Holdings presented the appellate court with factual matters that do not appear, at least on record, to have been shared or even passed upon by EMB Region-7. The following passage from the petition for certiorari is worthy of quote as it speaks for itself.

> Petitioner's Resort is located atop a cliff facing the Bohol Strait and Maribojoc Bay, at the foot of such cliff is a very little foreshore area which makes any permanent development in said area not only unsuitable, but also impractical. Besides, Municipal Ordinance No. 03-1991 of the Municipality of Dauis, where the Resort is located, prohibits any foreshore development in the Municipality. For these reasons, Petitioner has never made any development in the foreshore area within the Resort. Since the requirement under Condition No. 2.2 of Petitioner's ECC, that is—to secure a foreshore lease/other lawful purposes permit becomes operative only once Petitioner should make "any development in the foreshore area," there is obviously no need for Petitioner to comply with said requirement since as stated earlier, Petitioner has never made any permanent development in the foreshore area of its Resort. [underlining provided][69]

Elsewhere in the petition, O.G. Holdings described the man-made island as an "islet,"[70] whereas EMB-Region 7 had identified it in the subject ECC as an "island."[71] O.G. Holdings' claim that it has "never made any development in the foreshore area" also flies in the face of EMB-Region 7's own finding, stated in its 7 February 2007 order, that O.G. Holdings had constructed

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[68] *Negros Oriental Electric Cooperative 1 v. The Secretary of the Department of Labor and Employment, et al.*, 409 Phil. 767, 777 (2001).

[69] *Rollo,* p. 97; Pages 19-21 of the Petition for *Certiorari*.

[70] *Id*. at 87.

[71] *Id*. at 257.

a guardhouse and had laid its foundation within the foreshore area of the resort.[72]

Yet, following O.G. Holdings' lead, the CA proceeded to declare that the man-made island was an offshore development and hence ruled that the island was *not* to be covered by the foreshore lease requirement set forth in Condition No. 2.2 of the ECC. Admittedly, the CA arrived at the factual premise based on "pictures" and on the alleged finding of a deputy public land inspector. But these are insufficient proof. The CA did not identify the kind of "pictures" these were such that it was persuaded to pronounce, in a certiorari proceeding, a rather technical finding of fact. From which angle were the pictures taken or drawn? Were they cartographic, satellite images, or photographic–of which there are two kinds, digital and non-digital. Perhaps these decisive pictures were artistic representations, rendered by hand in graphite or ink, but the CA did not say. As to its reliance on the alleged factual finding of the deputy land inspector, suffice it to say that even if it were to be assumed, *arguendo*, that the man-made island had indeed been built offshore, as allegedly found by the land inspector in the fulfillment of the unique mandate of his office, such finding should not be taken to mean that the EMB, in the exercise of its own mandate under the Philippine Environmental Impact Statement System, should automatically exempt the *entire* beach resort project from the need for a foreshore lease, as set forth from the ECC it had issued.

The CA erred in this case in making factual findings in a certiorari proceeding—even if O.G. Holdings had alleged a *misappreciation of facts* on the part of EMB-Region 7. As a rule, misapplication of facts and evidence, and erroneous conclusions based on evidence do not, by the mere fact that errors were committed, rise to the level of grave abuse of discretion.[73] Parenthetically, O.G. Holdings should have elevated

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[72] *Id.* at 76.

[73] *People v. Nazareno*, 612 Phil. 753, 769 (2009); cited in *Ysidoro vs. Hon. Leonardo-de Castro, et al.*, 681 Phil. 1, 17 (2012).

its factual issues on administrative appeal to the sound discretion of the DENR, the government body entrusted with the regulation of activities coming under its special and technical training and knowledge.[74] As this Court held in the case of *Acoba v. Court of Appeals*:[75]

> In a special civil action for certiorari, under Rule 65 of the 1997 Rules of Civil Procedure, factual issues may not be brought before us. Here petitioner's submission, however, shows that he is raising issues concerning alleged errors and misapprehensions of facts committed by the Court of Appeals. These are not correctible by certiorari under Rule 65. The only question that may be raised in a petition for certiorari is whether the respondent has acted without or in excess of jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction. It is not the office of a writ of certiorari to correct errors of fact or law which the lower court may have committed. An error of judgment committed by a court in the exercise of its legitimate jurisdiction is not the same as grave abuse of discretion.

The CA erred in finding grave abuse of discretion amounting to lack or excess of jurisdiction in the suspension of the subject ECC.

To recall, the CA found grave abuse of discretion, amounting to lack or excess of jurisdiction, on the part of the EMB-Region 7 and Arranguez based on the theory that their suspension of the subject ECC made O.G. Holdings' PRA application problematic. We recall the theory, as follows:

O.G. Holdings was seeking to comply with Condition No. 2.2. of the beach resort project's ECC, which was issued in 2002. But the compliance, i.e., obtaining a foreshore lease or permit, was "legally impossible" due to an ordinance prohibiting foreshore developments in the municipality. So in 2005, O.G. Holdings filed an application with the PRA for the special registration, as reclaimed land, of its man-made island, and

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[74] *Quiambao v. Court of Appeals*, 494 Phil. 16, 28 (2005).

[75] G.R. No. 144459, 3 February 2004.

asked that EMB-Region 7 consider the application as substantial compliance with Condition No. 2.2.[76] But in 2007, after noting O.G. Holdings' continued violation of the ECC (for failure to comply with Condition No.2.2), EMB-Region 7 suspended the ECC, prompting O.G. Holdings to assert, on certiorari before the CA, that the suspension had rendered impossible the approval of their PRA registration. O.G. Holdings emphasized that it needed the registration for its substantial compliance with Condition No. 2.2, which compliance, in turn, was pivotal in securing or rather, recovering the ECC for its beach resort project. In fine, O.G. Holdings posited that it needed an ECC in order that it may obtain an ECC. From the foregoing, O.G. Holdings theorized that EMB-Region 7 and Arranguez had acted with grave abuse of discretion in suspending the ECC.

That the CA was convinced by this circuitous theory with its obviously flawed premises is remarkable.

The flaws are two-fold. *First*. It is wrong to suppose that *an application* for the registration of a man-made island, as reclaimed land, may substitute for a foreshore lease agreement or permit. This same observation holds true even if the substitution sought involved the *approved* registration. Incidentally, it bears mentioning that O.G. Holdings' application for the man-made island was made under PRA Administrative Order No. 2005-1, or the Rules and Procedures for Special Registration of Unauthorized/Illegal Reclamation Projects.[77]

Certainly, the supposition would be acceptable were there a law or regulation authorizing such a substitution. Unfortunately for O.G. Holdings, it failed to plead such law or regulation in its petition for certiorari.

Second. Even if it were to be assumed, *arguendo*, that such law or regulation existed, it is wrong to suppose that EMB-Region 7 and Arranguez had acted in grave abuse of discretion

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[76] *Rollo,* p. 75 (see p. 2 of 7 February 2007 Order); *Rollo*, pp. 196-197 (see p. 9 of Petition for *Certiorari*).

[77] *Rollo*, p. 262.

simply because they had practically rejected O.G. Holdings' proposed substitution for Condition No. 2.2. Indeed, the acceptance of the proposed substitution still lay within the *sound discretion* of EMB-Region 7 and Arranguez.

For these reasons, the CA erred in ruling that EMB-Region 7 and Arranguez had acted in *grave* abuse of discretion. Time and again we have held that a petition for certiorari will prosper only if *grave* abuse of discretion is alleged and proved to exist.[78] Abuse of discretion is *grave* if it is so patent and gross as to amount to an evasion of a positive duty or a virtual refusal to perform a duty enjoined by law or to act at all in contemplation of law, as where the power is exercised in an arbitrary and despotic manner by reason of passion or hostility.[79]

Here, we find no grave abuse of discretion on the part of EMB-Region 7 and Arranguez when they suspended the ECC for the Panglao Island Nature Resort Corporation. Indeed, we cannot even find mere abuse of discretion in the act, as it came on the heels of a recommendation from the EIA Division and was provoked by O.G. Holdings' continuous non-compliance with Condition No. 2.2 of the ECC. Such noncompliance is a violation that the National Environmental Protection Council, now the Environmental Management Bureau, was authorized to penalize under P.D. No. 1586, *viz*:

Section 9

Penalty for Violation

Any person, corporation or partnership found violating Section 4 of this Decree, or the terms and conditions in the issuance of the Environmental Compliance Certificate, or of the standards, rules and regulations issued by the National Environmental Protection Council pursuant to this Decree shall be punished by the suspension or

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[78] *Beluso v. Commission on Elections*, 635 Phil. 436, 443 (2010); cited *Spouses Castillo v. CA (4th Division), et al.*, 680 Phil. 334, 341 (2012).

[79] *Estrada v. Hon. Desierto*, 487 Phil. 169, 182 (2004); citing *Duero v. CA*, 424 Phil. 12, 20 (2002); and cited in *Spouses Castillo vs. CA (4th Division), et al.*, 680 Phil. 334, 341 (2012).

cancellation of his/its certificate and/or a fine in an amount not to exceed Fifty Thousand Pesos (₱50,000.000) for every violation thereof, at the discretion of the National Environmental Protection Council.

With this penalizing law in existence, there is no basis to rule that EMB-Region 7 and Arranguez had acted in excess or lack of jurisdiction. We consider, also, that EMB-Region 7 had issued several notices of violations to O.G. Holdings before it came to the lawful decision to suspend the subject ECC for its noncompliance with a condition. This indicates a considerable effort to resolve the violation judiciously and prudently, without automatically resorting to the penalty provided therefor.

We also consider it strange that O.G. Holdings had found it expedient to pray, via its petition for certiorari with the CA, for the annulment or modification of an unspecified "condition"[80] in the ECC, implicitly Condition No. 2.2. To include such a prayer in the petition for certiorari was clearly a procedural error on O.G. Holdings' part. A.O. No. 30 provided for an administrative machinery for amending an existing ECC, *viz*:

8.3 Amending an ECC

Requirements for processing ECC amendments shall depend on the nature of the request but shall be focused on the information necessary to assess the environmental impact of such changes.

8.3.1. Requests for minor changes to ECCs such as extension of deadlines for submission of post-ECC requirements shall be decided upon by the endorsing authority.

8.3.2. Requests for major changes to ECCs shall be decided upon by the deciding authority.

8.3.3. For ECCs issued pursuant to an IEE or IEE checklist, the processing of the amendment application shall not exceed thirty (30) working days; and for ECCs issued pursuant to an EIS, the processing shall not exceed sixty (60) working days. Provisions on automatic approval related to prescribed timeframes under AO 42 shall also apply for the processing of applications to amend ECCs.

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[80] *Rollo*, p. 80.

O.G. Holdings should thus have brought its concerns over Condition No. 2.2 to the attention of this administrative machinery, and should have brought it *at the first instance*, or upon the issuance of the ECC in 2002. That it did not do so again indicates the prematurity of its petition for certiorari, and reflects badly on the appellate court, which expressly "opined" in the decision under review that Condition No. 2.2 "may be dispensed with."[81] On this note, we also observe, that about five years had lapsed from the issuance of the ECC before its suspension. All that time, it appears that the beach resort project had been tolerated to operate without a foreshore lease agreement or permit.

In fine, the CA erred in granting the petition for certiorari despite O.G. Holdings' unjustified failure to exhaust the available administrative remedies for the suspension of its beach resort project's ECC.

WHEREFORE, the foregoing premises considered, the Petition of the Republic is **GRANTED**. There being no grave abuse of discretion amounting to excess or lack of jurisdiction on the part of the Environmental Management Bureau, Region 7, and of Alan C. Arranguez, Officer-in-Charge, Office of the Regional Director, EMB-Region 7, in the issuance of the Orders dated 6 July 2006[82] and 7 February 2007, and in EIA Cases Nos. VII-2006-06-019 and VII-2007-02-010, the Decision and the Resolution of the Court of Appeals in CA-G.R. SP No. 02530 are hereby **SET ASIDE**. The 6 July 2006 and 7 February 2007 Orders of the EMB-Region 7 are ordered **REINSTATED**.

SO ORDERED.

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

Gesmundo, J., on leave.

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[81] *Id.* at 59.

[82] *Id.* at 71-73.

THIRD DIVISION

[G.R. No. 193085. November 29, 2017]

PETRONILO NAPONE, JR. and EDGAR NAPONE, *petitioners, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. CRIMINAL LAW; JUSTIFYING CIRCUMSTANCES; SELF-DEFENSE AND DEFENSE OF A RELATIVE; ELEMENTS THAT MUST CONCUR FOR SELF-DEFENSE AND DEFENSE OF A RELATIVE TO PROSPER; IN BOTH CASES, UNLAWFUL AGGRESSION ON THE PART OF THE VICTIM IS ESSENTIAL.— To successfully claim self-defense, the accused must satisfactorily prove the concurrence of all of its elements, which are: (1) unlawful aggression; (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. Similarly, for defense of a relative to prosper, the following requisites must concur, namely: (1) unlawful aggression by the victim; (2) reasonable necessity of the means employed to prevent or repel the aggression; and (3) in case the provocation was given by the person attacked, that the person making the defense took no part in the provocation. In both self-defense and defense of relatives, whether complete or incomplete, it is essential that there be unlawful aggression on the part of the victim. After all, there would be nothing to prevent or repel if such unlawful aggression is not present. For unlawful aggression to be appreciated there must be an actual, sudden, and unexpected attack or imminent danger thereof, not merely a threatening or intimidating attitude.

2. ID.; ID.; ID.; THE DEFENSE FAILED TO PROVE SELF-DEFENSE AND DEFENSE OF RELATIVE; THE UNLAWFUL AGGRESSORS WERE PETITIONERS THEMSELVES.— [T]he Court finds that the defense failed to discharge the burden of proving that the petitioners acted in self-defense or defense of relatives. x x x The prosecution was able to establish that the Napones, and not the Espelitas, were the unlawful aggressors. x x x Senior armed himself with a

bolo and was ready to use it against the Espelitas making them his specific targets because of his belief that they were his son's assailants. At this juncture, it is well to emphasize that the fact that Calib was seen lying on the ground is not the unlawful aggression required under the law. It was established during trial that any attack on the person of Calib by the Espelitas, if there was any, had already ceased at the time the Napones arrived. No actual, sudden, and unexpected attack or imminent danger on the life or limb of Calib, therefore, could justify Senior's attack on Salvador.

3. **REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; FACTUAL FINDINGS OF THE TRIAL COURT ACCORDED RESPECT; NONE OF THE EXCEPTIONS IS PRESENT IN THIS CASE.—** It is doctrinally settled that findings of trial courts on the credibility of witnesses deserve a high degree of respect and will not be disturbed during appeal in the absence of any clear showing that the trial court overlooked, misunderstood or misapplied some facts or circumstances of weight and substance which could have altered the conviction of the appellant. Furthermore, factual findings of the trial court, when affirmed by the CA, are deemed binding and conclusive. While this rule admits of exceptions, such as when the evaluation was reached arbitrarily or when the trial court overlooked, misunderstood, or misapplied some facts or circumstances of weight and substance which could affect the result of the case, the Court is of the view that none of these exceptions is present in this case.

4. **ID.; ID.; ID.; WHERE PROSECUTION WITNESSES WERE NOT ONLY CREDIBLE BUT WERE ALSO NOT SHOWN TO HAVE HARBORED ILL MOTIVE, THEIR TESTIMONIES ARE ENTITLED TO FULL FAITH AND CREDENCE.—** The prosecution witnesses were not only credible but were also not shown to have harbored any ill motive toward the Napones. Thus, the Court has no reason to doubt their respective testimonies. They were surely entitled to full faith for those reasons, and both the RTC and the CA properly accorded them such credence. Their positive and categorical statements that the Napones assaulted Salvador without any unlawful aggression on his part prevail over the claim of self-defense and defense of relative which were unsubstantiated by clear and convincing proof.

5. ID.; ID.; ID.; INCONSISTENCIES IN THE TESTIMONIES OF WITNESSES AS TO THE LOCATION OF THE HACK WOUNDS OF THE VICTIM DO NOT WEAKEN THEIR CREDIBILITY.— Petitioners capitalize on the apparent inconsistencies between the testimonies of Janioso and Sadaya, who testified that Senior was hacked at the back of his head, and the post-mortem report by Dr. Vacalares, which revealed that Senior sustained hacks wound on the "frontal left side of the head." The variance as to the location of the hack wounds, however, is a relatively minor matter which does not necessarily discredit Janioso and Sadaya as witnesses. This supposed discrepancy could be easily explained by the fact that the incident happened at nighttime, at on or about 8 o'clock in the evening, which might have caused some minor departures in the witnesses' perception. Such minor inconsistency does not weaken, as in fact it serves to strengthen, the credibility of the prosecution witnesses.

6. ID.; ID.; CONSPIRACY MUST BE PROVEN BEYOND REASONABLE DOUBT; CIRCUMSTANTIAL EVIDENCE PRESENTED IN THIS CASE IS NOT SUFFICIENT TO ESTABLISH CONSPIRACY.— The Court agrees with the appellate court that conspiracy does not obtain in the present case. Settled is the rule that much like the criminal act itself, proof beyond reasonable doubt is necessary to establish the existence of conspiracy. It cannot be established by conjectures, but by positive and conclusive evidence. In this case, no other evidence was presented by the prosecution to establish conspiracy aside from the circumstances that the accused were members of the same family, that they arrived at the scene of the crime at about the same time, and that they attacked Salvador successively. These pieces of circumstantial evidence would not suffice to establish conspiracy. It has been held that the fact that the defendants were relatives and had acted with some degree of simultaneity in attacking their victim does not prove conspiracy in the absence of other independent evidence positively and convincingly showing its presence.

7. CRIMINAL LAW; ACCOMPLICE; REQUISITES THAT MUST CONCUR IN ORDER THAT A PERSON MAY BE CONSIDERED AN ACCOMPLICE.— In order that a person may be considered an accomplice, the following requisites must concur: (1) that there be community of design; that is, knowing

the criminal design of the principal by direct participation, he concurs with the latter in his purpose; (2) that he cooperates in the execution by previous or simultaneous act, with the intention of supplying material or moral aid in the execution of the crime in an efficacious way; and (3) that there be a relation between the acts done by the principal and those attributed to the person charged as accomplice.

8. **ID.; ID.; WHERE THE ACCUSED'S PARTICIPATION WAS NOT INDISPENSABLE TO THE CRIME OF ATTEMPTED HOMICIDE, HE MUST BE HELD GUILTY AS AN ACCOMPLICE TO SUCH FELONY.—** The Court opines that Edgar witnessed his father's assault on Salvador and was thus knowledgeable of his criminal design. The simultaneous act of throwing a stone at Salvador was made to assist Senior in achieving his criminal purpose. Thus, Edgar's assent and participation to the criminal acts of his father were sufficiently established. As Edgar's participation was not indispensable to the felony, he must be held liable as an accomplice to the criminal acts of Senior. Therefore, Edgar is guilty as an accomplice to the crime of attempted homicide.

9. **ID.; MITIGATING CIRCUMSTANCES; VINDICATION FOR A GRAVE OFFENSE; REQUISITES TO BE APPRECIATED AS MITIGATING; ACCUSED'S RAGE AND RESENTMENT UPON SEEING THAT A MEMBER OF THEIR FAMILY SUSTAINED GRAVE INJURIES AMOUNT TO A MITIGATING CIRCUMSTANCE OF VINDICATION OF A GRAVE OFFENSE.—** [T]he circumstances surrounding the unfortunate incident merit the appreciation of the mitigating circumstance of vindication for a grave offense. For such to be credited, the following requisites must be satisfied: (1) that there be a grave offense done to the one committing the felony, his spouse, ascendants, descendants, legitimate, natural or adopted brothers or sisters, or relatives by affinity within the same degrees; and (2) that the felony is committed in vindication of such grave offense. Although it was not witnessed by the Napones, the attack on Calib which put his life at risk must have infuriated them. The belief that the Espelitas were responsible for the grave injuries sustained by a member of their family created rage in their minds which clouded their judgment. Upon seeing Calib bloody, prostrate on the ground and possibly clinging for dear life, the Napones were filled

with resentment that resulted in the assault on Salvador. Their acts, therefore, were committed in vindication of a grave offense.

10. ID.; ID.; VOLUNTARY SURRENDER; WHEN THE PROSECUTION DID NOT DISPUTE THE ACCUSED'S CLAIM THAT HE SURRENDERED TO THE AUTHORITIES, SUCH MITIGATING CIRCUMSTANCE MUST BE CREDITED IN HIS FAVOR.— The CA also erred when it failed to appreciate voluntary surrender in favor of Junior. In denying him the benefit of this mitigating circumstance, the appellate court reasoned that no evidence on record other than Junior's own testimony was offered to prove that he voluntarily surrendered to the authorities. In *People v. Malabago*, we held that where the accused testified that he voluntarily surrendered to the police and the prosecution did not dispute such claim, the mitigating circumstance should be appreciated in his favor. A perusal of the record revealed that the prosecution did not dispute Junior's claim that he surrendered to the police authorities in Baungon, Bukidnon, on 23 June 1992. Hence, the mitigating circumstance of voluntary surrender must be credited in his favor.

11. ID.; HOMICIDE; PROPER PENALTY WHEN THERE ARE TWO MITIGATING AND NO AGGRAVATING CIRCUMSTANCES.— In fine, the Court finds Junior liable as principal for the crime of homicide with the prescribed penalty of *reclusion temporal*. Considering, however, that the two mitigating circumstances could be credited in his favor, and no aggravating circumstance attended the commission of the felony, the imposable penalty is *prision mayor*, lower than *reclusion temporal*, and within which the maximum term of the indeterminate sentence shall be taken.

12. ID.; ID.; CIVIL LIABILITY.— Petitioner Petronilo Napone, Jr. is found GUILTY beyond reasonable doubt as principal for the crime of homicide and is x x x ordered to pay the heirs of the deceased Salvador Espelita the following amounts: (1) ₱50,000.00, as civil indemnity; (2) ₱50,000.00, as moral damages; and (3) ₱50,000.00 as temperate damages in lieu of the award of actual damages which the prosecution failed to prove.

13. ID.; ATTEMPTED HOMICIDE; PENALTY AND CIVIL LIABILITY OF AN ACCOMPLICE FOR THE CRIME OF

ATTEMPTED HOMICIDE.— Petitioner Edgar Napone is found GUILTY beyond reasonable doubt as an accomplice to the crime of attempted homicide and is sentenced to suffer the penalty of two (2) months of *arresto mayor*. Further, he is ordered to pay the following amounts: (1) ₱6,667.00, as civil indemnity; and (2) ₱6,667.00, as moral damages. All monetary awards shall earn interest at the rate of six percent (6%) per annum reckoned from the finality of this decision until its full payment.

APPEARANCES OF COUNSEL

Arcol and Musni Law Office for petitioners.
Office of the Solicitor General for respondent.

D E C I S I O N

MARTIRES, *J.*:

This is a petition for review seeking the reversal of the 9 December 2009 Decision[1] and 21 July 2010 Resolution[2] of the Court of Appeals *(CA)* in CA-G.R. CR No. 00384 which affirmed with modification the 14 November 2006 Decision[3] of the Regional Trial Court, Branch 11, Manolo Fortich, Bukidnon *(RTC)*, in Criminal Case No. 1190 finding accused-appellants Petronilo Napone, Jr. *(Junior)* and Edgar Napone *(Edgar)* guilty of the crime of homicide.

THE FACTS

Junior and Edgar, together with their father, Petronilo Napone, Sr. *(Senior;* collectively, *the Napones)*, were charged with the crime of murder for the death of Salvador Espelita *(Salvador)* under an information, dated 13 November 1992, the accusatory portion of which reads:

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[1] *Rollo*, pp. 40-58, penned by Associate Justice Leoncia R. Dimagiba, and concurred in by Associate Justices Edgardo A. Camello, and Edgar T. Lloren.

[2] *Id*. at 61.

[3] Records, pp. 462-474; penned by Presiding Judge Jose U. Yamut, Sr.

That on or about the 22nd day of September, 1992, in the evening at [B]arangay Mabunga, [M]unicipality of Baungon, [P]rovince of Bukidnon, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and mutually helping one another, with intent to kill, by means of treachery and superior strength, armed with a bolo, firearm and stone, did then and there willfully, unlawfully and criminally attack, hack, shoot and throw stone at SALVADOR ESPELITA, inflicting mortal wounds to wit:

- Hack wounds, frontal left side of the head, (1) 4 x 1 cm. (2) 2.5 x 1 cm. (3) 3.5 cm. (4) 1 cm.

- Gunshot wound, left chest measuring 8cm. in diameter, 2 inches from the midline, at the 4th intercostal space [surrounded] by contusion collar, directed straight forward penetrating [and] perforating the left ventricle thru [and] thru, traversing towards the right piercing the intervertebral muscle at the back at the level 5th inter space 4 inches from the vertebral column.

that caused his death thereafter.

To the damage and prejudice [of] the heirs of the deceased SALVADOR ESPELITA in such sum they are entitled to under the law.

Contrary to and in violation of Article 248 of the Revised Penal Code.[4]

On 4 May 1993, the Napones were arraigned and pleaded not guilty.[5] Trial ensued.

On 17 January 2005, the trial court ordered the dismissal of the case against Senior due to his death on 8 October 2003, a month after he completed his testimony.

Evidence for the Prosecution

The prosecution anchored mainly on the testimonies of three (3) witnesses, namely: Jocelyn Janioso *(Janioso)*, Dante Sadaya *(Sadaya)*, Janioso's storekeeper, and Dr. Apolinar Vacalares,

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[4] *Id*. at 2-3.

[5] *Id*. at 92.

M.D. *(Dr. Vacalares)*, the medico-legal officer who conducted the post-mortem examinations on Salvador's cadaver. Their combined testimonies tended to establish the following:

On 22 September 1992, at about 8:00 o'clock in the evening, at Barangay Mabunga, Municipality of Baungon, Province of Bukidnon, Salvador and his son, Robert Espelita *(Robert)* arrived at Janioso's house calling out for help. When Janioso came out of her house, she saw Salvador whose forehead was oozing with blood,[6] and Calib Napone *(Calib)* likewise bloodied on the face, mud-laden,[7] and trying to extricate himself from Salvador who held him by the back collar of his shirt.[8] Calib is the son of Senior and the brother of Junior and Edgar.

When Janioso asked what happened, Salvador replied that Calib waylaid him and struck him with an iron bar while he and Robert were on their way home from their farm.[9] Salvador turned over to Janioso the iron bar which he allegedly wrested from Calib. Thereafter, Janioso directed one of her employees to find a vehicle to be used to bring Salvador and Calib to the hospital.[10] Janioso was Salvador's *balae*.[11]

After a while, the Napones arrived in a vehicle.[12] To avoid further conflict, Janioso pulled Salvador inside her house. Unfortunately, Senior followed them and immediately hacked Salvador from behind using a *borak*, a big bolo ordinarily used for chopping wood, hitting Salvador at the back of his head.[13] Salvador, in retaliation, also hacked Senior.

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[6] TSN, 29 July 1993, p. 4.

[7] *Id*. at 6.

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

[9] *Id*. at 4.

[10] *Id*. at 6.

[11] *Id*. at 11.

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

[13] *Id*. at 5-7.

Meanwhile, Edgar and Junior also alighted from the vehicle. Edgar threw a stone the size of a fist at Salvador.[14] Junior then shot Salvador three (3) times with a small firearm, hitting the latter on the chest which caused him to fall.[15] Janioso immediately rushed to Salvador's aid. While she was trying to lift Salvador, she saw Junior running away with the gun. She no longer took notice of Edgar and Senior as her concern was to bring Salvador to the hospital. At the hospital, Salvador was pronounced dead.[16]

The post-mortem findings on Salvador revealed that he sustained four (4) hack wounds on the left side of his head and a gunshot wound on his chest.[17] Dr. Vacalares, the medico-legal officer who conducted the autopsy, concluded that the cause of death was the perforation of the left ventricule due to gunshot wound,[18] which necessarily proved to be the fatal wound. Dr. Vacalares also took the witness stand where he elaborated that the bullet perforated Salvador's left ventricule resulting in his death in less than ten (10) minutes.[19] As regards the hack wounds, Dr. Vacalares stated that they were caused by a sharp bladed instrument.[20] However, he did not state whether these hack wounds were fatal or not.

Evidence for the Defense

The defense presented Senior, Junior, and Johnny Palasan *(Palasan)* as witnesses. Calib was also presented as a witness but his testimony was deemed inadmissible in evidence for being hearsay because he was not sworn in when he took the witness stand. The testimonies of the defense witnesses tended to establish that the Napones acted in self-defense and in defense of a relative, as follows:

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[14] TSN, 17 June 1993, pp. 6-7.

[15] *Id.*; TSN, 29 July 1993, p. 7.

[16] TSN, 29 July 1993, p. 8.

[17] Records, p. 130.

[18] *Id*.

[19] TSN, 10 August 1993, pp. 7-8.

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

On 22 September 1992, at around 8:00 o'clock in the evening, while Senior was chopping firewood, and while Junior and Edgar were conversing inside their house at Mabunga, Baungon, Bukidnon, a certain Ervin "Ungat" Tagocon *(Tagocon)* came and told them that he saw Calib bloodied and dragged by Salvador and Robert to the house of Janioso, located approximately 100 meters from their house. Upon hearing the news, Junior hurriedly ran towards Janioso's house, while Edgar and Senior immediately followed.[21] Before running to Calib's aid, Senior got hold of his *borak*,[22] because he suspected that the Espelitas had hacked Calib.[23]

Upon arriving at Janioso's place, the Napones saw Calib bloodied and being held by the Espelitas who, upon seeing them coming, dropped Calib, who was then prostrate and unconscious. The Espelitas then went inside the fenced premises of Janioso's house. When Senior attempted to lift Calib from the ground, Salvador rushed towards him and hacked him with a bolo multiple times. Senior, unable to retaliate because he was lifting Calib,[24] parried the attacks with his left hand but was unsuccessful. His ring and middle fingers were severed from his left hand and his forehead was wounded. Thereafter, Senior fell to the ground and lost consciousness.[25]

Edgar tried to defend his father from Salvador by throwing a stone at the latter. Because of this, Salvador shifted his attention towards Edgar and chased him with a bolo.[26]

Meanwhile, Junior was about to rush to Senior's aid when a man, later identified to be Palasan, alerted him that Robert was aiming a firearm at him. Junior wrestled with Robert for the possession of the firearm. When Junior got hold of the firearm, Robert allegedly shouted "watch out, my firearm was taken"

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[21] TSN, 9 March 1994, p. 4.

[22] TSN, 29 September 1993, pp. 4-5.

[23] *Id*. at 22, 27.

[24] TSN, 29 September 1993, p. 29.

[25] *Id*. at 6-7, 29-30; TSN, 9 March 1994, pp. 5-6.

[26] TSN, 30 September 1996, pp. 6-7.

and ran away.[27] Salvador stopped chasing after Edgar, turned to Junior, and hacked him three (3) times: the first blow missed, the second hit Junior's belt buckle, but the third struck Junior's left leg.[28]

Junior fell to the ground face down from the third strike. With Salvador still behind him, he crawled away from his assailant. When he stood up and saw that Salvador was still coming after him, Junior fired his gun at Salvador.[29] Junior claimed that was the first time he had fired a gun.[30] Despite the first shot, Salvador kept advancing towards Junior; thus, he again shot at Salvador hitting him in the chest.[31] Thereafter, Junior left the gun by Janioso's fence and took Senior and Calib to the provincial hospital in Cagayan de Oro City, for treatment.[32]

On 23 June 1992, Junior surrendered to the authorities in Baungon, Bukidnon.[33] However, the firearm he used to shoot Salvador was never recovered.

The RTC Ruling

In its 14 November 2006 decision, the RTC found Junior and Edgar guilty beyond reasonable doubt of the crime of homicide. It gave more weight to the version of the prosecution witnesses finding them to be more credible, straightforward, and duly supported by the post-mortem findings. The trial court rejected petitioners' claim of self-defense and in defense of a relative ratiocinating that they failed to establish the presence of unlawful aggression on the part of Salvador. It further ruled that a conspiracy among the Napones existed as shown by their successive attacks on Salvador. The trial court also ruled that

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[27] TSN, 9 March 1994, p. 6.

[28] *Id*. at 7-8.

[29] *Id*. at 8.

[30] TSN, 25 May 1994, p. 8.

[31] TSN, 9 March 1994, p. 8.

[32] TSN, 25 May 1994, p. 9.

[33] TSN, 9 March 1994, p. 9.

no aggravating or mitigating circumstance attended the felony. The dispositive portion of the decision reads:

> WHEREFORE, IN VIEW OF THE ABOVE, judgment is hereby rendered finding the two (2) remaining accused PETRONILO NAPONE, Jr. and EDGAR NAPONE GUILTY beyond reasonable doubt of the felony of HOMICIDE, and applying the indeterminate sentence law, the court hereby sentences the two (2) remaining accused aforecited to suffer the penalty of imprisonment of TWELVE (12) YEARS OF PRISION MAYOR IN ITS MAXIMUM PERIOD AS MINIMUM TO SEVENTEEN (17) YEARS FOUR (4) MONTHS OF RECLUSION TEMPORAL AS MAXIMUM.
>
> The two (2) remaining accused further hereby ordered to PAY, solidarily, the heirs of SALVADOR ESPELITA in the sum of One Hundred Eighty Thousand (₱180,000.00) Pesos, as actual damages, Forty Three Thousand (₱43,000.00) Pesos, as Attorney's Fees, and the amount of Seventy Five Thousand (₱75,000.00) Pesos, as moral damages for the death of SALVADOR ESPELITA. The Bond for the provisional liberty of the accused are hereby CANCELLED. Let warrant of arrest issue and the accused are hereby ordered committed to serve their sentence [at] the DAVAO PENAL COLONY, PANABO, DAVAO DEL NORTE.
>
> Costs against [the] accused.[34]

Aggrieved, petitioners appealed before the CA.

The CA Ruling

In its assailed decision, the CA affirmed the RTC decision, with modifications.

The appellate court concurred that the testimonies of Janioso and Sadaya were more truthful and candid, but disagreed with the RTC with regard to the appreciation of modifying circumstance. While it conceded that no aggravating circumstance attended the killing of Salvador, it opined that the trial court failed to appreciate the mitigating circumstance of passion and obfuscation. It observed that the unfortunate incident occurred at the "spur of the moment" and because of the Napones' "impulse

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[34] Records, pp. 473-474.

reaction" upon seeing Calib wounded and lying on the ground. It also noted that the testimonies of both the prosecution and defense witnesses showed that there was no prior animosity between the Espelitas and the Napones. In fact, Senior testified that Salvador was his friend or "compadre."

Likewise, the CA ruled that conspiracy could not be appreciated considering that the incident happened at "the spur of the moment." Thus, the appellate court reduced Edgar's liability to that of a mere accomplice reasoning that his participation in throwing a stone at Salvador during the incident, while showing community of criminal design, was otherwise not indispensable to the commission of the felony.

The dispositive portion of the assailed decision reads:

> WHEREFORE, the assailed Judgment is hereby AFFIRMED with MODIFICATION that appellants Petronilo Napone, Jr. and Edgar Napone are found GUILTY beyond reasonable doubt of HOMICIDE, as PRINCIPAL and ACCOMPLICE, respectively, and accordingly SENTENCED to suffer the penalt[ies] of:
>
> As to PETRONILO NAPONE, JR.– eight (8) years and one (1) day of *prision mayor* as minimum to twelve (12) years and one (1) day of *reclusion temporal* as maximum.
>
> As to EDGAR NAPONE.– four (4) years and two (2) months of *prision correccional* as minimum to eight (8) years and one (1) day of *prision mayor* as maximum.
>
> They are also mandated to PAY jointly the heirs of deceased Salvador Espelita, the following:
>
> 1. Fifty Thousand Pesos (₱50,000.00) as death indemnity;
> 2. Fifty Thousand Pesos (₱50,000.00) as moral damages; and
> 3. Twenty Five Thousand Pesos (₱25,000.00) as temperate damages, in lieu of the award of actual damages which the prosecution failed to prove.
>
> And, pursuant to the *Tampus*[35] ruling, (re: graduation of pecuniary penalties vis-à-vis the different degrees of liability in the commission of the felony), Petronilo Napone, Jr. (as a principal) has to pay 2/3

[35] 607 Phil. 296, 330-331 (2009).

of the sum total of the above-mentioned amounts, i.e., a total of EIGHTY-THREE THOUSAND THREE HUNDRED THIRTY-THREE PESOS and THIRTY-FOUR CENTAVOS (₱83,333.34), while Edgar Napone (as an accomplice) shall bear 1/3 thereof, i.e., a total of FORTY-ONE THOUSAND SIX HUNDRED SIXTY-SIX PESOS and SIXTY-SIX CENTAVOS (₱41,666.66).

With subsidiary imprisonment, in case of non-payment.[36]

Petitioners moved for reconsideration, but the same was denied by the CA in its Resolution, dated 21 July 2010

Hence, the present petition.

THE ISSUE

WHETHER THE TRIAL AND APPELLATE COURTS ERRED WHEN THEY RULED THAT THE PETITIONERS DID NOT ACT IN SELF-DEFENSE AND/OR DEFENSE OF RELATIVES

THE COURT'S RULING

The petition lacks merit.

Justifying circumstances of self-defense and defense of relatives

The petitioners interpose self-defense and defense of relatives. They insist that the actions they committed and which resulted in Salvador's death were necessary and reasonable under the circumstances to repel the latter's unlawful aggression towards them and their father.

It has been held that when the accused invokes the justifying circumstance of self-defense and, hence, admits to killing the victim, the burden of evidence shifts to him. The rationale for this shift is that the accused, by his admission, is to be held criminally liable unless he satisfactorily establishes the fact of self-defense.[37]

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[36] *Rollo*, p. 58.

[37] *People v. Roman*, 715 Phil. 817, 832 (2013), citing *People v. Del Castillo*, 679 Phil. 233, 251 (2012).

Thus, it is incumbent upon the accused to prove his innocence by clear and convincing evidence.[38] For this purpose, he must rely on the strength of his evidence and not on the weakness of that of the prosecution for, even if the latter is weak, it could not be denied that he has admitted to be the author of the victim's death.[39]

To successfully claim self-defense, the accused must satisfactorily prove the concurrence of all of its elements, which are: (1) unlawful aggression; (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.[40] Similarly, for defense of a relative to prosper, the following requisites must concur, namely: (1) unlawful aggression by the victim; (2) reasonable necessity of the means employed to prevent or repel the aggression; and (3) in case the provocation was given by the person attacked, that the person making the defense took no part in the provocation.[41]

In both self-defense and defense of relatives, whether complete or incomplete, it is essential that there be unlawful aggression on the part of the victim. After all, there would be nothing to prevent or repel if such unlawful aggression is not present. For unlawful aggression to be appreciated there must be an actual, sudden, and unexpected attack or imminent danger thereof, not merely a threatening or intimidating attitude.[42]

The defense failed to prove self-defense and defense of relative.

After a careful examination of the records, the Court finds that the defense failed to discharge the burden of proving that the petitioners acted in self-defense or defense of relatives.

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[38] *Flores v. People*, 705 Phil. 119, 133 (2013).

[39] *People v. Delima and Areo*, 452 Phil. 36, 44 (2003).

[40] *Nacnac v. People*, 685 Phil. 223, 229 (2012).

[41] *Medina, Jr. v. People*, 724 Phil. 226, 237 (2014).

[42] *People v. Arnante*, 439 Phil. 754, 758 (2002).

The defense would have this Court believe that the Napones proceeded to the place of Janioso without any malice in mind and with the only goal of rescuing Calib. To refute the accusations against them, they painted a picture of Salvador mercilessly attacking Senior who merely wanted to carry his son who was then lying on the ground and covered with blood. They maintain that the petitioners were forced to retaliate against Salvador who was unlawfully attacking their father.

The Court is not persuaded.

The version of the defense may be amusing, yet it still pales in comparison in terms of credibility when faced with the testimonies of the eyewitnesses Janioso and Sadaya and the post-mortem report by Dr. Vacalares. Needless to state, the Court concurs with the findings of the trial and appellate courts.

It is doctrinally settled that findings of trial courts on the credibility of witnesses deserve a high degree of respect and will not be disturbed during appeal in the absence of any clear showing that the trial court overlooked, misunderstood or misapplied some facts or circumstances of weight and substance which could have altered the conviction of the appellant.[43] Furthermore, factual findings of the trial court, when affirmed by the CA, are deemed binding and conclusive.[44] While this rule admits of exceptions, such as when the evaluation was reached arbitrarily or when the trial court overlooked, misunderstood, or misapplied some facts or circumstances of weight and substance which could affect the result of the case,[45] the Court is of the view that none of these exceptions is present in this case.

The prosecution was able to establish that the Napones, and not the Espelitas, were the unlawful aggressors. During her direct and cross-examinations, Janioso was steadfast in her account that Senior immediately hacked Salvador, thus:

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[43] *People v. Castillano*, 427 Phil. 309, 326-327 (2002).

[44] *People v. Gallanosa*, G.R. No. 219885, 17 July 2017.

[45] *People v. Enfectana*, 431 Phil. 64, 75 (2002).

ATTY. ADAZA:

Q. When you saw Petronilo Napone, Sr. and Petronilo Napone, Jr. with others arrive, what happened next?

A. When Petronilo Napone, Sr. arrived he immediately hacked Salvador Espelita.

Q. What instrument did he use?

A. A bolo.

Q. Where was Salvador Espelita hit?

A. In the head.

Q. Which part of the head?

A. Back of the head.[46] (emphasis supplied)

x x x x x x x x x

ATTY. MUSNI:

Q. When Petronilo, Sr. arrived together with Petronilo, Jr., there was no exchange of words between Salvador Espelita and Petronilo, Sr.?

A. With Petronilo Napone, Sr., none.

Q. And immediately, Petronilo Napone, Sr. immediately hack Salvador Espelita?

A. Yes.[47] (emphasis supplied)

The view that Senior initiated the hostility was actually consistent with his testimony. During the trial, Senior narrated that he brought his *borak* to defend himself against the Espelitas because he was of the belief that they hacked Calib, thus:

ATTY. ADAZA:

Q. Alright, now, according to you, you believed that your son was already dead that is why you brought along that weapon on that evening of September 22, 1992. Question, Mr. Napone, when

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[46] TSN, 29 July 1993, p. 7.

[47] *Id.* at 17-18.

you brought along that weapon, and you said in your affidavit that you wanted to defend yourself against whom and from whom?

A. It is to defend myself if he will include me.[48]

x x x x x x x x x

Q. How did you know that it was Salvador Espelita who hacked your son when you never talked to your son according to you, your son was sprawled on the ground bloodied?

A. What I have said before, it was Ungat Tagocon who told me.

Q. But according to you, Ungat Tagocon never told you that these Espelitas injured your son, it was only the information that your son was bloodied, which is which now?

A. Because he was bloodied, I presumed that it was Salvador Espelita who caused the injury because they were the ones who brought him to the store of Jocelyn Janioso.[49]

Clearly, Senior armed himself with a bolo and was ready to use it against the Espelitas making them his specific targets because of his belief that they were his son's assailants. At this juncture, it is well to emphasize that the fact that Calib was seen lying on the ground is not the unlawful aggression required under the law. It was established during trial that any attack on the person of Calib by the Espelitas, if there was any, had already ceased at the time the Napones arrived. No actual, sudden, and unexpected attack or imminent danger on the life or limb of Calib, therefore, could justify Senior's attack on Salvador.

Coming now to the actual shooting of Salvador, both Janioso and Sadaya's testimonies were positive and categorical with respect to its material aspects. They were consistent and corroborated each other in their narration of who committed the crime, and when and how it was committed. During her direct and cross-examinations, Janioso recounted how the events transpired, thus:

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[48] TSN, 29 September 1993, p. 24.

[49] *Id.* at 27.

ATTY. ADAZA:

Q. When he was hit at the back of his head, what happened next?

A. He face[d] Petronilo Napone, Sr. and retaliated by hacking then he was shot by Petronilo Napone, Jr.

Q. How many times did you hear a shot?

A. Three (3) shots.[50] (emphasis supplied)

x x x x x x x x x

ATTY. MUSNI:

Q. When Petronilo, Sr. arrived together with Petronilo, Jr., there was no exchange of words between Salvador Espelita and Petronilo, Sr.?

A. With Petronilo Napone, Sr., none.

Q. And immediately, Petronilo Napone, Sr. immediately hacked Salvador Espelita?

A. Yes.[51] (emphasis supplied)

On Sadaya's part, his testimony was unwavering despite the defense counsel's apparent attempts to confuse him during cross-examination, in this wise:

ATTY. MUSNI:

Q. You said in your affidavit that you already heard the two gunshots when you were already inside the sala of the house of Jocelyn Janioso, is that right?

A. I heard two gunshots when I was already inside the house of Janioso.

Q. Now, you have read your affidavit, please go over your affidavit again Mr. Sadaya and tell the Honorable Court whether you have stated that you have first heard a gunshot when you were still inside the house, if there is a statement aside from hearing two shots when you were already inside the house?

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[50] TSN, 29 July 1993, p. 7.

[51] *Id.* at 17-18.

A. The answer of Question No. 11, last sentence "because of fear I entered the house through the kitchen and when I was already at the sala I heard two gunshots."

Q. So, that is your answer, you are referring to the last sentence of Question No. 11 of your affidavit?

A. Yes sir.

Q. In this last sentence in your Answer to Question No. 11, it refers only to Mr. Sadaya to two gunshots that you heard when you were inside the sala, is that correct?

A. Yes sir.

Q. It did not refer in any way to what you have testified that you heard a gunshot while you were outside the house?

A. It's not placed in the affidavit.

Q. Because the truth of the matter Mr. Sadaya is that, you only heard two gunshots on that particular night of September 22, 1992, is that correct?

A. I saw the actual shooting then when I turned around and went inside the house I heard two gunshots.[52]

x x x x x x x x x

Q. So, that at the time you claimed that you have seen somebody shot Salvador Espelita, your back was turned to where Salvador Espelita was standing, is that correct?

A. After he made the shot.

Q. But you did not see at the time the shot was made, is that correct?

A. I saw it.[53] (emphasis supplied)

The prosecution witnesses were not only credible but were also not shown to have harbored any ill motive toward the Napones. Thus, the Court has no reason to doubt their respective testimonies. They were surely entitled to full faith for those reasons, and both the RTC and the CA properly accorded them

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[52] TSN, 17 June 1993, pp. 15-16.

[53] *Id*. at 18.

such credence. Their positive and categorical statements that the Napones assaulted Salvador without any unlawful aggression on his part prevail over the claim of self-defense and defense of relative which were unsubstantiated by clear and convincing proof.

Petitioners capitalize on the apparent inconsistencies between the testimonies of Janioso and Sadaya, who testified that Senior was hacked at the back of his head, and the post-mortem report by Dr. Vacalares, which revealed that Senior sustained hacks wound on the "frontal left side of the head." The variance as to the location of the hack wounds, however, is a relatively minor matter which does not necessarily discredit Janioso and Sadaya as witnesses. This supposed discrepancy could be easily explained by the fact that the incident happened at nighttime, at on or about 8 o'clock in the evening, which might have caused some minor departures in the witnesses' perception. Such minor inconsistency does not weaken, as in fact it serves to strengthen, the credibility of the prosecution witnesses.

Thus, the defense's claim of self-defense and defense of relatives, which have been held to be inherently weak defenses because they are easy to fabricate,[54] were reduced into incredulity when scrutinized against the prosecution's evidence. The Court, therefore, sees no reason to disturb the trial and the appellate courts' findings that the killing of Salvador was not attended by any justifying circumstance.

Conspiracy did not attend the commission of the felony.

The Court agrees with the appellate court that conspiracy does not obtain in the present case. Settled is the rule that much like the criminal act itself, proof beyond reasonable doubt is necessary to establish the existence of conspiracy. It cannot be established by conjectures, but by positive and conclusive evidence.[55]

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[54] *People v. Roman*, *supra* note 37 at 831.

[55] *People v. Furugganan*, 271 Phil. 496, 507 (1991).

In this case, no other evidence was presented by the prosecution to establish conspiracy aside from the circumstances that the accused were members of the same family, that they arrived at the scene of the crime at about the same time, and that they attacked Salvador successively. These pieces of circumstantial evidence would not suffice to establish conspiracy. It has been held that the fact that the defendants were relatives and had acted with some degree of simultaneity in attacking their victim does not prove conspiracy in the absence of other independent evidence positively and convincingly showing its presence.[56]

From the foregoing, no concerted action pursuant to a common criminal design could be attributed to the petitioners. In the absence of conspiracy, each of the accused, herein petitioners, is responsible only for the consequences of his own acts.[57]

Edgar is liable only as an accomplice to the attempted homicide.

While the appellate court ruled that no conspiracy could be ascribed to the Napones, it, nevertheless, opined that Edgar's act of throwing a stone at Salvador sufficiently showed that he agreed with Junior's criminal design to kill Salvador thereby establishing his complicity to the felony.

The Court disagrees.

In order that a person may be considered an accomplice, the following requisites must concur: (1) that there be community of design; that is, knowing the criminal design of the principal by direct participation, he concurs with the latter in his purpose; (2) that he cooperates in the execution by previous or simultaneous act, with the intention of supplying material or moral aid in the execution of the crime in an efficacious way; and (3) that there be a relation between the acts done by the principal and those attributed to the person charged as accomplice.[58]

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[56] *People v. Geronimo*, 153 Phil. 1, 11 (1973), citing *People v. Portugueza*, 127 Phil. 288, 292-293 (1967).

[57] *Araneta, Jr. v. CA*, 265 Phil. 127, 136 (1990).

[58] *People v. Gambao*, 718 Phil. 507, 527 (2013).

Edgar's act which ensued prior to the shooting of Salvador did not necessarily demonstrate his concurrence with Junior's criminal purpose. There was no showing that Edgar committed the deed knowing that Junior would shoot or otherwise harm Salvador moments after. Community of design was lacking. Thus, Edgar could not be held liable as an accomplice to the consummated homicide because the cooperation which the law punishes is the assistance knowingly or intentionally given and which is not possible without previous knowledge of the principal's criminal purpose.[59]

Nevertheless, while Edgar's complicity and participation in the consummated homicide was not sufficiently shown, he should still be held liable for his participation in and concurrence with Senior's criminal purpose.

In *Araneta, Jr. v. CA*,[60] the Court ruled that absent conspiracy, the liability of an accused who, with the intent to kill, slightly wounded the victim who was killed by his co-accused is limited to the "slight injury" he had caused the victim.

The prosecution was able to prove that Senior hacked Salvador at least four (4) times, inflicting upon the latter four (4) hack wounds. Senior's intent to kill Salvador was also established by the nature of the weapon he used and the location of the wounds. However, there was no showing that these hack wounds had caused or would have caused Salvador's death. In fact, Dr. Vacalares, both in his Post-Mortem Findings and during his testimony, was silent whether there was any mortal risk from the hack wounds. Instead, Dr. Vacalares was categorical that the mortal wound was the gunshot wound which caused Salvador's death.

Clearly, and considering that conspiracy is not attendant in this case, Senior would not be liable for the death of Salvador. Instead, he would have been held liable as a principal by direct participation in the crime of attempted homicide, were it not

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[59] *People v. Cruz*, 269 Phil. 399, 408 (1990).

[60] *Araneta Jr. v. CA*, *supra* note 57 at 136.

for the total extinction of his criminal liability as a consequence of his demise during trial.

Knowledge of the principal's criminal design is shown by the fact that the person accused as an accomplice has seen the criminal acts of the principal. It has been established that the Napones arrived at the scene of the crime at the same time on board a jeepney. It is also beyond dispute that Edgar threw a stone at Salvador during the latter's struggle with Senior which fact the defense had admitted but with the assertion that it was committed in defense of a relative.

The Court opines that Edgar witnessed his father's assault on Salvador and was thus knowledgeable of his criminal design. The simultaneous act of throwing a stone at Salvador was made to assist Senior in achieving his criminal purpose. Thus, Edgar's assent and participation to the criminal acts of his father were sufficiently established. As Edgar's participation was not indispensable to the felony, he must be held liable as an accomplice to the criminal acts of Senior. Therefore, Edgar is guilty as an accomplice to the crime of attempted homicide.

Mitigating circumstances which attended the case; Appropriate penalties

The appellate court erred when it credited passion or obfuscation in favor of the petitioners. Acts done in the spirit of revenge cannot be considered acts done with passion or obfuscation.[61] Thus, to avail of the mitigating circumstance, it is necessary to show that the passion and obfuscation arose from lawful sentiments and not from a spirit of lawlessness or revenge.[62]

The acts of the Napones after they were informed that Calib was dragged by the Espelitas were more consistently driven by revenge rather than mere impulsive reaction. Senior even got hold of his weapon first before going to the place where

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[61] *People v. Oloverio*, 756 Phil. 435, 454 (2015).

[62] *People v. Caber, Sr.*, 399 Phil. 743, 753 (2000).

his son was reportedly harmed. Thus, the extenuating circumstance of passion or obfuscation could not be appreciated in petitioners' favor.

Nevertheless, the circumstances surrounding the unfortunate incident merit the appreciation of the mitigating circumstance of vindication for a grave offense. For such to be credited, the following requisites must be satisfied: (1) that there be a grave offense done to the one committing the felony, his spouse, ascendants, descendants, legitimate, natural or adopted brothers or sisters, or relatives by affinity within the same degrees; and (2) that the felony is committed in vindication of such grave offense.[63]

Although it was not witnessed by the Napones, the attack on Calib which put his life at risk must have infuriated them. The belief that the Espelitas were responsible for the grave injuries sustained by a member of their family created rage in their minds which clouded their judgment. Upon seeing Calib bloody, prostrate on the ground and possibly clinging for dear life, the Napones were filled with resentment that resulted in the assault on Salvador. Their acts, therefore, were committed in vindication of a grave offense.

The CA also erred when it failed to appreciate voluntary surrender in favor of Junior. In denying him the benefit of this mitigating circumstance, the appellate court reasoned that no evidence on record other than Junior's own testimony was offered to prove that he voluntarily surrendered to the authorities.

In *People v. Malabago*,[64] we held that where the accused testified that he voluntarily surrendered to the police and the prosecution did not dispute such claim, the mitigating circumstance should be appreciated in his favor. A perusal of the record revealed that the prosecution did not dispute Junior's claim that he surrendered to the police authorities in Baungon, Bukidnon, on 23 June 1992. Hence, the mitigating circumstance of voluntary surrender must be credited in his favor.

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[63] Revised Penal Code, Article 13(5).

[64] 333 Phil. 20, 35-36 (1996).

In fine, the Court finds Junior liable as principal for the crime of homicide with the prescribed penalty of *reclusion temporal*. Considering, however, that the two mitigating circumstances could be credited in his favor, and no aggravating circumstance attended the commission of the felony, the imposable penalty is *prision mayor,*[65] lower than *reclusion temporal*, and within which the maximum term of the indeterminate sentence shall be taken.

The Court finds Edgar liable as an accomplice to the attempted homicide and, thus, should be meted a penalty three (3) degrees lower than that prescribed by the code for homicide. Further, the mitigating circumstance of vindication of a grave offense shall be credited in his favor.

Appropriate monetary awards

Since Edgar and Junior are liable for separate crimes which arose from different criminal resolutions, they must also be separately liable for civil indemnities arising from these crimes.

In *People v. Jugueta*,[66] the Court summarized the amounts of damages which may be awarded for different crimes. In said case, the Court held that for the crime of consummated homicide, the following amounts may be awarded: (1) ₱50,000.00, as civil indemnity; (2) ₱50,000.00, as moral damages; and (3) ₱50,000.00 as temperate damages when no documentary evidence of burial or funeral expenses is presented in court. On the other hand, for attempted homicide, the following amounts may be awarded: (1) ₱20,000.00, as civil indemnity; and (2) ₱20,000.00, as moral damages.

In *People v. Tampus*,[67] the Court ruled that the penalty and liability, including civil liability, imposed upon an accused must be commensurate with the degree of his participation in the commission of the crime. Thus, the Court held that the principal must be adjudged liable to pay two-thirds (2/3) of the civil

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[65] Revised Penal Code, Article 64(5).

[66] G.R. No. 202124, 5 April 2016, 788 SCRA 331, 386-388.

[67] *Supra* note 35 at 323.

indemnity and moral damages; while the accomplice should pay one-third (1/3) portion thereof. The Court further advanced that the accomplice would not be subsidiarily liable for the amount allotted to the principal if the latter dies before the finality of the decision. The reason for this is that there would be nothing that could be passed to the accomplice as the principal's criminal liability, including the civil liability arising thereon, had been extinguished by his death.

WHEREFORE, the assailed Decision, dated 9 December 2009 of the Court of Appeals in CA-G.R. CR No. 00384, which affirmed with modification the decision, dated 14 November 2006, of the Regional Trial Court of Manolo Fortich, Bukidnon, Branch 11 in Criminal Case No. 1190, is hereby **AFFIRMED** with **MODIFICATIONS**. Petitioner Petronilo Napone, Jr. is found GUILTY beyond reasonable doubt as principal for the crime of homicide and is sentenced to suffer the indeterminate penalty of four (4) years and two (2) months of *prision correccional*, as minimum, to eight (8) years and one (1) day of *prision mayor*, as maximum. He is further ordered to pay the heirs of the deceased Salvador Espelita the following amounts: (1) ₱50,000.00, as civil indemnity; (2) ₱50,000.00, as moral damages; and (3) ₱50,000.00 as temperate damages in lieu of the award of actual damages which the prosecution failed to prove.

Petitioner Edgar Napone is found GUILTY beyond reasonable doubt as an accomplice to the crime of attempted homicide and is sentenced to suffer the penalty of two (2) months of *arresto mayor*. Further, he is ordered to pay the following amounts: (1) ₱6,667.00, as civil indemnity; and (2) ₱6,667.00, as moral damages. All monetary awards shall earn interest at the rate of six percent (6%) per annum reckoned from the finality of this decision until its full payment.[68]

SO ORDERED.

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

Gesmundo, J., on leave.

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[68] *Nacar v. Gallery Frames*, 716 Phil. 267, 283 (2013).

THIRD DIVISION

[G.R. No. 197849. November 29, 2017]

RAFFY BRODETH and ROLAN B. ONAL, *petitioners, vs.* **PEOPLE OF THE PHILIPPINES and ABRAHAM G. VILLEGAS,** *respondents.*

SYLLABUS

CRIMINAL LAW; BATAS PAMBANSA BLG. 22 (B.P. BLG. 22); COMPLAINT FOR VIOLATION OF B.P. BLG. 22 MAY BE FILED AND TRIED AT THE PLACE WHERE THE CHECK WAS ISSUED, DRAWN, DELIVERED, OR DEPOSITED; FAILURE TO ALLEGE AND PROVE ANY OF THESE MATERIAL PLACES, THE COURT HAS NO FACTUAL BASIS FOR ITS TERRITORIAL JURISDICTION. — [W]e can deduce that a criminal complaint for violation of B.P. Blg. 22 may be filed and tried either at the place where the check was issued, drawn, delivered, or deposited. In the present case, however, evidence on record is missing at **any** of these material places. Again, the only factual link to the territorial jurisdiction of the MeTC is the allegation that the subject checks were issued in Manila. In criminal cases, venue or where at least one of the elements of the crime or offense was committed must be proven and not just alleged. Otherwise, a mere allegation is not proof and could not justify sentencing a man to jail or holding him criminally liable. To stress, an allegation is not evidence and could not be made equivalent to proof. All said, since the prosecution failed to prove that the subject checks were issued in Manila nor was any evidence shown that these were either drawn, delivered, or deposited in Manila, the MeTC has no factual basis for its territorial jurisdiction.

APPEARANCES OF COUNSEL

Paras and Manlapaz Lawyers for petitioners.
Romualdo M. Jubay for respondent Villegas.
Office of the Solicitor General for public respondent.

D E C I S I O N

MARTIRES, *J.*:

We resolve the petition for review on certiorari[1] filed by petitioners Raffy Brodeth *(Brodeth)* and Rolan B. Onal *(Onal)* assailing the 17 May 2011 Decision[2] and the 20 July 2011 Resolution[3] of the Court of Appeals *(CA)* in CA-G.R. CR No. 33104. The CA affirmed petitioners' criminal liability for violating Batas Pambansa Blg. 22 *(B.P. Blg. 22)*.

THE FACTS

On 16 August 2001, petitioners were charged before the Metropolitan Trial Court, Branch 30, Manila *(MeTC)*, with violation of B.P. Blg. 22. The informations read:

Criminal Case No. 371104-CR

That on or about September 5, 1999 in the City of Manila, Philippines, the said accused, did then and there willfully, unlawfully, and feloniously make or draw and issue to VILL INTEGRATED TRANSPORT CORP., rep. by ABRAHAM VILLEGAS to apply on account or for value METROBANK Check No. 2700111416 dated September 5, 1999 in the amount of ₱123,600.00 payable to Vill Integrated Transport Corporation said accused well knowing that at the time of issue he/she/they did not have sufficient funds or credit with the drawee bank for payment of such check in full upon presentment, which check when presented for payment within ninety (90) days from the date thereof was subsequently dishonored by the drawee bank for the reason "Drawn Against Insufficient Funds (DAIF)" and despite receipt of notice of such dishonor, said accused, failed to pay said VILL INTEGRATED TRANSPORT CORPORATION the amount of the check or make arrangement for full payment of the same within five (5) banking days after receiving said notice.[4]

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[1] *Rollo*, pp. 9-33.

[2] *Id*. at 35-45.

[3] *Id*. at 47-48.

[4] *Id*. at 52.

Criminal Case No. 371105-CR

That on or about August 31, 1999 in the City of Manila, Philippines, the said accused, did then and there willfully, unlawfully, and feloniously make or draw and issue to VILL INTEGRATED TRANSPORT CORP., rep. by ABRAHAM VILLEGAS to apply on account or for value METROBANK Check No. 2700111415 dated August 31, 1999 in the amount of ₱140,000.00 payable to Vill Integrated Transport Corporation said accused well knowing that at the time of issue he/she/they did not have sufficient funds or credit with the drawee bank for payment of such check in full upon presentment, which check when presented for payment within ninety (90) days from the date thereof was subsequently dishonored by the drawee bank for the reason "Drawn Against Insufficient Funds (DAIF)" and despite receipt of notice of such dishonor, said accused, failed to pay said VILL INTEGRATED TRANSPORT CORPORATION the amount of the check to make arrangement for full payment of the same within five (5) banking days after receiving said notice.[5]

The charges against petitioners stemmed from an affidavit-complaint dated 23 November 2000 filed by Abraham G. Villegas *(Villegas)*, the Operations Manager of Vill Integrated Transportation Corporation *(Vill Integrated)*. He alleged that in the course of his company's operations, he transacted with Land & Sea Resources Phils. *(L&S Resources)*, Inc. by providing the latter equipment and tugboats for its own operations. After the execution of the service contracts, L&S Resources started using the equipment and tugboats, and even made partial payments to Vill Integrated. However, L&S Resources had not fully paid all of Vill Integrated's billings and its officers only made promises to settle them but never did.[6]

According to Villegas, among the payments made by L&S Resources were three (3) checks drawn against Metropolitan Bank and Trust Company *(Metrobank)*. Two (2) out of these three (3) checks, particularly: (a) Metrobank Check No. 2700111415 dated 31 August 1999, and (b) Metrobank Check

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[5] *Id*. at 53.

[6] *Id*. at 50-51.

No. 2700111416 dated 5 September 1999,[7] are the subject checks in the instant case. When the subject checks were deposited to Vill Integrated's account, they were dishonored as they were "Drawn Against Insufficient Funds (DAIF)."[8]

On 9 October 1999, and on 3 May 2000, due to L&S Resources' growing outstanding balance, its refusal to comply with continued demand for payment, and on account of its checks that bounced, Vill Integrated sent demand letters to settle the L&S Resources' account.[9]

Despite the demands, L&S Resources did not settle its account; hence, the filing of the criminal complaint against petitioners.

In his counter-affidavit executed on 8 May 2008, Brodeth alleged that L&S Resources' balance pertaining to the subject checks were settled in cash duly received by Vill Integrated's officer. But, only one (1) of the three (3) checks was returned. Upon inquiry, Brodeth was informed that the outstanding accounts were not the obligations of L&S Resources but of one Noli Dela Cerna.[10] These allegations were backed up by Onal's letter dated 10 November 1999, explaining that Vill Integrated should bill Noli dela Cerna instead.[11]

On 2 July 2008, the MeTC found petitioners guilty beyond reasonable doubt for the offense charged. The MeTC held that the dishonor of the subject checks was sufficiently shown by the letters "DAIF" written at the back of the checks, which is *prima facie* evidence that the drawee bank had dishonored the checks. Moreover, the MeTC ruled that petitioners had known the checks were dishonored because they admitted they had the demand letters.[12]

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[7] *Id*. at 60.

[8] *Id*. at 61.

[9] *Id*. at 56-57.

[10] *Id*. at 72-73.

[11] *Id*. at 74; presented as Exhibit "2" for the defense.

[12] *Id*. at 76-84; penned by Presiding Judge Glenda R. Mendoza-Ramos.

The MeTC Ruling

With regard to their defense, the MeTC was not convinced that the two (2) dishonored checks were paid at all, to wit:

The defense contends that it was another officer of Land and Sea Resources by the name of Noli Dela Cerna who had a remaining obligation to Vill Integrated which was not allegedly the obligation of their company Land and Sea Resources but a personal obligation of Mr. Dela Cerna. The defense further argues that since Vill Integrated could no longer locate the whereabouts of Mr. Dela Cerna, Vill Integrated chose to pressure them into paying the obligation of the latter.

However, in the course of his testimony, Mr. Brodeth somehow made a three hundred sixty-degree turn on his first contention when he testified that these checks were already paid on staggered basis as well [as] an alleged arrangement with a certain Cristina Villegas that payment will be made in cash, fuel oil and food for the crew. However, as Mr. Brodeth himself admitted there were no receipts to prove such payments.

Be that as it may, the defense was not able to show any convincing proof to back up both contentions. In fact, their first contention that it was Mr. Dela Cerna who owes the complainant company was not even heavily relied upon by them.

The accused anchors his defense mainly on the fact that the subject checks were already paid and made good. Such being the case, the court deems it unnecessary to delve further on this line of argument and instead will discuss the merits of its main defense that the checks were already paid.

To the mind of the court, it is quite absurd to think that the company or for that matter both accused would just pay Vill Integrated without any proof to show that payments were indeed made. This attitude is not normal considering that both accused were engaged in business themselves. As such they were presumed to know the ordinary and routine duty that a receipt is necessary to evidence payment. In fact, it is not even a duty to ask for a receipt as proof of a purchase or for any payment made but it is a common practice and a correlative duty on both seller and buyer or creditor and debtor to issue one.

Furthermore, no person in his right mind would just part way[s] with his hard[-]earned money without any assurance that it will be

received by its rightful possessor and in this case it was the company Vill Integrated.

Accused Brodeth contends that the company closed down sometime in 2000. This is the reason why he could no longer locate the receipts. To the mind of the court this is a flimsy excuse and could be a last[-] ditch effort to exonerate them from liability.

It is but natural to safely keep the said receipt[s] if indeed they exist. Sad to say, Land and Sea Resources, through both accused, were remiss of its simple duty and as such, they should suffer the consequences.

Moreover, if indeed payments were already made, Vill Integrated would not exert efforts to go through the painstaking rigors of court trial. Obviously, Vill Integrated was not paid because the subject checks given as payment were dishonored by the bank, hence, it was forced to file these present cases.

The defense also offers Exhibit "2" to prove that the amounts of the check were paid. The court cannot consider this evidence since what has been presented was a mere photocopy. The original document was never presented in court. In fact, defense counsel undertook to submit the original of the said document but up to this date the same was not presented in court.

Furthermore, Exhibit "2," which is purportedly a letter addressed to Vill Integrated regarding the obligations of Land and Sea, does not refer nor does it mention the checks subject of these cases.

To reiterate, the defense was not able to convince the court that the two (2) checks that were dishonored were paid at all. No documentary proof was shown that the checks were paid or made good after they were dishonored except the bare allegation of the defense that they were paid. Without such proof to support its allegation, the defense of payment must fail.

To make matters worse, accused Raffy Brodeth readily admitted in his cross[-]examination to have issued the two (2) checks and that despite claiming to have already paid it, he could not produce any receipt to prove his claim.[13]

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[13] *Id.* at 81-82.

Accordingly, the MeTC ordered petitioners to pay a fine of ₱200,000.00 for each check that was issued, totaling ₱400,000.00, with subsidiary imprisonment in case of insolvency. They were likewise ordered to pay Vill Integrated ₱283,600.00 as civil indemnity, and the costs of suit.[14]

On 29 July 2008, petitioners timely filed a notice of appeal, and the case was forwarded to the Regional Trial Court for further proceedings.[15]

The RTC Ruling

After the parties had submitted their respective memoranda, the Regional Trial Court, Branch 27 of Manila *(RTC)*, in Criminal Case Nos. 08-264256-57, found no reversible error in the MeTC's decision and affirmed it *in toto*.[16] The RTC's disposition is as follows:

> On the first issue, the [c]ourt finds that the lower court has jurisidiction over the cases. The Affidavit-Complaint of Abraham G. Villegas (Exh. "J"), Operations Manager of Vill Integrated states that the checks were issued in Manila. Paragraph 9 of the said complaint affidavit, which was admitted as part of the testimony of Mr. Villegas states:
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> > 9. Despite the receipt of the said letters, the above-named principal officers, Rolan B. Onal, Noli de la Cerna and Raffy Brodeth ignored our letters in refusing to pay not only their account of ₱1,078,238.24 but also refused to redeem the two (2) checks dated August 31, 1999 and September 5, 1999, to our detriment and prejudice, which checks were issued on said dates **in Manila**, so we were forced to again refer the matter to our lawyer, Atty. Romualdo M. Jubay, who sent new demand letters to the said persons dated Octber 15, 2000 and October 27, 2000, xerox copies of which letters are hereto attached and marked as Annexes "P" and "Q." (emphasis in the original)
>
> A case for violation of B.P. Blg. 22 can be filed either at the place where the ckeck was issued or paid. In the instant case, as already stated, the checks were issued in Manila.

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[14] *Id*. at 83.

[15] *Id*. at 84.

[16] *Id*. at 95-97; penned by Presiding Judge Teresa P. Soriano.

Anent the second issue, accused-appellants insisted that the fact that the prosecution did not present a bank personnel to attest to the fact of dishonor of the checks created doubt as to the authenticity and genuineness for the reason therefor, as stamped at the back of the checks. This is misplaced.

In order to hold […] liable for violation of B.P. Blg. 22, aside from the fact of dishonor, it must also be established beyond reasonable doubt that he knew the fact and reason for the dishonor of the check. In the instant case, the original checks were presented in court. Accused were notified through a demand letter of the dishonor of the checks. The defense conceded receipt of the notice of dishonor. Accused-appellants redeemed one of the checks but failed to redeem the two other checks. This sufficed to make them fall within the ambit of the law.

On the third issue, accused-appellants posit that they cannot be held liable of the issuance of the subject checks because they issued them in good faith, and as requested by private complainant to ensure payment of the obligations of Land and Sea Resources. Accused-appellants were officers of the corporation. They were the ones who issued the checks in favor of Land and Sea Resources. As drawers of the subject checks on behalf of the corporation, they must be held criminally liable thereon. Besides, "Violation of Batas Pambansa Blg. 22 applies even in cases where dishonored checks are issued merely in the form of a deposit or a guarantee."[17] (citation omitted)

After the RTC denied their motion for reconsideration,[18] petitioners filed a petition for review before the CA.[19]

In the assailed decision, the CA denied petitioners' appeal. It emphasized that the gravamen of the offense charges is the issuance of a bouncing check regardless of the purpose why it was issued. The fact that the checks were drawn by a corporation cannot exculpate petitioners from the charge against them. Further, the CA maintained that the MeTC had jurisdiction to try the case because the complaint-affidavit categorically stated that the checks were issued in Manila, to wit:

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[17] *Id*. at 96-97.

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

[19] *Id*. at 106-120.

As regards the issue of lack of jurisdiction of the M[e]TC to try the case, a [v]iolation of B.P. [Blg.] 22 can be filed either in the place where the check was issued or when it was presented for payment. The RTC ruled correctly that the M[e]TC has jurisdiction to try the case for the reason that the affidavit-complaint of private complainant categorically stated that the checks were issued in Manila.[20]

Petitioners filed the instant petition after the CA promulgated the assailed resolution denying their motion for reconsideration. They rely on the following grounds in their petition:

I. THE COURT OF APPEALS ERRONEOUSLY AFFIRMED RELIANCE ON HEARSAY EVIDENCE TO ESTABLISH TERRITORIAL JURISDICTION OF THE METROPOLITAN TRIAL COURT OF MANILA;

II. THE COURT OF APPEALS ERRONEOUSLY AFFIRMED THE APPLICATION OF A PRESUMPTION ON KNOWLEDGE OF INSUFFICIENCY OF FUNDS WHEN THE PROSECUTION FAILED TO PRESENT EVEN AN IOTA OF PROOF TO SHOW THAT PETITIONERS COULD BE CHARGED WITH KNOWLEDGE OF THE CORPORATE FUNDS; AND

III. THE COURT OF APPEALS ERRONEOUSLY AFFIRMED PETITIONERS' CONVICTION DESPITE THE APPARENT FAILURE OF THE PROSECUTION TO PROVE THEIR GUILT BEYOND REASONABLE DOUBT.[21]

OUR RULING

Without having to consider the other two (2) assignments of errors, we find merit in the petition because the MeTC had no territorial jurisdiction over the instant case.

Territorial jurisdiction in criminal cases is the territory where the court has jurisdiction to take cognizance of or to try the offense allegedly committed therein by the accused. In all criminal prosecutions, the action shall be instituted and tried

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[20] *Id*. at 44.

[21] *Id*. at 18.

in the court of the municipality or territory wherein the offense was committed or where any one of the essential ingredients took place. The fact as to where the offense charged was committed is determined by the facts alleged in the complaint or information.[22]

In *Isip v. People*,[23] we explained:

> The place where the crime was committed determines not only the venue of the action but is an essential element of jurisdiction. It is a fundamental rule that for jurisdiction to be acquired by courts in criminal cases, the offense should have been committed or any one of its essential ingredients should have taken place within the territorial jurisdiction of the court. Territorial jurisdiction in criminal cases is the territory where the court has jurisdiction to take cognizance of or to try the offense allegedly committed therein by the accused. Thus, it cannot take jurisdiction over a person charged with an offense allegedly committed outside of that limited territory. Furthermore, the jurisdiction of a court over the criminal case is determined by the allegations in the complaint or information. And once it is so shown, the court may validly take cognizance of the case. However, **if the evidence adduced during the trial shows that the offense was committed somewhere else, the court should dismiss the action for want of jurisdiction**.[24] (emphasis supplied)

To reiterate, a court cannot take jurisdiction over a person charged with an offense allegedly committed outside of that limited territory, and if the evidence adduced during trial shows that the offense was committed somewhere else, the court should dismiss the action for want of jurisdiction.[25]

Petitioners argue that the MeTC had no jurisdiction because Villegas' allegation that the subject checks were issued in Manila was unsubstantiated. They explain that the lower courts should not have relied on this allegation for being hearsay considering

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[22] *Fullero v. People*, 559 Phil. 524, 547-548 (2007).

[23] 552 Phil. 786 (2007), cited in *Treñas v. People*, 680 Phil. 368, 380 (2012).

[24] *Id.* at 801-802.

[25] *Macasaet v. People*, 492 Phil. 355, 370 (2005), citing *Uy v. CA*, 342 Phil. 329, 337 (1997); *Foz v. People*, 618 Phil. 120, 130 (2009).

that Villegas had no firsthand knowledge about the transaction between Vill Integrated and L&S Resources.

We agree with this position.

A careful review of the rulings of the lower courts would show that the only piece of evidence they considered connecting the alleged violation of B.P. Blg. 22 within the territorial jurisdiction of the MeTC is the affidavit-complaint of Villegas. In this affidavit, the allegation that the subject checks were issued in Manila was mentioned only once even though the circumstances behind the issuance of the checks were referred to a couple of times.[26] Moreover, the phrase "in Manila" only appeared in the ninth paragraph of Villegas' affidavit where the elements of the offense were already being summarized. Looking at the affidavit itself already casts some doubt as to where the subject checks were really issued.

More importantly, we agree with petitioners that Villegas could not have testified or alleged in his affidavit that the checks were issued in Manila because he was not privy to the contractual negotiations with L&S Resources nor was he present when petitioners issued the checks. In fact, his position in the company did not give him any opportunity to deal directly with his clients as brought out in his cross-examination:

Q: Mr. Villegas, you said that you are an Operations Manager of the Vill Integrated Transport Corporation?
A: Yes sir.

x x x x x x x x x

Q: You said that you are the operations manager, specifically said that your main duties and responsibilities (sic) to oversee maintenance of your tugboat, is that correct?
A: Yes sir.

Q: So directly or indirectly, you are not involved in dealing with customers of Vill Integrated Transport Corporation, is that correct?
A: Yes sir.

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[26] *Rollo*, pp. 63-64.

Q: So, in the particular case the dealing with Rolan Onal and Raffy Brodeth, you are not involved in any way, is that right?
A: No sir.

Q: As a matter of fact, Mr. Villegas, in the Contract dated 16 August 1999 that was previously marked by your counsel, you were never a signatory to that contract?
A: No sir.

Q: That confirmed a fact that you are not in any way directly or indirectly involved in the transaction with both accused.
A: No sir.[27]

Furthermore, petitioners claimed in defense that the checks were issued as a guarantee for the payments. As admitted by Vill Integrated's liason officer, their company collects payments from its clients in their respective offices.[28] Considering that L&S Resources' principal place of business is in Makati City, it would be out of the ordinary course of business operations for petitioners to go all the way to Manila just to issue the checks.

Our ruling in *Morillo v. People*[29] is instructive as to where violations of B.P. Blg. 22 should be filed and tried:

> It is well-settled that violations of B.P. [Blg.] 22 cases are categorized as transitory or continuing crimes, meaning that some acts material and essential thereto and requisite in their consummation occur in one municipality or territory, while some occur in another. In such cases, the court wherein any of the crime's essential and material acts have been committed maintains jurisdiction to try the case; it being understood that the first court taking cognizance of the same excludes the other. Thus, a person charged with a continuing or transitory crime may be validly tried in any municipality or territory where the offense was in part committed.

The OSG, relying on our ruling in *Rigor v. People*, concluded that "the Supreme Court regarded the place of deposit and the place of dishonor as distinct from one another and considered the place

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[27] *Rollo*, pp. 20-21, Petition; TSN, August 22, 2007, pp. 9-11.

[28] *Id.* at 62.

[29] 775 Phil. 192 (2015).

where the check was issued, delivered and dishonored, and not where the check was deposited, as the proper venue for the filing of a B.P. Blg. 22 case." The Court, however, cannot sustain such conclusion.

In said case, the accused therein obtained a loan from the Rural Bank of San Juan, Metro Manila, and in payment thereof, he issued a check drawn against Associated Bank of Tarlac. Thereafter, Rural Bank deposited the check at PS Bank, San Juan, but the same was returned for the reason that it had been dishonored by Associated Bank of Tarlac. When all other efforts to demand the repayment of the loan proved futile, Rural Bank filed an action against the accused for violation of B.P. Blg. 22 at the RTC of Pasig City, wherein crimes committed in San Juan are triable. The accused, however, contends that the RTC of Pasig had no jurisdiction thereon since no proof had been offered to show that his check was issued, delivered, dishonored or that knowledge of insufficiency of funds occurred in the Municipality of San Juan. The Court, however, disagreed and held that while the check was dishonored by the drawee, Associated Bank, in its Tarlac Branch, evidence clearly showed that the accused had drawn, issued and delivered it at Rural Bank, San Juan, *viz.*:

> Lastly, petitioner contends that the Regional Trial Court of Pasig had no jurisdiction over this case since no proof has been offered that his check was issued, delivered, dishonored or that knowledge of insufficiency of funds occurred in the Municipality of San Juan, Metro Manila.
>
> The contention is untenable.
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> x x x x x x x x x.
>
> The evidence clearly shows that the undated check was issued and delivered at the Rural Bank of San Juan, Metro Manila on November 16, 1989, and subsequently the check was dated February 16, 1990 thereat. On May 25, 1990, the check was deposited with PS Bank, San Juan Branch, Metro Manila. Thus, the Court of Appeals correctly ruled:
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> > Violations of B.P. Blg. 22 are categorized as transitory or continuing crimes. A suit on the check can be filed in any of the places where any of the elements of the offense occurred, that is, where the check is drawn, issued, delivered or dishonored. x x x
> >
> > **The information at bar effectively charges San Juan as the place of drawing and issuing. The jurisdiction**

> **of courts in criminal cases is determined by the allegations of the complaint or information. Although, the check was dishonored by the drawee, Associated Bank, in its Tarlac Branch, appellant has drawn, issued and delivered it at RBSJ, San Juan. The place of issue and delivery was San Juan and knowledge, as an essential part of the offense, was also overtly manifested in San Juan. There is no question that crimes committed in November, 1989 in San Juan are triable by the RTC stationed in Pasig. In short both allegation and proof in this case sufficiently vest jurisdiction upon the RTC in Pasig City**.

The bone of contention in *Rigor*, therefore, was whether the prosecution had offered sufficient proof that the check drawn in violation of B.P. Blg. 22 was issued, delivered, dishonored or that knowledge of insufficiency of funds occurred in the Municipality of San Juan, thereby vesting jurisdiction upon the RTC of Pasig City. Nowhere in the cited case, however, was it held, either expressly or impliedly, that the place where the check was deposited is not the proper venue for actions involving violations of B.P. Blg. 22. It is true that the Court, in *Rigor*, acknowledged the fact that the check was issued and delivered at the Rural Bank of San Juan while the same was deposited with the PS Bank of San Juan. But such differentiation cannot be taken as basis sufficient enough to conclude that the court of the place of deposit cannot exercise jurisdiction over violations of B.P. Blg. 22. In the absence, therefore, of any ground, jurisprudential or otherwise, to sustain the OSG's arguments, the Court cannot take cognizance of a doctrine that is simply inapplicable to the issue at hand.

In contrast, the ruling in *Nieva, Jr. v. Court of Appeals* cited by petitioner is more squarely on point with the instant case. In *Nieva*, the accused delivered to Ramon Joven a post-dated check drawn against the Commercial Bank of Manila as payment for Joven's dump truck. Said check was deposited in the Angeles City Branch of the Bank of Philippine Islands. Joven was advised, however, that the Commercial Bank of Manila returned the check for the reason that the account against which the check was drawn is a "closed account." Consequently, the accused was charged with violation of B.P. Blg. 22 before the RTC of Pampanga. On the contention of the accused that said court had no jurisdiction to try the case, the Court categorically ruled:

> **As to petitioner's contention that the Regional Trial Court of Pampanga has no jurisdiction to try the cases charged herein as none of the essential elements thereof took place in Pampanga, suffice it to say that such contention has no basis. The evidence discloses that the check was deposited and/or presented for encashment with the Angeles City Branch of the Bank of the Philippine Islands. This fact clearly confers jurisdiction upon the Regional Trial Court of Pampanga over the crimes of which petitioner is charged**. It must be noted that violations of B.P. Blg. 22 are categorized as transitory or continuing crimes and so is the crime of estafa. The rule is that a person charged with a transitory crime may be validly tried in any municipality or territory where the offense was in part committed.

In fact, in the more recent *Yalong v. People*, wherein the modes of appeal and rules of procedure were the issues at hand, the Court similarly inferred:

> Besides, even discounting the above-discussed considerations, Yalong's appeal still remains dismissible on the ground that, *inter alia*, the MTCC had properly acquired jurisdiction over Criminal Case No. 45414. It is well-settled that violation of B.P. Blg. 22 cases is categorized as transitory or continuing crimes, which means that the acts material and essential thereto occur in one municipality or territory, while some occur in another. Accordingly, the court wherein any of the crime's essential and material acts have been committed maintains jurisdiction to try the case; it being understood that the first court taking cognizance of the same excludes the other. Stated differently, a person charged with a continuing or transitory crime may be validly tried in any municipality or territory where the offense was in part committed. Applying these principles, a criminal case for violation of B.P. Blg. 22 may be filed in any of the places where any of its elements occurred — in particular, the place where the check is drawn, issued, delivered, or dishonored.
>
> **In this case, while it is undisputed that the subject check was drawn, issued, and delivered in Manila, records reveal that Ylagan presented the same for deposit and encashment at the LBC Bank in Batangas City where she learned of its dishonor. As such, the MTCC [of Batangas City] correctly**

took cognizance of Criminal Case No. 45414 as it had the territorial jurisdiction to try and resolve the same. In this light, the denial of the present petition remains warranted.

Guided by the foregoing pronouncements, there is no denying, therefore, that the court of the place where the check was deposited or presented for encashment can be vested with jurisdiction to try cases involving violations of B.P. Blg. 22. Thus, the fact that the check subject of the instant case was drawn, issued, and delivered in Pampanga does not strip off the Makati MeTC of its jurisdiction over the instant case for it is undisputed that the subject check was deposited and presented for encashment at the Makati Branch of Equitable PCIBank. The MeTC of Makati, therefore, correctly took cognizance of the instant case and rendered its decision in the proper exercise of its jurisdiction.[30] (emphases in the original and citations omitted)

From the foregoing, we can deduce that a criminal complaint for violation of B.P. Blg. 22 may be filed and tried either at the place where the check was issued, drawn, delivered, or deposited. In the present case, however, evidence on record is missing at **any** of these material places.

Again, the only factual link to the territorial jurisdiction of the MeTC is the allegation that the subject checks were issued in Manila. In criminal cases, venue or where at least one of the elements of the crime or offense was committed must be proven and not just alleged. Otherwise, a mere allegation is not proof and could not justify sentencing a man to jail or holding him criminally liable. To stress, an allegation is not evidence and could not be made equivalent to proof.

All said, since the prosecution failed to prove that the subject checks were issued in Manila nor was any evidence shown that these were either drawn, delivered, or deposited in Manila, the MeTC has no factual basis for its territorial jurisdiction.

WHEREFORE, the present petition is **GRANTED**. The 17 May 2011 Decision and the 20 July 2011 Resolution of the Court

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[30] *Id*. at 205-209.

of Appeals in CA-G.R. CR No. 33104 are **REVERSED** and **SET ASIDE** on the ground of lack of jurisdiction on the part of the Metropolitan Trial Court, Branch 30, Manila. Criminal Case Nos. 371104-CR & 371105-CR are **DISMISSED** without prejudice.

SO ORDERED.

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

Gesmundo, J., on leave.

THIRD DIVISION

[G.R. No. 203121. November 29, 2017]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **GOLEM SOTA and AMIDAL GADJADLI,** *accused-appellants.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; FACTUAL FINDINGS OF THE TRIAL AND APPELLATE COURTS WERE FINAL AND CONCLUSIVE; EXCEPTIONS; THE COURT FOUND NO COMPELLING REASON TO DISTURB SUCH FINDINGS.— Time and again, the Court has held that when the issues involve matters of credibility of witnesses, the findings of the trial court, its calibration of the testimonies, and its assessment of the probative weight thereof, as well as its conclusions anchored on said findings, are accorded high respect, if not conclusive effect. This is so because the trial court has the unique opportunity to observe the demeanor of witnesses and is in the best position to discern whether they are telling the truth. The factual findings of the trial court, especially when affirmed by the CA, are

generally binding and conclusive on this Court except on the following instances: 1. When the conclusion is a finding grounded entirely on speculation, surmises, and conjectures; 2. When the inference made is manifestly mistaken, absurd or impossible; 3. Where there is grave abuse of discretion; 4. When the judgment is based on misapprehension of facts; 5. When the findings of fact are conflicting; 6. When the Court of Appeals, in making its findings, went beyond the issues of the case and the same is contrary to the admissions of both appellant and appellee; 7. When the findings are contrary to those of the trial court; 8. When the findings of fact are conclusions without citation of specific evidence on which they are based; 9. When the facts set forth in the petition as well as in the petitioners' main and reply briefs are not disputed by the respondents; and 10. When the findings of fact of the Court of Appeals are premised on the supposed absence of evidence and contradicted by the evidence on record. x x x The CA, performing its sworn duty to re-examine the trial records as thoroughly as it could in order to uncover any fact or circumstances that could impact the verdict in favor of the appellants, is presumed to have uncovered none sufficient to undo or reverse the conviction. The Court, on the one hand, did not find any compelling cause or impetus to disturb the findings of the CA especially so that the accused-appellants failed to convincingly argue their claim that these cases fall within the determined exclusions.

2. **ID.; ID.; ID.; WHILE THE WITNESS WAS ONLY TWELVE YEARS OLD WHEN THE INCIDENT HAPPENED AND CALLED TO TESTIFY, SHE POSSESSED ALL THE QUALIFICATIONS AND NONE OF THE DISQUALIFICATIONS TO TESTIFY.—** Although Jocelyn was only twelve years old when the incident happened and when called to the witness stand, the Court takes note of the truth that she possessed all the qualification and none of the disqualifications to testify in these cases[.] x x x Jocelyn's young age had no bearing on her qualifications to testify on what happened that night on 19 November 1999. As the rules show, anyone who is sensible and aware of a relevant event or incident, and can communicate such awareness, experience, or observation to others can be a witness. Significantly, even under the crucible of an intense cross-examination, Jocelyn never wavered in her narration as to the incidents that led to the killing of Artemio and the burning of their house, and in the affirmative identification

of Sota and Gadjadli as two of the five persons who were responsible for these crimes.

3. **ID.; ID.; ID.; WITNESS HAD NO ILL MOTIVE IN NAMING ACCUSED-APPELLANTS AS THE PERPETRATORS OF THE CRIME.—** Sota and Gadjadli failed to attribute any ill motive on the part of Jocelyn in testifying against them. Notably, nothing from the records can sustain a finding that Jocelyn, who was a child when called to the witness stand, was moved by ill will against Sota and Gadjadli sufficient to encourage her to fabricate a tale before the trial court. Both Sota and Gadjadli, according to her, were even the friends of Artemio. At her tender age, Jocelyn could not have been able to concoct particulars on how the group killed Artemio and burned their house. Settled is the rule that the absence of evidence as to an improper motive strongly tends to sustain the conclusion that none existed and that the testimony is worthy of full faith and credit. Moreover, it has been observed that the natural interest of witnesses, who are relatives of the victims, in securing the conviction of the guilty would deter them from implicating persons other than the culprits, for otherwise, the culprits would gain immunity.

4. **ID.; ID.; DEFENSES OF ALIBI AND DENIAL PROFFERED BY ACCUSED-APPELLANTS WERE INTRINSICALLY WEAK.—** Denial is an intrinsically weak defense that further crumbles when it comes face-to-face with the positive identification and straightforward narration of the prosecution witnesses. For the defense of alibi to prosper, the accused must prove that he was somewhere else when the offense was committed and that he was so far away that it was not possible for him to have been physically present at the place of the crime or at its immediate vicinity at the time of its commission. The defense of denial must be buttressed by strong evidence of non-culpability to merit credibility. Sota's testimony that he was at his parents' house adjacent to the lot where Artemio's house stood, while Gadjadli claimed that he was actually at the scene of the crime, clearly proves it was probable that both Sota and Gadjadli had committed the crimes as charged.

5. **CRIMINAL LAW; REVISED PENAL CODE (RPC); MURDER; ELEMENTS; ESSENCE OF TREACHERY AS A QUALIFYING CIRCUMSTANCE.—** [T]o be liable for murder, the prosecution must prove that: (1) a person was killed;

(2) the accused killed him; (3) the killing was attended by any of the qualifying circumstances mentioned in Article 248; and (4) the killing is neither parricide nor infanticide. The essence of treachery is that the attack comes without a warning and is done in a swift, deliberate, and unexpected manner, affording the hapless, unarmed, and unsuspecting victim no chance to resist or escape. In treachery, the sudden and unexpected attack on an unsuspecting victim is without the slightest provocation on his part. The mode of attack, therefore, must have been planned by the offender and must not have sprung from an unexpected turn of events. What is decisive is that the execution of the attack made it impossible for the victim to defend himself or to retaliate. Treachery is likewise committed when the victim, although warned of the danger to his life, is defenseless and unable to flee at the time of the infliction of the *coup de grace*.

6. **ID.; ID.; ID.; EVIDENT PREMEDITATION AND TREACHERY ATTENDED THE KILLING IN CASE AT BAR; ABUSE OF SUPERIOR STRENGTH IS ABSORBED IN TREACHERY.—** It was obvious that the group had deliberately reflected on the means to carry out their plan to kill Artemio, *i.e.*, by making him open the door of his house when he hands them the food they demanded and thereafter to shoot him. They had a torch made of coconut leaves while Gadjadli was armed with a pistol which, as pointed out by the RTC, was an effective ploy and calculation by the group, considering that if Artemio refused to come out of the house, they would burn it. There was treachery when the group made Artemio believe they would burn his house for refusing to open the door and hand them the food they were demanding. Although Artemio knew the danger to his life if the group proceeded with its threat to burn the house should he still refuse to open the door, the unexpected firing at his house made it impossible for him to defend himself or to retaliate. The circumstance of use of superior strength cannot serve to qualify or aggravate the felony at issue since it is jurisprudentially settled that when the circumstance of abuse of superior strength concurs with treachery, the former is absorbed in the latter.

7. **ID.; ID.; ID.; PENALTY AND CIVIL LIABILITY.—** Pursuant to R.A. No. 7659, the penalty to be imposed upon the accused-appellants should be *reclusion perpetua* to death. With the effectivity of R.A. No. 9346, murder shall no longer be

punishable by death but by *reclusion perpetua*. Following the ruling of the Court in *People v. Jugueta*, appellants shall be liable for the following: civil indemnity of ₱100,000.00; moral damages of ₱100,000.00; exemplary damages of ₱100,000.00; and temperate damages of ₱50,000.00. Additionally, the civil indemnity, moral damages, exemplary damages, and temperate damages shall be subject to six percent (6%) interest per annum from finality of decision until fully paid.

8. ID.; ID.; RPC AS AMENDED BY PRESIDENTIAL DECREE NO. 1613; ARSON; WHEN THE BURNING OF THE PROPERTY WAS COMMITTED BY A SYNDICATE, THE PENALTY OF *RECLUSION PERPETUA* IS PROPER.— Section 3 of P.D. No. 1613 provides that the penalty of *reclusion temporal* to *reclusion perpetua* shall be imposed if the property burned is an inhabited house or dwelling, while Section 4 thereof states that the maximum of the penalty shall be imposed if arson was attended by the following special aggravating circumstances: x x x **4. If committed by a syndicate. The offense is committed by a syndicate if it is planned or carried out by a group of three (3) or more persons.** x x x The allegation that there were five accused conspiring to burn Artemio's house undoubtedly qualifies the crime as having been committed by a syndicate. Put otherwise, the information was couched in ordinary and concise language enough to enable the accused to know that they were being charged with arson perpetrated as a syndicate. Hence, to further state in the information that the crime was attended by the special aggravating circumstance that it was committed by a syndicate would only be a superfluity. x x x Considering the presence of the special aggravating circumstance, the penalty of *reclusion perpetua* should have been imposed on the accused-appellants.

9. ID.; ID.; ID.; ID.; CIVIL LIABILITY WHEN ARSON WAS COMMITTED BY A SYNDICATE.— [T]he CA was correct in awarding temperate damages in the amount of ₱30,000.00. In view of the presence of the special aggravating circumstance, exemplary damages in the amount of ₱20,000.00 is likewise appropriate. In addition, the temperate damages and exemplary damages to be paid by the accused-appellants are subject to interest at the rate of six percent (6%) per annum from finality of decision until fully paid.

APPEARANCES OF COUNSEL

Office of the Solicitor General for plaintiff-appellee.
Public Attorney's Office for accused-appellants.

D E C I S I O N

MARTIRES, *J.*:

This resolves the appeal of Golem Sota *(Sota)* and Amidal Gadjadli *(Gadjadli)* from the Decision[1] dated 29 February 2012 of the Court of Appeals *(CA)* in CA-G.R. CR HC No. 00801-MIN which affirmed, but modified as to the penalty and damages, the Joint Decision[2] dated 19 October 2009 of the Regional Trial Court, Branch 28, Liloy, Zamboanga del Norte *(RTC)* in Criminal Case Nos. L-00355 and L-00356, finding them guilty of Murder and Arson.

THE FACTS

Sota and Gadjadli were charged before the RTC with murder and arson committed as follows:

Criminal Case No. L-00355

That, in the evening, on or about the 19th day of November, 1999, in the [M]unicipality of Labason, Zamboanga del Norte, within the jurisdiction of this Honorable Court, the above-accused, armed with a handgun and a hunting knife, conspiring, confederating together and mutually helping one another and with intent to kill, by means of treachery and evident premeditation, did then and there willfully, unlawfully and feloniously attack, assault, shoot and stab one ARTEMIO EBA, thereby inflicting upon him multiple gunshot wounds and multiple stab wounds on the different vital parts of his body, which caused his instantaneous death; that as a result of the commission of the said crime the heirs of the herein victim suffered the following damages, viz:

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[1] *Rollo*, pp. 3-18; penned by Associate Justice Pamela Ann Abella Maxino, and concurred in by Associate Justices Romulo V. Borja and Zenaida T. Galapate-Laguilles.

[2] Records, pp. 172-199; penned by Judge Oscar D. Tomarong.

a) Indemnity for victim's death ---------- ₱50,000.00
b) Loss of earning capacity ---------- 30,000.00
₱80,000.00

CONTRARY TO LAW (Viol. of Art. 248, Revised Penal Code as amended by R.A. 7659), with the aggravating circumstance of superior strength and the qualifying circumstances of treachery and evident premeditation.[3]

Criminal Case No. L-00356

That in the evening on or about the 19th day of November 1999, in the [M]unicipality of Labason, Zamboanga del Norte, within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating together and mutually helping one another and with intent to destroy property and moved by hatred or resentment, did then and there wilfully, unlawfully and feloniously set on fire the residential house of one ARTEMIO EBA, causing to be totally burned including his belongings, valued at Thirty Thousand (₱30,000.00) Pesos, Philippine Currency, to the damage and prejudice of the said owner.

CONTRARY TO LAW (Viol. of Art. 320 of the Revised Penal Code, as amended by PD 1613).[4]

Sota and Gadjadli, assisted by counsel, pleaded not guilty to the charges against them; hence, joint trial proceeded. To prove its cases, the prosecution called to the witness stand Jocelyn and Abelardo, the daughter and son, respectively, of the victim, Artemio Eba *(Artemio)*.

The Version of the Prosecution

At around 9:30 p.m. on 19 November 1999, Jocelyn woke up and found that her father, Artemio, was no longer by her side. She peeped through a hole in the wall of their house, which was located at Sibulan, Barangay Balas, Municipality of Labason, Zamboanga del Norte, and saw Sota and Gadjadli outside with three other persons. The moon was bright, thus, she was able to identify Sota and Gadjadli, who were close friends of Artemio

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[3] *Id*. at 1.

[4] *Id*. at 2.

and whose lands adjoined Artemio's land. Sota acted as the leader of the group while Gadjadli carried a pistol. The group was demanding food from Artemio who was willing to comply on condition that he would hand the food through an opening in the wall, being afraid to open the door because he might be harmed. The group lighted a torch made up of coconut leaves and started to burn the house but Artemio was able to put out the fire. Artemio pleaded for them not to burn his house and repeated his request that he would wrap the food and hand it to them through the opening in the wall.[5]

The group demanded that Artemio open the door; otherwise, they would burn the house. When Artemio refused to comply insisting that he would hand them the food through the opening in the wall, the group fired at the house, with Gadjadli firing the first shot at Artemio. At that instance, Jocelyn jumped out of the window to escape and then ran away. When she looked back, she saw their house burning while Artemio, who ran down the house, was fired at by the group. Jocelyn proceeded to Eusebio's[6] house, which was 15 meters away from theirs, and told Eusebio, her brother, what happened to their father; but Eusebio did nothing about it because he was shivering in fear.[7]

Abelardo, a son of Artemio, who lived nearby, did not try to rescue Artemio when he saw that his father's house was burning because he was prevailed upon by his wife not to leave.[8]

The following day, Jocelyn, together with her brothers and sisters, found Artemio's body with stab and gunshot wounds. Jocelyn was brought to the police station at the Municipality of Labason where she executed her affidavit.[9] Abelardo reported Artemio's death to the Barangay Captain and the police

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[5] Records, pp. 33-34 and 44-45; TSN, 4 October 2000.

[6] Also known as "Eboy."

[7] Records, pp. 34-35, 40, 46-47 and 50-52.

[8] *Id*. at 60-61; TSN, 24 January 2001.

[9] *Id*. at 6.

detachment, and thereafter executed his affidavit.[10] The house and everything inside it, which had a total value of ₱30,000.00, were totally burned.[11]

The Version of the Defense

Sota, Gadjadli, Hamid Saaban *(Saaban)*, and Tambi S. Janjali *(Janjali)* were presented by the accused to prove their defenses.

When called to the witness stand, Sota admitted that he knew Gadjadli and Artemio. He and his wife had been staying at the house of his parents at Sibulan, Barangay Balas, which was adjacent to the lot where Artemio's house stood. On 19 November 1999, he stayed at home with his parents and siblings because he had fever and chicken pox. He consulted a doctor at Labason hospital about his chicken pox. He came to know that Artemio, with whom he had no misunderstanding, was killed when the policemen arrested him. He was brought to the police station where he executed his counter-affidavit. He claimed that he did not burn the house of Artemio nor was he involved in his killing. He did not see Gadjadli, who was living at Barangay New Salvacion, on 19 November 1999. He had transferred to Lemon, which is the boundary of Barangays Balas and New Salvacion, Municipality of Labason.[12]

Gadjadli stated that he was not responsible for the burning of the house of Artemio and his death. Before the incident on 19 November 1999 took place, Eusebio, Artemio's son, went to his house to ask if he knew someone who would kill Artemio for a price of ₱30,000.00. He told him that he did not know of anyone who would do that. When he asked why he wanted Artemio killed, Eusebio told him that they were having problems with the partitioning of their property. Eusebio then said that he would just go home since he could not find someone to kill his father.[13]

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[10] *Id*. at 5.

[11] *Id*. at 38-39; TSN, 4 October 2000; *id*. at 62; TSN, 24 January 2001.

[12] *Id*. at (no proper pagination); TSN, 22 May 2008, pp. 2-10 and 15-16.

[13] *Id*. at 129-131; TSN, 31 July 2008.

At around 6:00 p.m. on 19 November 1999, Gadjadli proceeded to Artemio's house, which was adjacent to the farmland he was tilling, to inform Artemio about Eusebio's plan. When he reached the place, he saw Eboy, Solaydi, and a masked person shoot Artemio. He shouted at Artemio and his daughter to run because they might be killed. Artemio's daughter was able to run, leaving Artemio behind. Eusebio and his companions chased and fired at him but missed.[14]

Gadjali claimed he had no ill feelings towards Artemio. He averred that Jocelyn could have recognized his presence at Artemio's house because he shouted at her and Artemio to run. He did not see Sota that fateful night.[15]

Saaban, a resident and a Barangay Kagawad of Barangay New Salvacion, Labason, testified that he knew Sota and Gadjadli. On 5 November 1999, he treated Sota, whose body had been swelling, with herbal medicine. Because Sota was not healed, he and Sota's parents brought him to Dr. Alpuerto at the Labason hospital. Dr. Alpuerto was also not able to cure Sota so his wife and mother brought him to Dipolog.[16]

Saaban continued to treat Sota when he returned to Labason from Dipolog on 18 November 1999. Because of the enlargement of Sota's penis, he could not have walked from Balas to New Salvacion. When he went back to Sota for treatment on 20 November 1999 at about 4:00 a.m., he was informed that Sota had been arrested. He knew Artemio because their barangays, i.e., New Salvacion and Balas, respectively, are adjacent.[17]

Janjali testified that he knew both Sota and Gadjadli. On 19 November 1999, Sota, on his way to see a doctor for his scabies, passed by Janjali's house at Barangay Salvacion, Labason. Sota proceeded to Dipolog because the person who was supposed

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[14] *Id*. at 131-133; *id*.

[15] *Id*. at 134; *id*.

[16] *Id*. at 154-157; TSN, 17 December 2008.

[17] *Id*. at 157-158; *id*.

to treat him was not around. He was sure that Sota arrived from Dipolog three days after Artemio had been killed because Sota passed by his (Janjali's) house.[18]

The RTC Ruling

In its Joint Decision[19] dated 19 October 2009, the RTC resolved these cases as follows**:**

> **WHEREFORE**, judgment is hereby rendered as follows:
>
> 1. In **Criminal Case No. L-00355**, the [c]ourt finds the accused **GOLEM SOTA and AMIDAL GADJADLI** guilty beyond reasonable doubt of the crime of **Murder** defined and penalized under Art. 248 of the Revised Penal Code as amended by Sec. 6 of Republic Act 7659 as charged in the information, and hereby sentences each of them to suffer the penalty of ***Reclusion Perpetua***; to indemnify the heirs of the deceased **ARTEMIO EBA** the sum of ₱50,000.00 as civil indemnity for his death without subsidiary imprisonment in case of insolvency and to pay the costs of the suit.
>
> 2. In **Criminal Case No. L-00356**, the court finds the accused **GOLEM SOTA and AMIDAL GADJADLI** guilty beyond reasonable doubt of the offense of **ARSON** penalized under Section 3, Paragraph 2, of Presidential Decree No. 1613 and sentences each of them to suffer the penalty of an indeterminate prison term of six (6) years for (4) months and twenty (20) days of *prision mayor* minimum as minimum to fourteen (14) years and two (2) months and ten (10) days of the minimum of reclusion temporal to *reclusion perpetua* as maximum may be imposed on the accused and to pay the heirs of the victim ARTEMIO EBA, the sum of Php30,000.00 representing the value of the house that was burned.
>
> The accused **GOLEM SOTA and AMIDAL GADJADLI** being detention prisoners are entitled to be credited 4/5 of their preventive imprisonment in the service of their respective sentences in accordance with Article 29 of the Revised Penal Code.[20]

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[18] *Id.* at (no proper pagination); TSN, 27 August 2009, pp. 2-3 and 7-9.

[19] Records, pp. 172-199.

[20] *Id.* at 197-198.

The CA Ruling

The CA, Twenty-First Division found Jocelyn a credible witness who held her ground even during the cross-examination. The CA held that the requisites in order that circumstantial evidence may be sufficient for conviction had been satisfied in these cases and which proved beyond reasonable doubt that Sota and Gadjadli, together with three other unidentified individuals, killed Artemio and burned his house. The CA however modified the decision of the RTC as to the penalties to be imposed on Sota and Gadjadli, and the damages to be awarded, viz:

> **IN LIGHT OF ALL THE FOREGOING**, the Court hereby **AFFIRMS** with **MODIFICATIONS** the assailed Joint Decision dated October 19, 2009 of the Regional Trial Court, branch 28, Liloy, Zamboanga del Norte in Criminal Case Nos. L-00355 and L-00356. The accused-appellant Golem Sota and Amidal Gadjadli are found **GUILTY** for the crimes of MURDER and ARSON and are hereby sentenced to suffer the penalty of *reclusion perpetua* for the crime of Murder and an indeterminate prison term of six (6) years and one (1) day to twelve (12) years of *prision mayor* as minimum and twenty (20) years of *reclusion temporal* as maximum for the crime of Arson. Accused-Appellants Golem Sota and Amidal Gadjadli are further ordered to indemnify the heirs of Artemio Eba the amounts of Php75,000.00 as civil indemnity, ₱50,000.00 as moral damages, Php30,000.00 as exemplary damages and Php30,000.00 as temperate damages, plus legal interest on all damages awarded at the rate of six percent (6%) from the date of commission of the crimes and twelve percent (12%) from the date of finality of this decision.[21]

ISSUE

The sole issue raised by Sota and Gadjadli in their Brief for Accused-Appellants[22] which they adopted[23] as their Supplemental Brief before the Court was:

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[21] *Rollo,* p. 17.

[22] CA *rollo*, pp. 11-24.

[23] *Id*. at 30-32; the People of the Philippines, represented by the Office of the Solicitor General, likewise manifested that it was adopting its Brief for the Appellee as its Supplemental Brief.

THE COURT A QUO FAILED TO PROVE THE GUILT OF THE ACCUSED-APPELLANTS BEYOND REASONABLE DOUBT.

THE RULING OF THE COURT

The appeal has no merit.

The findings of the trial and appellate courts as to the credibility of Jocelyn were final and conclusive.

Time and again, the Court has held that when the issues involve matters of credibility of witnesses, the findings of the trial court, its calibration of the testimonies, and its assessment of the probative weight thereof, as well as its conclusions anchored on said findings, are accorded high respect, if not conclusive effect. This is so because the trial court has the unique opportunity to observe the demeanor of witnesses and is in the best position to discern whether they are telling the truth.[24] The factual findings of the trial court, especially when affirmed by the CA, are generally binding and conclusive on this Court[25] except on the following instances:

1. When the conclusion is a finding grounded entirely on speculation, surmises, and conjectures;
2. When the inference made is manifestly mistaken, absurd or impossible;
3. Where there is grave abuse of discretion;
4. When the judgment is based on misapprehension of facts;
5. When the findings of fact are conflicting;
6. When the Court of Appeals, in making its findings, went beyond the issues of the case and the same is contrary to the admissions of both appellant and appellee;
7. When the findings are contrary to those of the trial court;

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[24] *People v. Dayaday*, G.R. No. 213224, 16 January 2017.

[25] *Torres v. People*, G.R. No. 206627, 18 January 2017.

8. When the findings of fact are conclusions without citation of specific evidence on which they are based;

9. When the facts set forth in the petition as well as in the petitioners' main and reply briefs are not disputed by the respondents; and

10. When the findings of fact of the Court of Appeals are premised on the supposed absence of evidence and contradicted by the evidence on record. [26] (italics omitted)

The CA, performing its sworn duty to re-examine the trial records as thoroughly as it could in order to uncover any fact or circumstances that could impact the verdict in favor of the appellants, is presumed to have uncovered none sufficient to undo or reverse the conviction.[27] The Court, on the one hand, did not find any compelling cause or impetus to disturb the findings of the CA especially so that the accused-appellants failed to convincingly argue their claim that these cases fall within the determined exclusions.

Most significantly, in every criminal case, the task of the prosecution is always two-fold, that is, (1) to prove beyond reasonable doubt the commission of the crime charged; and (2) to establish with the same quantum of proof the identity of the person or persons responsible therefor, because, even if the commission of the crime is a given, there can be no conviction without the identity of the malefactor being likewise clearly ascertained.[28] In these cases, the prosecution had undoubtedly discharged its task in accordance with the required degree of proof.

It was the position of the accused-appellants that Jocelyn failed to elucidate who were the actual perpetrators and how the alleged crimes were carried out. The petitioners claimed that the tales of the events were all speculations and self-serving perceptions.[29]

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[26] *Macayan, Jr. v. People*, 756 Phil. 202, 215-216 (2015).

[27] *Luy v. People*, G.R. No. 200087, 12 October 2016.

[28] *People v. Yau*, 741 Phil. 747, 763-764 (2014).

[29] CA *rollo*, pp. 18 and 20.

Credible witness and credible testimony are the two essential elements for determining the weight of a particular testimony.[30] Evidence to be believed must not only proceed from the mouth of a credible witness but must be credible in itself, such as the common experience and observation of mankind can approve as probable under the circumstances.[31]

Although Jocelyn was only twelve years old when the incident happened and when called to the witness stand, the Court takes note of the truth that she possessed all the qualification and none of the disqualification to testify in these cases, viz:

Section 20. *Witnesses; their qualifications*.— Except as provided in the next succeeding section, all persons who can perceive, and perceiving, can make known their perception to others, may be witnesses.

Religious or political belief, interest in the outcome of the case, or conviction of crime unless otherwise provided by law, shall not be a ground for disqualification.

Section 21. *Disqualification by reason of mental incapacity or immaturity*. — The following persons cannot be witnesses:

(a) Those whose mental condition, at the time of their production for examination, is such that they are incapable of intelligently making known their perception to others;

(b) Children whose mental maturity is such as to render them incapable of perceiving the facts respecting which they are examined and of relating them truthfully.[32]

Jocelyn's young age had no bearing on her qualification to testify on what happened that night on 19 November 1999. As the rules show, anyone who is sensible and aware of a relevant event or incident, and can communicate such awareness,

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[30] *People v. Mangune*, 698 Phil. 759, 769 (2012), citing *People v. Sorongon*, 445 Phil. 273, 278 (2003).

[31] *Idanan v. People,* G.R. No. 193313, 16 March 2016, 787 SCRA 499, 506.

[32] Rules of Court, Rule 130.

experience, or observation to others can be a witness.[33] Significantly, even under the crucible of an intense cross-examination, Jocelyn never wavered in her narration as to the incidents that led to the killing of Artemio and the burning of their house, and in the affirmative identification of Sota and Gadjadli as two of the five persons who were responsible for these crimes.

In *Salvador v. People*,[34] the Court laid down the rule that direct evidence is not the only ground by which the guilt of an accused may be anchored, viz:

> Direct evidence of the crime is not the only matrix wherefrom a trial court may draw its conclusion and finding of guilt. The rules of evidence allow a trial court to rely on circumstantial evidence to support its conclusion of guilt. Circumstantial evidence is that evidence which proves a fact or series of facts from which the facts in issue may be established by inference. At times, resort to circumstantial evidence is imperative since to insist on direct testimony would, in many cases, result in setting felons free and deny proper protection to the community.[35]

Jocelyn gave the credible testimony that on the night of 19 November 1999, Sota, Gadjadli, and three other unidentified persons lit the torch to burn their house but Artemio was able to put out the fire. Because the moon was bright, she vividly saw that it was Sota who acted as the leader of the group while Gadjadli carried a pistol. She witnessed that the group started to shoot at the house when Artemio became adamant not to open the door for fear he would be killed. It was with this burst of gunshots that made her jump out of the window and run towards the house of her brother Eusebio. When she looked back, their house was already burning while the group was shooting at Artemio who ran down the house.[36] Plainly, these

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[33] *People v. Esugon*, 761 Phil. 300, 310 (2015).

[34] 581 Phil. 430 (2008).

[35] *Id.* at 439-440.

[36] Records, pp. 33-35; TSN, 4 October 2000.

circumstances as testified to by Jocelyn produced a conviction beyond reasonable doubt that Sota, Gadjadli, and the three unidentified persons were responsible for the killing of Artemio and the burning of their house.

Accused-appellants denigrate as contrary to human experience the testimony of Jocelyn that Eusebio, having been informed of what had happened to their father, did not make any move to help him.[37]

Noteworthy, in *People v. Bañez*,[38] the Court ruled that it is not at all uncommon or unnatural for a witness who, as in this case, having seen the killing of a person, did not even move, help, or run away from the crime scene, but simply chose to stay and continue plowing. It explained its ruling as follows:

> It is settled that there could be no hard and fast gauge for measuring a person's reaction or behavior when confronted with a startling, not to mention horrifying, occurrence, as in this case. Witnesses of startling occurrences react differently depending upon their situation and state of mind, and there is no standard form of human behavioral response when one is confronted with a strange, startling or frightful experience. The workings of the human mind placed under emotional stress are unpredictable, and people react differently to shocking stimulus — some may shout, some may faint, and others may be plunged into insensibility.[39]

Jocelyn testified that Eusebio did not help Artemio because he was trembling with fear. Presumably, Eusebio had been informed by Jocelyn that five malefactors came to Artemio's house that night. Eusebio's immediate reaction was to cower in fear with concern for his self-preservation rather than coming to the aid of his father.

Jocelyn had no motive in naming Sota and Gadjadli as the perpetrators of the crime.

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[37] CA *rollo*, p. 20.

[38] 770 Phil. 40 (2015).

[39] *Id.* at 46.

Sota and Gadjadli failed to attribute any ill motive on the part of Jocelyn in testifying against them. Notably, nothing from the records can sustain a finding that Jocelyn, who was a child when called to the witness stand, was moved by ill will against Sota and Gadjadli sufficient to encourage her to fabricate a tale before the trial court. Both Sota and Gadjadli, according to her, were even the friends of Artemio. At her tender age, Jocelyn could not have been able to concoct particulars on how the group killed Artemio and burned their house. Settled is the rule that the absence of evidence as to an improper motive strongly tends to sustain the conclusion that none existed and that the testimony is worthy of full faith and credit.[40] Moreover, it has been observed that the natural interest of witnesses, who are relatives of the victims, in securing the conviction of the guilty would deter them from implicating persons other than the culprits, for otherwise, the culprits would gain immunity.[41]

The defenses of alibi and denial proffered by Sota and Gadjadli were intrinsically weak.

Sota's alibi was that he had fever due to chicken pox on 19 November 1999; thus, he stayed with his parents and siblings at their parents' house, located at Sibulan, Barangay Balas. Artemio's house stood on an adjacent lot. To fortify Sota's defense, Saaban testified that he was treating Sota for the swelling in his body at New Salvacion.

The inconsistencies in the testimonies of Sota and Saaban were readily apparent. Sota stated that he was staying in the house of his parents in Sibulan while Saaban claimed that Sota had been staying at New Salvacion where he had been treating the latter. To bolster his claim that Sota could not have committed the crime, Saaban stated that Sota's penis had been swollen; thus, Sota could not have walked to Sibulan. It must be stressed, however, that Sota's defense was that he was at Sibulan at his parents' house because he had fever and chicken pox.

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[40] *People v. Ygot*, G.R. No. 210715, 18 July 2016, 797 Phil. 87, 94.

[41] *People v. Reynes,* 423 Phil. 363, 382 (2001).

On the one hand, Janjali stated that he saw Sota on 19 November 1999 as the latter was on his way to Dipolog to seek medical attention for his scabies. He claimed that it was three days thereafter when Sota came back from Dipolog, thus, it was impossible for Sota to be at the crime scene on 19 November 1999 because Sota was still at a hospital in Dipolog. He asserted that he was sure about this because Sota passed by his house going to and coming from Dipolog.

The testimony of Janjali fatally weakens Sota's alibi. To stress, Sota insisted that he was at the house of his parents on 19 November 1999 while Saaban confirmed that Sota was in Labason on that day. It was clear, therefore, that contrary to Janjali's testimony, Sota was not in Dipolog; thus, it was not impossible for Sota to be at the scene of the crime.

Gadjadli offered the absurd alibi that it was Eusebio who had the intention to kill Artemio. He claimed that three nights before the incident Eusebio came to his house asking if he knew someone who could kill Artemio for ₱30,000.00.

Noteworthy, the testimony of a witness must be considered in its entirety and not merely on its truncated parts. In deciphering a testimony, the technique is not to consider only its isolated parts nor anchor a conclusion on the basis of said parts.[42] The defense of Gadjadli easily amounted to nothing when assayed as to the other portions of his testimony. He had stated that, on 19 November 1999 at around 6:00 p.m., he was on his way to inform Artemio about Eusebio's plan when he came upon Eusebio, Solaydi, and a masked man shooting at Artemio. Gadjadli failed to consider the fact that the incident happened at 9:00 p.m. on 19 November 1999; thus, it was impossible for him to have witnessed the shooting of Artemio at 6:00 p.m.

When compared to the alibi offered by Gadjadli to justify his presence at the scene of the crime, the Court finds more credible Jocelyn's testimony identifying him as the one carrying the pistol and firing the first shot at Artemio.

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[42] *People v. Combate*, 653 Phil. 487, 500 (2010).

Denial is an intrinsically weak defense that further crumbles when it comes face-to-face with the positive identification and straightforward narration of the prosecution witnesses.[43] For the defense of alibi to prosper, the accused must prove that he was somewhere else when the offense was committed and that he was so far away that it was not possible for him to have been physically present at the place of the crime or at its immediate vicinity at the time of its commission.[44] The defense of denial must be buttressed by strong evidence of non-culpability to merit credibility.[45] Sota's testimony that he was at his parents' house adjacent to the lot where Artemio's house stood, while Gadjadli claimed that he was actually at the scene of the crime, clearly proves it was probable that both Sota and Gadjadli had committed the crimes as charged.

It was the position of Sota and Gadjadli that they had no motive to kill Artemio.[46] Generally, the motive of the accused in a criminal case is immaterial and does not have to be proven.[47] In these cases, the proof of motive of the appellants becomes even more irrelevant considering that their identity as two of the persons responsible for the killing of Artemio and the burning of his house was no longer in question.

Criminal Case No. L-00355

Foremost, there is a need to determine whether the crime committed by the petitioners based on the facts was arson, murder or arson and homicide/murder using the following guidelines based on jurisprudence:[48]

In cases where both burning and death occur, in order to determine what crime/crimes was/were perpetrated — whether arson, murder

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[43] *Ibañez v. People*, G.R. No. 190798, 27 January 2016, 782 SCRA 291, 312.

[44] *People v. Pitalla, Jr.*, G.R. No. 223561, 19 October 2016.

[45] *People v. Regalado*, G.R. No. 210752, 17 August 2016.

[46] CA *rollo*, pp. 21-22.

[47] *People v. De Guzman,* 690 Phil. 701, 716 (2012).

[48] *People v. Baluntong*, 629 Phil. 441 (2010).

or arson and homicide/murder, it is *de rigueur* to ascertain the main objective of the malefactor: (a) 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; (b) 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, (c) 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.[49]

According to Jocelyn, when Artemio refused to open the door, the group began shooting at the house. The group followed Artemio when he ran under the house, and there shot him – facts that unerringly leave the conclusion that the group's objective was to kill Artemio.

Jocelyn testified that when Artemio refused to heed the demand of the group to give them food by opening the door, the group started to burn the house using a lighted torch of coconut leaves, which flames Artemio was able to put out. When Artemio still refused to open the door, the group threatened that they would burn the house. They made good their threat before they went after Artemio who ran below his house. Undoubtedly, the group's intent was also to burn down the house of Artemio, not only to kill him.

With these established facts, the prosecution was correct in charging Sota, Gadjadli, and the three unnamed persons with murder and arson.

Murder is defined under Article 248 of the Revised Penal Code, as amended by Republic Act *(R.A.)* No. 7659[50] as follows:

Art. 248. *Murder.* — Any person who, not falling within the provisions of Article 246 shall kill another, shall be guilty of murder and shall

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[49] *Id.* at 446-447, citing *People v. Malngan*, 534 Phil. 404, 431 (2006).

[50] Entitled "An Act to impose the Death Penalty on Certain Heinous Crimes, Amending for that Purpose the Revised Penal Laws, as amended, Other Special Laws, and for Other Purposes" which was approved on 13 December 1993.

be punished by *reclusion perpetua*, to death if committed with any of the following attendant circumstances:

1. With treachery, taking advantage of superior strength, with the aid of armed men, or employing means to weaken the defense or of means or persons to insure or afford impunity.
2. In consideration of a price, reward or promise.
3. By means of inundation, fire, poison, explosion, shipwreck, stranding of a vessel, derailment or assault upon a railroad, fall of an airship, or by means of motor vehicles, or with the use of any other means involving great waste and ruin.
4. On occasion of any of the calamities enumerated in the preceding paragraph, or of an earthquake, eruption of a volcano, destructive cyclone, epidemic or other public calamity.
5. With evident premeditation.
6. With cruelty, by deliberately and inhumanly augmenting the suffering of the victim, or outraging or scoffing at his person or corpse.

The RTC held that the qualifying circumstances of treachery and evident premeditation, and the aggravating circumstance of superior strength that attended the killing of Artemio had been proven by the prosecution.[51]

Jurisprudence dictates that, to be liable for murder, the prosecution must prove that: (1) a person was killed; (2) the accused killed him; (3) the killing was attended by any of the qualifying circumstances mentioned in Article 248; and (4) the killing is neither parricide nor infanticide.[52]

The essence of treachery is that the attack comes without a warning and is done in a swift, deliberate, and unexpected manner, affording the hapless, unarmed, and unsuspecting victim no chance to resist or escape.[53] In treachery, the sudden and

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[51] CA *rollo*, pp. 38-40.

[52] *People v. Camat,* 692 Phil. 55, 73 (2012).

[53] *People v. Zulieta*, 720 Phil. 818, 826 (2013), citing *People v. Jalbonian*, 713 Phil. 93, 106 (2013) further citing *People v. Dela Cruz*, 626 Phil. 631, 640 (2010).

unexpected attack on an unsuspecting victim is without the slightest provocation on his part.[54] The mode of attack, therefore, must have been planned by the offender and must not have sprung from an unexpected turn of events.[55] What is decisive is that the execution of the attack made it impossible for the victim to defend himself or to retaliate. Treachery is likewise committed when the victim, although warned of the danger to his life, is defenseless and unable to flee at the time of the infliction of the *coup de grace*.[56]

Jurisprudence[57] defines evident premeditation as follows:

> Evident premeditation exists when the execution of the criminal act is 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. Premeditation, to be considered, must be evident and so proved with equal certainty and clarity as the crime itself. It is essential that the following elements should there concur: (1) the time when the offender has determined to commit the crime, (2) an act manifestly indicating that the culprit has clung to his determination and, (3) a sufficient interval of time between the determination and the execution of the crime has lapsed to allow him to reflect upon the consequences of his act.[58]

It was obvious that the group had deliberately reflected on the means to carry out their plan to kill Artemio, i.e., by making him open the door of his house when he hands them the food they demanded and thereafter to shoot him. They had a torch made of coconut leaves while Gadjadli was armed with a pistol which, as pointed out by the RTC, was an effective ploy and calculation by the group, considering that if Artemio refused to come out of the house, they would burn it.[59]

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[54] *People v. Jugueta*, G.R. No. 202124, 5 April 2016, 788 SCRA 331, 350.

[55] *People v. Cañaveras,* 722 Phil. 259, 270 (2013).

[56] *People v. Camat, supra* note 52 at 85, citing *People v. Nugas*, 677 Phil. 168, 179-180 (2011).

[57] *People v. Repollo,* 387 Phil. 390 (2000).

[58] *Id*. at 403.

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

There was treachery when the group made Artemio believe they would burn his house for refusing to open the door and hand them the food they were demanding. Although Artemio knew the danger to his life if the group proceeded with its threat to burn the house should he still refuse to open the door, the unexpected firing at his house made it impossible for him to defend himself or to retaliate.

The circumstance of use of superior strength cannot serve to qualify or aggravate the felony at issue since it is jurisprudentially settled that when the circumstance of abuse of superior strength concurs with treachery, the former is absorbed in the latter.[60]

Pursuant to R.A. No. 7659, the penalty to be imposed upon the accused-appellants should be *reclusion perpetua* to death. With the effectivity of R.A. No. 9346,[61] murder shall no longer be punishable by death but by *reclusion perpetua*.

Following the ruling of the Court in *People v. Jugueta*,[62] appellants shall be liable for the following: civil indemnity of ₱100,000.00; moral damages of ₱100,000.00; exemplary damages of ₱100,000.00; and temperate damages of ₱50,000.00. Additionally, the civil indemnity, moral damages, exemplary damages, and temperate damages shall be subject to six percent (6%) interest per annum from finality of decision until fully paid.[63]

Criminal Case No. L-00356

In Criminal Case No. L-00356, accused-appellants were charged with arson under Art. 320 of the RPC, as amended by Presidential Decree *(P.D.)* No. 1613.[64]

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[60] *People v. Dadao,* 725 Phil. 298, 314 (2014).

[61] Entitled "An Act Prohibiting the Imposition of Death Penalty in the Philippines" dated 24 January 2006.

[62] *Supra* note 54 at 381-382 and 388.

[63] *Id*. at 388.

[64] Entitled "Amending The Law On Arson" dated 7 March 1979.

Enlightened precedent[65] dictates the meaning of *corpus delicti* in arson, viz:

> Proof of the *corpus delicti* is indispensable in the prosecution of arson, as in all kinds of criminal offenses. *Corpus delicti* means the substance of the crime; it is the fact that a crime has actually been committed. In arson, the *corpus delicti* is generally satisfied by proof of the bare occurrence of the fire, *e.g.*, the charred remains of a house burned down and of its having been intentionally caused. Even the uncorroborated testimony of a single eyewitness, if credible, may be enough to prove the *corpus delicti* and to warrant conviction.[66]

As testified to by Jocelyn, she and her siblings found the house and everything inside it burned to the ground the day after the incident. Noteworthy, the fact that the house of Artemio was burned was never assailed by the accused-appellants.

Section 3[67] of P.D. No. 1613 provides that the penalty of *reclusion temporal* to *reclusion perpetua* shall be imposed if the property burned is an inhabited house or dwelling, while Section 4 thereof states that the maximum of the penalty shall be imposed if arson was attended by the following special aggravating circumstances:

1. If committed with intent to gain;
2. If committed for the benefit of another;

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[65] *People v. De Leon,* 599 Phil. 759 (2009).

[66] *Id*. at 769.

[67] Section 3. *Other Cases of Arson.* The penalty of *Reclusion Temporal* to *Reclusion Perpetua* shall be imposed if the property burned is any of the following:

1. Any building used as offices of the government or any of its agencies;
2. Any inhabited house or dwelling;
3. Any industrial establishment, shipyard, oil well or mine shaft, platform or tunnel;
4. Any plantation, farm, pastureland, growing crop, grain field, orchard, bamboo grove or forest;
5. Any rice mill, sugar mill, cane mill or mill central; and
6. Any railway or bus station, airport, wharf or warehouse.

3. If the offender is motivated by spite or hatred towards the owner or occupant of the property burned;
4. **If committed by a syndicate.**

The offense is committed by a syndicate if it is planned or carried out by a group of three (3) or more persons. (emphasis supplied)

The special aggravating circumstance that arson was committed by a syndicate should have been appreciated in this case.

Sections 8 and 9 of Rule 110 of the Rules of Court provide:

Section 8. *Designation of the offense*. — The complaint or information shall state the designation of the offense given by the statute, aver the acts or omissions constituting the offense, and specify its qualifying and aggravating circumstances. If there is no designation of the offense, reference shall be made to the section or subsection of the statute punishing it.

Section 9. *Cause of the accusation*. — The acts or omissions complained of as constituting the offense and the qualifying and aggravating circumstances must be stated in ordinary and concise language and not necessarily in the language used in the statute but in terms sufficient to enable a person of common understanding to know what offense is being charged as well as its qualifying and aggravating circumstances and for the court to pronounce judgment.

The above provisions requiring that the qualifying and aggravating circumstances be specified in the information are in consonance with the constitutional rights of the accused to be informed of the nature and cause of accusation against him. The purpose is to allow the accused to fully prepare for his defense, precluding surprises during the trial.[68] Hence, even if the prosecution has duly proven the presence of the circumstances, the Court cannot appreciate the same if they were not alleged in the information.[69]

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[68] *People v. Lab-eo*, 424 Phil. 482, 497 (2002).

[69] *People v. Lapore*, 761 Phil. 196, 203 (2015).

The information in Criminal Case No. L-00356 pertinently states that the "*above-named accused, conspiring, confederating together and mutually helping one another and with intent to destroy property and moved by hatred or resentment, did then and there wilfully, unlawfully and feloniously set on fire the residential house of one ARTEMIO EBA, causing to be totally burned including his belongings*."[70] The information clearly informs the accused that they, i.e., Sota, Gadjadli, John Doe, Peter Doe, and Richard Doe, were being charged for having set on fire Artemio's house. The allegation that there were five accused conspiring to burn Artemio's house undoubtedly qualifies the crime as having been committed by a syndicate. Put otherwise, the information was couched in ordinary and concise language enough to enable the accused to know that they were being charged with arson perpetrated as a syndicate. Hence, to further state in the information that the crime was attended by the special aggravating circumstance that it was committed by a syndicate would only be a superfluity.

The aggravating circumstance that the crime was committed by a syndicate was confirmed by the fact that the accused-appellants and three other unidentified persons carried a torch and assembled outside Artemio's house making threats to burn it. The well-coordinated movements of the group fortified their joint purpose and design, and community of interest in burning Artemio's house. The group started to burn the house of Artemio when he refused to open his door in order to hand them food. It was fortunate that Artemio was able to put out the fire from the torch; but after the group had fired on the house of Artemio, they set fire to his house and thereafter ran after him to shoot him. Noteworthy, in their respective decisions, both the RTC[71] and the CA[72] ruled that there were five persons who killed Artemio and burned his house down.

To establish conspiracy, it is not essential that there be proof as to a previous agreement to commit a crime, it being sufficient

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[70] Records, p. 2.

[71] *Id*. at 186.

[72] *Rollo,* p. 13.

that the malefactors shall have acted in concert pursuant to the same objective.[73] In such a case, the act of one becomes the act of all and each of the accused will thereby be deemed equally guilty of the crime committed.[74]

Considering the presence of the special aggravating circumstance, the penalty of *reclusion perpetua* should have been imposed on the accused-appellants.

On damages, the CA was correct in awarding temperate damages in the amount of ₱30,000.00. In view of the presence of the special aggravating circumstance, exemplary damages in the amount of ₱20,000.00 is likewise appropriate.[75] In addition, the temperate damages and exemplary damages to be paid by the accused-appellants are subject to interest at the rate of six percent (6%) per annum from finality of decision until fully paid.[76]

WHEREFORE, the instant appeal is **DENIED**. Judgment is hereby rendered as follows:

In Criminal Case No. L-00355, the Court finds GOLEM SOTA and AMIDAL GADJADLI **GUILTY** beyond reasonable doubt of **Murder** defined and penalized under Article 248 of the Revised Penal Code, as amended by Republic Act No. 7659, and hereby sentences each of them to suffer the penalty of *reclusion perpetua,* and to indemnify the heirs of ARTEMIO EBA as follows: civil indemnity of ₱100,000.00; moral damages of ₱100,000.00; exemplary damages of ₱100,000.00; and temperate damages of ₱50,000.00, with interest at the rate of six percent (6%) per annum from the time of finality of this decision until fully paid, to be imposed on the civil indemnity, moral damages, exemplary damages, and temperate damages.

In Criminal Case No. L-00356, the Court finds GOLEM SOTA and AMIDAL GADJADLI **GUILTY** beyond reasonable doubt

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[73] *People v. CA,* 755 Phil. 80, 114 (2015).

[74] *Buebos v. People*, 573 Phil. 347, 360 (2008).

[75] *People v. De Leon,* 599 Phil. 759, 770 (2009).

[76] *People v. Jugueta*, *supra* note 54 at 388.

of **Arson** defined and penalized under Article 320 of the Revised Penal Code, as amended by Presidential Decree No. 1613; and hereby sentences each of them to suffer the penalty of *reclusion perpetua,* and to indemnify the heirs of ARTEMIO EBA the sum of ₱30,000.00 as temperate damages and ₱20,000.00 as exemplary damages, with interest at the rate of six percent (6%) per annum from the time of finality of this decision until fully paid.

SO ORDERED.

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

Gesmundo, J., on leave.

THIRD DIVISION

[G.R. No. 205838. November 29, 2017]

JOSEPH HARRY WALTER POOLE-BLUNDEN, *petitioner, vs.* **UNION BANK OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. CIVIL LAW; PROPERTY; REPUBLIC ACT NO. 4726 (CONDOMINIUM ACT); CONDOMINIUM UNIT, DEFINED; AREAS OF COMMON USE ARE NOT PART OF THE UNIT.— Section 3(b) of the Condominium Act defines a condominium unit, as follows: Section 3. As used in this Act, unless the context otherwise requires: . . . . (b) "Unit" means a part of the condominium project intended for any type of independent use or ownership, including one or more rooms or spaces located in one or more floors (or part or parts of floors) in a building or buildings and such accessories as may be appended thereto. Section 6(a) of the Condominium Act specifies the reckoning of a condominium unit's bounds. It also

specifies that areas of common use "are not part of the unit": x x x Thus, the unit sold to petitioner was deficient in relation to its advertised area. This advertisement having been made by respondent, it is equally settled there was a falsity in the declarations made by respondent prior to, and with the intention of enticing buyers to the sale.

2. ID.; CONTRACTS; ELEMENTS; THE PARTY TO A CONTRACT WHOSE CONSENT WAS VITIATED IS ENTITLED TO HAVE THE CONTRACT RESCINDED; EXPLAINED.— For there to be a valid contract, all three (3) elements of consent, subject matter, and price must be present. Consent wrongfully obtained is defective. The party to a contract whose consent was vitiated is entitled to have the contract rescinded. Accordingly, Article 1390 of the Civil Code stipulates that a contract is voidable or annullable even if there is no damage to the contracting parties where "consent is vitiated by mistake, violence, intimidation, undue influence or fraud." Under Article 1338 of the Civil Code "[t]here is fraud when, through insidious words or machinations of one of the contracting parties, the other is induced to enter into a contract which, without them, he would not have agreed to. However, not all instances of fraud enable the voiding of contracts. Article 1344 clarifies that in order to make a contract voidable, the fraud "should be serious and should not have been employed by both contracting parties." Thus, *Tankeh v. Development Bank of the Philippines* explained, "There are two types of fraud contemplated in the performance of contracts: *dolo incidente* or incidental fraud and *dolo causante* or fraud serious enough to render a contract voidable." The fraud required to annul or avoid a contract "must be so material that had it not been present, the defrauded party would not have entered into the contract." The fraud must be "the determining cause of the contract, or must have caused the consent to be given."

3. ID.; ID.; SALES; WARRANTY AGAINST HIDDEN DEFECTS; A SELLER IS GENERALLY RESPONSIBLE FOR THE WARRANTY AGAINST HIDDEN DEFECTS; EXCEPTION.— A seller is generally responsible for warranty against hidden defects of the thing sold. x x x Article 1566, paragraph 2 states the seller's liability for hidden defects shall be inapplicable if there is a stipulation made to the contrary. However, a mere stipulation does not suffice. To be fully absolved

of liability, Article 1566, paragraph 2 also requires a seller to be unaware of the hidden defects in the thing sold.

4. ID.; ID.; ID.; AS-IS-WHERE-IS STIPULATION; THE COURT CONSTRUED AN AS-IS-WHERE-IS STIPULATION AS PERTAINING TO THE PHYSICAL CONDITION OF THE THING SOLD AND NOT TO ITS LEGAL SITUATION.— In *Hian v. Court of Tax Appeals,* this Court construed an as-is-where-is stipulation as pertaining to the "physical condition" of the thing sold and "not to [its] legal situation. x x x A condominium unit's area is a physical attribute. In *Hian's* contemplation, it appeared that the total are of a condominium unit is a valid object of an as-is-where-is clause. However, while an as-is-where-is clauses exclusively apply to the physical attributes of a thing sold, they apply only to physical features that are readily observable. The significance of this Court's pronouncements in *Hian* and *National Development Company* are in clarifying that legal status, which is a technical matter perceptible only by lawyers and regulators, cannot be encompassed by an as-is-where-is stipulation. *Hian* and *National Development Company* are not a sweeping approbation of such stipulations' coverage of every corporeal attribute or tangible trait of objects being sold. Thus, in *Asset Privatization v. T.J. Enterprises,* the as-is-where-is stipulation was understood as one which "merely describes the actual state and location of the machinery and equipment sold," and nothing else. Features that may be physical but which can only be revealed after examination by persons with technical competence cannot be covered by as-is-where-is stipulations. A buyer cannot be considered to have agreed "to take possession of the things sold 'in the condition where they are found and from the place where they are located'" if the critical defect is one which he or she cannot even readily sense.

5. MERCANTILE LAW; BANKS; BANKS ASSUME A DEGREE OF PRUDENCE AND DILIGENCE HIGHER THAN THAT OF A GOOD FATHER OF A FAMILY BECAUSE THEIR BUSINESS IS IMBUED WITH PUBLIC INTEREST AND IS INHERENTLY FIDUCIARY.— By definition, fraud presupposes bad faith or malicious intent. It transpires when insidious words of machinations are deliberately employed to induce agreement to a contract. Thus, one could conceivably claim that respondent could not be guilty of fraud as it does

not appear to have crafted a deceptive strategy directed specifically at petitioner. However, while petitioner was not a specific target, respondent was so callously remiss of its duties as a bank. It was so grossly negligent that its recklessness amounts to a wrongful willingness to engender a situation where any buyer in petitioner's shoes would have been insidiously induced into buying a unit with an actual area so grossly short of its advertised space. In *Spouses Carbonell v. Metropolitan Bank and Trust Company*, this Court considered gross negligence, in relation to the fiduciary nature of banks: x x x Banks assume a degree of prudence and diligence higher than that of a good father of a family, because their business is imbued with public interest and inherently fiduciary. Thus, banks have the obligation to treat the accounts of its clients "meticulously and with the highest degree of care." x x x The high degree of diligence required of banks equally holds true in their dealing with mortgaged real properties, and subsequently acquired through foreclosure, such as the Unit purchased by petitioner. In the same way that banks are "presumed to be familiar with the rules on land registration," given that they are in the business of extending loans secured by real estate mortgage, banks are also expected to exercise the highest degree of diligence. This is especially true when investigating real properties offered as security, since they are aware that such property may be passed on to an innocent purchaser in the event of foreclosure. Indeed, "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 a bank's operation."

APPEARANCES OF COUNSEL

Ortega Bacorro Odulio Calma & Carbonell for petitioner.
Office of the General Counsel for respondent.

D E C I S I O N

LEONEN, *J.*:

Banks are required to observe a high degree of diligence in their affairs. This encompasses their dealings concerning properties offered as security for loans. A bank that wrongly

advertises the area of a property acquired through foreclosure because it failed to dutifully ascertain the property's specifications is grossly negligent as to practically be in bad faith in offering that property to prospective buyers. Any sale made on this account is voidable for causal fraud. In actions to void such sales, banks cannot hide under the defense that a sale was made on an as-is-where-is basis. As-is-where-is stipulations can only encompass physical features that are readily perceptible by an ordinary person possessing no specialized skills.

This resolves a Petition for Review on Certiorari[1] under Rule 45 of the 1997 Rules of Civil Procedure praying that the assailed November 15, 2012 Decision[2] and February 12, 2013 Resolution[3] of the Court of Appeals in CA-G.R. CV No. 95369 be reversed and set aside and that judgment be rendered annulling or rescinding the Contract to Sell between petitioner Joseph Harry Walter Poole-Blunden (Poole-Blunden) and respondent Union Bank of the Philippines (UnionBank).

The assailed Court of Appeals Decision affirmed the April 20, 2010 Decision of the Regional Trial Court, Branch 65, Makati City which dismissed the Complaint for Rescission of Contract and Damages filed by Poole-Blunden against respondent UnionBank.[4] The assailed Court of Appeals Resolution denied Poole-Blunden's Motion for Reconsideration.[5]

Sometime in March 2001, Poole-Blunden came across an advertisement placed by Union Bank in the Manila Bulletin.

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[1] *Rollo*, pp. 11-43.

[2] *Id*. at 45-53. The Decision was penned by Associate Justice Socorro B. Inting and concurred in by Associate Justices Jose C. Reyes, Jr., and Mario V. Lopez of the Ninth Division, Court of Appeals, Manila.

[3] *Id*. at 55-56. The Resolution was penned by Associate Justice Socorro B. Inting and concurred in by Associate Justices Jose C. Reyes, Jr., and Mario V. Lopez of the Ninth Division, Court of Appeals, Manila.

[4] *Id*. at 45 and 52.

[5] *Id*. at 56.

The ad was for the public auction of certain properties. One of these properties was a condominium unit, identified as Unit 2-C of T-Tower Condominium (the "Unit"), located at 5040 P. Burgos corner Calderon Streets, Makati City.[6] UnionBank had acquired the property through foreclosure proceedings "after the developer defaulted in the payment of its loan from [UnionBank]."[7]

The Unit was advertised to have an area of 95 square meters. Thinking that it was sufficient and spacious enough for his residential needs, Poole-Blunden decided to register for the sale and bid on the unit.[8]

About a week prior to the auction, Poole-Blunden visited the unit for inspection. He was accompanied by a representative of UnionBank. The unit had an irregular shape; it was neither a square nor a rectangle and included a circular terrace. Poole-Blunden did not doubt the unit's area as advertised. However, he found that the ceiling was in bad condition, that the parquet floor was damaged, and that the unit was in need of other substantial repairs to be habitable.[9]

On the day of the auction, Poole-Blunden inspected the Master Title of the project owner to the condominium in the name of Integrated Network (TCT No. 171433) and the Condominium Certificate of Title of UnionBank (CCT No. 36151) to verify once again the details as advertised and the ownership of the unit. Both documents were on display at the auction venue.[10]

Poole-Blunden placed his bid and won the unit for ₱2,650,000.00.[11] On May 7, 2001, Poole-Blunden entered into a Contract to Sell with UnionBank. This Contract stipulated that Poole-Blunden would pay 10% of the purchase price as

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[6] *Id*. at 12.

[7] *Id*. at 66, Comment.

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

[9] *Id*. at 13.

[10] *Id*.

[11] *Id*. at 14.

down payment[12] and that the balance shall be paid over a period of 15 years in equal monthly instalments, with interest of 15% per annum starting July 7, 2001.[13]

Poole-Blunden started occupying the unit in June 2001. By July 20, 2003, he was able to fully pay for the Unit, paying a total amount of ₱3,257,142.49.[14]

In late 2003, Poole-Blunden decided to construct two (2) additional bedrooms in the Unit. Upon examining it, he noticed apparent problems in its dimensions. He took rough measurements of the Unit, which indicated that its floor area was just about 70 square meters, not 95 square meters, as advertised by UnionBank.[15]

Poole-Blunden got in touch with an officer of UnionBank to raise the matter, but no action was taken.[16] On July 12, 2004, Poole-Blunden wrote to UnionBank, informing it of the discrepancy. He asked for a rescission of the Contract to Sell, along with a refund of the amounts he had paid, in the event that it was conclusively established that the area of the unit was less than 95 square meters.[17]

In a letter dated December 6, 2004,[18] UnionBank informed Poole-Blunden that after inquiring with the Housing and Land Use Regulatory Board (HLURB), the Homeowners' Association of T-Tower Condominium, and its appraisers, the Unit was confirmed to be 95 square meters, *inclusive of the terrace and the common areas surrounding it*.[19]

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[12] *Id*. at 46, *citing* the Regional Trial Court Decision.

[13] *Id*. at 14.

[14] *Id*. at 46.

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

[16] *Id*. at 15.

[17] *Id*.

[18] *Id*. at 47, *citing* the Regional Trial Court Decision.

[19] *Id*. at 15.

Poole-Blunden was not satisfied with UnionBank's response as the condominium's Master Title expressly stated that the "boundary of each unit are the interior surfaces of the perimeter walls, floors, ceilings, windows and doors thereof."[20] Thus, he hired an independent geodetic engineer, Engr. Gayril P. Tagal (Engr. Tagal) of the Filipinas Dravo Corporation, to survey the Unit and measure its actual floor area. Engr. Tagal issued a certification stating that the total floor area of the Unit was only 74.4 square meters.[21] Poole-Blunden gave UnionBank a copy of Engr. Tagal's certification on July 12, 2005.[22]

In a letter dated February 1, 2006, UnionBank explained:

> [T]he total area of the subject unit based on the ratio allocation maintenance cost submitted by the developer to HLURB is 98 square meters (60 square meters as unit area and 38 square meters as share on open space). On the other hand, the actual area thereof based on the measurements made by its surveyor is 74.18 square meters which was much higher than the unit area of 60 square meters that was approved by HLURB.[23]

Poole-Blunden's dissatisfaction with UnionBank's answer prompted him to file his Complaint for Rescission of Contract and Damages with the Regional Trial Court, Makati City.[24]

On April 20, 2010, the Regional Trial Court dismissed Poole-Blunden's complaint for lack of merit. The dispositive portion of its Decision read:

> WHEREFORE, premises considered, the instant complaint for rescission of contract and damages is hereby DISMISSED for lack of merit. The counterclaim is likewise DENIED.
>
> SO ORDERED.[25]

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[20] *Id*.

[21] *Id*.

[22] *Id*. at 16.

[23] *Id*. at 47.

[24] *Id*. at 17.

[25] *Id*. at 48.

On appeal, the Court of Appeals affirmed the ruling of the Regional Trial Court.[26] It noted that the sale was made on an "as-is-where-is" basis as indicated in Section 12 of the Contract to Sell.[27] Thus, Poole-Blunden supposedly waived any errors in the bounds or description of the unit.[28] The Court of Appeals added that Poole-Blunden failed to show, by clear and convincing evidence that causal fraud can be attributed to UnionBank.[29] It added that the sale was made for a lump-sum amount and that, in accordance with Article 1542, paragraph 1 of the Civil Code,[30] Poole-Blunden could not demand a reduction in the purchase price.[31]

Following the denial of his Motion for Reconsideration, Poole-Blunden filed the present Petition before this Court.[32]

Poole-Blunden charges UnionBank with fraud in failing to disclose to him that the advertised 95 square meters was inclusive of common areas.[33] With the vitiation of his consent as to the object of the sale, he asserts that the Contract to Sell may be

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[26] *Id*. at 52.

[27] *Id*. at 32. Section 12 of the Contract to Sell provides:

Section 12. The BUYER recognizes that he is buying the property on an "as-is-where-is" basis including errors in boundaries or description of property, if any *etc*. and among others, he shall be responsible for the eviction of the occupants on the property, if any, or for the repair of the property, if needed. It shall be understood that the SELLER makes no warranty whatsoever on the authenticity, accuracy, or title over property.

[28] *Rollo*, pp. 49-50.

[29] *Id*. at 51.

[30] CIVIL CODE, Art. 1542 provides:

Article 1542. In the sale of real estate, made for a lump sum and not at the rate of a certain sum for a unit of measure or number, there shall be no increase or decrease of the price, although there be a greater or less area or number than that stated in the contract.

[31] *Rollo*, p. 52.

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

[33] *Id*. at 20 and 27.

voided. He insists that UnionBank is liable for breach of warranty despite the "as-is-where-is" clause in the Contract to Sell.[34] Finally, he assails the Court of Appeals' application of Article 1542 of the Civil Code.[35]

For resolution is the sole issue of whether or not respondent Union Bank of the Philippines committed such a degree of fraud as would entitle petitioner Joseph Harry Walter Poole-Blunden to the voiding of the Contract to Sell the condominium unit identified as Unit 2C, T-Tower Condominium, 5040 P. Burgos corner Calderon Streets, Makati City.

I

No longer in dispute at this juncture is how the Unit's interior area is only 74.4 square meters. While respondent has maintained that the Unit's total area is in keeping with the advertised 95 square meters, it has conceded that these 95 square meters is inclusive of outside spaces and common areas.

Even before litigation commenced, in a December 6, 2004 letter,[36] respondent informed petitioner that, following inquiries with the HLURB, the Homeowners' Association of T-Tower Condominium, and its appraisers, it had confirmed that the Unit's 95 square meters was *inclusive of "the terrace and the common areas surrounding it."*[37]

During trial, respondent's former Assistant Vice President of the Asset and Recovery Group, Atty. Elna N. Cruz (Atty. Cruz), testified on how there would have been documents (such as an appraisal report) relating to inspections made by respondent's personnel at the time the unit was being offered as a collateral to a loan. These would have concerned the unit's area.[38] She affirmed respondent's statements in its December

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[34] *Id.* at 30.

[35] *Id.* at 35-36.

[36] *Id.* at 47, *citing* the Regional Trial Court Decision.

[37] *Id.* at 15.

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

6, 2004 letter and indicated that, based on an appraisal report, the declared 95 square meters was not exclusive to the Unit's interiors but included common areas:

> Q: So my impression, Madam Witness, is that before you accepted the property as a collateral, Union Bank already knew what was the actual area of the unit?
> A: Yes, sir.
>
> Q: But you do not know what was the actual area as found by your inspector?
> A: It would be 95 square meters as per the record, sir.
>
> Q: That was the actual findings of your inspector, Madam Witness?
> A: Yes, sir.
>
> Q: What's your basis for saying that?
> A: The appraisal report, sir.
>
> Q: Do you have now with you that appraisal report showing that the actual area of the unit is indeed 95 square meters?
> A: *We gathered the appraisal report and in the December 06, 2004 letter that we gave Mr. Blunden, we consulted the appraiser of the Bank and we were informed that the area was indeed 95 square meters. <u>But that area was brought about by measuring not just the inside of the unit, sir, but including also the terrace, and the common area</u>*.[39] (Emphasis supplied)

Respondent has not disavowed Atty. Cruz's testimony. In its Comment, it merely asserted that the "[e]xtensive reference to the [transcript of stenographic notes] is unmistakable proof that the litigated issue is one of fact, not of law" and insisted that this Court should not take cognizance of the present Petition.[40]

Respondent's insistence on how common spaces should be included in reckoning the Unit's total area runs afoul of how

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[39] *Id*. at 24.

[40] *Id*. at 60.

Republic Act No. 4726, otherwise known as the Condominium Act, reckons what forms part of a condominium unit.

Section 3(b) of the Condominium Act defines a condominium unit, as follows:

> Section 3. As used in this Act, unless the context otherwise requires:
>
> . . . .
>
> (b) "Unit" means a part of the condominium project intended for any type of independent use or ownership, including one or more rooms or spaces located in one or more floors (or part or parts of floors) in a building or buildings and such accessories as may be appended thereto.

Section 6(a) of the Condominium Act specifies the reckoning of a condominium unit's bounds. It also specifies that areas of common use "are not part of the unit":

> Section 6. Unless otherwise expressly provided in the enabling or master deed or the declaration of restrictions, the incidents of a condominium grant are as follows:
>
> (a) The boundary of the unit granted are the interior surfaces of the perimeter walls, floors, ceilings, windows and doors thereof. *The following are not part of the unit* bearing walls, columns, floors, roofs, foundations and other common structural elements of the building; lobbies, stairways, hallways, and other *areas of common use*, elevator equipment and shafts, central heating, central refrigeration and central air-conditioning equipment, reservoirs, tanks, pumps and other central services and facilities, pipes, ducts, flues, chutes, conduits, wires and other utility installations, wherever located, except the outlets thereof when located within the unit. (Emphasis supplied.)

Thus, the unit sold to petitioner was deficient in relation to its advertised area. This advertisement having been made by respondent, it is equally settled there was a falsity in the declarations made by respondent prior to, and with the intention of enticing buyers to the sale. What remains in issue is whether or not this falsity amounts to fraud warranting the voiding of the Contract to Sell.

II

For there to be a valid contract, all the three (3) elements of consent, subject matter, and price must be present.[41] Consent wrongfully obtained is defective. The party to a contract whose consent was vitiated is entitled to have the contract rescinded. Accordingly, Article 1390 of the Civil Code[42] stipulates that a contract is voidable or annullable even if there is no damage to the contracting parties where "consent is vitiated by mistake, violence, intimidation, undue influence or fraud."

Under Article 1338 of the Civil Code "[t]here is fraud when, through insidious words or machinations of one of the contracting parties, the other is induced to enter into a contract which, without them, he would not have agreed to." However, not all instances of fraud enable the voiding of contracts. Article 1344 clarifies that in order to make a contract voidable, the fraud "should be serious and should not have been employed by both contracting parties."[43]

Thus, *Tankeh v. Development Bank of the Philippines*[44] explained, "There are two types of fraud contemplated in the performance of contracts: *dolo incidente* or incidental fraud and *dolo causante* or fraud serious enough to render a contract

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[41] See *Coronel v. Court of Appeals*, 331 Phil. 294 (1996) [Per *J*. Melo, Third Division]; *Dizon v. Court of Appeals*, 361 Phil. 963 (1999) [Per *J*. Martinez, First Division]; *Londres v. Court of Appeals*, 442 Phil. 340 (2002) [Per *J*. Carpio, First Division].

[42] CIVIL CODE, Art. 1390 provides:

Article 1390. The following contracts are voidable or annullable, even though there may have been no damage to the contracting parties:

(1) Those where one of the parties is incapable of giving consent to a contract;

(2) Those where the consent is vitiated by mistake, violence, intimidation, undue influence or fraud.

These contracts are binding, unless they are annulled by a proper action in court. They are susceptible of ratification.

[43] CIVIL CODE, Art. 1344.

[44] 720 Phil. 641 (2013) [Per *J*. Leonen, Third Division].

voidable."[45] The fraud required to annul or avoid a contract "must be so material that had it not been present, the defrauded party would not have entered into the contract."[46] The fraud must be "the determining cause of the contract, or must have caused the consent to be given."[47]

Petitioner's contention on how crucial the dimensions and area of the Unit are to his decision to proceed with the purchase is well-taken. The significance of space and dimensions to any buyer of real property is plain to see. This is particularly significant to buyers of condominium units in urban areas, and even more so in central business districts, where the scarcity of space drives vertical construction and propels property values. It would be immensely guileless of this Court to fail to appreciate how the advertised area of the Unit was material or even indispensable to petitioner's consent. As petitioner emphasized, he opted to register for and participate in the auction for the Unit only after determining that its advertised area was spacious enough for his residential needs.[48]

III

The significance of the Unit's area as a determining cause of the Contract to Sell is readily discernible. Falsity on its area is attributable to none but to respondent, which, however, pleads that it should not be considered as having acted fraudulently given that petitioner conceded to a sale on an as-is-where-is basis, thereby waiving "warranties regarding possible errors in boundaries or description of property."[49]

Section 12 of the Contract to Sell spells out the "as-is-where-is" terms of the purchase:

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[45] *Id*. at 670.

[46] *Id*. at 671.

[47] *Fontana Resort and Country Club, Inc. v. Spouses Tan*, 680 Phil. 395, 412 (2012) [Per *J.* Leonardo-de Castro, First Division] citing *Rural Bank of Sta. Maria, Pangasinan v. Court of Appeals*, 373 Phil. 27 (1999) [Per *J.* Gonzaga-Reyes, Third Division].

[48] *Rollo,* pp. 12-13.

[49] *Id*. at 66.

Section 12. *The BUYER recognizes that he is buying the property on an "as-is-where-is" basis including errors in boundaries or description of property, if any* etc. and among others, he shall be responsible for the eviction of the occupants on the property, if any, or for the repair of the property, if needed. It shall be understood that the SELLER makes no warranty whatsoever on the authenticity, accuracy, or title over property.[50] (Emphasis supplied.)

Reliance on Section 12's as-is-where-is stipulation is misplaced for two (2) reasons. First, a stipulation absolving a seller of liability for hidden defects can only be invoked by a seller who has no knowledge of hidden defects. Respondent here knew that the Unit's area, as reckoned in accordance with the Condominium Act, was not 95 square meters. Second, an as-is-where-is stipulation can only pertain to the readily perceptible physical state of the object of a sale. It cannot encompass matters that require specialized scrutiny, as well as features and traits that are immediately appreciable only by someone with technical competence.

A seller is generally responsible for warranty against hidden defects of the thing sold. As stated in Article 1561 of the New Civil Code:

Article 1561. The vendor shall be responsible for warranty against the hidden defects which the thing sold may have, should they render it unfit for the use for which it is intended, or should they diminish its fitness for such use to such an extent that, had the vendee been aware thereof, he would not have acquired it or would have given a lower price for it; but said vendor shall not be answerable for patent defects or those which may be visible, or for those which are not visible if the vendee is an expert who, by reason of his trade or profession, should have known.

Article 1566, paragraph 2 states the seller's liability for hidden defects shall be inapplicable if there is a stipulation made to the contrary. However, a mere stipulation does not suffice. To be fully absolved of liability, Article 1566, paragraph 2 also

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[50] *Id.* at 32.

requires a seller to be unaware of the hidden defects in the thing sold.

> Article 1566. The vendor is responsible to the vendee for any hidden faults or defects in the thing sold, even though he was not aware thereof.
>
> *This provision shall not apply if the contrary has been stipulated, and the vendor was not aware of the hidden faults or defects in the thing sold*. (Emphasis supplied.)

It is clear from the records that respondent fully knew that the Unit's area, reckoned strictly in accordance with the Condominium Act, did not total 95 square meters. Respondent admits that the only way the Unit's area could have amounted to 95 square meters was if some areas for common use were added to its interior space. It acknowledged knowing this fact through the efforts of its appraisers and even conceded that their findings were documented in their reports.

In *Hian v. Court of Tax Appeals*,[51] this Court construed an as-is-where-is stipulation as pertaining to the "physical condition" of the thing sold and "not to [its] legal situation."[52] As further explained in *National Development Company v. Madrigal Wan Hai Lines Corporation*:[53]

> In *Hian vs. Court of Tax Appeals*, we had the occasion to construe the phrase "as is, where is" basis, thus:
>
> > "We cannot accept the contention in the Government's Memorandum of March 31, 1976 that Condition No. 5 in the Notice of Sale to the effect that 'The above-mentioned articles (the tobacco) are offered for sale 'AS IS' and the Bureau of Customs gives no warranty as to their condition' relieves the Bureau of Customs of liability for the storage fees in dispute. As we understand said Condition No. 5, it refers to the physical condition of the tobacco and not to the legal situation in which

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[51] 196 Phil. 217 (1981) [Per *J*. Barredo, Second Division].

[52] *Id*. at 231.

[53] 458 Phil. 1038 (2003) [Per *J*. Sandoval-Gutierrez, Third Division].

> it was at the time of the sale, as could be implied from the right of inspection to prospective bidders under Condition No. 1[.]" (Emphasis ours)
>
> The phrase "as is, where is" basis pertains solely to the physical condition of the thing sold, not to its legal situation. In the case at bar, the US tax liabilities constitute a potential lien which applies to NSCP's legal situation, not to its physical aspect. Thus, respondent as a buyer, has no obligation to shoulder the same.[54]

A condominium unit's area is a physical attribute. In *Hian*'s contemplation, it appeared that the total area of a condominium unit is a valid object of an as-is-where-is clause. However, while as-is-where-is clauses exclusively apply to the physical attributes of a thing sold, they apply only to physical features that are readily observable. The significance of this Court's pronouncements in *Hian* and *National Development Company* are in clarifying that legal status, which is a technical matter perceptible only by lawyers and regulators, cannot be encompassed by an as-is-where-is stipulation. *Hian* and *National Development Company* are not a sweeping approbation of such stipulations' coverage of every corporeal attribute or tangible trait of objects being sold. Thus, in *Asset Privatization v. T.J. Enterprises*,[55] the as-is-where-is stipulation was understood as one which "merely describes the actual state and location of the machinery and equipment sold,"[56] and nothing else. Features that may be physical but which can only be revealed after examination by persons with technical competence cannot be covered by as-is-where-is stipulations. A buyer cannot be considered to have agreed "to take possession of the things sold 'in the condition where they are found and from the place where they are located'"[57] if the critical defect is one which he or she cannot even readily sense.

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[54] *Id*. at 1054.

[55] 605 Phil. 563 (2009) [Per *J.* Tinga, Second Division].

[56] *Id*. at 570.

[57] *Casimiro Development Corporation v. Renato Mateo*, 670 Phil. 311, 329 (2011) [Per *J.* Bersamin, First Division].

In inspecting the Unit prior to the auction sale, petitioner took note of its actual state: "he noticed that the ceilings were down, [that] there was water damage from the leaks coming from the unit above, and [that] the parquet floor was damaged."[58] He also took note of its irregular shape and the circular terrace outside it. These observations represent the full extent of what was readily perceptible to petitioner. The precise measurement of the Unit's area, in contrast, could only be determined by someone with specialized or technical capabilities. While ordinary persons, such as petitioner, may hold such opinions that the Unit looks small, their perception could not be ascertained until after an examination by someone equipped with peculiar skills and training to measure real property. Indeed, petitioner's suspicions were not roused until years after he had occupied the Unit and confirmed until after a certification was issued by a surveyor.

Any waiver of warranties under Section 12 of the Contract to Sell could have only been concerned with the readily apparent subpar condition of the Unit. A person not equipped with technical knowledge and expertise to survey real property could not reasonably be expected to recognize deficiencies in measurement at the first instance especially if that property was of "irregular shape," "neither square nor rectangle," and having a "circular terrace."[59]

IV

Contrary to the Court of Appeals' assertion, Article 1542 of the Civil Code does not bar the voiding of the Contract to Sell.

Article 1542 of the Civil Code states:

> Article 1542. *In the sale of real estate, made for a lump sum and not at the rate of a certain sum for a unit of measure or number, there shall be no increase or decrease of the price, although there be a greater or less area or number than that stated in the contract.*
>
> The same rule shall be applied when two or more immovables are sold for a single price; but if, besides mentioning the boundaries,

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[58] *Rollo*, p. 13.

[59] *Id.*

which is indispensable in every conveyance of real estate, its area or number should be designated in the contract, the vendor shall be bound to deliver all that is included within said boundaries, even when it exceeds the area or number specified in the contract; and, should he not be able to do so, he shall suffer a reduction in the price, in proportion to what is lacking in the area or number, unless the contract is rescinded because the vendee does not accede to the failure to deliver what has been stipulated. (Emphasis supplied.)

Article 1542 has nothing to do with annulling fraudulently made sales. What it is concerned with is the proportionate reduction of the purchase price in relation to the measurable units of the thing sold. Petitioner does not seek a reduction of the purchase price. He seeks judicial relief to have the entirety of his purchase annulled, his consent having been fraudulently obtained. By filing an action under Article 1390 of the Civil Code, petitioner declared that his consent to the entire subject matter of the contract was vitiated. What suffices as relief is the complete annulment of the sale, not the partial reimbursement upon which Article 1542 is premised.

Likewise, Article 1542 does not contemplate the seller's delivery to the buyer of things other than the agreed object of the sale. While it is true that petitioner did not buy the unit on a per-square-meter basis, it remains that what he bought was a condominium unit. A condominium unit's bounds are reckoned by "the interior surfaces of [its] perimeter walls, floors, ceilings, windows and doors."[60] It excludes common areas. Thus, when petitioner agreed to purchase the Unit at a lump-sum price, he never consented to including common areas as part of his purchase. Article 1542's concern with a ratable reduction of the price delivered by the buyer assumes that the seller correctly delivered, albeit deficiently, the object of the sale.

In any case, for Article 1542 to operate, "the discrepancy must not be substantial."[61] Article 1542 remains anchored on

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[60] Rep. Act No. 4726, Sec. 6(a).

[61] *Rudolf Lietz, Inc. v. Court of Appeals*, 514 Phil. 634, 642 (2005) [Per *J.* Tinga, Second Division].

a sense of what is reasonable. An estimate given as a premise for a sale should be "more or less" the actual area of the thing sold.[62] Here, the area advertised and stipulated in the Contract to Sell was 95 square meters but the actual area of the unit was only 74.4 square meters.[63] By no stretch of the imagination can a 21.68% deficiency be discounted as a mere minor discrepancy.

V

By definition, fraud presupposes bad faith or malicious intent. It transpires when insidious words or machinations are deliberately employed to induce agreement to a contract. Thus, one could conceivably claim that respondent could not be guilty of fraud as it does not appear to have crafted a deceptive strategy directed specifically at petitioner. However, while petitioner was not a specific target, respondent was so callously remiss of its duties as a bank. It was so grossly negligent that its recklessness amounts to a wrongful willingness to engender a situation where any buyer in petitioner's shoes would have been insidiously induced into buying a unit with an actual area so grossly short of its advertised space.

In *Spouses Carbonell v. Metropolitan Bank and Trust Company*,[64] this Court considered gross negligence, in relation to the fiduciary nature of banks:

> Gross negligence connotes want of care in the performance of one's duties; it is a negligence characterized by the want of even slight care, *acting or omitting to act in a situation where there is duty to act*, not inadvertently but wilfully and intentionally, *with a conscious indifference to consequences insofar as other persons may be affected*. It evinces a thoughtless disregard of consequences without exerting any effort to avoid them.

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[62] *Id*.

[63] *Rollo*, p. 47, *citing* the findings of the Trial Court.

[64] G.R. No. 178467, April 26, 2017 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2017/april2017/178467.pdf> 4-5 [Per *J.* Bersamin, Third Division].

In order for gross negligence to exist as to warrant holding the respondent liable therefor, the petitioners must establish that the latter did not exert any effort at all to avoid unpleasant consequences, or that it wilfully and intentionally disregarded the proper protocols or procedure . . . and in selecting and supervising its employees.[65] (Emphasis supplied)

Banks assume a degree of prudence and diligence higher than that of a good father of a family, because their business is imbued with public interest[66] and is inherently fiduciary.[67] Thus, banks have the obligation to treat the accounts of its clients "meticulously and with the highest degree of care."[68] With respect to its fiduciary duties, this Court explained:

The law imposes on banks high standards in view of the fiduciary nature of banking. Section 2 of Republic Act No. 8791 ("RA 8791"), which took effect on 13 June 2000, declares that the State recognizes the "fiduciary nature of banking that requires high standards of integrity and performance." This new provision in the general banking law, introduced in 2000, is a statutory affirmation of Supreme Court

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[65] *Id*. at 4-5 citing *Comsavings Bank (now GSIS Family Bank) v. Capistrano*, 716 Phil. 547 (2013) [Per *J*. Bersamin, Third Division].

[66] *Land Bank of the Philippines v. Belle Corporation*, 768 Phil. 368, 385-386 (2015) [Per *J*. Peralta, Second Division], citing *Heirs of Gregorio Lopez v. Development Bank of the Philippines,* 747 Phil. 427 (2014) [Per *J*. Leonen, Second Division]*; Arguelles v. Malarayat Rural Bank, Inc.,* 730 Phil. 226 (2014) [Per *J*. Villarama, Jr., First Division]; and *PNB v. Corpuz*, 626 Phil. 410, 413 (2010) [Per *J*. Abad, Second Division]; *Bank of Commerce v. San Pablo*, 550 Phil. 805 (2007) [Per *J*. Chico-Nazario, Third Division]; *Philippine Commercial International Bank v. Court of Appeals*, 403 Phil. 361 (2001) [Per *J*. Quisumbing, Second Division]; *Philippine Banking Corporation v. Court of Appeals*, 464 Phil. 614 (2004) [Per *J*. Carpio, First Division]; *Citibank, N.A. v. Dinopol*, 650 Phil. 188 (2010) [Per *J*. Mendoza, Second Division]; *Gonzales v. Philippine Commercial and International Bank*, 659 Phil. 244 (2011) [Per *J*. Velasco, Jr., First Division]; *Comsavings Bank v. Spouses Capistrano*, 716 Phil. 547 (2013) [Per *J*. Bersamin, First Division].

[67] *Consolidated Bank and Trust Corp. v. Court of Appeals*, 457 Phil. 688, 705 (2003) [Per *J*. Carpio, First Division].

[68] *Westmont Bank v. Ong*, 425 Phil. 834, 845 (2002) [Per *J*. Quisumbing, Second Division].

decisions, starting with the 1990 case of *Simex International v. Court of Appeals*, holding that "the bank is under obligation to treat the accounts of its depositors with meticulous care, always having in mind the fiduciary nature of their relationship.

This fiduciary relationship means that the bank's obligation to observe "high standards of integrity and performance" is deemed written into every deposit agreement between a bank and its depositor. The fiduciary nature of banking requires banks to assume a degree of diligence higher than that of a good father of a family. Article 1172 of the Civil Code states that the degree of diligence required of an obligor is that prescribed by law or contract, and absent such stipulation then the diligence of a good father of a family. Section 2 of RA 8791 prescribes the statutory diligence required from banks — that banks must observe "high standards of integrity and performance" in servicing their depositors.[69] (Citations omitted)

The high degree of diligence required of banks equally holds true in their dealing with mortgaged real properties, and subsequently acquired through foreclosure, such as the Unit purchased by petitioner. In the same way that banks are "presumed to be familiar with the rules on land registration," given that they are in the business of extending loans secured by real estate mortgage,[70] banks are also expected to exercise the highest degree of diligence. This is especially true when investigating real properties offered as security, since they are aware that such property may be passed on to an innocent purchaser in the event of foreclosure. Indeed, "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 a bank's operations":[71]

When the purchaser or the mortgagee is a bank, the rule on innocent purchasers or mortgagees for value is applied more strictly. Being

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[69] *Consolidated Bank and Trust Corp. v. Court of Appeals*, 457 Phil. 688, 705-706 (2003) [Per *J*. Carpio, First Division].

[70] *Land Bank of the Philippines v. Belle Corporation*, 768 Phil. 368, 385 (2015) [Per *J.* Peralta, Second Division].

[71] *Id*. at 386 citing *Philippine Amanah Bank v. Contreras*, 744 Phil. 256 (2014) [Per *J*. Brion, Second Division].

in the business of extending loans secured by real estate mortgage, banks are presumed to be familiar with the rules on land registration. Since the banking business is impressed with public interest, they are expected to be more cautious, to exercise a higher degree of diligence, care and prudence, than private individuals in their dealings, even those involving registered lands. Banks may not simply rely on the face of the certificate of title. Hence, they cannot assume that, simply because the title offered as security is on its face free of any encumbrances or lien, they are relieved of the responsibility of taking further steps to verify the title and inspect the properties to be mortgaged. As expected, 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 a bank's operations. It is of judicial notice that the standard practice for banks before approving a loan is to send its representatives to the property offered as collateral to assess its actual condition, verify the genuineness of the title, and investigate who is/are its real owner/s and actual possessors.[72] (Citations omitted)

Credit investigations are standard practice for banks before approving loans and admitting properties offered as security. It entails the assessment of such properties: an appraisal of their value, an examination of their condition, a verification of the authenticity of their title, and an investigation into their real owners and actual possessors.[73] Whether it was unaware of the unit's actual interior area; or, knew of it, but wrongly thought that its area should include common spaces, respondent's predicament demonstrates how it failed to exercise utmost diligence in investigating the Unit offered as security before accepting it. This negligence is so inexcusable; it is tantamount to bad faith.

Even the least effort on respondent's part could have very easily confirmed the Unit's true area. Similarly, the most cursory

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[72] *Id.* at 385-386.

[73] *Id.* at 386 citing *Alano v. Planters Development Bank*, 667 Phil. 81, 89-90 (2011) [Per *J.* Del Castillo, First Division]; *Philippine National Bank v. Corpuz*, 626 Phil. 410, 413 (2010) [Per *J.* Abad, Second Division]; *Erasusta, Jr. v. Court of Appeals*, 527 Phil. 639, 651 (2006) [Per *J.* Garcia, Second Division]; and *PNB v. Heirs of Militar*, 504 Phil. 634, 644 (2005) [Per *J.* Ynares-Santiago, First Division].

review of the Condominium Act would have revealed the proper reckoning of a condominium unit's area. Respondent could have exerted these most elementary efforts to protect not only clients and innocent purchasers but, most basically, itself. Respondent's failure to do so indicates how it created a situation that could have led to no other outcome than petitioner being defrauded.

VI

The Regional Trial Court and the Court of Appeals gravely erred in finding that causal fraud is not attendant in this case. Quite the contrary, it is evident that respondent orchestrated a situation rife for defrauding buyers of the advertised unit. Therefore, the assailed Decision and Resolution must be reversed, the Contract to Sell between petitioner and respondent be annulled, and petitioner be refunded all the amounts he paid to respondent in respect of the purchase of the Unit.

Under Article 2232, in relation to Article 2229 of the Civil Code, "[i]n contracts and quasi-contracts, the court may award exemplary damages if the defendant acted in a wanton, fraudulent, reckless, oppressive, or malevolent manner," "by way of example or correction for the public good." By awarding exemplary damages to petitioner, this case shall serve as an example and warning to banks to observe the requisite care and diligence in all of their affairs.

Consistent with Article 2208 of the Civil Code,[74] respondent is equally liable to petitioner for attorney's fees and the costs of litigation.

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[74] CIVIL CODE, Art. 2208 provides:

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

(1) When exemplary damages are awarded;
(2) When the defendant's act or omission has compelled the plaintiff to litigate with third persons or to incur expenses to protect his interest;
(3) In criminal cases of malicious prosecution against the plaintiff;
(4) In case of a clearly unfounded civil action or proceeding against the plaintiff;
(5) Where the defendant acted in gross and evident bad faith in refusing to satisfy the plaintiff's plainly valid, just and demandable claim;

WHEREFORE, the Petition is **GRANTED**. The assailed November 15, 2012 Decision and February 12, 2013 Resolution of the Court of Appeals in CA-G.R. CV No. 95369 are **REVERSED and SET ASIDE**.

The Contract to Sell entered into by petitioner Joseph Harry Walter Poole-Blunden and respondent Union Bank of the Philippines is declared null and void. Respondent is ordered to pay petitioner the amount of ₱3,257,142.49 to refund the amounts petitioner has paid to purchase Unit 2C of T-Tower Condominium located at 5040 P. Burgos corner Calderon Streets, Makati City. This refund shall earn legal interest at twelve percent (12%) per annum from the date of the filing of petitioner's Complaint for Rescission of Contract and Damages up to June 30, 2013; and six percent (6%) per annum, reckoned from July 1, 2013 until fully paid.

Respondent is ordered to pay petitioner ₱100,000.00 as exemplary damages, ₱100,000.00 as attorney's fees, and the costs of litigation.

SO ORDERED.

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

Gesmundo, J., on leave.

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(6) In actions for legal support;
(7) In actions for the recovery of wages of household helpers, laborers and skilled workers;
(8) In actions for indemnity under workmen's compensation and employer's liability laws;
(9) In a separate civil action to recover civil liability arising from a crime;
(10) When at least double judicial costs are awarded;
(11) In any other case where the court deems it just and equitable that attorney's fees and expenses of litigation should be recovered.

THIRD DIVISION

[G.R. No. 206965. November 29, 2017]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **EMMA BOFILL PANGAN**, *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; REPUBLIC ACT 9165 (COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002); ILLEGAL POSSESSION OF DANGEROUS DRUGS; ELEMENTS; ESTABLISHED IN CASE AT BAR.— The prosecution presented evidence beyond reasonable doubt to establish that all the elements of the offense were present and that the accused committed the offense. Section 11 of Republic Act No. 9165 punishes illegal possession of dangerous drugs x x x Based on this provision, sufficient evidence to prove the following elements should be presented: (1) the actual possession of an item or object which is identified to be a prohibited drug; (2) such possession is not authorized by law; and (3) the accused freely or consciously possessed the said drug. x x x To evade liability, Pangan offered uncorroborated and self-serving assertions. x x x This Court is not persuaded with Pangan's defense. She was found to have been in possession of the illicit drugs without authority to do so. Her mere possession establishes a *prima facie* proof of knowledge or *animus possidendi* enough to convict her as an accused in the absence of any acceptable reason for its custody. The trial judge had the distinct opportunity to examine the witnesses and to gauge their credibility. The trial court was persuaded with the evidence presented by the prosecution. Pangan's culpability of the charge was sufficiently established.

2. ID.; ID.; CHAIN OF CUSTODY, DEFINED; THE PROSECUTION MUST OFFER TESTIMONIES RELATING TO THE CHAIN OF CUSTODY TO ESTABLISH THE EXISTENCE OF THE ILLICIT DRUGS AND PROVE THAT ITS INTEGRITY IS MAINTAINED; CASE AT BAR.— The prosecution must establish the existence of the illicit drugs. It must also prove that the integrity of the *corpus*

delicti has been maintained because the confiscated drug, being the proof involved, is ***not promptly recognizable*** through sight and can be tampered or replaced. To establish that the illicit drugs scrutinized and presented in court were the very same ones confiscated from the accused, the prosecution should offer testimonies relating to its chain of custody. Chain of custody is defined as: [T]he duly recorded authorized movements and custody of seized drugs or controlled chemicals or plant sources of dangerous drugs or laboratory equipment of each stage, from the time of seizure/confiscation to receipt in the forensic laboratory to safekeeping to presentation in court for destruction. Such record of movements and custody of seized item shall include the identity and signature of the person who held temporary custody of the seized item, the date and time when such transfer of custody were made in the course of safekeeping and use in court as evidence, and the final disposition.

3. ID.; ID.; ID.; NON-CONFORMITY WITH THE MANDATED PROCEDURE IN HANDLING THE SEIZED DRUGS IS NOT FATAL PROVIDED THAT THERE IS JUSTIFIABLE REASON FOR THE DEVIATION AND THE INTEGRITY OF THE SEIZED DRUGS WAS PRESERVED; CASE AT BAR.— While the chain of custody has been a ***crucial*** issue which led to acquittals in drugs cases, this Court has still ruled that non-conformity with the mandated procedure in handling the seized drugs does ***not*** automatically mean that the seized items' identity was compromised, which necessarily leads to an acquittal. The Implementing Rules and Regulations of Republic Act No. 9165 provide some flexibility. x x x The saving mechanism included in the implementing rules guarantees that ***not*** every case of non-observance will irreversibly prejudice the prosecution's cause. However, to merit the application of the saving clause, the prosecution should acknowledge and explain the deviations they committed. Moreover, the prosecution should also prove that the integrity and evidentiary worth of the confiscated evidence was maintained. x x x [E]ven assuming that the police officers failed to strictly conform to the procedures provided for under Section 21, the accused may still be adjudged guilty of the charge provided that the chain of custody remains uninterrupted. In this case, the prosecution was able to establish the necessary

links in the chain of custody from the time the sachets of illicit drugs were confiscated until they were forwarded to the laboratory for examination and presented as evidence in court.

4. REMEDIAL LAW; EVIDENCE; PRESUMPTION OF REGULARITY IN THE PERFORMANCE OF OFFICIAL DUTIES; OVERTURNED ONLY WHEN THERE IS PROOF THAT THE POLICE OFFICERS DID NOT PERFORM THEIR FUNCTIONS IN A REGULAR MANNER OR THERE IS EVIDENCE IMPUTING ILL-MOTIVE ON THEIR PART.— It is settled that in proceedings involving violations of the Dangerous Drugs Act, the testimonies of police officers as prosecution witnesses are given weight for it is assumed that they have performed their functions in a regular manner. Thus, this presumption stands except in cases when there is evidence to the contrary or proof imputing ill-motive on their part, which is wanting in this case. Pangan failed to adduce any evidence which could overturn the well-entrenched presumption in favor of the police officers.

5. ID.; ID.; CREDIBILITY OF WITNESSES; DENIAL; AN INHERENTLY WEAK DEFENSE THAT MERITS NO CREDENCE IN LAW WHEN UNCORROBORATED BY ANY CLEAR AND PERSUASIVE PROOF.— Pangan's denial was essentially weak and cannot overcome the prosecution witnesses' positive identification of her as the perpetrator of the charge. Considering that a denial is self-serving, it merits no credence in law when uncorroborated by any clear and persuasive proof.

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.*:

Section 21 of Republic Act No. 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002, cannot be

utilized to frustrate legitimate efforts of law enforcers.[1] Minor deviations from the mandated procedure in handling the *corpus delicti* must not absolve a guilty defendant.[2]

This Court resolves this appeal[3] filed by Emma Bofill Pangan (Pangan) from the September 21, 2012 Decision[4] of the Court of Appeals in CA-G.R. CR-H.C. No. 00747, which affirmed the Regional Trial Court ruling[5] that she was guilty beyond reasonable doubt of illegal possession of dangerous drugs in violation of Section 11 of Republic Act No. 9165.[6]

On April 11, 2003, the Office of the City Prosecutor of Roxas City filed an Information[7] against Pangan for violation

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[1] *People v. Dimaano,* G.R. No. 174481, February 10, 2016, < http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2016/february2016/174481.pdf> 12 [Per *J.* Leonen, Second Division].

[2] *Id.*

[3] CA *rollo,* p. 117.

[4] *Rollo,* pp. 3-17. The Decision was penned by Associate Justice Ramon Paul L. Hernando and concurred in by Associate Justices Carmelita Salandanan-Manahan and Zenaida T. Galapate-Laguilles of the Twentieth Division, Court of Appeals, Cebu City.

[5] CA *rollo*, pp. 47-63. The Decision, dated April 18, 2007 and docketed as Crim. Case No. C-093-03, was penned by Judge Delano F. Villaruz of Branch 16, Regional Trial Court, Roxas City.

[6] Rep. Act No. 9165, Sec. 11 provides:

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) 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:

. . . . . .

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[.]

[7] *See* CA *rollo,* p. 47. The Information was filed by Assistant City Prosecutor Eduardo D. Delfin.

of Section 11 of Republic Act No. 9165.[8] The accusatory portion of this Information read:

> That on or about the 10th day of April, 2003, in the City of Roxas, Philippines, and within the jurisdiction of this Honorable Court, said accused, did then and there willfully, unlawfully and feloniously have in her possession and control 14.16 grams of Methamphetamine Hydrochloride (shabu), a dangerous drug, without being authorized by law to possess the same.
>
> CONTRARY TO LAW.[9]

On May 15, 2003, Pangan pleaded not guilty to the charge.[10]

Trial on the merits commenced.[11]

The prosecution presented the following witnesses[12]: PO1 Eleno Carillo (PO1 Carillo), SPO4 Dionisio Revisa, Jr. (SPO4 Revisa),[13] Forensic Chemist P/Chief Insp. Angela Baldevieso (P/Chief Insp. Baldevieso), Fastpak Global Express Corporation (Fastpak) employee Louie Culili (Culili), Barangay Kagawad Virginia Beluso (Barangay Kagawad Beluso), and P/S Insp.[14] Leo Batiles (P/S Insp Batiles).[15]

PO1 Carillo was an Intelligence Operative[16] of the Capiz Police Provincial Office in Camp Teodoro Apil, Roxas City.[17]

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[8] *Rollo,* p. 4.

[9] *Id*.

[10] *Id*.

[11] *Id*.

[12] *Id*. at 5.

[13] *Id*. at 6.

[14] *See* CA *rollo*, p. 48. The RTC Decision referred to him as Captain Batiles instead of P/S Insp. Batiles.

[15] *Rollo,* p. 5. He was a rebuttal-witness for the prosecution.

[16] *See* CA *rollo*, p. 48. One of PO1 Carillo's functions includes the "surveillance, monitoring and gathering information about illegal drug operations in Roxas City."

[17] *Rollo,* p. 5.

At around 8:00 a.m. of April 10, 2003, he conducted a test-buy operation on Pangan at B&T Merchandising on Asis Street, Roxas City.[18] A police asset had reported that the shop was owned by Pangan and her live-in partner, Mario Tupaz (Tupaz).[19]

After PO1 Carillo bought a sachet of *shabu* worth ₱1,000.00 from Pangan, he expressed his interest to buy more drugs.[20] Pangan instructed him to return in the afternoon of that day as more *shabu* would allegedly be delivered to her via Fastpak.[21]

PO1 Carillo went back to the Police Provincial Office to report the information to P/S Insp. Batiles. P/S Insp. Batiles and PO1 Carillo applied for a search warrant before Judge Charlito Fantilanan (Judge Fantilanan), who later issued Search Warrant No. 2003-26.[22]

P/S Insp. Batiles conducted a briefing with the buy-bust team[23] comprised of PO1 Carillo, SPO4 Revisa, PO2 Escultero, PO1 Etalla,[24] PO1 Cordovero, PO1 Bernardez[25] and SPO3 Inocentes Liberia, together with the assigned investigator and recorder.[26] PO1 Carillo and PO1 Bernardez were tasked to ensure that Pangan was in her store and to give the needed pre-arranged signal when already warranted.[27]

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[18] *Id*.

[19] *Id*.

[20] *Id*.

[21] *Id*.

[22] *Id*.

[23] *Id*. at 5-6. "[C]omposed of members of Capiz PPO Intelligence Section, the First Mobile Group and the Military Intelligence, Group 6."

[24] *See* CA *rollo,* p. 49, RTC Decision. Name spelled as PO1 Italia.

[25] The complete names of PO2 Escultero, PO1 Etalla, PO1 Cordovero, and PO1 Bernardez are not mentioned.

[26] *Rollo,* p. 6.

[27] *Id*.

At around 4:20 p.m., PO1 Carillo and PO1 Bernardez[28] bought soft drinks at Pangan's store.[29] Thereafter, Pangan went out to get a delivery package from Culili.[30] Pangan acknowledged the receipt of the delivery by signing Waybill No. 200-0000002352-2.[31] She then returned to the store and placed the delivered Fastpak pouch on top of a table.[32]

PO1 Carillo made the pre-arranged signal, prompting P/S Insp. Batiles to advance to the area where other members of the buy-bust team followed.[33] P/S Insp. Batiles read the contents of the search warrant to Pangan.[34] Barangay Captain Andrada,[35] Barangay Kagawad Beluso, Barangay Kagawad Cesar Lara (Lara),[36] Rey Casumpang of Radio Mindanao Network (RMN), Nimbe dela Cruz and Ricardo Bulana (Bulana) of RMN-DYVR also arrived.[37]

While inside the store, PO1 Carillo and SPO4 Revisa inspected the Fastpak package on top of the table.[38] Pangan suddenly became unruly, trying to grab the package from PO1 Carillo.[39] The police officers brought Pangan out of the store to continue the search and to prevent Pangan from harming herself.[40]

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[28] See CA *rollo,* p. 82, Brief for the Plaintiff-Appellee. He was also pertained as PO1 Bernaldez.

[29] *Rollo,* p. 4.

[30] *Id*.

[31] *Id*.

[32] *Id*.

[33] *Id*.

[34] *Id*.

[35] Barangay Captain Andrada's complete name is not mentioned.

[36] CA *rollo,* p. 51.

[37] *Rollo,* p. 6.

[38] *Id*.

[39] *Id*.

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

SPO4 Revisa opened the sealed package with a knife.[41] He found a *Noli Me Tangere* book, the pages of which were intentionally cut[42] to serve as "compartments" for the three (3) big sachets of suspected *shabu*.[43] PO1 Carillo searched the table's drawer where he found another small pack of suspected illicit drugs, magazines of a 0.45 caliber pistol, ammunition, a magazine pouch, and a holster.[44] Members of the media and barangay officials were present during the entire course of the search and seizure.[45]

The confiscated items were turned over to SPO1 Lebria[46] for marking.[47] He wrote "EBP-1," "EBP-2," "EBP-3," and "EBP-4" on the four (4) plastic sachets, which stood for Emma Bofill Pangan.[48] He also prepared the inventory, which was signed by the third-party witnesses, who were present during the search.[49] PO1 Carillo took pictures of the premises and the seized items.[50]

The arresting team brought Pangan to the police station.[51] The confiscated articles were recorded in the police blotter.[52] P/S Insp. Batiles prepared and signed the return of service to

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[41] *Id* at 7.

[42] *See* CA *rollo,* p. 62. "Cutting the tape, the police discovered inside the book between the cut portions of pages 45 to 119 [,] three sachets of suspected methamphetamine hydrochloride . . ."

[43] *Rollo,* p. 7.

[44] *Id*.

[45] *Id*.

[46] *See* CA *rollo,* p. 50, RTC Decision. Pertained to as "SPO3 Libria" and the complete name is not mentioned.

[47] *Rollo,* p. 7, CA Decision.

[48] *Id*.

[49] *Id*.

[50] *Id*.

[51] *Id*.

[52] *Id*.

be presented to the trial court which issued the search warrant.[53] The arresting team then brought the return of service of the search warrant and the seized items to the court.[54]

Later, P/S Insp. Batiles wrote a letter to Judge Fantilanan, requesting to withdraw the four (4) sachets of suspected *shabu* for laboratory examination.[55] The trial court granted the request causing the items to be forwarded to the Philippine National Police Crime Laboratory, Camp Delgado, Iloilo City.[56] P/C Insp. Baldevieso issued Chemistry Report No. D-145, which verified that the seized items tested positive for methamphetamine hydrochloride or *shabu*.[57]

On the other hand, the defense's witnesses were Pangan; her live-in partner, Tupaz; her 17-year-old nephew, Ronel Compa (Compa); a tricycle driver,[58] Wilson Villareal (Villareal); and Radio Mindanao Network reporter, Bulana.[59]

The defense's narrative was as follows:

Pangan and Compa were operating the store when a tricycle driver named Nong Nelson came and bought a bottle of soft drink. Thereafter, two (2) men followed and similarly bought some drinks.[60]

A delivery man from Fastpak suddenly came with a package for Pangan. After handing the package to Pangan, the delivery man directed her to sign the receipt.[61] Upon checking the package,

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[53] *Id*.

[54] *Id*. at 7-8.

[55] *Id*.

[56] *Id*.

[57] *Id*. *See* RTC Decision on p. 53 of CA *rollo* which refers to the same as Chemistry Report No. D-143-05. However on p. 52 of the same decision, it was referred as Chemistry Report No. D-145-03.

[58] CA *rollo*, p. 54.

[59] *Rollo,* p. 8.

[60] *Id*.

[61] *Id*.

Pangan noticed that it was addressed to a certain "Gemma."[62] It is at this point when the two (2) men allegedly approached Pangan and introduced themselves as police officers. One (1) of them struggled to possess the package while the other poked a gun at Compa, instructing him to stay still.[63]

Pangan continuously struggled to free herself. In the process, she hit a bottle, which broke into pieces. As the commotion continued, one (1) of the men instructed Compa to get the handcuffs inside the store. Pangan was eventually handcuffed and pulled towards the Radio Mindanao Network vehicle parked about 10 arms' length from the store. The two (2) men who struggled to detain her then returned to the store to continue the search.[64]

After 15 minutes, more police arrived at the store to aid in the search. One (1) of the police officers approached Pangan and told her that her store was being searched. She was told that her handcuffs would be removed so that she could sign some papers, which Pangan refused to sign.[65]

Pangan narrated that she and Compa were brought to the police station. In the evening of the same day, Tupaz came. Pangan instructed him to go to her store to check the money she had left in a bag on their bed. When Tupaz returned, he informed Pangan that her bag was "in disarray" without the money inside.[66] The next day, Pangan caused the incident to be entered in the police blotter.[67]

Pangan claimed that the package was sealed when it was delivered. She asserted that she was already inside the vehicle when the search warrant was shown to her.[68] According to her,

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

[63] *Id*.

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

[65] *Id*.

[66] CA *rollo*, p. 55.

[67] *Rollo,* p. 8.

[68] *Id*. at 9.

the search warrant had an inaccurate account of its subject as her true and right name was Emma Bofill, not[69] Emma Bofill Pangan,[70] and that the name of her store, Imar Marketing, was not there.[71] Pangan insisted that she did not know Jaime Castro, the indicated sender of the package.[72] She asserted that she was not expecting any delivery that day.[73]

The Regional Trial Court[74] convicted Pangan.[75] It found that Pangan had *animus possidendi* as she appeared to know the contents of the Fastpak package she had received.[76]

It also ruled that Pangan failed to rebut the claim that PO1 Carillo initially conducted a successful test-buy that led to the application for a search warrant.[77] Considering that Pangan directed PO1 Carillo to return in the afternoon as more supply would allegedly be delivered to her through Fastpak, PO1 Carillo knew precisely what to find during the conduct of the search.[78]

Furthermore, when Pangan realized that she was dealing with police officers, she tried to grab the package. The trial court inferred that if she really knew nothing about its contents, she would not have been concerned with its possession.[79]

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[69] *See* CA *rollo*, p. 56.

Based on the testimony of Pangan, she disclosed that prior to her relationship with Tupaz, she had been living with one Noel Pangan (Noel) who was allegedly charged of illegal possession of drugs. In that case, Pangan executed an affidavit stating that she was the wife of Noel and her name appearing therein was *"Emma Bofill Pangan."*

[70] *Rollo,* p. 8.

[71] *Id*.

[72] *See* CA *rollo*, p. 55.

[73] *Rollo,* p. 9.

[74] CA *rollo*, pp. 47-63.

[75] *Id*. at 62.

[76] *Id*. at 59.

[77] *Id*. at 58.

[78] *Id*. at 58-59.

[79] *Id*. at 59.

Contrary to Pangan's assertion that the presumption of regularity could not work in favor of the arresting team,[80] the trial court ruled that the police officers properly carried out their duties during the search, there being no proof of any misdeed or irregularity.[81] It also ruled that although none of the prosecution witnesses testified where the seized articles were marked, this does not automatically mean that the articles were marked elsewhere and not at the place where the items were confiscated.[82] PO1 Carillo, SPO4 Revisa, and Barangay Kagawad Beluso identified the seized illicit drugs in court as the same ones recovered from Pangan during the implementation of the warrant. Considering that no evidence was presented to establish any improper motive on their part, their testimonies deserve full credit.[83]

The dispositive portion of its Decision read:

WHEREFORE, accused EMMA BOFILL PANGAN is found guilty beyond reasonable doubt of possession of 14.16 grams[84] of methamphetamine hydrochloride, a dangerous drug, in the afternoon of April 10, 2003 at Roxas City, Philippines without being authorized by law to possess the same, defined and penalized by Section 11 sub paragraph (1), Article II of Republic Act No. 9165 and is sentenced to life imprisonment and to pay a fine of Four Hundred Thousand (₱400,000.00) Pesos, Philippine Currency, and the costs of this suit.

She will be credited with the full term of her detention period.

The illegal drugs are ordered confiscated to be turned over to the Philippine Drug Enforcement Agency (PDEA) for proper disposal.

SO ORDERED.[85] (Emphasis in the original)

Pangan appealed the conviction, attesting that the prosecution failed to prove the identity of the confiscated drugs. Allegedly,

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[80] *Id*. at 60.

[81] *Id*. at 61.

[82] *Id*. at 60.

[83] *Id*.

[84] *Id*. at 62. "EBP-1", "EBP-2", "EBP-3", and "EBP-4" correspondingly weighed 5.03 grams, 4.09 grams, 5.02 grams, and 0.02 grams.

[85] *Id*. at 62.

the police officers failed to observe the guidelines provided for under Section 21 of Republic Act No. 9165. Neither the marking of the confiscated drugs or the signing of the inventory receipt was made in her presence.[86]

The Court of Appeals ruled against the accused.[87]

It found that failure to strictly conform to the requirements of Section 21 of Republic Act No. 9165 does not immediately make the seized drugs inadmissible as evidence,[88] provided that the integrity and evidentiary worth of the seized articles were maintained.[89]

Furthermore, the Court of Appeals ruled that Pangan's absence during the marking and inventory was justified as she became "hysterical" after the search warrant was read to her.[90] Hence, the arresting officers needed to pacify Pangan to prevent her from harming herself and other people.[91]

The dispositive portion of its Decision provided:

> **WHEREFORE**, in view of the foregoing premises, the appeal filed in this case is hereby **DENIED**. The assailed Decision dated April 18, 2007 of the Regional Trial Court, Branch 16, of Roxas City in Criminal Case No. C-093-03 is **AFFIRMED**.
>
> **SO ORDERED**.[92] (Emphasis in the original)

Hence, this appeal was filed before this Court.

On May 20, 2013,[93] the Court of Appeals elevated to this Court the records of this case pursuant to its January 23, 2013

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[86] *Rollo,* p. 12.

[87] *Id*. at 3-17.

[88] *Id*. at 10.

[89] *Id*. at 14.

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

[91] *Id*. at 14.

[92] *Id*. at 16.

[93] *Id*. at 1.

Resolution,[94] which gave due course to Pangan's Notice of Appeal.[95]

In its July 22, 2013 Resolution,[96] this Court noted the records of this case forwarded by the Court of Appeals. The parties were ordered to file their respective supplemental briefs, should they have desired, within 30 days from notice. Both parties manifested that they would no longer file supplemental briefs.[97]

For resolution before this Court is whether or not Emma Bofill Pangan's[98] guilt was proven beyond reasonable doubt. Specifically, the main issue presented is whether or not the prosecution established an unbroken chain of custody on the handling of the confiscated illicit drugs.

Pangan wonders how three (3) armed middle-aged police officers allegedly failed to pacify a 42-year-old woman like her, causing them to lock her up inside a vehicle during the entire course of the search.[99] She questions whether or not her enforced inability to witness the marking and inventory of the confiscated items has sufficient justification to allow a deviation from Section 21 of Republic Act No. 9165.[100]

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[94] *Id*. at 19-20.

[95] *Id*. at 18.

[96] *Id*. at 22.

[97] *Id*. at 24-28, Manifestation of the Office of the Solicitor General and *rollo,* pp. 30-32, Manifestation of the accused. *See* also *rollo,* p. 34 where this Court noted the Manifestations of the parties through a Resolution dated November 11, 2013.

[98] *Id*. at 37-48. Three indorsements with attachments were included as part of the *Rollo*, all pertaining to a request for regular hospital referral of Accused-Appellant Pangan to Rizal Medical Center for further examination and treatment of her T/C Myoma Uteri with A[bnormal] U[terine] B[leeding]. Through a Resolution dated March 9, 2016 (*Rollo,* pp. 49-51), this Court noted the indorsements. Similarly, this Court also approved (*Rollo,* pp. 52-57) the request for Pangan's outside medical referral subject to certain conditions.

[99] CA *rollo,* p. 42.

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

Furthermore, Pangan claims that the testimony of Culili cannot prove her guilt considering that the delivery man has no personal knowledge of the package's contents.[101] She also insists that the trial court erred when it discredited her nephew's testimony on the ground that he was her relative.[102] Relationship, in itself, does not give rise to assumption of bias or impair the credibility of witnesses or their statements.[103]

Pangan underscores the arresting officers' failure to provide any acceptable reason to deviate from the requirements of Republic Act No. 9165 and its implementing rules.[104] She asserts that the presumption of regularity cannot work in their favor.[105]

On the other hand, the Office of the Solicitor General[106] presents that all the elements of illegal possession of dangerous drugs were present.[107] The prosecution's testimonial, documentary and object evidence amply established that Pangan was guilty of the charge.[108]

The Office of the Solicitor General reiterates that non-compliance with Section 21 of Republic Act No. 9165 is not fatal provided that there are justifiable grounds to deviate and the integrity of the chain of custody of the confiscated articles is maintained.[109] Pangan's absence in the marking and inventory was justifiable since the arresting officers needed to pacify her as she became frantic and disorderly after the search warrant was read to her.[110]

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[101] *Id*. at 43.

[102] *Id*.

[103] *Id*.

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

[105] *Id*.

[106] *Id*. at 76-97.

[107] *Id*. at 87.

[108] *Id*. at 89.

[109] *Id*. at 90.

[110] *Id*.

The Office of the Solicitor General further avers that Pangan's mere denial of the charge and claim of violation of the chain of custody rule cannot be the bases of her acquittal.[111] Pangan's defense of denial is innately weak and unless corroborated by clear and persuasive evidence, it remains self-serving and does not merit any credence in law.[112]

This Court dismisses the appeal and sustains the conviction.

I

The prosecution presented evidence beyond reasonable doubt to establish that all the elements of the offense were present and that the accused committed the offense.

Section 11 of Republic Act No. 9165 punishes illegal 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) 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:
>
> . . . .
>
> (5) 50 grams or more of methamphetamine hydrochloride or "shabu";
>
> . . . .
>
> 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***[.] (Emphasis supplied)

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[111] *Id.* at 93.

[112] *Id.*

Based on this provision, sufficient evidence to prove the following elements should be presented:

(1) the actual possession of an item or object which is identified to be a prohibited drug;
(2) such possession is not authorized by law; and
(3) the accused freely or consciously possessed the said drug.[113] (Citation omitted)

The prosecution presented evidence that in the morning of April 10, 2003, PO1 Carillo initially conducted a successful test-buy which served as basis for the application of a search warrant.[114] In the test-buy, Pangan disclosed to PO1 Carillo that more drugs would be delivered to her via Fastpak in the afternoon that day.[115] Her words were ***confirmed*** when indeed, Culili delivered a Fastpak package to Pangan, which prompted PO1 Carillo and other members of the buy-bust team to effect the search leading to the seizure of the illegal drugs.[116]

Pangan ***admitted*** the delivery of the Fastpak package where she signed a delivery receipt.[117] Culili, in response to a subpoena issued against him, testified for the prosecution and confirmed that he delivered a package to Pangan.[118]

Culili added that the package was addressed to "Gemma Bofill."[119] He identified Pangan as a ***regular customer***.[120] This claim was expressly acknowledged[121] by the accused herself,

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[113] *People v. Lagman,* 593 Phil. 617, 625 (2008) [Per *J.* Carpio- Morales, *En Banc*].

[114] CA *rollo,* p. 58.

[115] *Id.*

[116] *Id.* at 58-59.

[117] *Id.* at 55.

[118] *Id.* at 51.

[119] *Id.*

[120] *Id.*

[121] *Id.* at 56.

when she admitted that prior to April 10, 2003, she had received other packages from Fastpak addressed to either her or Tupaz. Culili asserted that he already made prior deliveries to Pangan and Tupaz in their past residence at SANECRA Subdivision in Gabuan, Roxas City.[122] Culili was definite that it was Pangan who received the package.[123] He personally handed it to her and saw her sign the corresponding waybill.[124] Moreover, Pangan admitted[125] that she was the owner of the store that was made subject of the search warrant.

PO1 Carillo testified that when the barangay officials and media representatives came, he and SPO4 Revisa had started the search.[126] When SPO4 Revisa opened the sealed package, they found a book containing three (3) sachets of suspected illicit drugs.[127] From the table's drawer, an additional sachet was also discovered along with other articles listed in the inventory duly signed by P/S Insp. Batiles and the third-party witnesses.[128] PO1 Carillo's testimony was ***corroborated*** by the statements of SPO4 Revisa in court.[129]

Barangay Kagawad Beluso testified for the prosecution to confirm that she saw the search warrant, witnessed its implementation, and signed the inventory prepared after the search.[130] Finally, to prove that the contents of the four (4) sachets tested positive for methamphetamine hydrochloride or shabu, P/C Insp. Baldevieso testified to have conducted the qualitative and quantitative[131]

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[122] *Id*. at 51.

[123] *Id*.

[124] *Id*.

[125] *Id*. at 56.

[126] *Id*. at 49.

[127] *Id*.

[128] *Id*.

[129] *Id*. at 50.

[130] *Id*. at 51.

[131] *Id*. She individually weighed the four (4) sachets which yield to the following: EBP-1 – 5.03 grams; EBP-2 – 4.09 grams, EBP-3 – 5.02 grams

examination.[132] The test result was embodied in Chemistry Report No. D-145-03, which she and the Regional Chief of the Crime Laboratory, Police Chief Inspector Rea Abastillas-Villavicencio, duly signed.[133]

To evade liability, Pangan offered uncorroborated and self-serving assertions. She alleged that Culili's delivery of the package cannot prove her guilt considering that he had no personal knowledge of the package's contents.[134] She also assumes that the trial court discredited Compa's testimony as he was her relative.[135]

This Court is not persuaded with Pangan's defense. She was found to have been in possession of the illicit drugs without authority to do so. Her mere possession establishes a *prima facie* proof of knowledge or *animus possidendi* enough to convict her as an accused in the absence of any acceptable reason for its custody.[136]

The trial judge had the distinct opportunity to examine the witnesses and to gauge their credibility.[137] The trial court was persuaded with the evidence presented by the prosecution.[138] Pangan's culpability of the charge was sufficiently established.[139] This Court does not find either palpable error or grave abuse of discretion in the trial court's or Court of Appeals' evaluation

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and EBP – 4 - 0.02 grams. The total weight of the confiscated illicit drugs is 14.16 grams.

[132] *Id.* at 52.

[133] *Id.* at 53.

[134] *Id.* at 43.

[135] *Id.*

[136] *People v. Bontuyan,* 742 Phil. 788, 799 (2014) [Per J. Perez, First Division].

[137] *People v. Del Mundo,* 418 Phil. 740, 755 (2001) [Per J. Ynares-Santiago, First Division].

[138] CA *rollo,* p. 62.

[139] *Id.*

of evidence.[140] Therefore, their findings will not be overturned on appeal.[141]

II

In crimes involving dangerous drugs, the State has the burden of proving not only the elements of the offense but also the *corpus delicti* of the charge.[142]

Prosecutions involving illegal possession of dangerous drugs demand that the elemental act of possession be proven with moral certainty and not allowed by law.[143] The illicit drugs, itself, comprise the *corpus delicti* of the charge and its existence is necessary to obtain a judgment of conviction.[144] Therefore, it is important in these cases that the identity of the illegal drugs be proven beyond reasonable doubt.[145]

The prosecution must establish the existence of the illicit drugs.[146] It must also prove that the integrity of the *corpus delicti* has been maintained because the confiscated drug, being the proof involved, is ***not promptly recognizable*** through sight and can be tampered or replaced.[147]

To establish that the illicit drugs scrutinized and presented in court were the very same ones confiscated from the accused,

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[140] See *People v. Minanga,* 751 Phil. 240, 249 (2015) [Per *J.* Villarama, Jr., Third Division].

[141] *Id*.

[142] *People v. Bautista,* 682 Phil. 487, 499 (2012) [Per *J.* Bersamin, First Division].

[143] *Mallillin v. People,* 576 Phil. 576, 586 (2008) [Per *J.* Tinga, Second Division].

[144] *Id*.

[145] *Id*.

[146] *People v. Dimaano,* G.R. No. 174481, February 10, 2016, <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2016/february2016/174481.pdf> [Per *J.* Leonen, Second Division].

[147] *Id*. at 10.

the prosecution should offer testimonies relating to its chain of custody.[148] Chain of custody is defined as:

> [T]he duly recorded authorized movements and custody of seized drugs or controlled chemicals or plant sources of dangerous drugs or laboratory equipment of each stage, from the time of seizure/confiscation to receipt in the forensic laboratory to safekeeping to presentation in court for destruction. Such record of movements and custody of seized item shall include the identity and signature of the person who held temporary custody of the seized item, the date and time when such transfer of custody were made in the course of safekeeping and use in court as evidence, and the final disposition.[149] (Citation omitted)

This is governed by Section 21 of Republic Act No. 9165:[150]

> Section 21. *Custody and Disposition of Confiscated, Seized, and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/Paraphernalia and/or Laboratory Equipment.* — The PDEA shall take charge and have custody of all dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment so confiscated, seized and/or surrendered, for proper disposition in the following manner:
>
> (1) The apprehending team having initial custody and control of the drugs shall, immediately after seizure and confiscation, ***physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy*** thereof;

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[148] *Id*.

[149] *Id*.

[150] *Id*. This is the prevailing law then. Now amended by Republic Act No. 10640 (2014) or An Act to Further Strengthen the Anti-Drug Campaign of the Government, amending for the purpose Section 21 of Republic Act No. 9165, otherwise known as the "Comprehensive Dangerous Drugs Act of 2002."

(2) Within twenty-four (24) hours upon confiscation/seizure of dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/ paraphernalia and/or laboratory equipment, the same shall be submitted to the PDEA Forensic Laboratory for a qualitative and quantitative examination;

(3) A certification of the forensic laboratory examination results, which shall be done under oath by the forensic laboratory examiner, shall be issued within twenty-four (24) hours after the receipt of the subject item/s: *Provided*, That when the volume of the dangerous drugs, plant sources of dangerous drugs, and controlled precursors and essential chemicals does not allow the completion of testing within the time frame, a partial laboratory examination report shall be provisionally issued stating therein the quantities of dangerous drugs still to be examined by the forensic laboratory: *Provided*, *however*, That a final certification shall be issued on the completed forensic laboratory examination on the same within the next twenty-four (24) hours;

(4) After the filing of the criminal case, the Court shall, within seventy-two (72) hours, conduct an ocular inspection of the confiscated, seized and/or surrendered dangerous drugs, plant sources of dangerous drugs, and controlled precursors and essential chemicals, including the instruments/paraphernalia and/or laboratory equipment, and through the PDEA shall within twenty-four (24) hours thereafter proceed with the destruction or burning of 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 DOJ, civil society groups and any elected public official. The Board shall draw up the guidelines on the manner of proper disposition and destruction of such item/s which shall be borne by the offender: *Provided*, That those item/s of lawful commerce, as determined by the Board, shall be donated, used or recycled for legitimate purposes: *Provider*, *further*, That a representative sample, duly weighed and recorded is retained;

(5) The Board shall then issue a sworn certification as to the fact of destruction or burning of the subject item/s which, together with the representative sample/s in the custody of the PDEA, shall be submitted to the court having jurisdiction

over the case. In all instances, the representative sample/s shall be kept to a minimum quantity as determined by the Board;

(6) The alleged offender or his/her representative or counsel shall be allowed to personally observe all of the above proceedings and his/her presence shall not constitute an admission of guilt. In case the said offender or accused refuses or fails to appoint a representative after due notice in writing to the accused or his/her counsel within seventy-two (72) hours before the actual burning or destruction of the evidence in question, the Secretary of Justice shall appoint a member of the public attorney's office to represent the former;

(7) After the promulgation and judgment in the criminal case wherein the representative sample/s was presented as evidence in court, the trial prosecutor shall inform the Board of the final termination of the case and, in turn, shall request the court for leave to turn over the said representative sample/s to the PDEA for proper disposition and destruction within twenty-four (24) hours from receipt of the same[.] (Emphasis supplied)

Compliance with the preconditions provided for under Section 21 cannot be overstated.[151] It excludes the chances that the evidence may be planted, contaminated, or tampered in any way.[152] Thus, as signified by its mandatory terms, ***strict*** conformity to the procedures in handling the seized articles and drugs is important and the prosecution must prove their acquiescence in any case.[153]

Non-conformity equates to failure in proving the identity of the *corpus delicti*, which is an important element of the charge involving illegal possession of illicit drugs.[154] Hence, even doing

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[151] *People v. Dela* Cruz, 744 Phil. 816, 827 (2014) [Per *J.* Leonen, Second Division].

[152] *People v. Holgado,* 741 Phil. 78, 93 (2014) [Per *J.* Leonen, Third Division].

[153] *People v. Denoman,* 612 Phil. 1165, 1175 (2009) [Per *J.* Brion, Second Division].

[154] *People v. Dela* Cruz, 744 Phil. 816, 827 (2014) [Per *J.* Leonen, Second Division].

acts which apparently nears compliance but do ***not*** really conform to the requirements do not suffice.[155] By failing to prove an element of the charge, non-conformity with the law will, therefore, cause the acquittal of the accused.[156]

This Court had the occasion to discuss the consequences of the arresting team's failure to comply with Section 21(1) of Republic Act No. 9165 in this Court's recent cases.

In *People v. Jaafar,*[157] the accused was acquitted of the charge for the illegal sale of 0.0604 grams of *shabu,* which was seized from him through a buy-bust operation. While the police officers marked the confiscated items, the physical inventory was not done in the presence of the accused or any of the mandated third-party witnesses. Also, no photograph was taken. In closing, this Court held that non-compliance with the mandatory preconditions of Section 21 creates doubt on the integrity of the seized *shabu.*[158]

In *People v. Saunar,*[159] accused Delia Saunar was acquitted of the charge for illegal sale of 0.0526 grams and 0.0509 grams of dangerous drugs. This Court held that the prosecution failed to strictly conform to the rigorous standards provided for under Republic Act No. 9165, as amended, causing serious doubt on the origin and identity of the seized drugs.

In *Saunar*, the marking and inventory were done only when the team already reached Camp Simeon Ola and not immediately after confiscation. This Court inferred that any of the arresting

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

[156] *People v. Dela Cruz*, 744 Phil. 816, 827 (2014) [Per *J.* Leonen, Second Division].

[157] 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].

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

[159] G.R. No. 207396, August 9, 2017, <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2017/august2017/207396.pdf> [Per *J.* Leonen, Second Division].

officers could have taken custody of the seized drugs during transit, thereby concluding that there was a high probability that the evidence was tampered with or altered. While the belated marking and inventory were done in the presence of third-party witnesses, there was no evidence showing that the acts were done in the presence of the accused or any of her representatives. More telling was the fact that none of the third-party witnesses was presented to testify in court. Furthermore, no photograph was taken.[160]

In *People v. Sagana,*[161] photos of the seized items were taken only when the accused was already in the police station. The belated photograph taking was not simultaneously done with the marking and inventory, which was conducted immediately after the items were seized.[162] Also, there was no third-party witness present when the items were seized and inventoried.[163]

Accused Sagana was acquitted of the charge for illegal sale of *shabu* due to the evident lapses in the chain of custody that cast doubt on the integrity and identity of the *corpus delicti* and the arresting team's lack of justifiable reason to deviate from the mandated procedures.[164]

While the chain of custody has been a ***crucial*** issue which led to acquittals in drugs cases, this Court has still ruled that non-conformity with the mandated procedure in handling the seized drugs does ***not*** automatically mean that the seized items' identity was compromised, which necessarily leads to an acquittal.[165] The Implementing Rules and Regulations of Republic

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

[161] G.R. No. 208471, August 2, 2017, <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2017/august2017/208471.pdf> [Per *J.* Leonen, Second Division].

[162] *Id.*

[163] *Id.* at 14-16.

[164] *Id.*

[165] *People v. Denoman,* 612 Phil. 1165, 1178 (2009) [Per *J.* Brion, Second Division].

Act No. 9165 provide some flexibility[166] with the addition of a proviso which reads:

> 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 . . .*
>
> (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)

The saving mechanism included in the implementing rules guarantees that ***not*** every case of non-observance will irreversibly prejudice the prosecution's cause. However, to merit the application of the saving clause, the prosecution should acknowledge and explain the deviations they committed. Moreover, the prosecution should also prove that the integrity and evidentiary worth of the confiscated evidence was maintained.[167]

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[166] *People v. Capuno,* 655 Phil. 226, 240 (2011) [Per J. Brion, Third Division].

[167] *People v. Denoman,* 612 Phil. 1165, 1178 (2009) [Per J. Brion, Second Division].

In other words, the arresting officers' non-compliance with Section 21 is ***not fatal***, provided that that there is a ***justifiable*** reason for their deviation and that the ***evidentiary*** worth of the seized drugs or articles was preserved. Non-conformity with the mandated procedures will not make the arrest of the accused illegal or the items seized inadmissible as evidence. What ***matters*** most is that the integrity and evidentiary worth of the seized articles were maintained since these will be used in resolving the guilt or innocence of the accused.[168]

Pangan's main point of contention rests on her absence during the inventory and marking of the confiscated articles.[169]

This Court underscores that from the start, Pangan already insisted that she did ***not*** know the contents of the delivery.[170] Surprisingly, when she testified in her defense, she disclosed that when the two (2) men allegedly "grabbed the package from her,"[171] they grappled for its possession for about two (2) to three (3) minutes.[172] Hence, the way she violently reacted belied her claim of innocence. As emphasized by the trial court, "She fought tooth and nail for [the] possession of the Fastpak pouch . . . with the police officer because a revelation of its contents would surely incriminate her."[173]

The police officers acknowledged their breach, offering a justifiable reason why they had to dispense with Pangan's presence during the search, inventory, and photographing. The police narrated how Pangan became "uncontrollable."[174] This is a fact corroborated by the accused herself when she testified

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[168] *People v. Pringas,* 558 Phil. 579, 593 (2007) [Per *J.* Chico-Nazario, Third Division].

[169] CA *rollo,* p. 42.

[170] *Id.* at 58.

[171] *Id.* at 55.

[172] *Id.* at 56.

[173] *Id.* at 59.

[174] *Id.* at 90.

that she "***struggled*** to free herself [and] she accidentally swiped a bottle in front of her store that fell and broke into pieces."[175] Therefore, Pangan's aggressive actuations urged the police officers to lock her up in the vehicle for the search to smoothly proceed.

The attendance of third-party witnesses during buy-bust operations and during time of seizures is to prevent the planting of evidence or frame-up.[176] Even though neither Pangan nor any of her representatives was present during the marking, inventory, and photographing, the police officers substantially complied with the rules as media representatives and barangay officials were present during the search.[177]

Barangay Kagawad Beluso, who appeared as one (1) of the witnesses for the prosecution, confirmed that she was ***with*** Barangay Kagawad Lara and Barangay Captain Andrada during the search. She testified that the police officers found the sealed Fastpak package on top of Pangan's table, which was inside the store. She corroborated the testimonies of other prosecution witnesses narrating that when the *Noli Me Tangere* book was opened, three (3) sachets of suspected shabu were concealed between its pages. She added that the police officers found another sachet of illicit drugs in Pangan's drawer.[178]

Barangay Kagawad Beluso also identified in court the Fastpak package, the *Noli Me Tangere* book, and the additional small sachet as the articles she was referring to in her statements. She verified that an inventory of the items was prepared by the police which she and the other witnesses signed.[179]

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[175] *Id.* at 55.

[176] See *People v. Reyes,* G.R. No. 199271, October 19, 2016, < http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2016/october2016/199271.pdf> [Per Justice Bersamin, First Division].

[177] *Rollo,* p. 14.

[178] CA *rollo,* pp. 51–52.

[179] *Id.* at 52.

Even radio reporter Bulana, who testified for the defense, mentioned that he was ***one*** (1) of the witnesses.[180] He disclosed that at around 4:00 p.m. of April 10, 2003, they gathered with the arresting team at Dinggoy Roxas Civic Center.[181] He attested that after seeing the pre-arranged signal from one (1) of the police officers, ***they*** went to Asis Street where he saw PO1 Carillo and PO1 Bernardez enter Pangan's store, trying to grab a "*bundle*" from the accused.[182] Thereafter, Pangan was "forcefully" brought outside the store and was eventually handcuffed inside a Radio Mindanao Network vehicle.[183]

Furthermore, even assuming that the police officers failed to strictly conform to the procedures provided for under Section 21, the accused may still be adjudged guilty of the charge provided that the chain of custody remains uninterrupted.[184]

In this case, the prosecution was able to establish the necessary links in the chain of custody from the time the sachets of illicit drugs were confiscated until they were forwarded to the laboratory for examination and presented as evidence in court.

After its seizure, the four (4) plastic sachets were immediately given to SPO1 Liberia for marking. SPO1 Liberia also prepared the inventory, which was duly signed by the third-party witnesses present during the search.[185]

PO1 Carillo took photographs of the search and the confiscated articles. Thereafter, the seized items were forwarded to the trial court which issued the warrant. Upon P/S Insp. Batiles' request, the trial court released the seized items for laboratory testing. The articles were received by SPO1 Alberto Espura of the

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[180] *Id.* at 56.

[181] *Id.*

[182] *Id.* at 56-57.

[183] *Id.* at 57.

[184] *People v. Amarillo,* 692 Phil. 698, 711 (2012) [Per *J.* Perez, Second Division].

[185] *Rollo,* p. 14.

Philippine National Police Crime Laboratory in Camp Claudio, Iloilo City. P/C Insp. Baldevieso confirmed through a chemical analysis that the contents of the sachets yielded positive for methamphetamine hydrochloride or *shabu* as evinced by Chemistry Report No. D-145.[186]

The confiscated drugs which were examined in the laboratory were offered as evidence in the trial court and were identified by PO1 Carillo, Barangay Kagawad Beluso, and SPO4 Revisa as the same ones seized from Pangan during the lawful search.[187]

Apart from Pangan's unsupported claims, no cogent proof was shown to attest that the seized items were tampered in any way. Based on the totality of the prosecution's evidence, the integrity and evidentiary value of the seized items were never compromised.

The rationale behind Section 21 is to shield the accused from malicious assertions of guilt from abusive police officers. However, this provision cannot be utilized to frustrate legitimate efforts of law enforcers. Minor deviations from the mandated procedure in handling the *corpus delicti* must ***not*** absolve a guilty defendant.[188]

III

In a further attempt to evade liability, accused Pangan denies the presence of the additional sachet of *shabu* found hidden in her drawer, asserting that "PO1 Carillo ***could*** have planted it there because he has a bad record."[189]

It is settled that in proceedings involving violations of the Dangerous Drugs Act, the testimonies of police officers as

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[186] *Id*.

[187] *Id*.

[188] *People v. Dimaano,* G.R. No. 174481, February 10, 2016, < http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2016/february2016/174481.pdf> 12 [Per *J*. Leonen, Second Division].

[189] See CA *rollo,* p. 40.

prosecution witnesses are given weight for it is assumed that they have performed their functions in a regular manner. Thus, this presumption stands except in cases when there is evidence to the contrary or proof imputing ill-motive on their part, which is wanting in this case. Pangan failed to adduce any evidence which could overturn the well-entrenched presumption in favor of the police officers.[190]

Pangan's denial was essentially weak and cannot overcome the prosecution witnesses' positive identification of her as the perpetrator of the charge. Considering that a denial is self-serving, it merits no credence in law when uncorroborated by any clear and persuasive proof.[191]

Therefore, this Court upholds Pangan's guilt for possession of a considerable amount of 14.16 grams of methamphetamine hydrochloride or *shabu*. As correctly imposed by the Regional Trial Court and affirmed by the Court of Appeals, the penalty of life imprisonment and a fine of ₱400,000.00 are warranted and are in accordance with law.[192]

WHEREFORE, the appeal is **DISMISSED**. The Court of Appeals September 21, 2012 Decision in CA-G.R. CR-H.C. No. 00747 affirming the Regional Trial Court's conviction of accused-appellant Emma Bofill Pangan of illegal possession of dangerous drugs in violation of Section 11 of Republic Act No. 9165 is **AFFIRMED.**

SO ORDERED.

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

Gesmundo, J., on leave.

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[190] *People v. Dulay*, 468 Phil. 56, 65 (2004) [Per *J*. Azcuna, First Division].

[191] *Id.*

[192] *See* Rep. Act No. 9165, Art. II, Sec. 11 which provides that the penalty of "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."

THIRD DIVISION

[G.R. No. 209910. November 29, 2017]

VISAYAN ELECTRIC COMPANY, INC., *petitioner, vs.* **EMILIO G. ALFECHE, GILBERT ALFECHE, EMMANUEL MANUGAS, and M. LHUILLIER PAWNSHOP AND JEWELRY,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; APPEALS; PETITION FOR REVIEW ON *CERTIORARI*; ONLY QUESTIONS OF LAW MAY BE RAISED; EXCEPTIONS.—** Ordinarily, it is not for this Court to review factual issues in petitions such as the present Rule 45 Petition which may only raise questions of law. This rule, however, admits certain exceptions: (1) when the factual findings of the Court of Appeals and the trial court are contradictory; (2) when the findings are grounded entirely on speculation, surmises, or conjectures; (3) when the inference made by the Court of Appeals from its findings of fact is manifestly mistaken, absurd, or impossible; (4) when there is graver abuse of discretion in the appreciation of facts; (5) when the appellate court, in making its findings, goes beyond the issues of the case, and such findings are contrary to the admissions of both appellant and appellee; (6) when the judgment of the Court of Appeals is premised on a misapprehension of facts; (7) when the Court of Appeals fails to notice certain relevant facts which, if properly considered, will justify a different conclusion; (8) when the findings of fact are themselves conflicting; (9) when the findings of fact are conclusions without citation of the specific evidence on which they are based; and (10) when the findings of fact of the Court of Appeals are premised on the absence of evidence but such findings are contradicted by the evidence on record.

2. **CIVIL LAW; QUASI-DELICT; ELEMENTS; EXPLAINED.—** The elements of a quasi-delict are: (1) the damages suffered by the plaintiff; (2) the fault or negligence of the defendant or some other person for whose act he must respond; and (3) the connection of cause and effect between the fault or negligence and the damages incurred. x x x Fault is "a voluntary act or omission which causes damage to the right of another giving

rise to an obligation on the part of [another]." On the other hand, "[n]egligence is the failure to observe for the protection of the interest of another person that degree of care, precaution and vigilance which the circumstances justly demand. x x x Proximate cause is defined as "that cause which, in natural and continuous sequence, unbroken by any efficient intervening cause, produces the injury and without which the result would not have occurred."

3. ID.; ID.; ID.; ESTABLISHED IN CASE AT BAR.— All the elements for liability for a quasi-delict under Article 2176 of the Civil Code have been shown to be attendant on VECO's part. x x x On the first element, it is undisputed that the Alfeches and Manugas suffered damage because of the fire. x x x Between VECO and M. Lhuillier, it is VECO which this Court finds to have been negligent. M. Lhuillier was not negligent in installing its signage. It installed its signage in 1995 well before the road-widening and drainage projects commenced and ahead of VECO's relocation of its posts. Solon and Camuta both emphasized that the signage was installed free of any obstacle. Other than VECO's evasive accusations, there is no proof to the contrary. It was VECO that was negligent. It is apparent that it transferred its posts and wires without regard for the hazards that the transfer entailed, particularly with respect to the installations which had previously been distant from the wires and posts but which had since come into close proximity. VECO is a public utility tasked with distributing electricity to consumers. It is its duty to ensure that its posts are properly and safely installed. As the holder of a public franchise, it is to be presumed that it has the necessary resources and expertise to enable a safe and effective installation of its facilities. By installing its posts and wires haphazardly, without regard to how its wires could come in contact with a previously installed signage, VECO failed to act in keeping with the diligence required of it. x x x VECO's negligence was the proximate cause of the damage suffered by the Alfeches and Manugas. It is settled that the confluence of proximity, abrasion, and short-circuiting led to the fire.

APPEARANCES OF COUNSEL

J.P. Garcia & Associates for petitioner.
Gloria L. Dalawampu for respondent Alfeche and Manugas.
Joseph U. Bernaldez for M. Lhuillier Pawnshop and Jewelry.

D E C I S I O N

LEONEN, *J.*:

An electric distribution company is a public utility presumed to have the necessary expertise and resources to enable a safe and effective installation of its facilities. Absent an indication of fault or negligence by other actors, it is exclusively liable for fires and other damages caused by its haphazardly installed posts and wires.

This resolves a Petition for Review on Certiorari[1] under Rule 45 of the 1997 Rules of Civil Procedure praying that the assailed Court of Appeals October 25, 2012 Decision[2] and October 8, 2013 Resolution[3] in CA-G.R. CV No. 02583 be reversed and set aside.

The assailed Court of Appeals October 25, 2012 Decision reversed the January 4, 2006 Decision[4] of Branch 11, Regional Trial Court, Cebu City in Civil Case No. CEB-23694, which found herein respondent M. Lhuillier Pawnshop and Jewelry

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[1] *Rollo*, pp. 11-41.

[2] *Id.* at 55-77. The Decision was penned by Associate Justice Carmelita Salandanan Manahan and concurred in by Executive Justice Pampio A. Abarintos and Associate Justice Maria Elisa Sempio Diy of the Special Twentieth Division, Court of Appeals, Cebu City.

[3] *Id.* at 93-96. The Resolution was penned by Associate Justice Carmelita Salandanan Manahan and concurred in by Associate Justices Pampio A. Abarintos and Maria Elisa Sempio Diy of the Former Special Twentieth Division, Court of Appeals, Cebu City.

[4] *Id.* at 42-53. The Decision was penned by Acting Presiding Judge Gabriel T. Ingles.

(M. Lhuillier) negligent and liable for the fire which burned down the properties of Emilio G. Alfeche (Emilio), Gilbert Alfeche (Gilbert), and Emmanuel Manugas (Manugas). The Court of Appeals reversed the trial court decision and found herein petitioner Visayan Electric Company, Inc. (VECO) liable in M. Lhuillier's stead.

The assailed Court of Appeals October 8, 2013 Resolution denied VECO's Motion for Reconsideration.[5]

On the night of January 6, 1998, a fire broke out at 11th Street, South Poblacion, San Fernando, Cebu, which burned down the house and store of respondent Emilio and his son, respondent Gilbert (the Alfeches),[6] and the adjacent watch repair shop owned by respondent Manugas.[7] It was alleged that the cause of the fire was the constant abrasion of VECO's electric wire with M. Lhuillier's signboard.[8]

The next day, the Alfeches and Manugas reported the incident to the police[9] and to the Sangguniang Bayan of San Fernando.[10] Upon Emilio, Gilbert, and Manugas' request for site inspection, the Sangguniang Bayan of San Fernando eventually passed Resolution No. 12 requesting VECO to inspect the area and to repair faulty wires. The Alfeches and Manugas sent a letter to the management of VECO asking for financial assistance, which VECO denied. VECO asserted that the fire was due, not to its fault, but to that of M. Lhuillier.[11]

As their initial claim for financial assistance was not satisfied, the Alfeches and Manugas filed a Complaint for Damages

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[5] *Id*. at 78-91.

[6] *Id*. at 56-57.

[7] *Id*. at 59.

[8] *Id*. at 56-57.

[9] *Id*. at 59.

[10] *Id*. at 60.

[11] *Id*.

against VECO and M. Lhuillier before the Regional Trial Court of Cebu City.[12]

During pre-trial, M. Lhuillier admitted that it was the owner of the signboard at its branch in San Fernando, Cebu. M. Lhuillier and VECO admitted that a fire destroyed the Alfeches' and Manugas' properties on January 6, 1998.[13]

The Alfeches and Manugas presented testimonial, documentary, and object evidence. They presented as witnesses Emilio, Manugas, Mignonette Alfeche (Mignonette), and Rodolfo Rabor (Rabor).[14]

Emilio testified that between 9:00 p.m. and 10:00 p.m. of January 6, 1998, he was awakened as their house was burning.[15] He went out and saw a cut wire swinging and burning at the top of his roof, about three (3) to four (4) meters away.[16] He explained that his house was also used by his son, Gilbert, as a store for various merchandise such as food, beverages, and feeds. His house adjoined an M. Lhuillier pawnshop, which had a big signboard.[17] Emilio presented a module simulating how the fire broke out in relation to the location of the electric posts and his house.[18] He alleged that VECO posts were transferred to their current location because of a road-widening project. This transfer caused the sagging wire of VECO to constantly touch M. Lhuillier's signboard, which, in turn, led to the breaking and burning of the wire.[19] The burning cut wire went swinging on top of and landed on Emilio's roof; thus, it caused the fire that burned his house.[20]

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[12] *Id*.

[13] *Id*. at 42.

[14] *Id*. at 43.

[15] *Id*.

[16] *Id*.

[17] *Id*. at 57.

[18] *Id*. at 43.

[19] *Id*.

[20] *Id*. at 57.

Mignonette, the wife of Gilbert, corroborated Emilio's testimony that the fire came from the burning end of the electric wire near M. Lhuillier's signage. She presented pictures showing the location of their store and an electric post near M. Lhuillier's signage.[21]

Rabor testified that while in the highway on his way home, he noticed a spark in the electric line near M. Lhuillier's signboard. He ran towards Emilio's house to warn the Alfeches, but before getting there, the wire had dropped on the roof and caused a fire.[22]

Manugas attested that he owned the shop composed of "a small booth with a roof and glass window"[23] beside Emilio's house. This shop was burned along with his tools, watches, and other equipment. He identified the police blotter stating the extent of the damage.[24]

VECO countered with testimonies of the following persons, in addition to other documentary and object evidence: Engr. Benedicto Banaag (Engr. Banaag), Engr. Simeon Lauronal (Engr. Lauronal), Candelario L. Melencion (Melencion), Engr. Felipe Constantino (Engr. Constantino), Engr. Edwin Chavez (Engr. Chavez), and Engr. Miguel Ornopia (Engr. Ornopia).

Engr. Banaag, an electrical engineer and a lawyer who had been working with VECO for 35 years,[25] testified that VECO sent two (2) superintendents and a general foreman to inspect the site.[26] The inspectors found that the cause of the incident was the constant rubbing of the wires of VECO with M. Lhuillier's signage.[27] He also stated that M. Lhuillier's signage

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[21] *Id.* at 44.

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

[23] *Id.* at 45.

[24] *Id.*

[25] *Id.*

[26] *Id.* at 61.

[27] *Id.* at 52-A.

"was placed long after VECO installed their poles,"[28] the relocation of which was made after the fire broke out.[29] He claimed that their wirings and installations are in full compliance with the National Building Code and the Philippine Electrical Code, which allowed them to install their poles one half (½) meter inside the road-right-of-way and at least three (3) meters away from any structure.[30] According to him, it was M. Lhuillier which violated the National Building Code by placing their signage near their pole, thereby causing the abrasion and the fire.[31]

The Municipal Engineer of San Fernando, Cebu, Engr. Lauronal, averred that there was a road-widening project, which started in September 1997, and an accompanying construction of the drainage system, which commenced on October 6, 1997, in the Alfeches' and Manugas' area.[32] Their team asked the mayor to seek the relocation of VECO's posts as these would be affected by the drainage construction. VECO relocated its posts and consequently, its wires moved closer to the signage of M. Lhuillier with a distance of only eight (8) inches between them.[33] He also mentioned that the old location of VECO posts left a hole in the middle of the drainage.[34]

Melencion, an employee of VECO for 41 years, attested that he knew of the installation of the electric wires in the area.[35]

Engr. Constantino, also a VECO employee, testified that sometime in the last week of December, there was a complaint that the voltage in 11th Street, South Poblacion, San Fernando, Cebu was low. Upon inspection, he noticed that VECO's wires

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[28] *Id*.

[29] *Id*. at 46.

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

[31] *Id*. at 52.

[32] *Id*. at 63.

[33] *Id*. at 46.

[34] *Id*. at 70.

[35] *Id*. at 47.

near the signage of M. Lhuillier were newly installed. He noted that the wire used in the area was "a No. 4 aluminum standard, secondary system."[36]

Engr. Chavez was presented by VECO as an expert witness.[37] He noted that there were two (2) kinds of secondary systems used by utility companies: the line-to-line system and the line-to-ground system.[38] According to him, in a line-to-ground system, if one (1) of its wires was cut off, the flow of electricity would just continue; hence, this system was more likely to cause fire.[39]

Engr. Ornopia asserted that VECO used the line-to-line system for safety purposes.[40] Further, he stated that he personally conducted area inspections and that there was no report regarding any irregularity in the signage of M. Lhuillier.[41]

M. Lhuiller presented as its witnesses Ernesto G. Solon (Solon), Jose Edgar Camuta (Camuta), Randy Adlawan (Adlawan), and Rolando Baranquil (Baranquil).

Solon verified that he installed the signage of M. Lhuillier and emphasized that it was free from any obstacle upon installation.[42] He noted that in every installation, he would consider several factors:

> [T]hat the signage would not touch the electrical wirings of VECO, both primary and secondary wires, for safety purposes; that no pipes of [Metropolitan Cebu Water District] would be hit in making a hole; that the primary wires would have a distance of at least two (2) meters from the high tension wires; the secondary wires would not touch the signage and, that the signage [would] not be hit by the passing vehicles.[43]

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[36] *Id.* at 47.

[37] *Id.*

[38] *Id.* at 49.

[39] *Id.*

[40] *Id.*

[41] *Id.*

[42] *Id.* at 50.

[43] *Id.*

Camuta claimed that he won the contract to install M. Lhuillier's signage in 1995. He testified that before installing the signage, they had to ensure that it was "free from any obstacle."[44]

Adlawan, an M. Lhuillier employee,[45] held that "[the fire] started at the back of the house at the right portion [and spread] towards the firewall at the left side where the signage of M. Lhuillier was situated."[46]

The Regional Trial Court ruled that the proximate cause of the injury suffered by the Alfeches and Manugas was the negligence of M. Lhuillier. It noted that based on Engr. Banaag's testimony, M. Lhuillier installed its signage long after VECO moved its poles.[47] Thus, it was its negligence in installing and positioning its signage which led to the abrasion of VECO's power line and, ultimately, the fire.[48]

On appeal, the Court of Appeals reversed the Regional Trial Court decision and found VECO liable in M. Lhuillier's stead.[49] The Court of Appeals gave greater credence to the testimonies of Rabor and Engr. Lauronal, considering them to be impartial witnesses.[50] It noted that the relocation of the posts came before the fire, occasioned by the road widening and drainage projects.[51] Thus, VECO transferred the poles and the lines to a distance of merely eight (8) inches from M. Lhuillier's signboard. This, in turn, caused the abrasion of power lines and the fire:

These pieces of evidence move this Court to rule that it was VECO, not defendant-appellant M. Lhuillier, which was extremely remiss

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[44] *Id*.

[45] *Id*. at 65.

[46] *Id*. at 51.

[47] *Id*. at 52-A-53.

[48] *Id*. at 52-A.

[49] *Id*. at 69.

[50] *Id*.

[51] *Id*. at 70.

of its duty to ensure safe and secure transmission lines. It was utterly negligent of VECO to have allowed the transfer of the posts closer to the households without ensuring that they followed the same safety standards they used during the original installation of the posts. It must be emphasized that VECO, as the only electric distribution company in San Fernando, takes full charge and control of all the electric wires installed in the locality. It has the sole power and responsibility to transfer its wires to safe and secured places for all its consumers. However, they undoubtedly failed to observe the reasonable care and caution required of it under the circumstances. Hence, they are negligent.[52]

The dispositive portion of the assailed Court of Appeals Decision read:

> WHEREFORE, the instant appeal is GRANTED. The Decision of the Regional Trial Court Branch 11 of Cebu City dated 04 January 2006 is SET ASIDE and a New One Entered declaring defendant-appellee VISAYAN ELECTRIC COMPANY (VECO) negligent and liable for the damages suffered by the plaintiffs-appellees. The defendant-appellee VECO is ordered to pay the plaintiffs-appellees the following as temperate damages, to wit:
>
> 1. To Emilio Alfeche, the amount of ₱185,000.00
> 2. To Gilbert Alfeche, the amount of ₱800,000.00
> 3. To Emmanuel Manugas, the amount of ₱65,000.00
>
> The award of moral damages is deleted.
>
> SO ORDERED.[53]

Following the denial of its Motion for Reconsideration, VECO filed the present Petition.[54]

VECO insists that it is M. Lhuillier, and not itself, which should be held liable for the fire.[55] Asserting that it was impossible for its negligence to have caused the fire, it claims that its posts

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[52] *Id.* at 71.

[53] *Id.* at 76.

[54] *Id.* at 11-41.

[55] *Id.* at 31.

were relocated only after the fire occurred.[56] It adds that it was an error for the Court of Appeals to rely on Emilio's testimony, which it characterized as "self-serving."[57] It asserts that no witness ever corroborated Emilio's testimony that the posts were relocated before the fire.[58] It also challenges the findings of the Court of Appeals regarding Engr. Lauronal's testimony, claiming that he lacked personal knowledge as to when the posts were relocated and that he never testified that they were relocated before the fire.[59] It adds that although the picture shown by Engr. Lauronal was alleged to have been taken one (1) day after the fire occurred, it was only presented three (3) years after trial had commenced. This was supposedly the only basis of Engr. Lauronal's testimony pointing to the hole where the posts were previously located.[60] VECO also argues that the picture was not properly authenticated as required under the Rules on Evidence.[61]

M. Lhuillier counters that Engr. Lauronal's statements clearly showed that the relocation of the posts was made before the fire. It emphasizes that Engr. Lauronal stated during cross-examination that the relocation was made because of the drainage project which was undertaken from October 6, 1997 to November 28, 1997.[62] It further underscores that the contact between VECO's cables and its own signage would not have happened had VECO not relocated its posts.[63]

For resolution is the sole issue of whether or not the Court of Appeals erred in ruling that petitioner Visayan Electric Company Inc.'s negligence, rather than that of respondent M. Lhuillier Pawnshop and Jewelry, was the proximate cause of

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[56] *Id*. at 19.

[57] *Id*. at 23.

[58] *Id*. at 30.

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

[60] *Id*. at 26.

[61] *Id*. at 27.

[62] *Id*. at 147.

[63] *Id*. at 151.

the fire which razed the properties of respondents Emilio Alfeche, Gilbert Alfeche, and Emmanuel Manugas.

I

The case before this Court is replete with factual issues. Ordinarily, it is not for this Court to review factual issues in petitions such as the present Rule 45 Petition which may only raise questions of law.[64] This rule, however, admits certain exceptions:

(1) when the factual findings of the Court of Appeals and the trial court are contradictory;
(2) when the findings are grounded entirely on speculation, surmises, or conjectures;
(3) when the inference made by the Court of Appeals from its findings of fact is manifestly mistaken, absurd, or impossible;
(4) when there is grave abuse of discretion in the appreciation of facts;
(5) when the appellate court, in making its findings, goes beyond the issues of the case, and such findings are contrary to the admissions of both appellant and appellee;
(6) when the judgment of the Court of Appeals is premised on a misapprehension of facts;
(7) when the Court of Appeals fails to notice certain relevant facts which, if properly considered, will justify a different conclusion;
(8) when the findings of fact are themselves conflicting;
(9) when the findings of fact are conclusions without citation of the specific evidence on which they are based; and
(10) when the findings of fact of the Court of Appeals are premised on the absence of evidence but such findings are contradicted by the evidence on record.[65]

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[64] RULES OF COURT, Rule 45, Section 1:

Section 1. *Filing of petition with Supreme Court.* — A party desiring to appeal by *certiorari* from a judgment or final order or resolution of the Court of Appeals, the Sandiganbayan, the Regional Trial Court or other courts whenever authorized by law, may file with the Supreme Court a verified petition for review on *certiorari*. The petition shall raise only questions of law which must be distinctly set forth.

[65] *National Transmission Corporation v. Alphaomega Integrated Corporation,* 740 Phil. 87, 97 (2014) [Per J. Perlas-Bernabe, Second Division]

The findings of the Regional Trial Court and of the Court of Appeals differ in this case. The Regional Trial Court found that "had not defendant [M.] Lhuillier installed its signage in such a manner that it will come in contact with the secondary lines of defendant VECO, there could have been no short circuit which caused the fire."[66] On the other hand, the Court of Appeals found that "one VECO post was affected by the road widening work. Due to the transfer, the VECO wire already touched the signboard of M. Lhuillier pawnshop."[67] In the interest of arriving at a definite determination of the attendant liabilities, this Court exercises its power of review.

II

Despite the Regional Trial Court's and the Court of Appeals' divergence on the liabilities of VECO and M. Lhuillier, they are consistent in finding that the immediate cause of the fire was the short circuiting of VECO's wires. This short circuiting, in turn, happened because VECO's wires had been abraded or stripped of their insulation by their constant rubbing with M. Lhuillier's signage. The Regional Trial Court and the Court of Appeals are consistent in this regard.

The Regional Trial Court's statement that "there could have been no short circuit which caused the fire"[68] had M. Lhuillier installed its signage in a way that it would not touch VECO's secondary lines accepts as truth how the confluence of proximity, abrasion, and short circuiting led to the fire. For its part, the Court of Appeals stated:

> The constant abrasion led to the failure of the insulation thereby causing a short circuit which eventually led to the breaking and the burning of the wire. The burned and cut wire which fell on the roof of plaintiff-appellees' house was proven to be the main cause of the

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citing *Fuentes v. Court of Appeals,* 335 Phil. 1163 (1997) [Per *J.* Panganiban, Third Division].

[66] *Rollo*, pp. 52-A-53.

[67] *Id.* at 71.

[68] *Id.* at 52-A-53.

fire. These flow[s] of events reveal that the negligent act of defendant-appellee VECO in transferring its pole without providing the necessary precautionary and safety measure was the natural and probable result of the fire which caused damage to plaintiffs-appellees.[69]

This Court's inquiry proceeds from settled truth as to the immediate, factual cause of the fire. What is in dispute is whether VECO or M. Lhuillier was negligent to have engendered the confluence of proximity, abrasion, and short circuiting.

III

VECO attempts to altogether skirt any imputation of negligence by painting a scenario of impossibility. It claims that its wires could not have caused the fire by touching M. Lhuillier's signage as its posts were not transferred until after the fire occurred.

VECO's position is negated not only by the entire corpus of evidence but, more basically, by common sense.

To reiterate, the Regional Trial Court and the Court of Appeals are consistent in holding that proximity, abrasion, and short circuiting led to the fire. Common sense dictates that the wires and signage could never have rubbed against each other, or the wires abraded and short circuited, had they not been in close proximity. Common sense also shows that they could not have been in close proximity had not either the wires or the signage moved closer to the other. The testimonies of Solon and Camuta were definite that when M. Lhuillier's signage was installed in 1995, it was free from any obstacle. No allegation was made, let alone proof presented, that the signage had been relocated in the interim. In contrast, a plethora of evidence attests to the relocation of VECO's posts and wires. Heeding VECO's position demands not only this Court's disregard of the preponderant evidence against VECO but also this Court's acceptance of the absurdity and the impossibility that VECO's posts and wires must have moved closer to M. Lhuillier's signage by some unseen, even supernatural, force.

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[69] *Id*. at 72-73.

VECO's position is not only inherently impossible. Credible testimonies also militate against it. These testimonies remain credible despite VECO's attempts at undermining them.

VECO attempts to discredit Emilio by characterizing him as a biased witness, he being one (1) of the plaintiffs.

The fact of Emilio's being a plaintiff does not amount to bias against VECO vis-à-vis M. Lhuillier. That is, Emilio has not been shown to be actively impeding VECO's attempt to evade liability and to impute it instead to M. Lhuillier. In fact, his act of suing both VECO and M. Lhuillier indicates a lack of preference for any of them. It indicates, rather, his sole interest in the satisfaction of his claim for damages. Having brought an action against both VECO and M. Lhuillier, Emilio manifests intent to submit to judicial wisdom the determination of which between VECO and M. Lhuillier has been negligent and is liable.

VECO has also attempted to discredit the statements of its own witness, Engr. Lauronal.

On cross examination, Engr. Lauronal indicated that VECO's posts were transferred ahead of the fire. He definitely stated that VECO's posts were affected by the drainage project and that they had to be relocated.[70] According to him, the project commenced on October 6, 1997 and was already completed on November 28, 1997,[71] well ahead of the occurrence of the fire in the evening of January 6, 1998. He also stated that had it not been for the transfer, VECO's wires would not have touched M. Lhuillier's signage.[72]

Atty. Dalawampu (to the witness)

Q— Mr. Witness, you said that there was a road widening project at 11th Street, am I correct?

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[70] *Id*. at 148.

[71] *Id*. at 149.

[72] *Id*. at 151.

A– Yes, ma'am.

Q– You also said that there was a drainage project along the area, correct?

A- Yes, ma'am.

. . . . . .

Q– You said that there was a monitoring, were you aware that in the construction of the drainage at 11th Street, the VECO posts were affected, were you aware of that?

A– Our monitoring team requested the mayor of San Fernando to request VECO to relocate their posts, ma'am.

Q– Your monitoring team of your office requested the municipal mayor of San Fernando to ask VECO to relocate the posts because they were affected by the construction of drainage, meaning the drainage project had to pass through on that area where the VECO posts were located, am I correct?

A– Yes, ma'am.

. . . . . .

Q– Here is a VECO post as shown on this picture marked as Exhibit N-1. Can you tell this Honorable Court in the monitoring done by your office if this VECO post marked as Exhibit N-1 used to be located here on this hole marked as Exhibit N-5?

A– We didn't care anymore where the VECO post will be relocated, ma[']am.

Q– My question is, can you tell this Honorable Court if this post marked as Exhibit N-1 used to be in this hole, located in this hole marked as Exhibit N-5, that is the question?

A– Yes, the previous location of the post was this hole marked as N-5, ma[']am.

Q– This post which you are referring to is this Exhibit N-1, correct?

A– Yes, ma'am.

Q– But as shown on this picture Exhibit N, the VECO post at the other end of the street which was marked as Exhibit N-6 was not removed nor relocated?

A– Only the VECO post was relocated, ma'am.

Q– So, the only post that was relocated was Exhibit N-1, correct?

A– Yes, ma'am.

. . . . . .

Q– Because of the relocation, the wire connecting the two (2) posts, Exhibit N-1 and Exhibit N-6, was necessarily moved also closer to the houses along the area at the left?

A– Of course, it will be moved also because the VECO post was moved.

Q– And the movement of the post on Exhibit N-1 was towards or closer to the houses along the area?

A– Yes, ma'am.

Q– The drainage project which you are testifying before this Honorable Court was constructed or was undertaken on October 6, 1997, am I correct?

A– Yes, ma'am.

. . . . . .

Q– You mean to say that the duration of the construction should be up to November 28, 1997?

A– Yes, ma'am.

Q– Because of the transfer of this VECO post marked as Exhibit N-1, the wire connecting the two (2) posts Exhibit N-7 and N-1, had to touch the signage of M. Lhuillier, am I correct?

A– The distance of the wire from the M. Lhuillier signage was about 8 inches, the clearance, and they also placed a plastic material so that the wires will not touch the signage of M. Lhuillier, Ma'am.

Q– Engr. Lauronal, you are aware that the fire took place on January 6, 1998, in that area?

A– Yes, ma'am.

Q– Engr. Lauronal, there was no change in the location or situation of the wires connecting the 2 VECO posts after the fire, there was none yet?

A– Yes, there was no change, ma'am.[73]

On further cross-examination, Engr. Lauronal stated:

Atty. Dinsay (to the witness)

Q– Because of the drainage project they have to move the post a little bit inward to the left, correct?

A– Yes, sir.

Q– Engr. Lauronal, there was a gap from the electrical line to the signage of M. Lhuillier at about 8 inches, correct?

A– That's correct, sir.

Q– Since you are an engineer, can you estimate from this pole where you said the poles used to be and to the present location of the post marked as Exhibit N-1, can you please give us an estimate as to how far that is?

A– I can't give you an estimate, all I know is that the post was transferred.

Q– Can you tell whether the transfer from that former hole to the present position would be more than 8 inches?

A– I think more than 8 inches, sir.

Q– And, therefore, you would also say that had it not been for the fact that the post was moved more than 8 inches where it is now located, the electrical wire would not have touched the signage of M. Lhuillier, correct?

A– Yes, Sir.[74]

Different from what VECO suggests, Engr. Lauronal was not entirely dependent on Exhibit "N." On the contrary, when initially presented with Exhibit "N," he attempted to shrug it off by answering, "We didn't care anymore where the VECO post will be relocated."[75] Moreover, while he referenced Exhibit "N," the substance of Engr. Lauronal's testimony was not the

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[73] *Id*. at 147-150.

[74] *Id*. at 150-151.

[75] *Id*. at 148.

intricacies of Exhibit "N" and the veracity or the peculiarities of its features. The substance of his testimony, rather, was how VECO's posts and wires were transferred on account of road-widening and drainage projects, well ahead of the fire on January 6, 1998 and how these transfers brought VECO's wires closer to M. Lhuillier's signage.

Also contrary to VECO's suggestion that Engr. Lauronal was incompetent on the matters he had testified to, his testimony deserves great weight, he having testified in his capacity as the municipal engineer overseeing and liaising local projects. It is also particularly notable that Engr. Lauronal maintained a sense of objectivity and neutrality, speaking plainly of the facts, as he knew them, despite having been presented as VECO's own witness.

Engr. Banaag was VECO's sole witness on when it relocated its posts, claiming that the relocation happened after the fire.[76] While VECO has made much of the supposed biases of other witnesses, it is Engr. Banaag's testimony which should be treated with skepticism, he having admittedly worked for and represented VECO for 35 years.[77]

In any case, even Engr. Banaag's own testimony militates against VECO. In his testimony, he conceded that "the proximate cause of the fire was the breaking of the secondary wire forcibly caused by the abrasion of the signage of M. Lhuillier."[78] Engr. Banaag's conclusion, juxtaposed with VECO's claim that its posts and wires were not transferred until after the fire, strains credulity. Again, it runs afoul of common sense to claim that the wires and signage rubbed against each other if they had not been *previously* placed in close proximity. Certainly, someone must have placed them close to each other before they rubbed at each other. With an utter dearth of evidence indicating that it was the signage that moved, no reasonable conclusion is left other than that the wires and posts were moved. This transfer could

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[76] *Id*. at 197.

[77] *Id*. at 45.

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

not have been effected by anyone other than the electricity utility company responsible for their installation and maintenance, VECO.

IV

Thus, the Court of Appeals was correct in ruling that VECO's negligence was the proximate cause of the injury suffered by respondents Emilio, Gilbert, and Manugas. All the elements for liability for a quasi-delict under Article 2176 of the Civil Code[79] have been shown to be attendant on VECO's part. The elements of a quasi-delict are:

> (1) the damages suffered by the plaintiff; (2) the fault or negligence of the defendant or some other person for whose act he must respond; and (3) the connection of cause and effect between the fault or negligence and the damages incurred.[80]

On the first element, it is undisputed that the Alfeches and Manugas suffered damage because of the fire. What has hitherto remained unresolved is which between VECO and M. Lhuillier is liable to indemnify them.

Fault is "a voluntary act or omission which causes damage to the right of another giving rise to an obligation on the part of [another]."[81] On the other hand, "[n]egligence is the failure to observe for the protection of the interest of another person that degree of care, precaution and vigilance which the circumstances justly demand."[82]

Between VECO and M. Lhuillier, it is VECO which this Court finds to have been negligent.

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[79] CIVIL CODE, Art. 2176 provides:

> Article 2176. Whoever by act or omission causes damage to another, there being fault or negligence, is obliged to pay for the damage done. Such fault or negligence, if there is no pre-existing contractual relation between the parties, is called a quasi-delict and is governed by the provisions of this Chapter.

[80] *Child Learning Center, Inc. v. Tagario,* 512 Phil. 618, 623 (2005) [Per *J.* Azcuna, First Division].

[81] *Id*.

[82] *Id*. at 623-624.

M. Lhuillier was not negligent in installing its signage. It installed its signage in 1995 well before the road-widening and drainage projects commenced and ahead of VECO's relocation of its posts. Solon and Camuta both emphasized that the signage was installed free of any obstacle. Other than VECO's evasive accusations, there is no proof to the contrary.

It was VECO that was negligent. It is apparent that it transferred its posts and wires without regard for the hazards that the transfer entailed, particularly with respect to the installations which had previously been distant from the wires and posts but which had since come into close proximity.

VECO is a public utility tasked with distributing electricity to consumers. It is its duty to ensure that its posts are properly and safely installed. As the holder of a public franchise, it is to be presumed that it has the necessary resources and expertise to enable a safe and effective installation of its facilities. By installing its posts and wires haphazardly, without regard to how its wires could come in contact with a previously installed signage, VECO failed to act in keeping with the diligence required of it.

Proximate cause is defined as "that cause which, in natural and continuous sequence, unbroken by any efficient intervening cause, produces the injury and without which the result would not have occurred."[83]

VECO's negligence was the proximate cause of the damage suffered by the Alfeches and Manugas. It is settled that the confluence of proximity, abrasion, and short-circuiting led to the fire. The first of these—proximity—arose because of VECO's relocation of posts and wires. Installed in such a manner that its wires constantly touched M. Lhuillier's signage, this "led to the failure of the insulation thereby causing a short circuit which eventually led to the breaking and burning of the wire."[84]

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[83] *American Express International, Inc. v. Cordero,* 509 Phil. 619, 625 (2005) [Per *J.* Sandoval-Gutierrez, Third Division].

[84] *Rollo*, p. 72.

It was this burning wire that fell on the Alfeches' residence's roof and burned down their house and store, as well as Manugas' adjacent shop.

VECO would have this Court sustain a flimsy excuse for evading liability. Attempting to break the all too apparent causal connection between its negligence and the injury suffered by the plaintiffs, it would insist on absurdities that strain common sense and vainly attempt to discredit even its own witness. This Court finds no merit in VECO's pretenses and sustains the Court of Appeals decision.

WHEREFORE, the Petition for Review on Certiorari is **DENIED**. The Court of Appeals October 25, 2012 Decision and October 8, 2013 Resolution in CA-G.R. CV No. 02583 are **AFFIRMED.**

SO ORDERED.

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

Gesmundo, J., on leave.

THIRD DIVISION

[G.R. No. 211053. November 29, 2017]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **SEGFRED L. OROZCO, MANUEL D. OSIR, and ALBERTO B. MATURAN,** *accused,* **ERNIE N. CASTRO**, *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; REVISED PENAL CODE; MURDER; ELEMENTS.— To sustain a conviction under Article 248 of

the Revised Penal Code, the prosecution must prove that a person was killed, that the accused killed him, that the killing was not parricide or infanticide, and that the killing was attended by any of the qualifying circumstances mentioned under this Article.

2. **ID.; ID.; CONSPIRACY; MAY BE INFERRED AND PROVED THROUGH ACTS THAT SHOW A COMMON PURPOSE, A CONCERT OF ACTION, AND A COMMUNITY OF INTEREST.—** Conspiracy exists when two (2) or more persons come to an agreement concerning the commisision of a felony and decide to commit it. Its existence may be inferred and proved through acts that show a common purpose, a concert of action, and a community of interest. In this case, the prosecution proved the common purpose of all the accused, a concert of action, and a community of interest.

3. **REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; THE TRIAL COURT'S FACTUAL FINDINGS THEREON ARE TO BE GIVEN THE HIGHEST RESPECT.—** The trial court's factual findings, assessment of the credibility of witnesses and the probative weight of their testimonies, and conclusions based on these factual findings are to be given the highest respect. When these have been affirmed by the Court of Appeals, this Court will generally not re-examine them. Here, the Court of Appeals and Regional Trial Court found Lalona's testimony to be credible, considering that it was candid, categorical, and straightforward x x x.

APPEARANCES OF COUNSEL

Office of the Solicitor General for plaintiff-appellee.
Almeda Lozada & Associates for accused-appellant.

D E C I S I O N

LEONEN, *J.*:

Accused-appellant does not dispute being at the scene of the crime. He testified to taking a knife, giving chase, and stabbing the decedent. There is evidence beyond reasonable doubt that the victim was subdued by the decedent and his companions.

Thus, they employed means to weaken the victim's defense, constituting treachery.

This resolves an appeal[1] from the Court of Appeals November 28, 2013 Decision[2] in CA-G.R. CR HC No. 00891, affirming the conviction of Ernie N. Castro (Castro), Alberto B. Maturan (Maturan), and Segfred L. Orozco (Orozco) for the crime of murder.[3]

In an Amended Information dated December 1, 1998, Manuel D. Osir (Osir), Orozco, Maturan, and Castro were charged with the crime of murder. It read, in part:

> That on or about the 15th day of November, 1998, in the City of Surigao, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating together and mutually helping one another, taking advantage of superior strength and by means of treachery and armed with pointed weapons, did then and there willfully, unlawfully and feloniously attack, assault and stab Julius Joshua Mata with the use of said pointed weapons hitting the latter on the vital parts of his body, thereby inflicting upon him serious and mortal wounds which caused the death of said Julius Joshua Mata, to the damage and prejudice of the heirs of the deceased in such amount as may be allowed by law.[4]

Orozco and Osir were arraigned on January 25, 1999 and pled not guilty, while Castro and Maturan were still at large. Trial for Orozco and Osir ensued.[5] On March 9, 2002, Maturan was arrested and pled not guilty upon arraignment on July 3, 2002. Castro was arrested on November 23, 2006 and arraigned on December 22, 2006. He offered to plead guilty to the lesser

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[1] The appeal was filed under Rule 124, Section 13(c) of the Rules of Court.

[2] *Rollo,* pp. 3-15. The Decision was penned by Associate Justice Edgardo T. Lloren and concurred in by Associate Justices Oscar V. Badelles and Edward B. Contreras of the Special Twenty-Third Division, Court of Appeals, Cagayan de Oro City.

[3] *Id*. at 3.

[4] *Id*. at 4.

[5] *Id*.

offense of homicide; but this was rejected, and a plea of "not guilty" was entered for him.[6]

Osir passed away during the course of trial, and the case against him was dismissed in an Order dated February 20, 2008.[7]

The version of the prosecution was as follows:

Eyewitness Susan Lalona (Lalona) testified that on the evening of November 15, 1998, she was at Murillo's Restaurant,[8] Magallanes Street, Surigao City with her friend and herein victim, Julius Joshua Mata (Mata). They were the only customers at that time.[9]

Later, Orozco, Osir, Castro, and Maturan, apparently drunk, entered and occupied the table in front of Lalona and Mata. Shortly after they ordered beer, Orozco approached Mata from behind and stabbed him twice with a small bolo. Mata shouted that he was stabbed. Lalona grabbed Orozco and wrestled with him, but he pushed her back. When Mata tried to run out, the rest of the accused caught him. While Maturan and Osir held Mata's arms, Castro stabbed him in the chest. The four (4) accused continued stabbing Mata and ran away when Lalona shouted for help. Lalona took Mata to the Caraga Regional Hospital on a tricycle, but Mata was pronounced dead on arrival. Immediately after, Lalona went to Mata's house and told his relatives what had happened.[10]

On her way home, Lalona saw Castro walking along Sanchez Construction and reported it to her neighbor, PO1 Ulyses Ibarra (PO1 Ibarra), who then apprehended and took Castro to the police station.[11]

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

[7] *Id*. at 5.

[8] Different parts of the *rollo*, the records, and the transcripts of stenographic notes refer to it as "Murillo's Restaurant" and "Murillo's Store."

[9] *Rollo*, p. 5.

[10] *Id*.

[11] *Id*. at 6.

Dr. Milagros Regaña (Dr. Regaña) testified that on November 16, 1998, she conducted a post mortem examination on Mata's body, which provided the following details:

FINDINGS:

ESTIMATED WEIGHT	: 5'7"
LENGTH	: Over 60 kilos (sic)

FRONT:

1. Skin deep incised wound located on the right forehead 7.5 cm. long, extending from the hairline and ending between the right and left eye.
2. Skin deep incised wound 0.9 cm. long over the right nasal bone.
3. Small incised wound 1 cm. below wound number 2.
4. Stab wound measuring 2.4 cm. x 1.3 cm. located on the chest 7 cm. from the midsternal line at the level of the 3rd right anterior rib, directed downwards and medially towards the left and mediastinum 13 cm. deep.
5. Stab wound measuring 1 cm. x 4.5 cm. located on the postero-medial side, middle 3rd of right arm.
6. Abrasion, posterior [side] of right elbow.
7. Abrasion posterior side 3 cm. below wound number 6.
8. Confluent abrasion medial side of the right big toe.
9. Confluent abrasion medial side of the left big toe.

BACK

Wound No. 1 Stab wound measuring 1.7 cm. by 0.6 cm. 4.5 cm. from the middle 3rd of the right shoulder line 3.5 cm. deep directed towards the right shoulder joint.

Wound No. 2 Stab wound measuring 1.7 cm. x 0.6 cm. 13 cm. deep at the level of the 9[th] thoracic vertebra directed downwards along the left side of the 10th to the 12th thoracic vertebrae and to the 1st lumbar vertebra.

Wound No. 3 Stab wound measuring 2.3 cm. x 1 cm, 10.5 cm. deep 7 cm. from the 6th thoracic vertebra directed anteriorly and towards the right shoulder[.]

Wound No. 4 Stab wound measuring 2.6 cm. x 1.2 cm. directed anteriorly and downwards towards the posterior right axillary line and the right upper quadrant of the abdomen 18 cm. deep.

Wound No. 5 Linear abrasion 1.5 cm. located on the lateral side of the right forearm, distal 3rd.

Wound No. 6 Confluent abrasion over the left carpo phalangeal joint of the middle finger volar area.

CAUSE OF DEATH:

Cardiorespiratory arrest secondary to Severe Blood Loss secondary to Stab wounds on the chest and back.[12]

Dr. Regaña also testified that the size and nature of Mata's wounds could indicate the use of at least two (2) separate weapons.[13]

Mata's parents testified that they incurred ₱120,000.00 as funeral expenses for Mata.[14]

SPO1 Marlowe Cabaña (SPO1 Cabaña) and PO1 Ibarra testified on the respective arrests of Osir and Castro.[15]

The version of the defense was as follows:

All the accused admitted that on the night of November 15, 1998, after drinking beer at Pacelan Videoke in Bilang-bilang, Surigao City, they ordered another round of beer at Murillo's Restaurant. However, they had different versions of what had transpired there.[16]

Accused-appellant Castro testified that while they were drinking at Murillo's Restaurant, he went to play some music on the jukebox.[17] When he was at the jukebox, he heard a commotion and saw Orozco and a woman struggle then fall. The woman yelled, "Ta, run ta," and Mata ran to the exit. Castro

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

[13] *Id*. at 7.

[14] *Id*.

[15] *Id*.

[16] *Id*. at 7.

[17] *Id*. at 7-8.

thought that Mata may have stabbed Orozco, so he took a knife from a bucket of utensils and chased Mata. Orozco overtook Mata then stabbed him in the chest once. Seeing the ensuing commotion, Castro ran away from Murillo's Restaurant.[18]

Atty. Escalante:

. . . .

Q While playing the [jukebox] was there anything unusual that happened in that particular instance?

A While I was [at] the [jukebox] there was [a] commotion and when I turned back that was the time I saw the victim that [ran] outside.

Q What else did you notice?

A I saw Orozco fell down with a woman, they were struggling [with] each other.

Q Now, did you know who was that woman?

A I don't know her.

Q Did you hear any voices or shout?

A I heard the shout of the woman "Ta, run Ta".

. . . .

Q Now, after you have seen Orozco down with a woman whom you said you do not know, what did you do?

A I stood up and then I saw a knife on the table placed in the bucket full of spoons and fork[s] and I got it then I followed the victim.

Q What was your purpose in following the victim?

A Because I thought that the victim stabbed Orozco.

Q While you were running after the victim were you able to catch up with him?

A Yes, I had a face to face (nagharong kami) with him so I stabbed him.

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[18] *Id*. at 8.

Q Now, you said that you were facing each other and then you stabbed him. After stabbing him what happened next?

A I ran away, sir.

Q You ran away from the scene? To where?

A I went towards San Nicolas Street.

Q What was the reason why you were running away from the scene of the said incident?

A Because there was already commotion so I ran away.[19]

Court:

Q So you stabbed the victim?

A Yes.

Q How many times?

A Once.

Q What did you use?

A Knife which was among the utensils, [f]orks and spoons, [which were] placed on the table.

Q Was the stabbing inside or outside of the store?

A Outside.

Q Where was Maturan then?

A I was not able to notice him, sir.

(To the counsel)

In the Affidavit here somebody held the hands of the victim. Did you follow that?

Atty. Begil, Jr:

Yes, Your Honor.

Q Now, when you went outside, as you said in your direct testimony, outside M[u]rillo's Store on November 15, 1998, where were your other companions at that time?

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[19] Transcript of stenographic notes of hearing on February 20, 2008, pp. 11-14.

A Not anymore, sir.

Q Now, when you were able to stab the victim in this case what was the position of the victim?

A We were facing each other, sir.

Q And you stabbed him on the chest?

A Yes, somewhere front of the body.

Q When you stabbed the victim where were Maturan at that time?

A I was not able to see him anymore.

Q When you stabbed the victim what happened to him?

A Right after I stabbed him I immediately ran away.

Q What happened to him if you know?

A I did not anymore see because right after stabbing I turned my back and r[a]n away. There were several persons.

. . . . . .

Q When you were going to follow the victim outside the M[u]rillo's Store, did you notice where were Maturan and Osir at that time?

A I did not notice them anymore

. . . . . .

Q What were they doing the last time you saw them inside the M[u]rillo's Store before you r[a]n after the victim in this case?

A My only focus was on Tata.

Q You did not ask either Osir or Maturan what happened to your companion Orozco whom you said fell down?

A Not anymore, sir, because the incident happened so fast.

Q And you thought at that time when you followed the victim in this case that it was your companion Orozco who was stabbed?

A Yes, that was what I thought, sir.

Q Did you not ask Orozco what happened to him before following Tata?

A No, sir.

Q But the last time you saw Orozco before you followed the victim in this case he was down grappling with Susan Lal[o]na. Correct?

A Yes, sir.

Q And you did not try to help Orozco at that time?

A No, sir.

. . . . . .

Q What was your purpose in following the victim?

A To side with Orozco whom I thought was stabbed.

Q What you did was to follow the victim in this case but not to help Orozco who was grappling with Susan Lal[o]na?

A Yes, sir.[20]

Maturan testified that while they were drinking beer at Murillo's Restaurant, Orozco went to Mata's table and stabbed him. Mata's companion then held Orozco, and Mata ran toward the exit. Castro chased Mata. Orozco escaped from Mata's companion and followed Mata outside. Osir was already outside. Throughout the incident, Maturan was paralyzed from shock. Afterwards, he went home. The next day, he reported for work as a welder at his aunt's construction store.[21]

Orozco testified that he only drank one (1) glass of beer at Murillo's Restaurant then proceeded to the restroom. Afterwards, he immediately went to his tricycle outside the restaurant to pick up passengers.[22]

Osir testified that after ordering beer at Murillo's Restaurant, he went to the jukebox. He then went to a telephone outside the restaurant to call his girlfriend and waited while someone else was using it. While outside, he heard a commotion inside the

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[20] Transcript of stenographic notes, April 3, 2008, pp. 13-26.

[21] *Rollo,* p. 8.

[22] *Id*.

restaurant. He saw Lalona calling for help and Mata running to the exit. He witnessed Castro chase and stab Mata. When Mata fell, Castro sat on top of him. Osir stayed at the telephone booth, rattled. After calling his girlfriend, Osir ran toward the city hall then rode a tricycle home, afraid he would be implicated in Mata's stabbing.[23]

In its October 7, 2010 Decision, the Regional Trial Court found Maturan, Orozco, and accused-appellant Castro guilty of the crime of murder. The dispositive portion of this Decision read:

> WHEREFORE, the Court finds accused ERNIE CASTRO, SEGFRED OROZCO, and ALBERTO MATURAN GUILTY beyond reasonable doubt as co-principals by direct participation of the crime of MURDER qualified by treachery, penalized under Article 248 of the Revised Penal Code, and hereby sentences them to suffer the penalty of RECLUSION PERPETUA together with all its accessory penalties. They are also ordered to jointly and severally indemnify the heirs of Julius Joshua Mata the sum of Php 75,000.00 as civil indemnity, Php 50,000.00 as moral damages, and Php 120,000.00 as actual expenses.
>
> SO ORDERED.[24]

Maturan and Castro appealed to the Court of Appeals.[25]

In its November 28, 2013 Decision, the Court of Appeals affirmed the findings of the Regional Trial Court. The dispositive portion of this Decision read:

> WHEREFORE, premises considered, the appeal is DISMISED. The October 7, 2010 Decision of the Regional Trial Court, 10th Judicial Region, Branch 29 of Surigao City, in Criminal Case No. 5246 is hereby AFFIRMED *in toto*.
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> SO ORDERED.[26]

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[23] *Id*.

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

[25] *Id*. at 9.

[26] *Id*. at 15.

Thus, Castro filed a Notice of Appeal with the Court of Appeals.[27]

In compliance with its January 23, 2014 Resolution,[28] which gave due course to accused-appellant Castro's notice of appeal, the Court of Appeals elevated the records of the case to this Court.[29] On March 18, 2014, accused-appellant filed his supplemental brief.[30] In its March 31, 2014 Resolution, the Office of the Solicitor General was notified that it may file its supplemental brief.[31] On June 4, 2014, the Office of the Solicitor General filed a manifestation in lieu of a supplemental brief.[32]

In his supplemental brief, accused-appellant insists that the qualifying circumstance of treachery should not have been applied to all the accused.[33] There was no clear and convincing evidence proving the existence of conspiracy.[34] Considering that there was no conspiracy, accused-appellant should be liable only for the consequences of his individual acts and not for any treachery employed by the other accused.[35] No other issues were raised.

After carefully considering the parties' arguments and the records of this case, this Court resolves to **DISMISS** accused-appellant's appeal for failing to show reversible error in the assailed Court of Appeals November 28, 2013 Decision warranting the exercise of this Court's appellate jurisdiction.

Article 248 of the Revised Penal Code provides:

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[27] *Id.* at 16.

[28] CA *rollo*, p. 270.

[29] *Rollo,* p. 1.

[30] *Id.* at 24-52.

[31] *Id.* at 21.

[32] *Id.* at 57-61.

[33] *Id.* at 47.

[34] *Id.* at 35.

[35] *Id.* at 48.

Article 248. *Murder.* — Any person who, not falling within the provisions of article 246 shall kill another, shall be guilty of murder and shall be punished by reclusión temporal in its maximum period to death, if committed with any of the following attendant circumstances:

1. With treachery, taking advantage of superior strength, with the aid of armed men, or employing means to weaken the defense or of means or persons to insure or afford impunity.
2. In consideration of a price, reward or promise.
3. By means of inundation, fire, poison, explosion, shipwreck, stranding of a vessel, derailment or assault upon a street car or locomotive, fall of an airship, by means of motor vehicles, or with the use of any other means involving great waste and ruin.
4. On occasion of any of the calamities enumerated in the preceding paragraph, or of an earthquake, eruption of a volcano, destructive cyclone, epidemic, or any other public calamity.
5. With evident premeditation.
6. With cruelty, by deliberately and inhumanly augmenting the suffering of the victim, or outraging or scoffing at his person or corpse.

To sustain a conviction under Article 248 of the Revised Penal Code, the prosecution must prove that a person was killed, that the accused killed him, that the killing was not parricide or infanticide, and that the killing was attended by any of the qualifying circumstances mentioned under this Article.[36]

It is admitted that Mata was killed and that accused-appellant was one of those responsible for the stabs that led to his death. The only element disputed in this case is that the killing was attended by circumstances which qualify the crime as murder.

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[36] *People v. De la Cruz*, 626 Phil. 631, 639 (2010) [Per *J.* Velasco, Third Division], *citing* L.B. REYES, *THE REVISED PENAL CODE CRIMINAL LAW* 469 (16th ed., 2006).

In *People v. Dela Cruz*,[37]

> There is treachery when the offender commits any of the crimes against persons, employing means, methods, or forms in the execution, which tend directly and specially to insure its execution, without risk to the offender arising from the defense which the offended party might make. The essence of treachery is that the attack comes without a warning and in a swift, deliberate, and unexpected manner, affording the hapless, unarmed, and unsuspecting victim no chance to resist or escape. For treachery to be considered, two elements must concur: (1) the employment of means of execution that gives the persons attacked no opportunity to defend themselves or retaliate; and (2) the means of execution were deliberately or consciously adopted.[38]

The circumstances proved by the prosecution amply show that treachery attended the killing of Mata:

> As above-stated, Mata was completely helpless. His hands were held by two other persons while he was stabbed. To make matters worse, four persons, who were armed with knives, ganged-up on Mata. Certainly, Mata was completely deprived of any prerogative to defend himself or to retaliate.[39]

Accused-appellant claims that the prosecution failed to prove that treachery attended the killing of Mata, positing that the finding of treachery was based only on the fact that Orozco stabbed Mata suddenly in the back, which is insufficient to establish treachery.[40] This argument has no merit. Contrary to accused-appellant's contention, the finding of treachery was not based only on Orozco's act of swiftly stabbing Mata from behind. As observed by the Court of Appeals, Mata was helpless

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[37] 626 Phil. 631 (2010) [Per *J.* Velasco, Third Division].

[38] *Id*. at 639-640 citing *People v. Amazan*, 402 Phil. 247, 270 (2001) [Per *J.* Mendoza, Second Division]; *People v. Bato*, 401 Phil. 415, 431 (2000) [Per *J.* Pardo, First Division]; *People v. Albarido*, 420 Phil. 235, 252 (2001) [Per *J.* Sandoval-Gutierrez, Third Division], citing *People v. Francisco*, 389 Phil. 243, 266 (2000) [Per *J.* Kapunan, First Division].

[39] *Rollo,* pp. 13-14.

[40] *Id.* at 47-48.

against a group of persons with knives, who ganged up on him and held his hands while stabbing him.

There is likewise no sufficient ground to overturn the finding of conspiracy.

Conspiracy exists when two (2) or more persons come to an agreement concerning the commission of a felony and decide to commit it.[41] Its existence may be inferred and proved through acts that show a common purpose, a concert of action, and a community of interest.[42] In this case, the prosecution proved the common purpose of all the accused, a concert of action, and a community of interest. This Court quotes the Court of Appeals:

> In the case at hand, the overwhelming evidence is to the effect that accused-appellants and their co-accused acted in concert with a unity of purpose to kill Mata. After Orozco stabbed Mata in the back, the latter mustered his remaining strength to run away from his assailants. However, Osir, Maturan, and Castro chased and caught Mata. While Osir and Maturan held the hands of Mata, Castro stabbed the latter's chest. This caused Mata to fall on the ground. Still not contented with the dismal condition of the victim, all of the accused continued on stabbing the victim. Such carnage would not have stopped if not for the shouting made by Lalona to call for help. Clearly, the acts of the accused-appellants showed a unity of the criminal design to kill Mata.[43]

Accused-appellant insists that Lalona's testimony was insufficient to establish that he and his co-accused acted in conspiracy with one another, considering that it was not shown that they assumed positions or made statements showing a prior intention to kill Mata.[44] This claim has no merit. The finding of conspiracy was based on the fact that Orozco delivered the initial stabs to Mata's back and that the others chased, held down, and continued attacking him when he attempted to escape.

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[41] REV. PEN. CODE, Art. 8.

[42] See *People v. Andres*, 357 Phil. 321 (1998) [Per *J.* Panganiban, First Division].

[43] *Rollo,* p. 13.

[44] *Id.* at 43.

This finding was based on overt acts by all the accused, which were determined to be concerted actions.

Accused-appellant insists that Lalona's testimony is inconsistent, uncertain, and insufficient to establish treachery and conspiracy on the part of the accused.[45] This argument must be rejected.

The trial court's factual findings, assessment of the credibility of witnesses and the probative weight of their testimonies, and conclusions based on these factual findings are to be given the highest respect. When these have been affirmed by the Court of Appeals, this Court will generally not re-examine them.[46] Here, the Court of Appeals and Regional Trial Court found Lalona's testimony to be credible, considering that it was candid, categorical, and straightforward:

> Lalona, the eye-witness to the gruesome killing of Mata, was candid, categorical and straightforward throughout the course of her examination. Hence the trial court gave ample credence to the testimony of the said witness.
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> . . . . . .
>
> Lalona, in her testimony, convincingly narrated a complete picture of what really transpired during that fateful night . . .
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> . . . . . .
>
> Moreover, whatever doubts that surrounded Lalona's credibility as an eyewitness were purged by her clear and straightforward testimony during the trial. While there might have been several minor inconsistencies in her testimony, Lalona was nonetheless able to give a candid narration of the crime which she claimed to have transpired right before her very eyes. Certainly, this Court does not demand from the said witness a blow by blow account of the incident. Her positive identification of the accused-appellants in open court as the persons who stabbed and mauled the victim was unerring. A truth-telling witness is not always expected to give an error-free testimony, considering the lapse of time and treachery of human memory. Thus, We have followed the rule in accord with human nature and experience that honest inconsistencies on minor and trivial matters serve to

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[45] *Id.* at 35-40.

[46] See *People v. Castel*, 593 Phil. 288 (2008) [Per *J.* Reyes, *En Banc*].

strengthen, rather than destroy, the credibility of a witness, especially of witnesses to crimes shocking to conscience and numbing to senses.

It should be noted that Lalona was recalled several times to the witness stand because of the fact that herein appellants were arrested long after the prosecution rested its case. Lalona first testified on February 22, 1999. Then, on November 22, 2002, she testified again after the arrest of Maturan. And finally, on April 26, 2007, she appeared before the trial court after the arrest of Castro. Given the foregoing, it would be unreasonable to expect from Lalona to recall to the exact detail the testimony she had given years ago.[47] (Citation omitted)

Accused-appellant has failed to present any cogent reason to reverse the factual findings of the Court of Appeals and of the Regional Trial Court.

However, in line with current jurisprudence, ₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages, and ₱75,000.00 as exemplary damages shall be awarded to the heirs of Mata.[48]

WHEREFORE, this Court **ADOPTS** the findings of fact and conclusions of the Court of Appeals November 28, 2013 Decision in CA-G.R. CR HC No. 00891, which found accused-appellant Ernie N. Castro and his co-accused Segfred L. Orozco, and Alberto B. Maturan **GUILTY** beyond reasonable doubt of the crime of murder, and sentences them to *reclusión perpetua*. This assailed Decision is **AFFIRMED with MODIFICATION** in that the award of damages shall be ₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages, ₱75,000.00 as exemplary damages, and ₱120,000.00 as actual damages. The award of damages shall be subject to an interest at the rate of six percent (6%) per annum from the finality of judgment until fully paid.

SO ORDERED.

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

Gesmundo, J., on leave.

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[47] *Rollo,* pp. 10, 12-13.

[48] *People v. Jugueta*, G.R. No. 202124, April 5, 2016 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2016/april2016/202124.pdf> [Per *J.* Peralta, *En Banc*].

SECOND DIVISION

[G.R. No. 216139. November 29, 2017]

BERNARDO S. ZAMORA, *petitioner, vs.* **EMMANUEL Z. QUINAN, JR., EMMANUEL J. QUINAN, SR., EFREM Z. QUINAN and EMMA ROSE Q. QUIMBO,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; FORUM SHOPPING; THERE IS IDENTITY OF CAUSES OF ACTION, PARTIES AND RELIEFS SOUGHT IN THE ACTION FILED BY PETITIONER FOR RECONVEYANCE OF PROPERTIES BEFORE THE REGIONAL TRIAL COURT AND THE PETITION FOR ANNULMENT OF JUDGMENT FILED BEFORE THE COURT OF APPEALS.— A review of the cases, as well as the remedies sought by petitioner in the RTC, as well as in the CA shows that petitioner has, indeed committed forum shopping. There is identity of causes of action, parties and reliefs sought in the action he filed for the reconveyance of properties before the RTC and the petition for annulment of judgment filed before the CA. x x x Prudence should have dictated petitioner to await first the decision of the RTC in the reconveyance as it was the first case he filed before seeking other remedies. This Court reminds the petitioner and his lawyer that forum shopping constitutes abuse of court processes, which tends to degrade the administration of justice, to wreak havoc upon orderly juridical procedure, and to add to the congestion of the already burdened dockets of the courts.

2. ID.; ID.; ID.; RATIONALE BEHIND THE RULE PROSCRIBING FORUM SHOPPING, REITERATED.— [T]he rule proscribing forum shopping seeks to foster candor and transparency between lawyers and their clients in appearing before the courts — to promote the orderly administration of justice, prevent undue inconvenience upon the other party, and save the precious time of the courts. It also aims to prevent the embarrassing possibility of two or more courts or agencies rendering conflicting resolutions or decisions upon the same issue.

3. ID.; ID.; ID.; EFFECTS OF WILLFUL AND DELIBERATE FORUM SHOPPING.— [T]he CA did not commit an error in outrightly dismissing petitioner's petition. It must be remembered that the acts of a party or his counsel, clearly constituting willful and deliberate forum shopping shall be ground for the summary dismissal of the case with prejudice, and shall constitute direct contempt, as well as be a cause for administrative sanctions against the lawyer. Also, SC Circular No. 28-91 states that the deliberate filing of multiple complaints by any party and his counsel to obtain favorable action constitutes forum shopping and shall be a ground for summary dismissal thereof and shall constitute direct contempt of court, without prejudice to disciplinary proceeding against the counsel and the filing of a criminal action against the guilty party. In *Spouses Arevalo v. Planters Development Bank*, this Court further reiterated that once there is a finding of forum shopping, the penalty is summary dismissal not only of the petition pending before this Court, but also of the other case that is pending in a lower court.

APPEARANCES OF COUNSEL

Rodolfo A. Ugang, Sr. for petitioner.
Almerio L. Navarro for respondents.

D E C I S I O N

PERALTA, *J.*:

Before this Court is the Petition for Review on *Certiorari* under Rule 45 of the Rules of Court dated January 16, 2015 of petitioner Bernardo S. Zamora that seeks to reverse and set aside the Resolution[1] dated July 31, 2014 and Resolution[2] dated November 27, 2014 of the Court of Appeals (*CA*) granting respondents Emmanuel Z. Quinan, Jr., Emmanuel J. Quinan,

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[1] Penned by Associate Justice Gabriel T. Ingles, with the concurrence of Associate Justices Pamela Ann Abella Maxino and Renato C. Francisco; *rollo,* pp. 73-76.

[2] *Id.* at 16-17.

Sr., Efrem Z. Quinan and Emma Rose Q. Quimbo's motion to dismiss on account of petitioner's act of forum shopping.

The facts follow.

Petitioner, on June 19 2006, filed a Complaint for Reconveyance of Title of Real Properties fraudulently obtained with the Regional Trial Court (*RTC*) of Cebu City, Branch 19 and docketed as Civil Case No. CEB-32448 claiming that he is in possession of the original of the Transfer Certificate of Titles, against respondents, who earlier filed a Petition for the Issuance of New Duplicate Certificate of Title, which was granted by the RTC of Cebu City, Branch 9, in a Resolution dated April 11, 2006.

Pending the resolution of petitioner's complaint, he commenced another action before the Court of Appeals, Cebu City, on November 4, 2008, docketed as CA-G.R. SP. No. 03830 for the Annulment of Judgment of the RTC of Cebu City, Branch 9, which was dismissed based on technicalities in a Resolution dated April 22, 2009.

Then, again, on June 5, 2009, petitioner commenced another civil action before the CA for the Annulment of Judgment of the RTC of Cebu City, Branch 9, and docketed as CA G.R. SP. No. 04278.

On September 1, 2010, the RTC of Cebu City, Branch 19 dismissed Civil Case No. CEB-32448 on the ground of forum shopping.

Thereafter, the respondents filed with the CA a motion to dismiss CA- G.R. SP. No. 04278 claiming that petitioner has resorted to forum shopping, which was granted by the CA in its Resolution dated July 31, 2014, the dispositive portion of which reads, as follows:

> IN VIEW OF THE FOREGOING, the motion to dismiss is GRANTED. On account of petitioner Zamora's act of forum shopping, he and his counsel are hereby admonished that a repetition of this abhorrent act shall be dealt with more severely.
>
> SO ORDERED.

According to the CA, petitioner committed forum shopping because there is identity of causes of action, parties and reliefs sought in the action filed by him for reconveyance of real properties instituted before the RTC and the petition for annulment of judgment instituted before the CA.

Thus, petitioner filed a motion for reconsideration, but was denied by the CA in its Resolution dated November 27, 2014.

Hence, the present petition.

Petitioner assigns the following errors:

I

THE COURT OF APPEALS IN CEBU CITY, EIGHTEENTH (18TH) DIVISION SERIOUSLY AND FATALLY ERRED IN DISMISSING CA G.R. CEB SP NO. 04278 FOR ANNULMENT OF JUDGMENT OF THE REGIONAL TRIAL COURT OF CEBU CITY, BRANCH 9, ETC. ON MERE TECHNICALITIES THAT IMPEDED THE CAUSE OF JUSTICE AND THE PARTIES' RIGHT TO AN OPPORTUNITY TO BE HEARD.

II

THE COURT *A QUO* SERIOUSLY AND FATALLY ERRED IN IGNORING AND DISREGARDING THE JURISPRUDENTIAL RULING IN *CAMITAN V. FIDELITY INVESTMENT CORPORATION*, 551 SCRA 540, APRIL 16, 2008, WHICH STATES THAT IF AN OWNER'S DUPLICATE COPY OF A CERTIFICATE OF TITLE HAS NOT BEEN LOST BUT IN FACT IN THE POSSESSION OF ANOTHER PERSON, THE RECONSTITUTED TITLE IS VOID, AS THE COURT RENDERING THE DECISION NEVER ACQUIRES JURISDICTION.

It is the contention of petitioner that the CA should have relaxed the procedural rules so as to give him an opportunity to be heard. Petitioner further argues and insists that the subject owner's duplicated copies of transfer certificate of titles are still in his possession and were never lost as alleged by the respondents and as such, the reconstituted transfer certificate of titles in the name of respondents should be declared void because the RTC of Cebu City, Branch 9 never acquired

jurisdiction over the case as held by this Court in *Camitan v. Fidelity Investment Corporation*.[3]

In a Resolution dated March 18, 2015, this Court denied the present petition for failure of the petitioner to show any reversible error in the challenged resolutions as to warrant the exercise of this Court's discretionary appellate jurisdiction.

Petitioner filed his motion for reconsideration reiterating the arguments he raised in his petition and, on July 29, 2015, this Court ordered the respondents to file their comment on the said motion for reconsideration.

Respondents, in their Comment dated October 2, 2015, insist that petitioner committed forum shopping.

On January 18, 2016, this Court granted petitioner's motion for reconsideration and set aside its Resolution dated March 18, 2015.

After careful consideration, this Court finds no merit in the petition.

The rule against forum shopping is embodied in Rule 7, Section 5 of the Revised Rules of Court:

> Sec. 5. *Certification against forum shopping.*— The plaintiff or principal party shall certify under oath in the complaint or other initiatory pleading asserting a claim for relief, or in a sworn certification annexed thereto and simultaneously filed therewith: (a) that he has not theretofore commenced any action or filed any claim involving the same issues in any court, tribunal or quasi-judicial agency and, to the best of his knowledge, no such other action or claim is pending therein; (b) if there is such other pending action or claim, a complete statement of the present status thereof; and (c) if he should thereafter learn that the same or similar action or claim has been filed or is pending, he shall report that fact within five (5) days therefrom to the court wherein his aforesaid complaint or initiatory pleading has been filed.
>
> Failure to comply with the foregoing requirements shall not be curable by mere amendment of the complaint or other initiatory

[3] 574 Phil. 673, 685 (2008).

pleading but shall be cause for the dismissal of the case without prejudice, unless otherwise provided, upon motion and after hearing. The submission of a false certification or non-compliance with any of the undertakings therein shall constitute indirect contempt of court, without prejudice to the corresponding administrative and criminal actions. If the acts of the party or his counsel clearly constitute willful and deliberate forum shopping, the same shall be ground for summary dismissal with prejudice and shall constitute direct contempt, as well as a cause for administrative sanctions.

In *City of Taguig v. City of Makati,*[4] this Court was able to thoroughly discuss the concept of forum shopping through the past decisions of this Court, thus:

Top Rate Construction & General Services, Inc. v. Paxton Development Corporation[5] explained that:

> Forum shopping is committed by a party who institutes two or more suits in different courts, either simultaneously or successively, in order to ask the courts to rule on the same or related causes or to grant the same or substantially the same reliefs, on the supposition that one or the other court would make a favorable disposition or increase a party's chances of obtaining a favorable decision or action.[6]

First Philippine International Bank v. Court of Appeals[7] recounted that forum shopping originated as a concept in private international law:

> To begin with, forum-shopping originated as a concept in private international law, where non-resident litigants are given the option to choose the forum or place wherein to bring their suit for various reasons or excuses, including to secure procedural

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[4] G.R. No. 208393, June 15, 2016, 793 SCRA 527, 546-552.

[5] 457 Phil. 740 (2003) [Per *J.* Bellosillo, Second Division].

[6] *Id.* at 747-748, citing *Santos v. Commission on Elections*, 447 Phil. 760, 770-771 (2003) [Per *J.* Ynares-Santiago, *En Banc*]; *Young v. Keng Seng*, 446 Phil. 823, 832 (2003) [Per *J.* Panganiban, Third Division]; *Executive Secretary v. Gordon*, 359 Phil. 266, 271-272 (1998) [Per *J.* Mendoza, *En Banc*]

[7] 322 Phil. 280 (1996) [Per *J.* Panganiban, Third Division].

advantages, to annoy and harass the defendant, to avoid overcrowded dockets, or to select a more friendly venue. To combat these less than honorable excuses, the principle of *forum non conveniens* was developed whereby a court, in conflicts of law cases, may refuse impositions on its jurisdiction where it is not the most "convenient" or available forum and the parties are not precluded from seeking remedies elsewhere.

In this light, *Black's Law Dictionary* says that forum-shopping "occurs when a party attempts to have his action tried in a particular court or jurisdiction where he feels he will receive the most favorable judgment or verdict." Hence, according to *Words and Phrases*, "a litigant is open to the charge of 'forum shopping' whenever he chooses a forum with slight connection to factual circumstances surrounding his suit, and litigants should be encouraged to attempt to settle their differences without imposing undue expense and vexatious situations on the courts."[8]

Further, *Prubankers Association v. Prudential Bank and Trust Co.*[9] recounted that:

The rule on forum-shopping was first included in Section 17 of the Interim Rules and Guidelines issued by this Court on January 11, 1983, which imposed a sanction in this wise: "A violation of the rule shall constitute contempt of court and shall be a cause for the summary dismissal of both petitions, without prejudice to the taking of appropriate action against the counsel or party concerned." Thereafter, the Court restated the rule in Revised Circular No. 28-91 and Administrative Circular No. 04-94. Ultimately, the rule was embodied in the 1997 amendments to the Rules of Court.[10]

Presently, Rule 7, Section 5 of the 1997 Rules of Civil Procedure requires that a Certification against Forum Shopping be appended to every complaint or initiatory pleading asserting a claim for relief. x x x

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[8] *Id.* at 303-304, citing SALONGA, *PRIVATE INTERNATIONAL LAW*, p. 56 *et seq.* (1995), *Black's Law Dictionary*, 590 (5th ed., 1979); and 17 Words and Phrases 646 (permanent ed.).

[9] 361 Phil. 744 (1999) [Per *J.* Panganiban, Third Division].

[10] *Id.* at 754-755.

x x x x x x x x x

Though contained in the same provision of the 1997 Rules of Civil Procedure, the rule requiring the inclusion of a Certification against Forum Shopping is distinct from the rule against forum shopping. In *Korea Exchange Bank v. Gonzales*:[11]

> The general rule is that compliance with the certificate of forum shopping is separate from and independent of the avoidance of the act of forum shopping itself. Forum shopping is a ground for summary dismissal of both initiatory pleadings without prejudice to the taking of appropriate action against the counsel or party concerned.[12]

Top Rate Construction discussed the rationale for the rule against forum shopping as follows:

> It is an act of malpractice for it trifles with the courts, abuses their processes, degrades the administration of justice and adds to the already congested court dockets. What is critical is the vexation brought upon the courts and the litigants by a party who asks different courts to rule on the same or related causes and grant the same or substantially the same reliefs and in the process creates the possibility of conflicting decisions being rendered by the different fora upon the same issues, regardless of whether the court in which one of the suits was brought has no jurisdiction over the action.[13]

Jurisprudence has recognized that forum shopping can be committed in several ways:

> (1) filing multiple cases based on the same cause of action and with the same prayer, the previous case not having been resolved yet (where the ground for dismissal is *litis pendentia*); (2) filing

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[11] 496 Phil. 127 (2005) [Per *J*. Callejo, Sr., Second Division].

[12] *Id.* at 145, citing *Prubankers Association v. Prudential Bank and Trust Co., supra* note 9.

[13] *Top Rate Construction & General Services, Inc. v. Paxton Development Corporation*, *supra* note 5, at 748, citing *Joy Mart Consolidated Corp. v. Court of Appeals*, G.R. No. 88705, June 11, 1992, 209 SCRA 738, 745 [Per *J*. Griño-Aquino, First Division] and *Villanueva v. Adre*, 254 Phil. 882, 888 (1989) [Per *J.* Sarmiento, Second Division].

> multiple cases based on the same cause of action and the same prayer, the previous case having been finally resolved (where the ground for dismissal is *res judicata*); and (3) filing multiple cases based on the same cause of action but with different prayers (splitting of causes of action, where the ground for dismissal is also either *litis pendentia* or *res judicata*).[14] (Emphasis in the original)

Similarly, it has been recognized that forum shopping exists "where a party attempts to obtain a preliminary injunction in another court after failing to obtain the same from the original court."[15]

The test for determining forum shopping is settled. In *Yap v. Chua, et al.*:[16]

> To determine whether a party violated the rule against forum shopping, the most important factor to ask is whether the elements of *litis pendentia* are present, or whether a final judgment in one case will amount to *res judicata* in another; otherwise stated, the test for determining forum shopping is whether in the two (or more) cases pending, there is identity of parties, rights or causes of action, and reliefs sought.[17]

For its part, *litis pendentia* "refers to that situation wherein another action is pending between the same parties for the same cause of action, such that the second action becomes unnecessary and vexatious."[18] For *litis pendentia* to exist, three (3) requisites must concur:

> 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

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[14] *Collantes v. Court of Appeals*, 546 Phil. 391, 400 (2007) [Per *J.* Chico-Nazario, *En Banc*], citing *Ao-As v. Court of Appeals*, 524 Phil. 645, 660 (2006) [Per *J.* Chico-Nazario, First Division].

[15] *Executive Secretary v. Gordon*, *supra* note 6, at 272, citing *Fil-Estate Golf and Development, Inc. v. Court of Appeals*, 333 Phil. 465, 486-487 (1996) [Per *J.* Kapunan, First Division].

[16] 687 Phil. 392 (2012) [Per *J.* Reyes, Second Division].

[17] *Id.* at. 400, citing *Young v. John Keng Seng*, *supra* note 6, at 833.

[18] *Id.*

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.[19]

On the other hand, res judicata or prior judgment bars a subsequent case when the following requisites are satisfied:

(1) the former judgment is *final*; (2) it is rendered by a court having *jurisdiction* over the subject matter and the parties; (3) it is a judgment or an order *on the merits*; (4) there is — between the first and the second actions — *identity* of parties, of subject matter, and of causes of action.[20] (Emphasis in the original)

These settled tests notwithstanding:

Ultimately, what is truly important to consider in determining whether forum-shopping exists or not is the vexation caused the courts and parties-litigant by a party who asks different courts and/or administrative agencies to rule on the same or related causes and/or to grant the same or substantially the same reliefs, in the process creating the possibility of conflicting decisions being rendered by the different fora upon the same issue.[21]

A review of the cases, as well as the remedies sought by petitioner in the RTC, as well as in the CA shows that petitioner has, indeed committed forum shopping. There is identity of causes of action, parties and reliefs sought in the action he filed for the reconveyance of properties before the RTC and the petition for annulment of judgment filed before the CA. As correctly observed and ruled by the CA:

There exists between the two actions identity of parties which represent the same interest in both. In petitioner's action for

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[19] *Id.,* citing *Villarica Pawnshop, Inc. v. Gernale*, 601 Phil. 66, 78 (2009) [Per *J.* Austria-Martinez, Third Division].

[20] *Luzon Development Bank v. Conquilla*, 507 Phil. 509, 523 (2005) [Per *J.* Panganiban, Third Division], citing *Allied Banking Corporation v. Court of Appeals*, 299 Phil. 252, 259 (1994).

[21] *First Philippine International Bank v. Court of Appeals*, *supra* note 7, at 313.

reconveyance, he seeks to recover the property which is wrongfully registered in respondents' name by postulating that respondent Quinan knew fully that petitioner was in possession of the originals of the owner's duplicate copies of the Transfer Certificate of Title No. T-90102 and Transfer Certificate of Title No. 90096 for Lot No. 98-F by virtue of the Deed of Absolute Sale signed by all respondents. Thus petitioner prays for the reconveyance of the said parcels of land in his name and he likewise seeks to be awarded of moral and exemplary damages, litigation expenses and attorney's fees in his favor.

The rights asserted and the reliefs prayed for by the petitioner were reiterated in his petition for annulment of judgment filed before this Court. The petition hinges on the contention that the lower court which renders the decision for the issuance of new owner's duplicate Certificate of Title in respondents' favor never acquires jurisdiction because the reconstituted title is void considering that the duplicate copy of the Certificate of Title has not been lost but it is in fact in the possession of the petitioner. Hence, he is seeking for the nullification of the decision rendered by RTC Branch 9 of Cebu City.

A comparison of the reliefs sought by petitioner in the reconveyance case and the annulment of judgment case under Rule 47 of the Rules of Court confirms that they are substantially similar on two points: (1) revocation and cancellation of the new certificate of titles granted in the name of herein respondents and (2) the recovery or consolidation of title in petitioner's favor. In other words, the rights asserted and the reliefs prayed for are being founded on the same facts. The identity of the two cases filed is such that a favorable judgment rendered in the lower court for the case of reconveyance will amount to *res judicata* in the action under consideration of this Court.

There is a clear violation of the rules on forum-shopping, as this Court is being asked to grant substantially similar reliefs as those that may also be granted by the court a quo while the case was still pending with the latter. In the process, this creates a possibility of creating two separate and conflicting decisions.[22]

Prudence should have dictated petitioner to await first the decision of the RTC in the reconveyance as it was the first case he filed before seeking other remedies. This Court reminds

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[22] *Rollo,* pp. 75-76.

the petitioner and his lawyer that forum shopping constitutes abuse of court processes, which tends to degrade the administration of justice, to wreak havoc upon orderly juridical procedure, and to add to the congestion of the already burdened dockets of the courts.[23] Further, the rule proscribing forum shopping seeks to foster candor and transparency between lawyers and their clients in appearing before the courts — to promote the orderly administration of justice, prevent undue inconvenience upon the other party, and save the precious time of the courts. It also aims to prevent the embarrassing possibility of two or more courts or agencies rendering conflicting resolutions or decisions upon the same issue.[24]

Thus, the CA did not commit an error in outrightly dismissing petitioner's petition. It must be remembered that the acts of a party or his counsel, clearly constituting willful and deliberate forum shopping shall be ground for the summary dismissal of the case with prejudice, and shall constitute direct contempt, as well as be a cause for administrative sanctions against the lawyer.[25] Also, SC Circular No. 28-91[26] states that the deliberate filing of multiple complaints by any party and his counsel to obtain favorable action constitutes forum shopping and shall be a ground for summary dismissal thereof and shall constitute direct contempt of court, without prejudice to disciplinary proceeding against the counsel and the filing of a criminal action against the guilty party. In *Spouses Arevalo v. Planters Development Bank*,[27] this Court further reiterated that once there is a finding of forum shopping, the penalty is summary dismissal not only of the petition pending before this Court, but also of the other case that is pending in a lower court.

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[23] *Villamor, Jr. v. Hon. Manalastas, et al.*, 764 Phil. 456, 475 (2015), citing *Wee v. Gonzales*, 479 Phil. 737, 750 (2004).

[24] *Id.*

[25] *Heirs of Marcelo Sotto v. Palicte*, 726 Phil. 651, 662 (2014), citing Section 5, Rule 7, Rules of Court.

[26] Supreme Court Administrative Circular No. 28-91, February 8, 1994.

[27] 686 Phil. 236 (2012).

WHEREFORE, the Petition for Review on *Certiorari* under Rule 45 of the Rules of Court dated January 16, 2015 of petitioner Bernardo S. Zamora is **DENIED** for lack of merit. Consequently, the Resolution dated July 31, 2014 and Resolution dated November 27, 2014 of the Court of Appeals are **AFFIRMED**.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 220685. November 29, 2017]

PEOPLE OF THE PHILIPPINES, *petitioner, vs.* **ERNESTO L. DELOS SANTOS,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CRIMINAL PROCEDURE; PRELIMINARY INVESTIGATION; PROBABLE CAUSE; DETERMINATION OF PROBABLE CAUSE IS ESSENTIALLY AN EXECUTIVE FUNCTION; AUTHORITY OF THE JUDGE TO DISMISS THE CASE MUST BE DONE ONLY IN CLEAR-CUT CASES WHEN THE EVIDENCE ON RECORD PLAINLY FAILS TO ESTABLISH PROBABLE CAUSE.— "A public prosecutor's determination of probable cause – that is, one made for the purpose of filing an [I]nformation in court – is essentially an executive function and, therefore, generally lies beyond the pale of judicial scrutiny." However, Section 5 (a), Rule 112 of the Revised Rules of Criminal Procedure explicitly states that **a judge may immediately dismiss a case if the evidence on record clearly fails to establish probable cause,** x x x[.] In *De Los Santos-Dio v. CA,* the Court explained that **"the judge's dismissal of a case**

[under the authority of the aforesaid provision] must be done only in clear-cut cases when the evidence on record plainly fails to establish probable cause – that is when the records readily show uncontroverted, and thus, established facts which unmistakably negate the existence of the elements of the crime charged. On the contrary, if the evidence on record [show] that, more likely than not, the crime charged has been committed and that respondent is probably guilty of the same, the judge should not dismiss the case and thereon, order the parties to proceed to trial. In doubtful cases, however, the appropriate course of action would be to order the presentation of additional evidence."

2. ID.; ID.; ID.; ID.; ABSENCE OF KEY ELEMENTS OF THE CRIME OF QUALIFIED THEFT WARRANTS DISMISSAL OF THE CASE FOR LACK OF PROBABLE CAUSE.— [T]he Court concurs with the CA Fourth Division's finding that there was no probable cause against herein respondent for the crime of qualified theft, considering the glaring absence of certain key elements thereof. Notably, "for the public prosecutor to determine if there exists a well-founded belief that a crime has been committed, and that the suspect is probably guilty of the same, the elements of the crime charged should, in all reasonable likelihood, be present. This is based on the principle that every crime is defined by its elements, without which there should be, at the most, no criminal offense." x x x As correctly ruled by the CA, the elements of lack of owner's consent and intent to gain are evidently absent in this case. x x x **It has been held that in cases where one, in good faith, "takes another's property under claim of title in himself, he is exempt from the charge of larceny, however puerile or mistaken the claim may in fact be. And the same is true where the taking is on behalf of another, believed to be the true owner.** The gist of the offense is the intent to deprive another of his property in a chattel, either for gain or out of wantonness or malice to deprive another of his right in the thing taken. This cannot be where the taker honestly believes the property is his own or that of another, and that he has a right to take possession of it for himself or for another," as in this case. x x x [T]he RTC gravely erred when it denied respondent's motion for judicial determination of probable cause. Instead, it should have granted the same and, accordingly, dismissed the case pursuant to Section 5 (a), Rule 112 as cited above.

APPEARANCES OF COUNSEL

Office of the Solicitor General for petitioner.
Madrid Danao Carullo for University of Manila.
Tacardon & Partners for respondent.

D E C I S I O N

PERLAS-BERNABE, *J.*:

Assailed in this petition for review on *certiorari*[1] are the Amended Decision[2] dated November 21, 2014 and the Resolution[3] dated August 28, 2015 of the Court of Appeals (CA) in CA-G.R. SP No. 128625, which (*a*) dismissed for lack of probable cause the complaint charging respondent Ernesto L. Delos Santos (respondent) with qualified theft, and (*b*) quashed the arrest warrant against him.

The Facts

In May 2007, respondent undertook the construction of the CTTL Building in Baguio City, adjacent to the Benguet Pines Tourist Inn (BPTI) which is a business establishment owned and operated by the University of Manila (UM). At that time, respondent's father, Virgilio Delos Santos (Virgilio), who was the President and Chairman of the Board of Trustees (BOT) of UM, allegedly ordered the employees of BPTI to assist respondent in all his needs in the construction. Specifically, respondent was permitted to tap into BPTI's electricity and water supply.[4]

Respondent's father died on January 21, 2008, and was succeeded by Emily Dodson De Leon (De Leon) as President

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[1] *Rollo*, Vol. I, pp. 83-149.

[2] *Id*. at 36-49. Penned by Associate Justice Rosmari D. Carandang with Associate Justices Ramon M. Bato, Jr. and Edwin D. Sorongon concurring, and Associate Justices Marlene Gonzales-Sison and Manuel M. Barrios dissenting.

[3] *Id*. at 67-75.

[4] See *id*. at 37.

of UM. On July 8, 2011, UM, represented by De Leon, filed a criminal complaint[5] against respondent for the qualified theft of the electricity and water supply of BPTI for the period 2007 to 2011, with a total value of ₱3,000,000.00 more or less, before the Office of the City Prosecutor of Baguio City.[6] In his defense,[7] respondent argued that his family aggregately owns 98.79% of UM; that he was explicitly allowed by his father to use the electricity and water supply of BPTI for the construction of the CTTL Building for which no opposition was aired by anyone; and that the complaint was filed as a result of his own opposition to the probate of his father's alleged holographic will, which was initiated by his sister, Maria Corazon Ramona Llamas De Los Santos, whom respondent claims is the live-in partner of De Leon.[8]

In a Resolution[9] dated July 29, 2011, the investigating prosecutor dismissed the complaint in view of the absence of the element of "lack of consent or knowledge of the owner," considering that Virgilio, while being the President and Chairman of the BOT of UM, explicitly allowed respondent to use the electricity and water supply of BPTI. It was likewise noted that Virgilio was a very generous father to his children; and that, while Virgilio was still alive, no complaint was filed against the respondent for his use of the electricity and water supply of BPTI.[10]

However, the aforestated Resolution was subsequently reversed upon the UM's motion for reconsideration.[11] In a Resolution on Review[12] dated September 23, 2011, Assistant

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[5] *Id*. at 198.

[6] See *id*. at 37 and 198.

[7] See Counter-Affidavit dated July 28, 2011; *id*. at 206-213.

[8] See *id*. at 38 and 207-209.

[9] Not attached to the *rollos*.

[10] See *rollo*, Vol. I, p. 38.

[11] See Amended Motion for Reconsideration dated August 22, 2011; *id*. at pp. 254-263.

[12] *Id*. at 283-286.

City Prosecutor Rolando T. Vergara (ACP Vergara) found sufficient evidence to establish probable cause for qualified theft (attended by the qualifying circumstance of grave abuse of confidence),[13] pointing out that respondent's defense of being expressly allowed by his father is barred under the Dead Man's Statute. Nonetheless, ACP Vergara held that the express consent of Virgilio, if there was any, was only limited to the period of the construction of the CTTL Building. However, even after the completion thereof, respondent did not disconnect the electrical and water connections to the damage and prejudice of UM. Moreover, considering that respondent was, at the time in question, not only the manager and operator of BPTI, but a stockholder and trustee of UM which owns BPTI, he was said to have had access to the BPTI premises and, thus, gravely abused the confidence reposed upon him by UM.[14]

The September 23, 2011 Resolution on Review was affirmed in the Second Resolution on Review[15] dated November 23, 2011, which denied respondent's motion for reconsideration for lack of merit.[16] Meanwhile, an Information[17] dated September 23, 2011 charging respondent with qualified theft was filed before the Regional Trial Court of Baguio City, Branch 7 (RTC). Consequently, respondent was arrested on September 27, 2011.[18]

Respondent challenged *via* a petition for review[19] before the Department of Justice (DOJ) the (*a*) September 23, 2011 Resolution on Review, and (*b*) November 23, 2011 Second Resolution on Review. Said petition was, however, dismissed in a Resolution[20] dated June 8, 2015.

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[13] *Id*. at 286.

[14] See *id*. at 285-286.

[15] *Id*. at 311-326. Signed by Deputy City Prosecutor-In Charge Gloria Caranto-Agunos.

[16] *Id*. at 326.

[17] *Id*. at 287.

[18] See *id*. at 39 and 91.

[19] Not attached to the *rollos*.

[20] *Rollo*, Vol. I, p. 362. Signed by Prosecutor General Claro A. Arellano.

Eventually, respondent filed before the RTC an Urgent Omnibus Motion: (1) For Judicial Determination of Probable Cause; (2) To Lift/Quash Warrant of Arrest; and (3) To Suspend/Defer Arraignment and/or any Proceeding,[21] alleging that the Information filed against him and the documents appended thereto failed to show proof sufficient to warrant the finding of probable cause for the crime of qualified theft.[22]

The RTC Ruling

In an Order[23] dated February 1, 2012, the RTC denied the Urgent Omnibus Motion upon a finding that probable cause indeed exists for the indictment of respondent, considering his admission that he caused the tapping of the electricity and water supply of BPTI.[24]

Aggrieved, respondent elevated said ruling to the CA on *certiorari*,[25] arguing, among others, that the testimonies attesting to the fact of Virgilio's consent to the tapping and diversion of the electrical and water connections are not barred under the Dead Man's Statute;[26] and that the RTC erred in declaring that proof of absence of the elements of the crime may be passed upon only in a full blown trial.[27]

The Proceedings Before the CA

In a Decision[28] dated July 30, 2013, the CA Special Tenth Division affirmed *in toto* the questioned Orders of the RTC, and remanded the case to the trial court for further proceedings.[29]

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[21] Not attached to the *rollos*.

[22] See *rollo*, Vol. I, p. 363.

[23] *Id*. at 363-365. Penned by Presiding Judge Mona Lisa V. Tiongson-Tabora.

[24] See *id*. at 364-365.

[25] See Petition for *Certiorari* dated February 15, 2013; *id*. at 399-456.

[26] See *id*. at 412-427.

[27] See *id*. at 427-435.

[28] *Id*. at 16-34. Penned by Associate Justice Francisco P. Acosta with Associate Justices Fernanda Lampas Peralta and Nina G. Antonio-Valenzuela concurring.

[29] *Id*. at 33.

Consequently, respondent moved for reconsideration[30] of the foregoing Decision. He likewise filed a motion for inhibition[31] attributing irregularities on the part of the members of the Special Tenth Division, which was granted amidst strong denial of respondent's accusations.[32]

The case was re-raffled to the CA Fourth Division (Division of Five), which issued on November 21, 2014, an Amended Decision[33] setting aside the Orders of the RTC, and thereby, dismissing the complaint for qualified theft and quashing the warrant of arrest against respondent.[34]

The CA Fourth Division categorically held that Virgilio, as majority stockholder, President, and Chairman of the BOT of the UM, had apparent authority to give consent to respondent's use of the electricity and water supply of BPTI. Hence, the element of lack of owner's consent was absent. Even if Virgilio was not, in fact, duly authorized by the BOT to give his consent to respondent's acts, the latter nonetheless acted in good faith on the basis of the permission given to him by his father, which negated another element of the crime, *i.e.*, the intent to gain.[35] In view of the "clear absence" of said elements, the CA Fourth Division declared that subjecting respondent to the rigors of trial would just be a futile exercise and a waste of the trial court's precious time and resources.[36]

Undaunted, UM filed a motion for reconsideration[37] of the Amended Decision dated November 21, 2014, which was,

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[30] See motion for reconsideration dated August 19, 2013; *id.* at 566-649.

[31] Not attached to the *rollos*.

[32] See *rollo*, Vol. I, p. 41.

[33] *Id.* at 36-49.

[34] *Id.* at 48.

[35] See *id.* at 43-45.

[36] See *id.* at 47-48.

[37] See Motion for Reconsideration (Re: Amended Decision dated 21 November 2014); *id.* at 702-760.

however, denied in a Resolution[38] dated August 28, 2015 for lack of merit. Hence, the instant petition for review on *certiorari* filed by the People of the Philippines (petitioner) insisting on the existence of probable cause against respondent for the crime of qualified theft.

The Issue Before the Court

The primordial issue for the Court's resolution is whether or not the CA erred in finding that the RTC gravely abused its discretion in holding that probable cause exists against respondent for qualified theft.

The Court's Ruling

The petition is not impressed with merit.

"A public prosecutor's determination of probable cause – that is, one made for the purpose of filing an [I]nformation in court – is essentially an executive function and, therefore, generally lies beyond the pale of judicial scrutiny."[39]

However, Section 5 (a), Rule 112 of the Revised Rules of Criminal Procedure explicitly states that **a judge may immediately dismiss a case if the evidence on record clearly fails to establish probable cause**, *viz.*:

Section 5. *When warrant of arrest may issue*. – (a) *By the Regional Trial Court*. – Within ten (10) days from the filing of the complaint or information, the judge shall personally evaluate the resolution of the prosecutor and its supporting evidence. He may immediately dismiss the case if the evidence on record clearly fails to establish probable cause. If he finds probable cause, he shall issue a warrant of arrest, or a commitment order if the accused had already been arrested, pursuant to a warrant issued by the judge who conducted preliminary investigation or when the complaint or information was filed pursuant to section 6 of this Rule. In case of doubt on the existence of probable cause, the judge may order the prosecutor to present additional evidence within five (5) days from notice and the issue

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[38] *Id.* at 68-75.

[39] *Aguilar v. DOJ*, 717 Phil. 789, 798 (2013).

must be resolved by the court within thirty (30) days from the filing of the complaint or information.

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(Emphasis and underscoring supplied)

In *De Los Santos-Dio v. CA*,[40] the Court explained that "**the judge's dismissal of a case [under the authority of the aforesaid provision] must be done only in clear-cut cases when the evidence on record plainly fails to establish probable cause – that is when the records readily show uncontroverted, and thus, established facts which unmistakably negate the existence of the elements of the crime charged**. On the contrary, if the evidence on record [show] that, more likely than not, the crime charged has been committed and that respondent is probably guilty of the same, the judge should not dismiss the case and thereon, order the parties to proceed to trial. In doubtful cases, however, the appropriate course of action would be to order the presentation of additional evidence."[41]

In this case, the Court concurs with the CA Fourth Division's finding that there was no probable cause against herein respondent for the crime of qualified theft, considering the glaring absence of certain key elements thereof. Notably, "for the public prosecutor to determine if there exists a well-founded belief that a crime has been committed, and that the suspect is probably guilty of the same, the elements of the crime charged should, in all reasonable likelihood, be present. This is based on the principle that every crime is defined by its elements, without which there should be, at the most, no criminal offense."[42]

The elements of qualified theft, punishable under Article 310, in relation to Articles 308 and 309, of the Revised Penal Code (RPC), are as follows: (*a*) the taking of personal property; (*b*) the said property belongs to another; (*c*) the said taking be

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[40] 712 Phil. 288 (2013).

[41] *Id.* at 307-308.

[42] *Aguilar v. DOJ*, *supra* note 39, at 800.

done with intent to gain; (*d*) it be done without the owner's consent; (*e*) it be accomplished without the use of violence or intimidation against persons, nor of force upon things; and (*f*) it be done under any of the circumstances enumerated in Article 310 of the RPC, *i.e.*, with grave abuse of confidence.[43]

As correctly ruled by the CA, the elements of lack of owner's consent and intent to gain are evidently absent in this case.

To recount, UM, which owns BPTI, is an educational institution established and owned by respondent's family. His father, Virgilio, owned 70.79%[44] of the entire shares of stock of the UM, and respondent himself claims 9.85%[45] share thereof. Virgilio was the President and Chairman of the BOT of UM at the time material to this case, and respondent himself was a board member and stockholder. Records disclose that respondent was permitted by Virgilio to tap into BPTI's electricity and water supply. As such, respondent had no criminal intent – as he, in fact, acted on the faith of his father's authority, on behalf of UM – to appropriate said personal property.

It has been held that in cases where one, in good faith, "takes another's property under claim of title in himself, he is exempt from the charge of larceny, however puerile or mistaken the claim may in fact be. And the same is true where the taking is on behalf of another, believed to be the true owner. The gist of the offense is the intent to deprive another of his property in a chattel, either for gain or out of wantonness or malice to deprive another of his right in the thing taken. This cannot be where the taker honestly believes the property is his own or that of another, and that he has a right to take possession of it for himself or for another,"[46] as in this case.

The fact that respondent's shares of stock in UM represents only a proportionate or aliquot interest in the property of the

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[43] *Matrido v. People*, 610 Phil. 203, 211-212 (2009).

[44] *Rollo*, p. 415.

[45] *Id*.

[46] *Gaviola v. People*, 516 Phil. 228, 238 (2006); citation omitted.

corporation, or that his interest was only equitable or beneficial in nature[47] does not negate respondent's belief that he and his family own UM, and that the consent of his father was sufficient for the use of BPTI's electricity and water supply. As correctly reasoned by the CA, "(e)ven assuming arguendo that Virgilio was not duly authorized by the Board of Trustees of UM to give its consent to [respondent] and the latter erred when he solely relied on his father's consent without further securing the authority of the [BOT] of UM, his *bona fide* belief that he had authority from the real owner of the electricity and water supply will not make him culpable of the crime of qualified theft because he was acting with a color of authority or a semblance of right to do such act."[48]

Respondent's *bona fide* reliance on the consent of his father was bolstered by the material fact — which was likewise disregarded by the RTC — that Virgilio had utilized the resources of UM to shoulder the expenses of respondent's children. On this point, the Court quotes with approval the following disquisition of the CA:

> Indeed, the records show that UM's Board of Trustees clothed Virgilio with such apparent authority to act on behalf of UM. Private respondent admitted this when it adduced the affidavit (used during the preliminary investigation stage of the complaint *a quo*) of petitioner's sister, Ramona, who is the current Chairman of the Board of Trustees of the UM, to wit:
>
> > "They failed to appreciate the fact that it was even my father who shouldered his grandchildren's expenses. This was evidenced by a certification issued by the President and Chief of Academic Officer, x x x attesting that my brother's second mistress has been receiving monthly allowance from the University in the amount of Nine Thousand Eight Hundred Twenty Five Pesos. x x x"
>
> By giving Virgilio an apparent authority, UM's Board of Trustees cannot now deny and repudiate the legal effect of Virgilio's consent

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[47] See *Asia's Emerging Dragon Corporation v. Department of Transportation and Communication*, 572 Phil. 523, 528 (2008); citation omitted.

[48] *Rollo*, Vol. I, p. 45.

given to the petitioner to use the electricity and water supply of BPTI. The element of lack of owner's consent is thus glaringly absent in this case.[49]

In addition to the clear absence of the elements of *intent to gain* and *lack of owner's consent*, the RTC failed to take into consideration that the instant case stems from a bitter feud between siblings. The CA, on the other hand, found that it was only when respondent and his other sister, Cynthia, opposed the probate proceedings of the estate of their father, which was initiated by their youngest sister, Ramona, that the BOT of UM filed the complaint *a quo*.[50] In fact, respondent alleged in his Counter-Affidavit submitted before the investigating prosecutor that Ramona had filed "a number of malicious, revengeful and unfounded criminal complaints which were all dismissed."[51] Thus, the possibility that Ramona may have only dragged the BOT of UM into her personal vendetta against respondent is not farfetched.

The Court reiterates that "[w]hile probable cause should be determined in a summary manner, there is a need to examine the evidence with care to prevent material damage to a potential accused's constitutional right to liberty and the guarantees of freedom and fair play, and to protect the State from the burden of unnecessary expenses in prosecuting alleged offenses and holding trials arising from false, fraudulent or groundless charges."[52] This, the RTC failed to do. Hence, the CA correctly reversed the finding of probable cause against respondent.

All told, the RTC gravely erred when it denied respondent's motion for judicial determination of probable cause. Instead, it should have granted the same and, accordingly, dismissed the case pursuant to Section 5 (a), Rule 112 as cited above. In this light, the assailed CA rulings are affirmed.

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[49] *Id*. at 44.

[50] See *id*. at 43-44.

[51] *Id*. at 209.

[52] *Tan, Jr. v. Matsuura*, 701 Phil. 236, 251 (2013).

WHEREFORE, the petition is **DENIED**. The Amended Decision dated November 21, 2014 and the Resolution dated August 28, 2015 of the Court of Appeals in CA-G.R. SP No. 128625 are hereby **AFFIRMED**.

SO ORDERED.

Carpio (Chairperson), Jardeleza, Caguioa, and *Reyes, Jr., JJ.,* concur.

SECOND DIVISION

[G.R. No. 221815. November 29, 2017]

GLYNNA FORONDA-CRYSTAL, *petitioner, vs.* **ANIANA LAWAS SON,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; JUDICIARY REORGANIZATION ACT OF 1980 (BP 129) AS AMENDED BY R.A. NO. 7691; JURISDICTION; DEFINED AND EXPLAINED.— Jurisdiction is defined as the power and authority of a court to hear, try, and decide a case. In order for the court or an adjudicative body to have authority to dispose of the case on the merits, it must acquire, among others, jurisdiction over the subject matter. It is axiomatic that jurisdiction over the subject matter is the power to hear and determine the general class to which the proceedings in question belong; it is conferred by law and not by the consent or acquiescence of any or all of the parties or by erroneous belief of the court that it exists.

2. ID.; ID.; ID.; IN DETERMINING WHICH COURT HAS JURISDICTION IN CIVIL ACTIONS INVOLVING REAL PROPERTY, IT IS ONLY THE ASSESSED VALUE OF THE PROPERTY THAT SHOULD BE COMPUTED; COURT SHOULD ONLY LOOK INTO THE ALLEGATIONS

IN THE COMPLAINT TO DETERMINE WHETHER IT HAS JURISDICTION.— [I]n all civil actions which involve title to, or possession of, real property, or any interest therein, the RTC shall exercise exclusive original jurisdiction where the assessed value of the property exceeds ₱20,000.00 or, for civil actions in Metro Manila, where such value exceeds ₱50,000.00. For those below the foregoing threshold amounts, exclusive jurisdiction lies with the MeTC, MTC, MCTC, or MTCC. For a full discourse on the resolution of the present petition, emphasis must be given on the assessed values—not the fair market values—of the real properties concerned. According to the case of *Heirs of Concha, Sr. v. Spouses Lumocso*, the law is emphatic that in determining which court has jurisdiction, it is only the assessed value of the realty involved that should be computed. x x x To determine the assessed value, which would in turn determine the court with appropriate jurisdiction, an examination of the allegations in the complaint is necessary. It is a hornbook doctrine that the court should only look into the facts alleged in the complaint to determine whether a suit is within its jurisdiction.

3. **ID.; ID.; ID.; ID.; FAILURE TO ALLEGE THE ASSESSED VALUE OF THE REAL PROPERTY IN THE COMPLAINT GENERALLY WOULD RESULT IN THE DISMISSAL OF THE CASE.—** It is not a surprise, therefore, that a failure to allege the assessed value of a real property in the complaint would result to a dismissal of the case. This is because absent any allegation in the complaint of the assessed value of the property, it cannot be determined whether the RTC or the MTC has original and exclusive jurisdiction over the petitioner's action. Indeed, the courts cannot take judicial notice of the assessed or market value of the land. x x x In *Quinagoran v. Court of Appeals*, the Court had no qualms in dismissing the case for failing to allege the assessed value of the subject property.

4. **ID.; ID.; ID.; ID.; EXCEPTION TO THE STRICT APPLICATION IS ALLOWED IF THE REAL PROPERTY'S ASSESSED VALUE COULD BE FOUND IN THE DOCUMENT ATTACHED TO THE COMPLAINT.—** This is not to say, however, that there is no room for a liberal interpretation of this rule. In *Tumpag v. Tumpag*, the Court, through Justice Brion, provided for an instance when an exception to the strict application could be allowed. It said: Generally,

the court should only look into the facts alleged in the complaint to determine whether a suit is within its jurisdiction. There may be instances, however, when a rigid application of this rule may result in defeating substantial justice or in prejudice to a party's substantial right. In that case, there was also no allegation of the assessed value of the property. However, the Court pointed out that the facts contained in the Declaration of Real Property, which was attached to the complaint, could have facially resolved the question on jurisdiction and would have rendered the lengthy litigation on that very point unnecessary. In essence, the Court said that the failure to allege the real property's assessed value in the complaint would not be fatal if, in the documents annexed to the complaint, an allegation of the assessed value could be found.

5. ID.; ID.; ID.; ID.; THE RULE IN DETERMINING THE ASSESSED VALUE OF A PROPERTY TO IDENTIFY THE JURISDICTION OF THE FIRST AND SECOND LEVEL COURTS.— [T]he rule on determining the assessed value of a real property, insofar as the identification of the jurisdiction of the first and second level courts is concerned, would be two-tiered: First, the general rule is that jurisdiction is determined by the assessed value of the real property as alleged in the complaint; and Second, the rule would be liberally applied if the assessed value of the property, while not alleged in the complaint, could still be identified through a facial examination of the documents already attached to the complaint.

6. ID.; ID.; ID.; BP 129 AS AMENDED *VIS-À-VIS* RULE 141 OF THE RULES OF COURT; SECTION 7 OF RULE 141 DOES NOT DEAL WITH DELINEATION OF THE JURISDICTIONS OF THE FIRST AND SECOND LEVEL COURTS, BUT WITH THE ACQUISITION OF JURISDICTION BY THE COURTS THROUGH THE PAYMENT OF THE PRESCRIBED FILING AND DOCKET FEES.— Rule 141 of the Rules of Court concerns the amount of the prescribed filing and docket fees, the payment of which bestows upon the courts the jurisdiction to entertain the pleadings to be filed; and second, the latest iteration of the same provision already deleted the phrase "estimated value thereof," such that the determination of the amount of prescribed filing and docket fees are now based on the following: (a) the fair market value of the real property in litigation stated in the current tax

declaration or current zonal valuation of the Bureau of Internal Revenue; or (b) the stated value of the real or personal property in litigation as alleged by the claimant. A reading of the discourse on this would indicate that the jurisdiction referred to above does not deal with the delineation of the jurisdictions of the first and second level courts, but with the acquisition of jurisdiction by the courts through the payment of the prescribed filing and docket fees.

7. ID.; ID.; ID.; ID.; THE CASES OF *BARANGAY PIAPI V. TALIP* AND *TRAYVILLA V. SEJAS* MUST NOT BE READ IN THE CONTEXT OF JURISDICTION OF THE FIRST AND SECOND LEVEL COURTS AS CONTEMPLATED IN BP 129 AS AMENDED BUT MUST BE READ IN THE CONTEXT OF DETERMINING THE ACTUAL AMOUNT OF PRESCRIBED FILING AND DOCKET FEES UNDER RULE 141 OF THE RULES OF COURT.— [L]ike the discussion on *Barangay Piapi* above, *Trayvilla* was one which dealt with the payment of the required filing and docket fees. The crux of the case was the acquisition of jurisdiction by payment of docket fees, and not the delineation of the jurisdiction of the first and second level courts. In fact, *Trayvilla* interchangeably used the terms "**assessed value**" and "**market value**" in a manner that does not even recognize a difference. Like *Barangay Piapi*, therefore, *Spouses Trayvilla* must not be read in the context of jurisdiction of first and second level courts as contemplated in the Judiciary Reorganization Act of 1980, as amended, where the assessed values of the properties are required. These cases must perforce be read in the context of the determination of the actual amount of prescribed filing and docket fees provided for in Rule 141 of the Rules of Court.

8. ID.; ID.; ID.; WHERE THE TAX DECLARATION ATTACHED TO THE COMPLAINT SHOWING THE ASSESSED VALUE OF THE PROPERTY CLEARLY REVEALS THAT THE REGIONAL TRIAL COURT HAS NO JURISDICTION OVER THE CASE, THE DECISION IT RENDERED IS NULL AND VOID.— [S]ettled is the requirement that the Judiciary Reorganization Act of 1980, as amended, required the allegation of the real property's assessed value in the complaint. That the complaint in the present case did not aver the assessed value of the property is a violation of the law, and generally would be dismissed because the court which would

exercise jurisdiction over the case could not be identified. However, a liberal interpretation of this law, as opined by the Court in *Tumpag*, would necessitate an examination of the documents annexed to the complaint. In this instance, the complaint referred to Tax Declaration No. 16408A, attached therein as Annex "B," which naturally would contain the assessed value of the property. A perusal thereof would reveal that the property was valued at ₱2,826.00. On this basis, it is clear that it is the MTC, and not the RTC, that has jurisdiction over the case. The RTC should have upheld its Order dated November 8, 2006 which dismissed the same. Consequently, the decision that it rendered is null and void.

APPEARANCES OF COUNSEL

Zosa and Quijano Law Offices for petitioner.
Alquizalas-Abella and Partners for respondent.

D E C I S I O N

REYES, JR., *J.*:

In law, nothing is as elementary as the concept of jurisdiction, for the same is the foundation upon which the courts exercise their power of adjudication, and without which, no rights or obligation could emanate from any decision or resolution.

The Case

Challenged before this Court *via* this Petition for Review on *Certiorari* under Rule 45 of the Rules of Court is the Decision[1] of the Court of Appeals (CA) in CA-G.R. CV No. 02226 promulgated on March 12, 2015, which affirmed *in toto* the Decision[2] dated November 24, 2006 of the Regional Trial Court (RTC), Branch 55 of Mandaue City. Likewise challenged is

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[1] Penned by Associate Justice Jhosep Y. Lopez, and concurred in by Associate Justice Gabriel T. Ingles and Associate Justice Marilyn B. Lagura-Yap; *rollo*, pp. 52-79.

[2] *Id*. at 125-128.

the subsequent Resolution[3] promulgated on October 19, 2015 which upheld the earlier decision.

The Antecedent Facts

Petitioner is the daughter of Eddie Foronda, the registered owner of a parcel of land located in Barrio Magay, Municipality of Compostela, Province of Cebu. The latter derived his title over the property from a successful grant of a Free Patent (Free Patent No. VII-519533), which is covered by Original Certificate of Title (OCT) No. OP-37324, more particularly described as follows:

> A PARCEL OF LAND (lot 1280, Case 3, Pls .962) situated in the Barrio of Magay, Municipality of Compostela, Province of Cebu, Island of Cebu. Bounded on the SE., along line 1-2 by Lot 707 (As 07-01-000033-amended); along line 2-3 by Lot 1275; on the SW., along line 3-4 by Lot 1281; on the NW., along line 4-5 by Lot 1315; along line 5-6 by Lot 1314; on the NE., along line 6-7 by Lot 1392, along line 7-1 by Lot 1279, all of Compostela, Cadastre x x x.[4]

On March 15, 1999, Aniana Lawas Son (respondent) instituted an action for reconveyance and damages against Glynna Foronda-Crystal (petitioner) alleging that, for twelve and a half years, she has been the lawful owner and possessor of the subject lot. She alleged that she purchased the same from a certain Eleno T. Arias (Arias) on August 4, 1986 for a sum of ₱200,000.00. According to her, since her acquisition, she has been religiously paying real property taxes thereon as evidenced by Tax Declaration No. 16408A, which was issued under her name.[5]

According to the respondent, the issuance of the Free Patent in favor of the petitioner's father was "due to gross error or any other cause."[6] In support thereof, the respondent alleged that "there is no tax declaration in the name of patentee Eddie

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[3] *Id*. at 88-92.

[4] *Id*. at 53.

[5] *Id*. at 103-104.

[6] *Id*.

Foronda" and that this "goes to show that Eddie Foronda is not the owner of lot 1280 and neither has payment of real estate taxes been made by him when he was still alive or by his heirs."[7]

On April 13, 1999, herein petitioner filed a motion to dismiss on the grounds of (1) lack of jurisdiction, (2) venue is improperly laid, (3) action has prescribed, and, (4) lack of cause of action. A week thereafter, the RTC issued an Order dated April 20, 1999,[8] which dismissed the case for lack of jurisdiction. The RTC asserted that the "market value of the subject property per Tax Declaration No. 16408 (Annex B, Complaint) is ₱2,830.00" and thus, jurisdiction over the case lies with the Municipal Circuit Trial Court of Liloan-Compostela, Cebu.

However, in yet another Order[9] dated July 23, 1999, issued by the RTC following herein respondent's motion for reconsideration, the RTC reconsidered and set aside its earlier ruling based on the following ratiocination: (1) Paragraph III of the Complaint stated that the property was worth ₱200,000.00; (2) the Court has "judicial knowledge that under the BIR zonal valuation, the property located at Magay, Compostela, Cebu carries the value that may summed (sic) up to more than ₱20,000.00 for the property with an area of 1,570 square meters";[10] and (3) the "tax declaration, sometimes being undervalued, is not controlling."[11] Hence, trial ensued.

On November 24, 2006, the RTC rendered its Decision in favor of the respondent. The Register of Deeds of Cebu was ordered to cancel OCT No. OP-37324, and to issue, in lieu thereof, a new one under the name of the respondent. The dispositive portion of the decision reads:

WHEREFORE, premises considered, judgment in favor of the plaintiff and against the defendants:

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

[8] *Id*. at 115.

[9] *Id*. at 116.

[10] *Id*.

[11] *Id*.

1) Declaring the issuance of Original Certificate of Title No. OP-37324 (Free Patent No. VII-519533) in the name of Eddie Foronda a grave error since he is not the owner of Lot 1280, and therefore null and void;

2) Ordering the Register of Deeds of Cebu to cancel Original Certificate of Title No. OP-37324 (Free Patent No. VII-519533) and to issue, in lieu thereof, a new one in the name of Aniana Lawas Son of Compostela, Cebu. No pronouncement as to damages and costs of the suit.

SO ORDERED.[12]

Aggrieved, petitioner herein elevated the case to the CA. The material allegations that she presented included the following: (1) the RTC rendered its decision with undue haste considering that the same was promulgated even before the expiration of the period within which the parties' respective memoranda were to be filed; (2) the respondent was not able to prove that the lot she acquired from Arias was Lot No. 1280; (3) the respondent failed to prove that she was in actual physical possession of the subject property whereas the petitioner was able to do so since 1972; (4) the RTC erred in its order to cancel OCT No. OP-37324 and to issue, in lieu thereof, a new title in herein respondent's name; and (5) the action filed by the respondent was already barred by prescription and laches.

On March 12, 2015, the CA rendered the assailed Decision, which affirmed the RTC decision. The *fallo* of CA decision reads:

WHEREFORE, premises considered, the instant appeal is DENIED. The Decision of the Regional Trial Court, Branch 55, Mandaue City dated November 24, 2006 in Civil Case No. MAN-3498, is hereby AFFIRMED.

SO ORDERED.[13]

On October 19, 2015, the Resolution[14] issued by the CA denied the petitioner's motion for reconsideration. Hence, this petition for review on *certiorari* under Rule 45 of the Rules of Court.

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[12] *Id.* at 127-128.

[13] *Id.* at 79.

[14] *Id.* at 88-92.

The Issues

The petitioner anchors her plea for the reversal of the assailed decision on the following grounds:[15]

I. THE COURT OF APPEALS ERRED IN NOT DISMISSING THIS CASE ON THE GROUND OF LACK OF JURISDICTION OF THE RTC OF MANDAUE CITY OVER THIS CASE AS THE ASSESSED VALUE OF THE PROPERTY SUBJECT OF THIS CASE IS ₱1,030.00 AND THE PROPERTY IS LOCATED IN COMPOSTELA, CEBU.

II. THE COURT OF APPEALS ERRED IN NOT DECLARING THE PROCEEDINGS AS WELL AS THE JUDGMENT RENDERED BY THE RTC AS VOID

III. THE COURT OF APPEALS ERRED IN NOT APPLYING ARTICLE 434 OF THE CIVIL CODE TO THE CASE AT BAR

IV. THE COURT OF APPEALS ERRED IN NOT HOLDING THAT LOT NO. 1280 WAS A PUBLIC GRANT TO WHICH EDDIE FORONDA WAS ISSUED A FREE PATENT

V. THE COURT OF APPEALS ERRED IN NOT HOLDING THAT THE ACTION IS BARRED BY PRESCRIPTION

VI. THE COURT OF APPEALS ERRED IN NOT HOLDING THAT THE ACTION IS BARRED BY PRESCRIPTION (SIC)

VII. THE COURT OF APPEALS ERRED IN NOT HOLDING THAT THE VALIDITY AND INTEGRITY OF THE DECISION OF THE RTC IS QUESTIONABLE BECAUSE IT WAS RENDERED WITH UNDUE HASTE.

The foregoing assignment of errors could be summarized in three main issues: (1) whether or not the RTC validly acquired jurisdiction over the case, and whether or not the RTC decision

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

was void *ab initio*; (2) whether or not the Original Certificate of Title issued under the name of petitioner's father should be cancelled and set aside on the strength of the respondent's allegations of ownership over the same; and (3) whether or not the action is already barred by prescription.

The Court's Ruling

The petition is impressed with merit.

On the Issue of Jurisdiction

Jurisdiction is defined as the power and authority of a court to hear, try, and decide a case.[16] In order for the court or an adjudicative body to have authority to dispose of the case on the merits, it must acquire, among others, jurisdiction over the subject matter.[17] It is axiomatic that jurisdiction over the subject matter is the power to hear and determine the general class to which the proceedings in question belong; it is conferred by law and not by the consent or acquiescence of any or all of the parties or by erroneous belief of the court that it exists.[18]

What is relevant in this case, therefore, is the delineation provided for by law which separates the jurisdictions of the second level courts—the Regional Trial Courts—and the first level courts—the Metropolitan Trial Courts (MeTC), Municipal Trial Courts (MTC), Municipal Circuit Trial Courts (MCTC), and Municipal Trial Courts in the Cities (MTCC).

This can be easily ascertained through a reading of the Judiciary Reorganization Act of 1980, as amended by Republic Act No. 7691.[19]

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[16] *Mitsubishi Motors Philippines Corporation v. Bureau of Customs*, G.R. No. 209830, June 17, 2015, 759 SCRA 306, 310, citing *Spouses Genato v. Viola*, 625 Phil. 514, 527 (2010).

[17] *Id*.

[18] *Id*., See *Philippine Coconut Producers Federation, Inc. v. Republic*, 679 Phil. 508 (2012), citing *Allied Domecq Philippines, Inc. v. Villon*, 482 Phil. 894, 900 (2004).

[19] Batas Pambansa Blg. 129 (1980), as amended by Rep. Act No. 7691 (1994).

According to this law, in all civil actions which involve title to, or possession of, real property, or any interest therein, the RTC shall exercise exclusive original jurisdiction where the assessed value of the property exceeds ₱20,000.00 or, for civil actions in Metro Manila, where such value exceeds ₱50,000.00.[20] For those below the foregoing threshold amounts, exclusive jurisdiction lies with the MeTC, MTC, MCTC, or MTCC.[21]

For a full discourse on the resolution of the present petition, emphasis must be given on the assessed values[22]—not the fair market values—of the real properties concerned.

According to the case of *Heirs of Concha, Sr. v. Spouses Lumocso*,[23] the law is emphatic that in determining which court has jurisdiction, it is only the assessed value of the realty involved that should be computed. *Heirs of Concha, Sr.* averred this definitive ruling by tracing the history of the The Judiciary Reorganization Act of 1980, as amended. It said:

> The original text of Section 19(2) of B.P. 129 as well as its forerunner, Section 44(b) of R.A. 296, as amended, gave the RTCs x x x exclusive original jurisdiction. x x x Thus, under the old law, there was no substantial effect on jurisdiction whether a case is one, the subject matter of which was incapable of pecuniary estimation, under Section 19(1) of B.P. 129 or one involving title to property under Section 19(2).
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> The distinction between the two classes became crucial with the amendment introduced by R.A. No. 7691 in 1994 which expanded the exclusive original jurisdiction of the first level courts. x x x. Thus, under the present law, original jurisdiction over cases the subject

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[20] *Id.* Sec. 19(2).

[21] *Id.* Sec. 33(3).

[22] According to the case of *Geonzon v. Heirs of Legaspi* (586 Phil. 750, 751 [2008]), assessed value is understood to be the worth or value of property established by taxing authorities on the basis of which the tax rate is applied. It is synonymous to taxable value and could be computed by multiplying the fair market value with the assessment level (*Hilario v. Salvador*, 497 Phil. 327, 336 [2005]).

[23] 564 Phil. 580, 599 (2007), citing *Hilario v. Salvador*, 497 Phil. 327 (2005).

matter of which involves "title to, possession of, real property or any interest therein" under Section 19(2) of B.P. 129 is divided between the first and second level courts, **with the assessed value of the real property involved as the benchmark.** This amendment was introduced to "unclog the overloaded dockets of the RTCs which would result in the speedier administration of justice."[24] (Emphasis, underscoring and formatting supplied, citations omitted)

Time and again, this Court has continuously upheld *Heirs of Concha, Sr.'s* ruling on this provision of law.[25] In fact, in *Malana, et al. v. Tappa, et al.*[26] the Court said that "the Judiciary Reorganization Act of 1980, as amended, uses the word 'shall' and explicitly requires the MTC to exercise exclusive original jurisdiction over all civil actions which involve title to or possession of real property where the assessed value does not exceed ₱20,000.00."[27]

To determine the assessed value, which would in turn determine the court with appropriate jurisdiction, an examination of the allegations in the complaint is necessary. It is a hornbook doctrine that the court should only look into the facts alleged in the complaint to determine whether a suit is within its jurisdiction.[28] According to the case of *Spouses Cruz v. Spouses Cruz, et al.*,[29] only these facts can be the basis of the court's competence to take cognizance of a case, and that one cannot advert to anything not set forth in the complaint, such as evidence adduced at the trial, to determine the nature of the action thereby initiated.[30]

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[24] *Heirs of Concha, Sr. v. Spouses Lumocso*, *supra* at 596-597.

[25] See *San Pedro v. Asdala*, 611 Phil. 30 (2009).

[26] 616 Phil. 177 (2009).

[27] *Id.* at 188.

[28] *Tumpag v. Tumpag*, G.R. No. 199133, September 29, 2014, 737 SCRA 62, 69.

[29] 616 Phil. 519 (2009).

[30] *Id.* at 523-524.

It is not a surprise, therefore, that a failure to allege the assessed value of a real property in the complaint would result to a dismissal of the case. This is because absent any allegation in the complaint of the assessed value of the property, it cannot be determined whether the RTC or the MTC has original and exclusive jurisdiction over the petitioner's action. Indeed, the courts cannot take judicial notice of the assessed or market value of the land.[31] This is the same *ratio* put forth by the Court in the case of S*pouses Cruz v. Spouses Cruz, et al.*,[32] where the case was dismissed partly on the basis of the following:

> The complaint did not contain any such allegation on the assessed value of the property. There is no showing on the face of the complaint that the RTC had jurisdiction over the action of petitioners. Indeed, absent any allegation in the complaint of the assessed value of the property, it cannot be determined whether it is the RTC or the MTC which has original and exclusive jurisdiction over the petitioners' action.[33] (Citations omitted)

In *Quinagoran v. Court of Appeals*,[34] the Court had no qualms in dismissing the case for failing to allege the assessed value of the subject property. Similar to *Spouses Cruz*,[35] *Quinagoran*[36] held that: "Considering that the respondents failed to allege in their complaint the assessed value of the subject property, the RTC seriously erred in denying the motion to dismiss. Consequently, all proceedings in the RTC are null and void, and the CA erred in affirming the RTC."

This is not to say, however, that there is no room for a liberal interpretation of this rule. In *Tumpag v. Tumpag*,[37] the Court,

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[31] *Hilario v. Salvador*, *supra* note 22, at 336.

[32] *Supra* note 29.

[33] *Id.* at 527-528.

[34] 557 Phil. 650, 661 (2007).

[35] *Spouses Cruz v. Spouses Cruz, et al., supra* note 29, at 528.

[36] *Quinagoran v. Court of Appeals, supra* note 34, at 661.

[37] *Supra* note 28.

through Justice Brion, provided for an instance when an exception to the strict application could be allowed. It said:

> Generally, the court should only look into the facts alleged in the complaint to determine whether a suit is within its jurisdiction. There may be instances, however, when a rigid application of this rule may result in defeating substantial justice or in prejudice to a party's substantial right.[38]

In that case, there was also no allegation of the assessed value of the property. However, the Court pointed out that the facts contained in the Declaration of Real Property, which was attached to the complaint, could have facially resolved the question on jurisdiction and would have rendered the lengthy litigation on that very point unnecessary.[39] In essence, the Court said that the failure to allege the real property's assessed value in the complaint would not be fatal if, in the documents annexed to the complaint, an allegation of the assessed value could be found.

A reading of the quoted cases would reveal a pattern which would invariably guide both the bench and the bar in similar situations. Based on the foregoing, the rule on determining the assessed value of a real property, insofar as the identification of the jurisdiction of the first and second level courts is concerned, would be two-tiered:

> First, the general rule is that jurisdiction is determined by the assessed value of the real property as alleged in the complaint; and
>
> Second, the rule would be liberally applied if the assessed value of the property, while not alleged in the complaint, could still be identified through a facial examination of the documents already attached to the complaint.

Indeed, it is by adopting this two-tiered rule that the Court could dispense with a catena of cases specifically dealing with issues concerning jurisdiction over real properties.

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[38] *Id.* at 70.

[39] *Id.* at 70-71.

In upholding these afore-quoted rule, however, the Court is not unmindful of the cases of *Barangay Piapi v. Talip*[40] and *Trayvilla v. Sejas*[41] where the market value of the property, instead of the assessed value thereof, was used by the Court as basis for determining jurisdiction.

In *Barangay Piapi*,[42] the complaint did not allege the assessed value of the subject property. What it alleged was the market value thereof. The Court held that, in the absence of an allegation of assessed value in the complaint, the Court shall consider the alleged market value to determine jurisdiction.

Notably, this case referred to Section 7(b), Rule 141 of the Rules of Court, which deals with Legal Fees, to justify its reliance on the market value. It said:

> **The Rule requires that "the *assessed value of the property, or if there is none, the estimated value thereof*, shall be alleged by the claimant."** It bears reiterating that what determines jurisdiction is the allegations in the complaint and the reliefs prayed for. Petitioners' complaint is for reconveyance of a parcel of land. Considering that their action involves the title to or interest in real property, they should have alleged therein its assessed value. However, they only specified the market value or estimated value, which is ₱15,000.00. Pursuant to the provision of Section 33 (3) quoted earlier, it is the Municipal Circuit Trial Court of Padada-Kiblawan, Davao del Sur, not the RTC, which has jurisdiction over the case.[43] (Italics in the original, and emphasis supplied, citations omitted)

However, the rule alluded to above, while originally containing the sentence: "In a real action, the assessed value of the property, or if there is none, the estimated value thereof shall be alleged by the claimant and shall be the basis in computing the fees," has already been deleted through an amendment by A.M. No.

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[40] 506 Phil. 392, 397 (2005).

[41] G.R. No. 204970, February 1, 2016, 782 SCRA 578, 591.

[42] *Barangay Piapi v. Talip*, *supra* note 40.

[43] *Id.* at 398.

04-2-04-SC. As it currently stands, Section 7 of Rule 141 of the Rules of Court reads:

> Section 7 Clerks of Regional Trial Courts.—
>
> a) For filing an action or a permissive OR COMPULSORY counter-claim, CROSS-CLAIM, or money claim against an estate not based on judgment, or for filing a third-party, fourth-party, etc. complaint, or a complaint-in-intervention, if the total sum claimed, INCLUSIVE OF INTERESTS, PENALTIES, SURCHARGES, DAMAGES OF WHATEVER KIND, AND ATTORNEY'S FEES, LITIGATION EXPENSES AND COSTS and/or **in cases involving property, the FAIR MARKET value of the REAL property in litigation** STATED IN THE CURRENT TAX DECLARATION OR CURRENT ZONAL VALUATION OF THE BUREAU OF INTERNAL REVENUE, WHICHEVER IS HIGHER, OR IF THERE IS NONE, THE STATED VALUE OF THE PROPERTY IN LITIGATION OR THE VALUE OF THE PERSONAL PROPERTY IN LITIGATION AS ALLEGED BY THE CLAIMANT, is: x x x (Emphasis and underscoring supplied)

Two things must be said of this: first, Rule 141 of the Rules of Court concerns the amount of the prescribed filing and docket fees, the payment of which bestows upon the courts the jurisdiction to entertain the pleadings to be filed;[44] and second, the latest iteration of the same provision already deleted the phrase "estimated value thereof," such that the determination of the amount of prescribed filing and docket fees are now based on the following: (a) the fair market value of the real property in litigation stated in the current tax declaration or current zonal valuation of the Bureau of Internal Revenue; or (b) the stated value of the real or personal property in litigation as alleged by the claimant.

A reading of the discourse on this would indicate that the jurisdiction referred to above does not deal with the delineation of the jurisdictions of the first and second level courts, but with the acquisition of jurisdiction by the courts through the payment of the prescribed filing and docket fees.

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[44] *Trayvilla v. Sejas*, *supra* note 41.

This is the same tenor of the Court's decision in *Trayvilla*. In that case, where no assessed value was likewise alleged in the complaint, the Court determined jurisdiction by considering the actual amount by which the property was purchased and as written in the Amended Complaint. The Court stated that:

> However, the CA failed to consider that in determining jurisdiction, it could rely on the declaration made in the Amended Complaint that the property is valued at ₱6,000,00. **The handwritten document sued upon and the pleadings indicate that the property was purchased by petitioners for the price of ₱6,000.00. For purposes of filing the civil case against respondents, this amount should be the stated value of the property** in the absence of a current tax declaration or zonal valuation of the BIR.[45] (Emphasis supplied)

But then again, like the discussion on *Barangay Piapi* above, *Trayvilla* was one which dealt with the payment of the required filing and docket fees. The crux of the case was the acquisition of jurisdiction by payment of docket fees, and not the delineation of the jurisdiction of the first and second level courts. In fact, *Trayvilla* interchangeably used the terms "**assessed value**" and "**market value**" in a manner that does not even recognize a difference.

Like *Barangay Piapi*, therefore, *Spouses Trayvilla* must not be read in the context of jurisdiction of first and second level courts as contemplated in the Judiciary Reorganization Act of 1980, as amended,[46] where the assessed values of the properties are required. These cases must perforce be read in the context of the determination of the actual amount of prescribed filing and docket fees provided for in Rule 141 of the Rules of Court.

Having laid out the essential rules in determining the jurisdiction of the first and second level courts for civil actions which involve title to, or possession of, real property, or any interest therein, the Court now shifts focus to the specific circumstances that surround the current case.

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[45] *Id.* at 592-593.

[46] Batas Pambansa Blg. 129 (1980).

In here, the respondent failed to allege in her complaint the assessed value of the subject property. Rather, what she included therein was an allegation of its market value amounting to ₱200,000.00.[47] In the course of the trial, the petitioner asserted that the assessed value of the property as stated in the tax declaration was merely ₱1,030.00, and therefore the RTC lacked jurisdiction.

The question thus posed before this Court was whether or not the RTC should have dismissed the case for lack of jurisdiction, and in the affirmative, whether or not the RTC decision should be rendered void for being issued without jurisdiction.

As discussed above, settled is the requirement that the Judiciary Reorganization Act of 1980, as amended, required the allegation of the real property's assessed value in the complaint. That the complaint in the present case did not aver the assessed value of the property is a violation of the law, and generally would be dismissed because the court which would exercise jurisdiction over the case could not be identified.

However, a liberal interpretation of this law, as opined by the Court in *Tumpag*,[48] would necessitate an examination of the documents annexed to the complaint. In this instance, the complaint referred to Tax Declaration No. 16408A, attached therein as Annex "B," which naturally would contain the assessed value of the property. A perusal thereof would reveal that the property was valued at ₱2,826.00.

On this basis, it is clear that it is the MTC, and not the RTC, that has jurisdiction over the case. The RTC should have upheld its Order dated November 8, 2006 which dismissed the same. Consequently, the decision that it rendered is null and void.

In the case of *Maslag v. Monzon*,[49] the Court had occasion to rule that an order issued by a court declaring that it has original

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[47] *Rollo*, p. 104.

[48] *Tumpag v. Tumpag, supra* note 28.

[49] 711 Phil. 274, 285-286 (2013).

and exclusive jurisdiction over the subject matter of the case when under the law it has none cannot likewise be given effect. It amounts to usurpation of jurisdiction which cannot be countenanced. Since the Judiciary Reorganization Act of 1980, as amended, already apportioned the jurisdiction of the MTC and the RTC in cases involving title to property, neither the courts nor the petitioner could alter or disregard the same.

In yet another case, *Diona v. Balangue*,[50] the Court ruled that void judgment for want of jurisdiction is no judgment at all. It cannot be the source of any right nor the creator of any obligation. No legal rights can emanate from a resolution that is null and void. As said by the Court in *Cañero v. University of the Philippines*.[51]

> A void judgment is not entitled to the respect accorded to a valid judgment, but may be entirely disregarded or declared inoperative by any tribunal in which effect is sought to be given to it. It has no legal or binding effect or efficacy for any purpose or at any place. It cannot affect, impair or create rights. It is not entitled to enforcement and is, ordinarily, no protection to those who seek to enforce. In other words, a void judgment is regarded as a nullity, and the situation is the same as it would be if there was no judgment.[52]

Thus, considering the foregoing, it would be proper for the Court to immediately dismiss this case without prejudice to the parties' filing of a new one before the MTC that has jurisdiction over the subject property. Consequently, the other issues raised by the petitioner need not be discussed further.

WHEREFORE, premises considered, the assailed Decision in CA-G.R. CV No. 02226 dated March 12, 2015, and the Resolution dated October 19, 2015 of the Court of Appeals, as well as the Decision dated November 24, 2006 of the Regional Trial Court, Branch 55 of Mandaue City, are hereby **ANNULLED**

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[50] 701 Phil. 19, 25-26 (2013).

[51] 481 Phil. 249 (2004), as cited in *Imperial v. Armes*, G.R. No. 178842, January 30, 2017.

[52] *Cañero v. University of the Philippines*, *id*. at 267.

and SET ASIDE for being issued without jurisdiction. This is without prejudice to the filing of the parties of the proper action before the proper court.

SO ORDERED.

Carpio (Chairperson), Peralta, Perlas-Bernabe, and *Caguioa, JJ.,* concur.

THIRD DIVISION

[G.R. No. 223114. November 29, 2017]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **JONAS PANTOJA *Y* ASTORGA,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; REVISED PENAL CODE; EXEMPTING CIRCUMSTANCES; INSANITY; THE DEFENSE OF INSANITY IS IN THE NATURE OF A CONFESSION OR AVOIDANCE, REQUIRING DEFENDANT TO PROVE IT WITH CLEAR AND CONVINCING EVIDENCE; TWO ELEMENTS FOR THE DEFENSE OF INSANITY TO PROSPER.— The defense of insanity is thus in the nature of a confession or avoidance. The defendant who asserts it is, in effect, admitting to the commission of the crime. Consequently, the burden of proof shifts to defendant, who must prove his defense with clear and convincing evidence. x x x [T]he evidence of the defense must establish that such insanity constituting complete deprivation of intelligence existed immediately preceding or simultaneous to the commission of the crime. Thus, for the defense of insanity to prosper, two (2) elements must concur: (1) that defendant's insanity constitutes a complete deprivation of intelligence, reason, or discernment; and (2) that such insanity existed at the time of, or immediately preceding, the commission of the crime.

2. ID.; ID.; ID.; ID.; THE PROOF PROFFERED BY ACCUSED-APPELLANT IS INSUFFICIENT TO SUSTAIN HIS DEFENSE OF INSANITY; CIRCUMSTANCES SHOWING PAUCITY IN ACCUSED-APPELLANT'S PROOF.— A scrutiny of the evidence presented by accused-appellant unfortunately fails to establish that he was completely bereft of reason or discernment and freedom of will when he fatally stabbed the victim. The paucity in accused-appellant's proof is shown by the following circumstances: *First*, the testimony of Cederina tends to show that accused-appellant exhibited signs of mental illness only after being injured in an altercation in 2003; x x x [.] Nothing in her testimony pointed to any behavior of the accused-appellant at the time of the incident in question, or in the days and hours before the incident, which could establish that he was insane when he committed the offense[.] x x x [Witness'] narration does not attribute to accused-appellant any behavior indicative of insanity at the time of, or immediately preceding, the incident. His seemingly odd behaviour of repeatedly going in and out of the house in the days prior to the incident does not, in any way, demonstrate his insanity. x x x *Second*, accused-appellant testified that he was admitted to the hospital for his mental illness several times prior to the incident, x x x This fact, however, does not also prove that he was insane at the time he committed the crime. Prior confinement at a mental institution does not, by itself, constitute proof of insanity at the time of the commission of the crime. Even accused-appellant admitted during trial that he was released from confinement from time to time, which resulted after doctors deemed him well after a series of examinations and interviews[.] x x x *Third*, the documents offered in evidence by the defense do not categorically state that accused-appellant was insane; nor do they show when he became insane; whether such insanity constituted absolute deprivation of reason, intelligence, and discernment; and whether such insanity existed at the time he committed the crime. No expert testimony was also presented to testify on such.

3. ID.; ID.; QUALIFYING CIRCUMSTANCES; TREACHERY, ELEMENTS OF; SINCE THE VICTIM WAS A CHILD, TREACHERY ATTENDED HIS MURDER.— The RTC properly considered the killing as murder qualified by treachery, thereby warranting the imposition of reclusion perpetua. Well-settled is the rule that treachery exists when the prosecution

has sufficiently proven the concurrence of the following elements: (1) the accused employs means of execution that gives the person attacked no opportunity to defend himself or to retaliate; and (2) the means of execution was deliberate or consciously adopted. This Court has held that the killing of a child is characterized by treachery even if the manner of the assault is not shown because the weakness of the victim due to his tender age results in the absence of any danger to the accused. Considering that the victim in this case was only six (6) years old, treachery attended his murder.

4. ID.; ID.; MITIGATING CIRCUMSTANCES; DIMINISHED WILLPOWER; MAY BE APPRECIATED IN CASE AT BAR BUT IT CANNOT CHANGE THE NATURE OF THE CRIME.— [T]he presence of mitigating circumstances does not change the nature of the crime. It can only affect the imposable penalty, depending on the kind of penalty and the number of attendant mitigating circumstances. While the evidence of accused-appellant does not show that he was completely deprived of intelligence or consciousness of his acts when he committed the crime, there is sufficient indication that he was suffering from some impairment of his mental faculties; thus, he may be credited with the mitigating circumstance of diminished willpower.

5. ID.; ID.; MURDER; PROPER PENALTY IS *RECLUSION PERPETUA*; CIVIL LIABILITY.— Under Art. 248 of the Revised Penal Code, as amended by R.A. No. 7659, murder shall be punishable by the penalty of reclusion perpetua to death. x x x [T]he RTC properly imposed the penalty of reclusion perpetua. x x x Present jurisprudence holds that when the circumstances surrounding the crime call for the imposition of *reclusion perpetua* only, there being no ordinary aggravating circumstance, the proper amounts for damages should be ₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages, and ₱75,000.00 as exemplary damages, regardless of the number of qualifying aggravating circumstances present. In conformity thereto, the Court awards the foregoing damages in the instant case.

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.*:

On automatic review before this Court is the 20 March 2015 Decision[1] rendered by the Court of Appeals (*CA*) in CA-G.R. CR.-H.C. No. 06492, which affirmed with modification the 2 September 2013 Decision[2] of the Regional Trial Court (*RTC*) of Pasig City, Branch 163, Taguig City Station, in Criminal Case No. 143350 finding accused-appellant Jonas Astorga Pantoja (*accused-appellant*) guilty beyond reasonable doubt of the crime of murder and sentencing him to *reclusion perpetua*.

THE FACTS

Accused-appellant was charged in an information[3] which reads as follows:

> That on or about the 22nd day of July 2010, in the City of Taguig, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with intent to kill, armed with a bladed weapon (*kitchen knife*), a deadly weapon, with treachery, and taking advantage of his superior strength, did then there willfully, unlawfully, treacherously, and feloniously, attack, assault and repeatedly stab one [AAA],[4] who was 6 years of age at the time of the commission of the offense, which is an act also considered to be cruelty against children, hitting the latter on the different parts of his body; thereby inflicting upon him fatal injuries which caused his death; to the damage and prejudice of the heirs of the victim.

When arraigned on 4 April 2011, accused-appellant pleaded not guilty. Trial ensued.

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[1] *Rollo*, pp. 119-130; penned by Associate Justice Japar B. Dimaampao with Associate Justices Franchito N. Diamante and Carmelita Salandanan-Manahan, concurring.

[2] Records, pp. 311-322; penned by Presiding Judge Leili Cruz Suarez.

[3] *Id*. at 1.

[4] In compliance with Administrative Circular No. 83-2015 (A.C. 83-2015), the complete name of the child victim in this case is hereby replaced with the fictitious initials "AAA."

Version of the Prosecution

The prosecution presented the testimonies of Cederina Pantoja (*Cederina*), mother of the accused-appellant, as hostile witness; BBB[5] father of the victim; and Dr. Voltaire P. Nulud (*Dr. Nulud*), a medico-legal officer of the Philippine National Police Southern Police District (*PNP-SPD*) Crime Laboratory.

Cederina testified that accused-appellant was admitted to the National Center for Mental Health (*NCMH*) on 8 July 2010. Prior to that, he had already exhibited signs of mental illness which started manifesting after he was mauled by several persons in an altercation when he was twenty-one (21) years old. Because of the incident, he sustained head injuries, which required stitches. No further physical examination was conducted on him, because they did not have the funds to pay for additional checkups. Further, Cederina observed that his personality had changed, and he had a hard time sleeping. There was a time when he did not sleep at all for one week, prompting Cederina to bring the accused-appellant to the psychiatric department of the Philippine General Hospital (*PGH*). There, the attending physician diagnosed him with schizophrenia.[6]

Accused-appellant escaped from the hospital on 14 July 2010, at around 7:45 in the evening, and arrived at their house the day after. When Cederina inquired from accused-appellant how he was able to find his way home, accused-appellant responded that he roamed around until he remembered the correct jeepney route to their house. Cederina then informed the NCMH that the accused-appellant was in her custody, and she was advised to bring him back to the hospital. However, they were unable to do so at that time because they could not afford the transportation expenses.[7]

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[5] Per A.C. No. 83-2015, the complete names of the victim's family members or relatives who are mentioned in the court's decision or resolution should also be replaced with fictitious initials.

[6] TSN, 31 July 2012, pp. 4-5 and 14-15.

[7] *Id*. at 5-6 and 16.

On 22 July 2010, at around 8:00 o'clock in the morning, Cederina and the accused-appellant were inside their house. She was washing dishes while he was sitting on the balcony. She kept an eye on him from time to time but, eventually, she noticed that accused-appellant was gone. She went outside to look for him and noticed that the front door of the house where six-year-old AAA resided was open. She found this unusual because it was normally closed. She became nervous when she heard the cry of a child coming from the house. She entered the house and, sensing that the cry emanated from upstairs, she went up.[8]

She then saw accused-appellant holding a knife and the victim sprawled on the floor, bloodied. She took the knife from him and asked him what happened. He did not respond and appeared dazed. She took him downstairs and out of the house where she called out for help for the victim. Nobody responded, until she saw Glenda, who immediately ran to their house when Cederina told her that her son AAA had been hurt.[9]

After a while, barangay officials arrived and brought the accused-appellant with them. Cederina later learned that the victim had died. She went to Glenda and asked for her forgiveness.[10]

Cederina further testified that from the time accused-appellant came home until that fateful morning of 22 July 2010, he continued to take his medications. She observed, however, that accused-appellant exhibited odd behavior, such as repeatedly going in and out of the house.[11]

Dr. Nulud testified that he conducted an autopsy on the victim. His examination revealed that the victim sustained four (4) stab wounds: on his forehead, his neck, his right shoulder, and below his collar bone.[12]

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

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

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

[11] *Id*. at 16-17.

[12] TSN, 4 February 2013, pp. 5 and 9-10.

BBB testified that he was working in Qatar, when his son died. He immediately returned to the Philippines, arriving on 29 July 2010. The victim was buried a week after.[13]

He further testified that the family incurred expenses for their son's funeral service and for his wake, which lasted for two (2) weeks, in the amounts of ₱32,000.00 and ₱65,244.00, respectively. The former has corresponding official receipts while the latter is evidenced by a breakdown of expenses prepared by Glenda.[14]

Version of the Defense

The defense presented the testimonies of accused-appellant and Cederina.

Accused-appellant testified that he was first confined for his mental illness at the PGH in 2003 because his mother observed that he was speaking differently and was starting to hurt people; that he had been in and out of the hospital for the same reason since then; that he would be released from confinement whenever the doctors deemed him well enough after a series of examinations and interviews; that the doctors prescribed medicine, which he had been taking from 2003 up to the time his testimony was taken; that there was never an instance when any of the doctors recommended him to stop taking his medications; that there were times when he would stop taking his medicine if he felt that he was well, which was a source of quarrel for him and his mother; that he knew the victim as his younger brother's playmate; that he could not recall what happened on the fateful morning of 22 July 2010.[15]

The RTC Ruling

The RTC found accused-appellant guilty beyond reasonable doubt of the crime of murder and sentenced him to suffer the

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[13] TSN, 23 October 2012, pp. 4-6.

[14] *Id*. at 5-7.

[15] TSN, 8 April 2013, pp. 5-17.

penalty of reclusion perpetua. The dispositive portion of the decision reads:

> **WHEREFORE**, premises considered, Jonas Pantoja y Astorga is hereby found **GUILTY** beyond reasonable doubt of the crime of murder, defined and penalized under Article 248 of the Revised Penal Code and, there being no mitigating or aggravating circumstances, is hereby meted the penalty of *reclusion perpetua* without eligibility for parole conformably with Republic Act No. 9346.
>
> Accused is ordered to pay the heirs of [AAA] the amounts of ₱65,244.00 by way [of] actual damages, ₱75,000.00 as civil indemnity and ₱50,000.00 as moral damages. Interest at the rate of six percent (6%) per annum shall be applied to the award of all damages from the finality of the judgment until fully paid.[16]

The RTC reasoned that all the pieces of evidence proffered by the defense are insufficient to warrant a finding that accused-appellant was insane at the time immediately preceding or simultaneous with the crime. Consequently, the presumption of sanity stands.

Aggrieved, accused-appellant appealed before the CA.

The CA Ruling

The CA affirmed the conviction of the accused-appellant, with modification as to the award of damages. The dispositive portion of its decision reads as follows:

> **WHEREFORE**, the *Decision* of the Regional Trial Court of Pasig City, Branch 163, Taguig City Station, in Criminal Case No. 143350, is hereby **AFFIRMED WITH MODIFICATION** in that accused-appellant Jonas Pantoja *y* Astorga (JONAS) is **ORDERED** to pay actual damages in the amount of ₱35,000,00.[17]

The CA agreed with the RTC that the evidence of the defense do not prove that accused-appellant was insane at the time he committed the crime. Furthermore, while the CA acknowledged

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[16] Records, p. 322.

[17] CA *rollo*, p. 130.

that accused-appellant has a history of mental illness which diminished the exercise of his willpower without depriving him of the consciousness of his acts, it also ruled that this mitigating circumstance could not serve to lower the penalty meted against accused-appellant because *reclusion perpetua* is a single and indivisible penalty.

Hence, this appeal.

ISSUE

This Court is tasked to determine whether accused-appellant has clearly and convincingly proven his defense of insanity to exempt him from criminal liability and, in the negative, whether his mental issues constitute diminished willpower so as to mitigate his liability and to lower the penalty.

THE COURT'S RULING

After a careful evaluation of the records, this Court sees no reason to overturn the decision of the CA, except to modify the amount of damages awarded.

The defense of insanity is in the nature of a confession and avoidance, requiring defendant to prove it with clear and convincing evidence.

The RTC and the CA both found that all the elements constituting murder exist in the case at bar, with accused-appellant as the perpetrator. The accused-appellant did not present evidence controverting such findings. However, accused-appellant raises the defense of insanity in claiming that he should not be found criminally liable.

Insanity is one of the exempting circumstances enumerated in Article 12 of the Revised Penal Code, *viz*:

Art. 12. Circumstances which exempt from criminal liability. - The following are exempt from criminal liability:

1. An imbecile or an insane person, unless the latter has acted during a lucid interval.

x x x x x x x x x

Strictly speaking, a person acting under any of the exempting circumstances commits a crime but cannot be held criminally liable therefor. The exemption from punishment stems from the complete absence of intelligence or free will in performing the act.[18]

The defense of insanity is thus in the nature of a confession or avoidance. The defendant who asserts it is, in effect, admitting to the commission of the crime. Consequently, the burden of proof shifts to defendant, who must prove his defense with clear and convincing evidence.[19]

In *People v. Madarang*,[20] the Court ruled that a more stringent standard in appreciating insanity as an exempting circumstance has been established, *viz*:

> In the Philippines, the courts have established a **more stringent criterion** for insanity to be exempting as **it is required that there must be a complete deprivation of intelligence in committing the act**, i.e., the accused is deprived of reason; he acted without the least discernment because there is a complete absence of the power to discern, or that there is a total deprivation of the will. **Mere abnormality of the mental faculties will not exclude imputability.** (emphasis supplied)

Moreover, the evidence of the defense must establish that such insanity constituting complete deprivation of intelligence existed immediately preceding or simultaneous to the commission of the crime.[21]

Thus, for the defense of insanity to prosper, two (2) elements must concur: (1) that defendant's insanity constitutes a complete

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[18] Luis B. Reyes, *The Revised Penal Code: Criminal Law: Book One*, (19th Edition, 2017).

[19] *People v. Tibon*, 636 Phil. 521, 530 (2010).

[20] 387 Phil. 847, 859 (2000).

[21] *People v. Roa*, G.R. No. 225599, 22 March 2017.

deprivation of intelligence, reason, or discernment; and (2) that such insanity existed at the time of, or immediately preceding, the commission of the crime.

Since no man can know what goes on in the mind of another, one's behavior and outward acts can only be determined and judged by proof. Such proof may take the form of opinion testimony by a witness who is intimately acquainted with the accused; by a witness who has rational basis to conclude that the accused was insane based on the witness' own perception of the accused; or by a witness who is qualified as an expert, such as a psychiatrist.[22]

The proof proffered by accused-appellant is insufficient to sustain his defense of insanity.

To prove its assertion, the defense presented the testimonies of accused-appellant and Cederina. It also offered in evidence a (1) letter from the NCMH addressed to Cederina; (2) accused-appellant's patient identification cards from the NCMH and the PGH; (3) accused-appellant's clinical record; and (4) doctor's prescriptions.

A scrutiny of the evidence presented by accused-appellant unfortunately fails to establish that he was completely bereft of reason or discernment and freedom of will when he fatally stabbed the victim. The paucity m accused-appellant's proof is shown by the following circumstances:

First, the testimony of Cederina tends to show that accused-appellant exhibited signs of mental illness only after being injured in an altercation in 2003; that she observed changes in his personality and knew he had difficulty sleeping since then; that accused-appellant was confined in the hospital a few times over the years for his mental issues; and that he was confined at the NCMH on 8 July 2010 from where he subsequently escaped. Nothing in her testimony pointed to any behavior of the accused-

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[22] *Verdadero v. People*, G.R. No. 216021, 2 March 2016, 785 SCRA 490, 503, citing *People v. Opuran*, 469 Phil. 698, 713 (2004).

appellant at the time of the incident in question, or in the days and hours before the incident, which could establish that he was insane when he committed the offense, as seen from the following exchange during trial:

Prosecutor

(to Cederina)

Q. And where were you on July 22, 2010 at around past 8:00 in the morning?
A. At our house, sir.

Q. So when you were at your house, what happened?
A. **My son at that time was seated at our balcony of our house while I was washing the dishes. And I was looking at him from there, then later on, I noticed that he was gone, sir.**

Q. And when you noticed that your son was no longer at the place where you saw him last, what happened next?
A. I went outside and looked for him, sir.

Q. And what happened when you were looking for him?
A. I saw the front door of the house of Glenda open and I heard the cry of the child, sir.

Q. So when you heard the cry of the child, what did you do next?
A. *Kinabahan po ako, kasi po bukas po yung pinto ng bahay nila, dahil hindi naman po dating bukas 'yon dahil laging sarado. Tapos po, kinabahan ako. Inano ko po, pinakinggan ko yung iyak ng bata. Pumasok po ako, kasi nga, parang kinabahan ako. Tapos po, pag-ano, walang tao po, sa bahay po nila* (the voice of the witness starts to tremble), *tapos po, pinakinggan ko po yung iyak. Nasa taas po yung iyak. Umakyat po ako.* (The witness is teary-eyed.)

x x x x x x x x x

Q. **And when you went up, what did you see? If any.**
A. **Nakita ko po, yung anak ko po, may hawak pong kutsilyo, sir.**

Q. **And what else did you see?**
A. **I saw Evo bloodied and sprawled on the floor, sir.** (emphasis supplied)

x x x x x x x x x

Defense attorney

(to Cederina)

Q. Now, on July 22, 2010, you said that you were inside your house while Jonas was out on the terrace.
A. Yes, ma'am.

Q. Were (sic) he still on medication?
A. Yes, ma'am.

Q. And when he was in your house, I'd like withdraw that, Your Honor. When he was under your custody, did he take his pills?
A: Yes, ma'am.

Q. Now, **what did you observe of him when he was still in your custody?**
A. ***Para naman po siyang ano, magaling, tapos balisa po sya nag-ikot po siya ng ikot pag gabi, ma'am.***

Q. **You said, "ikot siya ng ikot." What do you mean?**
A. ***Lalabas po sya ng bahay tapos po papasok. Labas-pasok po siya ng bahay, ma'am.***

Q. Okay, did you ask him if he was religiously taking his medicines?
A. I'm the one giving him his medicines, ma'am.

Q. Now, did you ask him why he was acting that way?
A. Yes, ma'am.

Q. And what was his reply?
A. *Ang sabi po niya, bumili lang daw po siya ng sigarilyo, ma'am.*

Q. At that point of time, did he also take drugs?
A. I don't know, ma'am.

Q. You did not ask him if he took drugs?
A. *No, ma'am, hindi ko naman po sya nakikita na nagda-drugs.*[23]
(emphasis and underlining supplied)

The foregoing narration does not attribute to accused-appellant any behavior indicative of insanity at the time of, or immediately preceding, the incident. His seemingly odd behaviour of repeatedly going in and out of the house in the days prior to the incident does not, in any way, demonstrate his insanity.

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[23] TSN, 31 July 2012, pp. 6-8 and 16-17.

In *People v. Florendo*,[24] the Court held that "the prevalent meaning of the word 'crazy' is not synonymous with the legal terms 'insane,' '*non compos mentis*,' 'unsound mind,' 'idiot,' or 'lunatic.' The popular conception of the word 'crazy' is being used to describe a person or an act unnatural or out of the ordinary. A man may behave in a crazy manner but it does not necessarily and conclusively prove that he is legally so." Not every aberration of the mind or mental deficiency constitutes insanity.[25]

For purposes of exemption from criminal liability, mere behavioral oddities cannot support a finding of insanity unless the totality of such behavior indubitably shows a total absence of reason, discernment, or free will at the time the crime was committed.

As admitted by Cederina, prior to the incident, there were moments when she observed that accused-appellant appeared well. On the day in question and immediately preceding the incident, no improper, violent or aberrant behavior was observed of accused-appellant, as he was merely sitting on the balcony before he suddenly disappeared to go to the victim's house. During the commission of the crime itself, there were no eyewitnesses who could relay the behavior of accused-appellant, as even Cederina happened upon the accused-appellant and the victim only after the stabbing incident.

Second, accused-appellant testified that he was admitted to the hospital for his mental illness several times prior to the incident, which is corroborated by the testimony of his mother and in a report[26] on his mental condition issued by the NCMH on 21 February 2011. This fact, however, does not also prove that he was insane at the time he committed the crime. Prior confinement at a mental institution does not, by itself, constitute proof of insanity at the time of the commission of the crime.[27]

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[24] 459 Phil. 470, 479 (2003).

[25] *Id*.

[26] Records, pp. 40-42.

[27] *People v. Opuran*, 469 Phil. 698, 716 (2004).

Even accused- appellant admitted during trial that he was released from confinement from time to time, which resulted after doctors deemed him well after a series of examinations and interviews, to wit:

> Defense attorney
>
> (to accused-appellant)
>
> Q. Are you an out-patient of the Mental Hospital or an in-patient?
> A. **I'm being released whenever I'm fine and well.**
>
> Q. And what are the conditions before you are released, what are the conditions asked by your doctor?
> A. **We were examined and interviewed many times and also given test's before we can be declared mentally fit to be released.**[28]
> (emphasis and underlining supplied)

Thus, even assuming accused-appellant was insane, such insanity was clearly not continuous, as he had lucid intervals. Consequently, it is presumed that he was sane, or was in a lucid interval, at the time he committed the crime.

Third, the documents offered in evidence by the defense do not categorically state that accused-appellant was insane; nor do they show when he became insane; whether such insanity constituted absolute deprivation of reason, intelligence, and discernment; and whether such insanity existed at the time he committed the crime. No expert testimony was also presented to testify on such.

As correctly held by the RTC, the letter from the NCMH merely informed Cederina of the accused-appellant's escape on 14 July 2010; but the fact that he was able to escape unnoticed from the institution and to return home by himself is indicative of reasonable intelligence and free will merely a week before the commission of the crime. The patient's identification cards[29] issued by the NCMH and the PGH are only indicative of accused-

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[28] TSN, 8 April 2013, p. 11.

[29] Records, p. 261.

appellant's admission therein, which is not disputed, and nothing else. The clinical abstract[30] issued by PGH, while diagnosing accused-appellant with paranoid schizophrenia, appears to have been issued on 18 February 2007, years before the commission of the crime and could not serve as basis to rule that he was insane when he committed it. Finally, the doctor's prescription slips only contain the medications prescribed, but do not show the specific illness targeted by the medicine.

A consideration of all the foregoing pieces of evidence clearly does not point to accused-appellant's insanity at the time he committed the crime.

Since the victim was a child of tender years, treachery was properly appreciated against accused-appellant.

The RTC properly considered the killing as murder qualified by treachery, thereby warranting the imposition of reclusion perpetua.

Well-settled is the rule that treachery exists when the prosecution has sufficiently proven the concurrence of the following elements: (1) the accused employs means of execution that gives the person attacked no opportunity to defend himself or to retaliate; and (2) the means of execution was deliberate or consciously adopted.[31]

This Court has held that the killing of a child is characterized by treachery even if the manner of the assault is not shown because the weakness of the victim due to his tender age results in the absence of any danger to the accused.[32]

Considering that the victim in this case was only six (6) years old, treachery attended his murder.

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[30] *Id*. at 263.

[31] *People v. Umawid*, 735 Phil. 737, 746 (2014).

[32] *Id*.

Even if the mitigating circumstance of diminished willpower were to be considered in accused-appellant's favor, it cannot be a basis for changing the nature of the crime nor for imposing a penalty lower than that prescribed by law.

Accused-appellant contends that even assuming his insanity was not sufficiently proven, the Court should convict him of homicide only because the defense has proven that he has an illness which diminishes the exercise of his willpower without, however, depriving him of the consciousness of his acts.

This contention is without merit. At the outset, the presence of mitigating circumstances does not change the nature of the crime. It can only affect the imposable penalty, depending on the kind of penalty and the number of attendant mitigating circumstances.

While the evidence of accused-appellant does not show that he was completely deprived of intelligence or consciousness of his acts when he committed the crime, there is sufficient indication that he was suffering from some impairment of his mental faculties; thus, he may be credited with the mitigating circumstance of diminished willpower.

Under Art. 248 of the Revised Penal Code, as amended by R.A. No. 7659, murder shall be punishable by the penalty of reclusion perpetua to death. It is composed of two indivisible penalties, warranting the application of Article 63 of the Revised Penal Code, *viz*:

Article 63. *Rules for the Application of Indivisible Penalties*. — In all cases in which the law prescribes a single indivisible penalty, it shall be applied by the courts regardless of any mitigating or aggravating circumstances that may have attended the commission of the deed.

In all cases in which the law prescribes a penalty composed of two indivisible penalties, the following rules shall be observed in the application thereof:

1. When in the commission of the deed there is present only one aggravating circumstance, the greater penalty shall be applied.

2. When there are neither mitigating nor aggravating circumstances in the commission of the deed, the lesser penalty shall be applied.

3. **When the commission of the act is attended by some mitigating circumstance and there is no aggravating circumstance, the lesser penalty shall be applied.**

4. When both mitigating and aggravating circumstances attended the commission of the act, the courts shall reasonably allow them to offset one another in consideration of their number and importance, for the purpose of applying the penalty in accordance with the preceding rules, according to the result of such compensation. (emphasis supplied)

Clearly, the RTC properly imposed the penalty of reclusion perpetua.

The amount of damages must be modified.

Present jurisprudence holds that when the circumstances surrounding the crime call for the imposition of reclusion perpetua only, there being no ordinary aggravating circumstance, the proper amounts for damages should be ₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages, and ₱75,000.00 as exemplary damages, regardless of the number of qualifying aggravating circumstances present.[33] In conformity thereto, the Court awards the foregoing damages in the instant case.

WHEREFORE, the Court finds accused-appellant Jonas Pantoja y Astorga **GUILTY** beyond reasonable doubt of murder under Article 248 of the Revised Penal Code, as amended, and is sentenced to *reclusion perpetua*. The 20 March 2015 Decision of the Court of Appeals in CA-G.R. CR.-H.C. No. 06492 is **AFFIRMED with MODIFICATION** in that the heirs of the

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[33] *People v. Jugueta*, G.R. No. 202124, 5 April 2016, 788 SCRA 331, 373.

victim are entitled to ₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages, and ₱75,000.00 as exemplary damages. The award of damages shall earn interest at the rate of six percent (6%) per annum from the date of finality of the judgment until fully paid.

SO ORDERED.

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

Gesmundo, J., on leave.

SECOND DIVISION

[G.R. No. 229335. November 29, 2017]

REPUBLIC OF THE PHILIPPINES, represented by the DEPARTMENT OF PUBLIC WORKS and HIGHWAYS (DPWH), *petitioner, vs.* **BELLY H. NG, represented by ANNABELLE G. WONG,** *respondent.*

SYLLABUS

1. POLITICAL LAW; CONSTITUTIONAL LAW; EMINENT DOMAIN; DETERMINATION OF JUST COMPENSATION MUST BE GOVERNED BY R.A. NO. 8974 AND ITS IMPLEMENTING RULES AND REGULATIONS USING THE REPLACEMENT COST METHOD.— The construction of the Mindanao Avenue Extension Project, Stage II-C (Valenzuela City to Caloocan City) involves the implementation of a national infrastructure project. Thus, for purposes of determining the just compensation, RA 8974 and its implementing rules and regulations (IRR), which were effective at the time of the filing of the complaint, shall govern. Under Section 10 of the IRR, the improvements and/or structures on the land to be acquired shall be appraised using the **replacement**

cost method, x x x[.] The replacement cost method is premised on the principle of substitution, which means that "all things being equal, a rational, informed purchaser would pay no more for a property than the cost of building an acceptable substitute with like utility."

2. ID.; ID.; ID.; ID.; THE DEPRECIATED REPLACEMENT COST METHOD IS CONSISTENT WITH THE PRINCIPLE THAT THE PROPERTY OWNER SHALL BE COMPENSATED FOR HIS ACTUAL LOSS; WHAT THE PROPERTY OWNER LOSES IS ONLY THE ACTUAL VALUE OF THE PROPERTY AT THE TIME OF TAKING.— [T]he case of *Republic v. Mupas* (*Mupas*) instructs that in using the replacement cost method to ascertain the value of improvements, the courts may also consider the **relevant standards** provided under Section 5 of RA 8974, as well as **equity** consistent with the principle that eminent domain is a concept of *equity and fairness* that attempts to make the landowner whole. Thus, it is not the amount of the owner's investment, but the "value of the interest" in land taken by eminent domain, that is guaranteed to the owner. x x x *Mupas* declared that the use of the ***depreciated replacement cost method*** is consistent with the principle that the property owner shall be compensated for his actual loss, bearing in mind that the concept of just compensation does not imply fairness to the property owner alone, but must likewise be just to the public which ultimately bears the cost of expropriation. **The property owner is entitled to compensation only for what he actually loses, and what he loses is only the actual value of the property at the time of the taking**. Hence, even as undervaluation would deprive the owner of his property without due process, so too would its overvaluation unduly favor him to the prejudice of the public.

3. ID.; ID.; ID.; ID.; IN THE EXERCISE OF THEIR DISCRETION, COURTS MAY RELAX THE FORMULA'S APPLICATION SUBJECT TO JURISPRUDENTIAL LIMITATION THAT THE FACTUAL SITUATION CALLS FOR IT AND THE COURTS CLEARLY EXPLAIN THE REASON FOR SUCH DEVIATION.— It must be emphasized that in determining just compensation, the courts must consider and apply the parameters set by the law and its implementing rules and regulations in order to ensure that they do not arbitrarily

fix an amount as just compensation that is contradictory to the objectives of the law. Be that as it may, when acting within the parameters set by the law itself, courts are not strictly bound to apply the formula to its minutest detail, particularly when faced with situations that do not warrant the formula's strict application. **Thus, the courts may, in the exercise of their discretion, relax the formula's application, subject to the jurisprudential limitation that the factual situation calls for it and the courts clearly explain the reason for such deviation**.

4. ID.; ID.; ID.; ID.; WHEN THERE WAS NO COMPETENT EVIDENCE SHOWING COMPLIANCE WITH THE LAW IN THE DETERMINATION OF JUST COMPENSATION, REMAND OF THE CASE TO THE REGIONAL TRIAL COURT FOR RECEPTION OF FURTHER EVIDENCE IS NECESSARY.— [T]he RTC and the CA upheld the recommendation of the court-appointed commissioners, fixing the just compensation for the improvements on the expropriated properties at ₱12,000.00/sq. m., which merely considered their location, classification, value declared by the owner, and the zonal valuation of the subject lots. However, there is no competent evidence showing that it took into account the prevailing construction costs and all other attendant costs associated with the acquisition and installation of an acceptable substitute in place of the affected improvements/structures as required by the IRR. Consequently, the Court cannot uphold and must, perforce, set aside the said valuation as the just compensation for the subject improvements. x x x It must be emphasized that the veracity of the facts and figures which the parties used in their respective computations involves the resolution of questions of fact which is, as a rule, improper in a petition for review on *certiorari* since the Court is not a trier of facts. Thus, a remand of this case for reception of further evidence is necessary in order for the RTC to determine just compensation for the subject improvements in accordance with the guidelines set under RA 8974 and its IRR.

5. ID.; ID.; ID.; LEGAL INTEREST ON THE UNPAID BALANCE OF JUST COMPENSATION IS 12% FROM THE DATE OF TAKING UNTIL JUNE 30, 2013 AND 6% BEGINNING JULY 1, 2013 UNTIL FULLY PAID.— [T]he Court deems it proper to correct the award of legal interest to be imposed on the unpaid balance of the just compensation, which shall be computed at the rate of twelve percent (12%)

p.a. from the date of taking, *i.e.*, from April 10, 2013 when the RTC issued a writ of possession in favor of petitioner, until June 30, 2013. Thereafter, or beginning July 1, 2013, until fully paid, the just compensation due respondent shall earn interest at the rate of six percent (6%) p.a., in line with the amendment introduced by BSP-MB Circular No. 799, Series of 2013.

6. ID.; ID.; ID.; AWARD OF ATTORNEY'S FEES MUST BE DELETED WHERE THERE WAS NO SUFFICIENT SHOWING OF BAD FAITH.— [T]he Court finds the award of attorney's fees to be improper and should be, accordingly, deleted. Even when a claimant is compelled to incur expenses to protect his rights, attorney's fees may still be withheld where no sufficient showing of bad faith could be reflected in a party's persistence in a suit other than an erroneous conviction of the righteousness of his cause.

APPEARANCES OF COUNSEL

Office of the Solicitor General for petitioner.
Levy Fernandez for respondent.

D E C I S I O N

PERLAS-BERNABE, *J.*:

Before the Court is a petition for review on *certiorari*[1] assailing the Decision[2] dated July 1, 2016 and the Resolution[3] dated January 23, 2017 of the Court of Appeals (CA) in CA-G.R. CV No. 102033, which affirmed the Decision[4] dated November 26, 2013 and the Order[5] dated January 16, 2014 of the Regional

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[1] *Rollo*, pp. 28-55.

[2] *Id*. at 60-70. Penned by Associate Justice Noel G. Tijam (now a member of the Supreme Court) with Associate Justices Francisco P. Acosta and Eduardo B. Peralta, Jr. concurring.

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

[4] *Id*. at 160-168. Penned by Presiding Judge Evangeline M. Francisco.

[5] *Id*. at 209.

Trial Court of Valenzuela City, Branch 270 (RTC) in Civil Case No. 38-V-13, fixing the just compensation for the subject lots at ₱15,000.00/square meter (sq. m.) and the replacement cost of the improvements thereon at ₱12,000.00/sq. m., but deleting the award of consequential damages and reducing the legal rate of interest on the obligation from twelve percent (12%) to six percent (6%) per annum (p.a.).

The Facts

On February 12, 2013, petitioner the Republic of the Philippines, represented by the Department of Public Works and Highways (DPWH; petitioner), filed before the RTC a complaint[6] against respondent Belly H. Ng (respondent), represented by Annabelle G. Wong[7], seeking to expropriate the lots registered in the name of respondent under Transfer Certificate of Title (TCT) Nos. V-92188[8] and V-92191[9] with a total area of 1,671 sq. m. (subject lots), together with the improvements thereon with an aggregate surface area of 2,121.7 sq. m. (collectively, subject properties), located in Kowloon Industrial Compound, Tatalon Street, Brgy. Ugong, Valenzuela City,[10] for the construction of the Mindanao Avenue Extension Project, Stage II-C (Valenzuela City to Caloocan City).[11] Petitioner manifested that it is able and ready to pay respondent the amounts of ₱6,684,000.00 (*i.e.*, at 4,000.00/sq. m.) and ₱11,138,362.74,[12] representing the combined relevant zonal value of the subject lots and the replacement cost of the improvements thereon, respectively.[13]

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[6] See Complaint with Urgent Prayer for the Issuance of a Writ of Possession dated February 4, 2013; *id.* at 88-99.

[7] See Special Power of Attorney dated November 9, 2012; *id.* at 101-102.

[8] With an area of 1,379 sq. m. See TCT No. V-92188; records, p. 16, including dorsal portion.

[9] With an area of 292 sq. m. See TCT No. V-92191; *id.* 17, including dorsal portion.

[10] See *rollo*, pp. 162 and 167.

[11] See *id.* at 31-32, 61, 90, and 160.

[12] See Replacement Cost Summary; records, pp. 23-26.

[13] *Rollo*, pp. 91-92.

In her answer,[14] respondent contended that the offer price is unreasonably low, and that she should be compensated the fair market value of her properties at the time of taking, estimated to be at ₱25,000.00/sq. m. Moreover, the fair and just replacement cost of the improvements on the subject lots should be in the amount of ₱22,276,724.00,[15] pursuant to Section 10 of the Implementing Rules and Regulations of Republic Act No. (RA) 8974.[16]

Petitioner was eventually granted a Writ of Possession,[17] after respondent received the amount of ₱17,822,362.74, representing 100% of the zonal value of the subject properties.[18]

The RTC appointed a board of commissioners to determine the just compensation for the properties[19] which, thereafter, submitted its Commissioner's Report[20] dated June 10, 2013, recommending the amounts of ₱7,000.00/sq. m. and ₱12,000.00/sq. m. as the just compensation for the subject lots and the improvements thereon, respectively, and the payment of six percent (6%) legal interest therefor, reckoned from the time of taking.[21]

Dissatisfied, respondent objected[22] to the recommended just compensation of ₱7,000.00/sq. m. for the subject lots, contending that the same "is not [the] real, substantial, full, ample[,] and

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[14] See Answer with Affirmative Defenses dated February 26, 2013; *id*. at 133-139.

[15] See *id*. at 135. See also *id*. at 61.

[16] Entitled "IMPLEMENTING RULES AND REGULATIONS OF REPUBLIC ACT NO. 8974 (AN ACT TO FACILITATE THE ACQUISITION OF RIGHT-OF-WAY, SITE OR LOCATION FOR NATIONAL GOVERNMENT INFRASTRUCTURE PROJECTS AND FOR OTHER PURPOSES)," approved on February 12, 2001.

[17] Issued on April 10, 2013. Records, pp. 59-60.

[18] See Acknowledgment Receipts both dated March 8, 2013; *id*. at 41-42. See also *rollo*, p. 62.

[19] See Order dated March 8, 2013; records, pp. 53-54. See also *rollo*, p. 62.

[20] *Rollo*, pp. 142-143.

[21] *Id*. at 143.

[22] See Defendant's Comments/Objection (To Commissioner's Report dated June 10, 2013) dated June 25, 2013; *id*. at 152-159.

fair market value" of her lots,[23] considering that the just compensation for nearby properties[24] expropriated for the C-5 Northern Link Project[25] had been fixed by the same RTC at ₱15,000.00/sq. m.[26] She likewise objected to the imposition of six percent (6%) interest, insisting that the same should be pegged at twelve percent (12%) interest p.a.,[27] in line with the rulings in *Land Bank of the Philippines (LBP) v. Imperial*[28] and in *Republic of the Philippines (Republic) v. Ker & Company, Limited*.[29] However, she accepted the value of ₱12,000.00/sq. m. fixed as the replacement cost of the improvements.[30]

On the other hand, petitioner filed its comment,[31] interposing no objection to the ₱7,000.00/sq. m. valuation for the subject lots and the imposition of six percent (6%) legal interest recommended by the board of commissioners,[32] citing the

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[23] *Id*. at 154.

[24] In the case of *Republic v. Hobart Realty and Development Corporation*, which involved a residential property with a lower zonal value compared to respondent's industrial lots, the just compensation of ₱15,000.00/sq. m. was upheld by the Court via a Minute Resolution dated July 9, 2012 in G.R. No. 201136, which attained finality on January 7, 2013 (see Entry of Judgment issued by Deputy Clerk of Court and Chief, Judicial Records Office Corazon D. Delos Reyes; records p. 80). In the RTC Decision dated March 16, 2010 (penned by Judge Nancy Rivas-Palmones) issued in the same case, the defendant therein mentioned several expropriation cases filed and decided by the RTC, awarding ₱15,000.00/sq. m. as just compensation (*id*. at 83; see also *id*. at 126-132, including dorsal portions), which were made as references by herein respondent (see *rollo*, pp. 154-156).

[25] *I.e.*, the C-5 Northern Link Road Project (Segment 8.1) from Mindanao Avenue in Quezon City to the North Luzon Expressway, Valenzuela City. See records, p. 81.

[26] *Id*. at 86.

[27] *Rollo*, pp. 157-158.

[28] 544 Phil. 378 (2007).

[29] 433 Phil. 70 (2002).

[30] *Rollo*, p. 157.

[31] See Comment (Re: Board of Commissioners' Report dated June 10, 2013) dated July 31, 2013; records, pp. 162-164.

[32] *Id*. at 162.

letter[33] dated July 30, 2013 of the Office of Director Patrick B. Gatan, Project Director, Infrastructure Right-of-Way and Resettlement — Project Management Office, DPWH.[34] However, it failed to attach a copy of the said letter.

The RTC Ruling

In a Decision[35] dated November 26, 2013, the RTC fixed the just compensation for the subject lots at ₱15,000.00/sq. m. or the total amount of ₱25,065,000.00, taking into account: (*a*) the classification of the subject lots as industrial, their location, shape, and their being not prone to flood;[36] and (*b*) a previous case[37] involving a neighboring property expropriated for the C-5 Northern Link Project which was valued at ₱15,000.00/sq. m. by the same RTC.[38] It adopted the replacement cost of ₱12,000.00/sq. m. recommended by its appointed commissioners or the total amount of ₱25,460,400.00, noting that respondent accepted said recommendation.[39] Consequently, it ordered petitioner to pay respondent the aforesaid amounts with twelve percent (12%) legal interest p.a., reckoned from the time of taking of the properties, less the provisional deposit of ₱17,822,362.74, plus consequential damages and attorney's fees.[40]

Dissatisfied, petitioner moved for reconsideration,[41] but was denied in an Order[42] dated January 16, 2014, prompting it to file an appeal[43] before the CA.

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[33] *Rollo*, p. 151.

[34] *Id*. at 99.

[35] *Id*. at 160-168. Penned by Presiding Judge Evangeline M. Francisco.

[36] *Id*. at 167.

[37] Referring to *Republic v. Hobart*, *supra* note 24.

[38] *Rollo*, p. 166.

[39] *Id*. at 167.

[40] *Id*. at 167-168.

[41] See motion for reconsideration dated December 23, 2013; *id*. at 169-180.

[42] *Id*. at 209.

[43] See Notice of Appeal dated January 23, 2014; *id*. at 210.

The CA Ruling

In a Decision[44] dated July 1, 2016, the CA affirmed the RTC rulings, but deleted the award of consequential damages and reduced the legal interest to six percent (6%) p.a., computed from the date of the RTC Decision until full satisfaction.[45]

The CA upheld the just compensation of ₱15,000.00/sq. m. fixed by the RTC for the subject 1,671-sq. m. lots on the basis of relevant factors, such as the BIR zonal valuation of the land, tax declarations and the Commissioner's Report, as well as the market value of the properties within the area.[46] It likewise sustained the value of ₱12,000.00/sq. m. fixed as the replacement cost of the improvements with an aggregate surface area of 2,121.7 sq. m. or the total amount of ₱25,460,400.00, holding that: (*a*) the amount of ₱11,138,362.74 proposed by petitioner was inconceivably lower than the current construction cost of a commercial/warehouse which was at ₱32,000.00/sq. m., even as early as November 2009; and (*b*) petitioner did not interpose any objection to the said amount.[47]

However, the CA ruled that the award of consequential damages was improper, considering that the entirety of the subject properties is being expropriated, hence, there is no remaining portion that may suffer an impairment or decrease in value.[48] It likewise reduced the legal interest to six percent (6%) p.a., in line with the amendment introduced by the *Bangko Sentral ng Pilipinas* Monetary Board in BSP-MB Circular No. 799,[49] Series of 2013.[50]

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[44] *Id*. at 60-70.

[45] *Id*. at 70.

[46] See *id*. at 65-67.

[47] *Id*. at 67.

[48] *Id*. at 68.

[49] Entitled "Subject: Rate of interest in the absence of stipulation" (July 1, 2013).

[50] See *Nacar v. Gallery Frames*, 716 Phil. 267, 281-283 (2013).

Petitioner filed a Motion for Partial Reconsideration,[51] which was, however, denied in a Resolution[52] dated January 23, 2017; hence, the instant petition.

The Issue Before the Court

The essential issue for the Court's resolution is whether or not the CA committed reversible error in affirming the replacement cost for the improvements fixed by the RTC, and the award of attorney's fees.

The Court's Ruling

The petition is partly meritorious.

The construction of the Mindanao Avenue Extension Project, Stage II-C (Valenzuela City to Caloocan City) involves the implementation of a national infrastructure project. Thus, for purposes of determining the just compensation, RA 8974[53] and its implementing rules and regulations (IRR), which were effective at the time of the filing of the complaint, shall govern.[54]

Under Section 10 of the IRR, the improvements and/or structures on the land to be acquired shall be appraised using the **replacement cost method**, thus:

Section 10. *Valuation of Improvements and/or Structures.* — Pursuant to Section 7 of [RA 8974], the Implementing Agency shall

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[51] Dated July 26, 2016; *rollo*, pp. 76-87.

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

[53] The complaint was filed pursuant to RA 8974 (see *id.* at 88-89). Section 4 of RA 8974 pertinently provides:

> Section 4. *Guidelines for Expropriation Proceedings.* — **Whenever it is necessary to acquire real property for the right-of-way or location for any national government infrastructure project through expropriation**, the appropriate implementing agency shall initiate the expropriation proceedings before the proper court x x x
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> x x x x x x x x x
>
> (Emphasis supplied)

[54] See *Republic v. Mupas*, 769 Phil. 21, 125 (2015).

determine the valuation of the improvements and/or structures on the land to be acquired using the replacement cost method. **The replacement cost of the improvements/structures is defined as the amount necessary to replace the improvements/structures, based on the current market prices for materials, equipment, labor, contractor's profit and overhead, and all other attendant costs associated with the acquisition and installation in place of the affected improvements/structures**. In the valuation of the affected improvements/structures, the Implementing Agency shall consider, among other things, the kinds and quantities of materials/equipment used, the location, configuration and other physical features of the properties, and prevailing construction prices. (Emphasis supplied)

The replacement cost method is premised on the principle of substitution, which means that "all things being equal, a rational, informed purchaser would pay no more for a property than the cost of building an acceptable substitute with like utility."[55]

Accordingly, the Implementing Agency should consider: (*a*) construction costs or the current market price of materials, equipment, labor, as well as the contractor's profit and overhead; and (*b*) attendant costs or the cost associated with the acquisition and installation of an acceptable substitute in place of the affected improvements/structures.[56] In addition, the case of *Republic v. Mupas* (*Mupas*)[57] instructs that in using the replacement cost method to ascertain the value of improvements, the courts may also consider the **relevant standards** provided under Section 5[58] of RA 8974, as well as **equity** consistent with the principle

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[55] *Id.* at 128-129.

[56] *Id.* at 134-135.

[57] *Id.* at 126-128.

[58] Section 5. *Standards for the Assessment of the Value of the Land Subject of Expropriation Proceedings or Negotiated Sale.* — In order to facilitate the determination of just compensation, the court may consider, among other well-established factors, the following relevant standards:

(a) The classification and use for which the property is suited;
(b) The developmental costs for improving the land;
(c) The value declared by the owners;
(d) The current selling price of similar lands in the vicinity;

that eminent domain is a concept of *equity and fairness* that attempts to make the landowner whole. Thus, it is not the amount of the owner's investment, but the "value of the interest" in land taken by eminent domain, that is guaranteed to the owner.[59]

While there are various methods of appraising a property using the cost approach, among them, the reproduction cost, the replacement cost new, and the depreciated replacement cost, *Mupas* declared that the use of the ***depreciated replacement cost method***[60]

(e) The reasonable disturbance compensation for the removal and/or demolition of certain improvements on the land and for the value of improvements thereon;
(f) The size, shape or location, tax declaration and zonal valuation of the land;
(g) The price of the land as manifested in the ocular findings, oral as well as documentary evidence presented; and
(h) Such facts and events as to enable the affected property owners to have sufficient funds to acquire similarly situated lands of approximate areas as those required from them by the government, and thereby rehabilitate themselves as early as possible.

[59] *Republic v. Mupas*, *supra* note 54, at 128.

[60]

Cost of constructing the building (s) (including fees)	xxxx
Plus: Cost of the land (including fees)	xxxx
Total Costs	**xxxx**
Less: Allowance for age and depreciation	(xxxx)
= *Depreciated Replacement Cost*	xxxx

Id. at 132-134, citing Plimmer, Frances & Sayce, Sarah. *DEPRECIATED REPLACEMENT COST — CONSISTENT METHODOLOGY*, page 5, <https://www.fig.net/pub/fig2006/papers/ts86/ts86_01_plimmer_sayce_0268.pdf> (visited November 3, 2017). See International Association of Assessing Officers. STANDARDS ON MASS APPRAISAL OF REAL PROPERTY, page 17, <http://katastar.rgz.gov.rs/masovnaprocena/Files/2.Standard_of_Mass_Appraisal_of_Real_ Property_2013.pdf> (visited November 3, 2017).

The International Valuation Standards further explains the computation:

5.5. **In applying DRC methodology, the Valuer shall:**
5.5.1.1 **Assess the land at its *Market Value for Existing Use***
5.5.1.2 **Assess the current gross replacement cost of improvements less allowances to reflect:**
• Physical deterioration
• Functional, or technical, obsolescence
• Economic, or external, obsolescence

is consistent with the principle that the property owner shall be compensated for his actual loss,[61] bearing in mind that the

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5.5.1.3 **Assess physical deterioration in the improvements, resulting from wear and tear over time and the lack of necessary maintenance.** Different valuation methods may be used for estimating the amount required to rectify the physical condition of the improvements.

5.5.1.3.1 Some methods rely on estimates of specific elements of depreciation and contractors' charges;

5.5.1.3.2 Other methods rely on direct unit value comparisons between properties in similar condition.

5.5.1.4 **Assess functional/technical obsolescence caused by advances in technology that create new assets capable of more efficient delivery of goods and services.**

5.5.1.4.1 Modern production methods may render previously existing assets fully or partially obsolete in terms of current cost equivalency.

5.5.1.4.2 Functional/technical obsolescence is usually allowed for by adopting the costs of a modern equivalent asset.

5.5.1.5 **Assess economic/external obsolescence resulting from external influences that affect the value of the subject property.**

5.5.1.5.1 External factors may include changes in the economy, which affect the demand for goods and services, and, consequently, the profitability of business entities.

5.5.1.6 **Estimate all relevant forms of remediable deterioration and obsolescence, including the costs of *optimization* required to rectify the property so as to optimize its productivity.**

5.5.1.7 **Calculate the sum of the *Market Value for Existing Use* of the land and the Depreciated Replacement cost of the improvements (current gross replacement cost of the improvements less allowances for physical deterioration and all relevant forms of obsolescence) as the DRC estimate.**

5.5.1.8 **In the case of plant and machinery, the DRC method of calculation is the same but excludes the land element.** (Emphases in the original)

INTERNATIONAL VALUATION GUIDANCE NOTE 8. International Valuation Standards, Sixth Edition, pp. 313-314, <http://www.romacor.ro/legislatie/22-gn8.pdf> (visited November 3, 2017).

[61] *Id*. at 128, 138.

concept of just compensation does not imply fairness to the property owner alone, but must likewise be just to the public which ultimately bears the cost of expropriation. **The property owner is entitled to compensation only for what he actually loses, and what he loses is only the actual value of the property at the time of the taking**.[62] Hence, even as undervaluation would deprive the owner of his property without due process, so too would its overvaluation unduly favor him to the prejudice of the public.[63]

It must be emphasized that in determining just compensation, the courts must consider and apply the parameters set by the law and its implementing rules and regulations in order to ensure that they do not arbitrarily fix an amount as just compensation that is contradictory to the objectives of the law.[64] Be that as it may, when acting within the parameters set by the law itself, courts are not strictly bound to apply the formula to its minutest detail, particularly when faced with situations that do not warrant the formula's strict application. **Thus, the courts may, in the exercise of their discretion, relax the formula's application,**[65] **subject to the jurisprudential limitation that the factual situation calls for it and the courts clearly explain the reason for such deviation**.[66]

In this case, the RTC and the CA upheld the recommendation of the court-appointed commissioners, fixing the just compensation for the improvements on the expropriated properties at ₱12,000.00/sq. m., which merely considered their location, classification, value declared by the owner, and the

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[62] *Id*. at 139.

[63] *Republic v. Mupas* (Resolution), G.R. Nos. 181892, 209917, 209696, and 209731, April 19, 2016, 790 SCRA 217, 248.

[64] See *Alfonso v. LBP*, G.R. Nos. 181912 & 183347, November 29, 2016.

[65] *Republic v. Mupas*, *supra* note 54, at 140.

[66] In *LBP v. Omengan* (See G.R. No. 196412, July 19, 2017), the Court had the occasion to declare that there is no cause to treat differently the manner and the method by which just compensation is determined only because it is to be paid in implementation of the agrarian reform law.

zonal valuation of the subject lots. However, there is no competent evidence showing that it took into account the prevailing construction costs and all other attendant costs associated with the acquisition and installation of an acceptable substitute in place of the affected improvements/structures as required by the IRR. Consequently, the Court cannot uphold and must, perforce, set aside the said valuation as the just compensation for the subject improvements.

On the other hand, it is unclear how the parameters set by the IRR have been factored-in in petitioner's proposed valuation of ₱11,138,362.74.[67] Thus, the Court cannot automatically adopt petitioner's own computation as prayed for in the instant petition. Neither can the Court accept respondent's submitted valuation[68] which claimed to have used the prevailing replacement cost method for lack of proper substantiation to support the correctness of the values or data used in such computation.

It must be emphasized that the veracity of the facts and figures which the parties used in their respective computations involves the resolution of questions of fact which is, as a rule, improper in a petition for review on *certiorari* since the Court is not a trier of facts. Thus, a remand of this case for reception of further evidence is necessary in order for the RTC to determine just compensation for the subject improvements in accordance with the guidelines set under RA 8974 and its IRR.

In relation thereto, the Court deems it proper to correct the award of legal interest to be imposed on the unpaid balance of the just compensation, which shall be computed at the rate of twelve percent (12%) p.a. from the date of taking, *i.e.*, from April 10, 2013 when the RTC issued a writ of possession[69] in favor of petitioner,[70] until June 30, 2013. Thereafter, or beginning July 1, 2013, until fully paid, the just compensation due

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[67] Records, pp. 23-26.

[68] *Id.* at 95-100.

[69] *Id.* at 59-60.

[70] See *Republic v. Mupas*, *supra* note 54, at 199-200, 223.

respondent shall earn interest at the rate of six percent (6%) p.a.,[71] in line with the amendment introduced by BSP-MB Circular No. 799, Series of 2013.

Finally, the Court finds the award of attorney's fees to be improper and should be, accordingly, deleted. Even when a claimant is compelled to incur expenses to protect his rights, attorney's fees may still be withheld where no sufficient showing of bad faith could be reflected in a party's persistence in a suit other than an erroneous conviction of the righteousness of his cause.[72] The case of *Republic v. CA* (*Republic*)[73] cited by the CA to justify the award is inapplicable because, unlike in this case where petitioner only acquired possession of the expropriated properties after paying respondent the amount of ₱17,822,362.74, representing the 100% zonal valuation thereof, the petitioner in *Republic* took possession of the landowner's real property without initiating expropriation proceedings, and over the latter's objection.

WHEREFORE, the petition is **PARTLY GRANTED**. The Decision dated July 1, 2016 and the Resolution dated January 23, 2017 of the Court of Appeals in CA-G.R. CV No. 102033 are hereby **AFFIRMED** insofar as it upheld the just compensation fixed by the Regional Trial Court of Valenzuela City, Branch 270 (RTC) for the subject 1,671-square meter (sq. m.) lots at ₱15,000.00/sq. m. However, the valuation of ₱12,000.00/sq. m. fixed by the lower courts as the replacement cost of the subject improvements with an aggregate surface area of 2,121.7 sq. m. is hereby **SET ASIDE**, and Civil Case No. 38-V-13 is **REMANDED** to the RTC for reception of evidence on the issue of just compensation therefor in accordance with the guidelines set under Republic Act No. 8974 and its implementing rules and regulations. Legal interest is hereby imposed on the unpaid balance of the just compensation, as

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[71] See *Nacar v. Gallery Frames*, *supra* note 50.

[72] See *National Power Corporation v. Spouses Malijan*, G.R. Nos. 211731 & 211818, December 7, 2016.

[73] 612 Phil. 965 (2009).

determined by the RTC, at twelve percent (12%) per annum (p.a.) reckoned from April 10, 2013 to June 30, 2013 and, thereafter, at six percent (6%) p.a. until full payment. Finally, the award of attorney's fees is **DELETED** for lack of factual and legal bases.

The RTC is directed to conduct the proceedings in said case with reasonable dispatch, and to submit to the Court a report on its findings and recommended conclusions within sixty (60) days from notice of this Decision.

SO ORDERED.

Carpio (Chairperson), Peralta, Caguioa, and *Reyes, Jr., JJ.,* concur.

THIRD DIVISION

[G.R. No. 229701. November 29, 2017]

EDWINA RIMANDO *y* FERNANDO, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. CRIMINAL LAW; REVISED PENAL CODE (RPC); ILLEGAL POSSESSION AND USE OF FALSE TREASURY BANK NOTES AS DEFINED UNDER ARTICLE 168 OF THE RPC; ELEMENTS; NONE OF THESE ELEMENTS ARE PRESENT IN THE CASE OF PETITIONER.— The elements of the crime charged for violation of said law are: (1) that any treasury or bank note or certificate or other obligation and security payable to bearer, or any instrument payable to order or other document of credit not payable to bearer is forged or falsified by another person; (2) that the offender knows that any of the said instruments is forged or falsified; and (3) that he either used or *possessed with intent to use* any of such forged

or falsified instruments. None of these elements are present in the case of petitioner. The prosecution was not able to prove that she was even aware of the counterfeit US$ notes. Moreover, there was no showing that petitioner had a hand or active participation in the consummation of the illegal transaction. In fact, petitioner was not present during the test-buy operation conducted by the team of Alex Muñez nor was she spotted during the surveillance.

2. **ID.; ID.; ID.; MERE PRESENCE AT THE SCENE OF THE CRIME AT THE TIME OF ITS COMMISSION IS NOT SUFFICIENT TO ESTABLISH CONSPIRACY; WHERE THE RECORD IS BEREFT OF ANY HINT THAT PETITIONER COOPERATED IN THE COMMISSION OF THE CRIME UNDER ARTICLE 168 OF THE RPC, HER ACQUITTAL IS IN ORDER.—** Mere presence at the scene of the crime at the time of its commission is not, by itself, sufficient to establish conspiracy. To establish conspiracy, evidence of actual cooperation rather than mere cognizance or approval of an illegal act is required. Nevertheless, mere knowledge, acquiescence or approval of the act, without the cooperation or agreement to cooperate, is not enough to constitute one a party to a conspiracy, but that there must be intentional participation in the transaction with a view to the furtherance of the common design and purpose. The fact that petitioner accompanied her husband at the restaurant and allowed her husband to place the money inside her bag would not be sufficient to justify the conclusion that conspiracy existed. In order to hold an accused liable as co-principal by reason of conspiracy, he or she must be shown to have performed an overt act in pursuance or in furtherance of conspiracy. x x x The record is bereft of any hint that petitioner cooperated in the commission of the crime under Article 168 of the RPC. Taken together, the evidence of the prosecution does not meet the test of moral certainty in order to establish that petitioner conspired with her husband Romeo to commit the crime. Hence, in the absence of conspiracy, if the inculpatory facts and circumstances are capable of two or more explanations, one of which is consistent with the innocence of the accused and the other consistent with his guilt, then the evidence does not fulfill the test of moral certainty and is not sufficient to support a conviction. Exoneration must then be granted as a matter of right. Thus, petitioner's acquittal is in order.

APPEARANCES OF COUNSEL

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

D E C I S I O N

VELASCO JR., *J.*:

This is a Petition for Review on Certiorari under Rule 45 of the Rules of Court, seeking the reversal of the Court of Appeals (CA) Decision[1] dated September 6, 2016 and Resolution[2] dated January 31, 2017 in CA-G.R. CR No. 36422. The CA affirmed the Decision[3] dated February 6, 2014 of the Regional Trial Court (RTC), Branch 137 of Makati City, in Criminal Case No. 12-1761.

An Information was filed against Romeo Rimando y Cachero and Edwina Rimando y Fernando charging them with violation of Article 168 of the Revised Penal Code (RPC), to wit:

> On the 14th day of September 2012, in the City of Makati, the Philippines, accused conspiring and confederating together and both of them mutually helping and aiding one another, did then and there willfully, unlawfully and feloniously, with intent to use, have in their possession, custody and control false and counterfeit 100 pieces U.S. Dollars which are bank notes, knowing that said notes are all falsified and counterfeit.
>
> CONTRARY TO LAW.[4]

The Facts

We quote the narration of facts of the CA, as follows:

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[1] *Rollo*, pp. 40-70. Penned by Associate Justice Amy C. Lazaro-Javier and concurred in by Associate Justices Celia C. Librea-Leagogo and Melchor Q. C. Sadang.

[2] *Id*. at 72.

[3] *Id*. at 90-100. Penned by Presiding Judge Ethel V. Mercado-Gutay.

[4] *Id*. at 41.

Prosecution's Evidence:

Alex Muñez, Bank Officer I of the Investigation Division, Task Department, Bangko Sentral ng Pilipinas (BSP) Complex, East Avenue, Diliman, Quezon City, testified that:

a) He was tasked to conduct investigations, make arrests and conduct searches and seizures in all cases adversely affecting the integrity of currencies pursuant to BSP Circular 599, Series of 2008. He recognized appellants because the latter were arrested for violation of Art. 168 of the RPC;

b) Sometime in July 2012, his office received information from their confidential informant that a certain Pastor Danny and Datu Romy and their cohorts were involved in the distribution, manufacture, and printing of counterfeit US dollar notes. They validated the information by conducting a surveillance on the suspects, including appellant Romeo Rimando, also known as Datu Romy;

c) On September 5, 2012, the confidential informant introduced him to the group of counterfeiters at Farmer's Market, Araneta Center, Cubao, Quezon City. His team subsequently conducted a test-buy around 3 o'clock in the afternoon. He was able to buy 3 pieces of USD100 counterfeit notes for ₱500 per piece. He knew that the notes were fake because he had been trained to detect counterfeit currencies;

d) In the morning of September 14, 2012, Romeo Rimando called him and offered to sell 100 pieces of USD100 counterfeit notes at ₱500 per piece. His office formed a team to conduct an entrapment operation;

e) It was agreed that he and appellants' group would meet at Savory Restaurant along Makati Avenue. Before proceeding to the venue, they coordinated with the Tactical Operation Center of Philippine National Police (PNP). By 2:00 in the afternoon, they were already at the restaurant. When Romeo Rimando arrived, he was accompanied by appellant Edwina Rimando. Members of the entrapment team were strategically positioned in the area;

f) Romeo Rimando talked to him. He asked Romeo Rimando about the counterfeit notes. Romeo Rimando handed him the counterfeit notes while he gave Romeo Rimando the marked money. After receiving the marked money, Romeo Romando went over to

appellant Edwina Rimando and placed the money inside her bag. Appellants started to walk away when he gave the prearranged signal-placing his eyeglasses on top of his head. The team then closed in and arrested appellants.

Reynaldo Paday, Senior Currency Specialist, Investigation Division, Cash Department, BSP, testified that:

1) He was part of the team that conducted the test-buy on September 5, 2012 at Farmer's Market. He was assigned to assist poseur buyer Alex Muñez and secure the confidential informant during the test-buy. He was about 150 meters from Alex Muñez when the test-buy took place;

2) Alex Muñez bought 3 pieces of USD100 counterfeit notes. Afterwards, the team went back to the office and he made an initial verification of the 3 notes. He later issued a temporary certification that said notes were fake;

3) On September 14, 2012 their team conducted an entrapment operation at Savory Restaurant in Makati Avenue. He was tasked to secure the perimeter and assist Alex Muñez, who was waiting for the suspect. He observed that an old man talked with Alex Muñez. Afterwards, Alex Muñez put his eyeglasses on top of his head, the prearranged signal;

4) After they had closed in, he grabbed Romeo Rimando and told the latter he was under arrest. Appellant Edwina Rimando, who accompanied Romeo Rimando, was also arrested by one of the agents. They proceeded to the vehicle and conducted an inventory of the 100 pieces of counterfeit notes and marked money. He examined and verified the 100 pieces of notes and concluded that they were counterfeited;

Sylvia Tamayo, Assistant Manager of the Currency Analysis and Redemption Division, Cash Department of the BSP, confirmed that she issued a Certification dated September 17, 2012. She certified that the 100 pieces US dollar bills were counterfeit, viz:

This is to certify that the one hundred (100) pieces 100 US Dollar notes submitted for verification as to their genuineness by Mr. Reynaldo L. Paday, Senior Currency Specialist, Investigation Division, Cash Department per memorandum of even date and more particularly described as follows:

Denomination	Serial Number	No. of pieces	Amount
100-US Dollar Note	AE73685100B	2	US$200.00
-do-	AE73685101B	2	200.00
-do-	AE73685102B	2	200.00
-do-	AE73685103B AE73685110B	8	800.00
-do-	AE73685112B AE73685114B	3	300.00
-do-	AE73685116B AE73685151B	36	3,600.00
-do-	AE73685152B	2	200.00
-do-	AE73685153B	3	300.00
-do-	AE73685154B	3	300.00
-do-	AE73685155B	3	300.00
-do-	AE73685156B AE7368159B	4	400.00
-do-	AE73685170B AE73685177B	8	800.00
-do-	AE73685178B	1	100.00
-do-	AE73685179B AE73685178B	1	100.00
-do-	AE73685180B	1	100.00
-do-	AE73685182B AE73685197B	16	1,600.00
-do-	AE73685199B AE73685201B	3	300.00
-do-	AE73685246B	1	100.00
-do-	AE73685249B	1	100.00
		100 pcs.	US$10,000.00

had been found to be COUNTERFEIT after examination conducted by the Currency Analysis and Redemption Division, this Department and are therefore being retained by Bangko Sentral ng Pilipinas pursuant to BSP Circular No. 61, Series of 1995. The abovementioned notes had been stamped "COUNTERFEIT" (Subject Romeo Rimando y Cachero a.k.a. "Datu Ramie" and Edwina Rimando y Fernando).

Glenn Peterson, Special Agent of the US Secret Service in Guam testified: the 100 pieces of US Dollar bills were referred to him for

examination. He examined each note under a magnifying glass. Unlike genuine US Dollar notes which were printed, using Intaglo and Typographic Printing Method, the 100 counterfeit bills were printed with the use of an inkjet printer.

Appellants' Evidence:

Appellant Edwina Rimando, a freelance real estate agent, testified:

a) At 2:00 in the afternoon of September 14, 2012, she was in Makati Tower Hotel in Kalayaan Street Makati City. She was invited there by a certain Pong to meet a certain Emily about an old coins transaction. Her husband, Romeo Rimando, was with her. Emily invited them to eat at a Pizza Hut behind the hoteL Once there, they just sat on the sofa. Emily left them to smoke and make a call. She followed Emily outside and the latter told her to look for another restaurant They walked towards Kalayaan and Burgos. While waiting for the stop light to change, she and her husband were suddenly apprehended by the group of Alex Muñez. Pong and Emily suddenly disappeared. They were forced to ride a silver Toyota Innova;

b) She and her husband were handcuffed. Agent Armida Superales took her bag and said: "*Boss, negative*." She also saw Agent Superales take out from her side something wrapped in plastic and put it inside the bag. When they reached the BSP premises in Quezon City, Agent Superales opened the bag and declared that there were US dollar bills and a bundle of marked money inside. She and Agent Superales had an argument;

c) The agents took Romeo Rimando to another room while she was left at the front desk. Alex Muñez and Reynaldo Paday interrogated her and she was asked to admit that the counterfeit notes came from her. She was afraid because they were threatening her. They told her she could not do anything because there were no witnesses around. The agents also informed her that they had a companion who was a shooter. She just kept silent. She was further told that if she admitted the crime, she would be made a civilian agent, given cash rewards, and set free after the inquest;

Appellant Romeo Rimando, a scrap agent, testified:

1. On September 14, 2012, he and his wife were somewhere along Makati Avenue. They went there upon invitation by a certain

Pong who wanted to transact with them about old coins. They all met at Makati Tower Hotel with a certain Emily. According to Pong, Emily was a trusted buyer of a hotel guest;

2. They met and talked at the ground floor of the hotel. Afterwards, Emily invited them to have lunch at a nearby Pizza Hut. There was no table available at the restaurant so Emily suggested they go to Andok's on Jupiter Street. On the road, they were arrested by a group of 10 agents who had 3 vehicles.

3. He and his wife were handcuffed and forced into a Toyota Innova. Emily and Pong were walking ahead of them and did not notice that they were already arrested. When Emily and Pong looked back, the two did not concern themselves with what transpired. They were taken to a parking lot near the Makati Tower Hotel. Inside the Innova, he saw through the back mirror that Pong and Emily were talking to the operatives;

4. On their way to BSP, their cellphones were taken. Agent Superales grabbed his wife's shoulder bag. They were told that it was SOP to confiscate their belongings. He saw Agent Superales put into his wife's bag a plastic wrapped bundle of US dollar bills and marked money worth ₱50,000.00;

5. When they arrived at BSP, Alex Muñez brought him to the storeroom. Alex Muñez took out his pistol and placed it on top of the table. Alex Muñez also had a plastic bag and said it was going to be used on him. He was interrogated and told to just admit that the confiscated notes belonged to them;

6. His wife was interrogated by Reynaldo Paday. Afterwards, he and his wife got seated at a table with Alex Muñez. Alex Muñez was writing his initials on the dollar bills. Photographs were taken of him, his wife, and the alleged confiscated items;

7. The process ended at 2 o'clock the following day. They were told that they could sleep on the chairs. Later that day, they were taken for inquest.[5]

Accordingly, the RTC rendered the assailed Decision dated February 6, 2014. The dispositive portion states:

WHEREFORE PREMISES CONSIDERED, this court finds and declares both accused ROMEO RIMANDO y CACHERO and

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

EDWINA RIMANDO y FERNANDO GUILTY beyond reasonable doubt of the offense as defined in Art. 168, and penalized in Art. 166 paragraph 1 of the Revised Penal Code; and hereby sentence each of them to suffer an indeterminate penalty of Eight (8) years and One (1) day of *prision mayor* in its medium period as minimum to Ten (10) years Eight (8) months and One (1) day of *prision mayor* in its maximum period as maximum; to pay a fine of ₱5,000.00 and to pay the cost.

The Branch Clerk of Court is directed to burn the one hundred three (103) pieces of counterfeit US$100 dollar notes subject of the offense.

SO ORDERED.

Before the CA, accused-appellants assigned the following errors, to wit:

I.

The RTC gravely erred in finding that all the elements of the crime charged have been established beyond reasonable doubt.

II.

The RTC gravely erred in admitting in evidence exhibits "E" to "E-99" (counterfeit US dollar notes) since there were doubts as to whether a valid entrapment operation took place and whether the counterfeit notes presented in court were the same ones allegedly confiscated from the accused-appellants.

III.

The RTC gravely erred in admitting in evidence against accused-appellants exhibits "F" to "F-2" (counterfeit US dollar notes) since there was no proof that they owned or possessed the said counterfeit notes as the same were recovered from pastor Danny and not from the accused-appellants.

IV.

The RTC gravely erred in giving full faith and credence to the testimonies of agents Alex Muñez and Reynaldo Paday despite their contradictory statements.[6]

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[6] *Id*. at 75.

The CA, in its Decision dated September 6, 2016, affirmed *in toto* the Decision of the RTC, to wit:

ACCORDINGLY, the appeal is DENIED. The assailed Decision dated February 6, 2014 is AFFIRMED in all respects.

SO ORDERED.

Initially, Romeo signified his intention to appeal his case. However, he decided to withdraw his appeal through a letter dated March 16, 2017.[7]

On October 7, 2016, Edwina filed a Petition for Review on Certiorari under Rule 45 of the Rules of Court.

Issue

Whether or not the CA erred in affirming the conviction of petitioner Edwina Rimando.

Ruling of this Court

Inarguably, the resolution of the issues raised by petitioner in her Brief requires us to inquire into the sufficiency of the evidence presented, including the credibility of the witnesses, a course of action which this Court, as a general rule, will not do, consistent with our repeated holding that this Court is not a trier of facts. Well-settled is the rule that only questions of law should be raised in petitions filed under Rule 45. This Court is not a trier of facts and will not entertain questions of fact as the factual findings of the appellate court, when supported by substantial evidence, are final, binding or conclusive on the parties and upon this Court.[8]

But where the trial court overlooked, misunderstood or misapplied some facts or circumstances of weight and substance which can affect the result of the case, this Court is duty-bound to correct this palpable error for the right to liberty, which stands second only to life in the hierarchy of constitutional rights,

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[7] *Id*. at 14.

[8] *Siasat v. Court of Appeals*, 425 Phil. 139, 145 (2002).

cannot be lightly taken away.[9] It is the unique nature of an appeal in a criminal case that the appeal throws the whole case open for review and it is the duty of the appellate court to correct, cite, and appreciate errors in the appealed judgment whether they are assigned or unassigned.[10]

After a careful review of the records of the case, we sustain the ruling of the CA with respect to the validity of the entrapment operation conducted by the BSP agents and its findings as to the existence of all the elements of the crime of illegal possession and use of false treasury bank notes as defined under Article 168 of the Revised Penal Code. The CA did not also commit grave abuse of discretion in giving credence to the testimonies of the prosecution witnesses and on the basis thereof, convicted Romeo.

Having charged that petitioner acted in conspiracy with Romeo, it was, however, incumbent upon the prosecution to prove that both the accused had come to an agreement concerning the commission of the crime and decided to execute the agreement.

In holding that petitioner conspired with Romeo, the CA quoted with approval the trial court's observation, to wit:

> Notwithstanding that Edwina's participation on September 14, 2012 seemed merely to accompany her husband Romeo, the commonality of intent to pass on and sell counterfeit US$ notes was evident and inferable from the following circumstances: (1) it was husband Romeo who offered to sell the counterfeit US$ notes to the agent of the BSP; (2) Edwina accompanied her husband to Makati City coming all the way from their residence in Quezon City; (3) upon arrival at the designated meeting place, which was in front of the Original Savory restaurant along Makati Avenue, she merely distanced herself from her husband and Agent Muñez but did not leave them alone entirely; (4) when her husband handed over to her the marked money, she willingly accepted and placed it inside her

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[9] *Quidet v. People*, G.R. No. 170289, April 8, 2010, 618 SCRA 1.

[10] *People v. Balagat*, G.R. No. 177163, April 24, 2009, 586 SCRA 640, 644-645.

handbag; (5) upon receipt of the marked money she and her husband proceeded to leave the place together.[11]

We do not agree.

It bears stressing that conspiracy requires the same degree of proof required to establish the crime beyond reasonable doubt. Thus, mere presence at the scene of the crime at the time of its commission without proof of cooperation or agreement to cooperate is not enough to constitute one a party to a conspiracy.[12] In this regard, our ruling in *Bahilidad v. People*[13] is instructive, thus:

> There is conspiracy when two or more persons come to an agreement concerning the commission of a felony and decide to commit it. Conspiracy is not presumed. Like the physical acts constituting the crime itself, the elements of conspiracy must be proven beyond reasonable doubt. While conspiracy need not be established by direct evidence, for it may be inferred from the conduct of the accused before, during and after the commission of the crime, all taken together, however, the evidence must be strong enough to show the community of criminal design. For conspiracy to exist, it is essential that there must be a conscious design to commit an offense. Conspiracy is the product of intentionality on the part of the cohorts.
>
> It is necessary that a conspirator should have performed some overt act as a direct or indirect contribution to the execution of the crime committed. The overt act may consist of active participation in the actual commission of the crime itself, or it may consist of moral assistance to his co-conspirators by being present at the commission of the crime or by exerting moral ascendancy over the other co-conspirators. Hence, the mere presence of an accused at the discussion of a conspiracy, even approval of it, without any active participation in the same, is not enough for purposes of conviction.

In the instant case, we find petitioner's participation in the crime not adequately proved with moral certainty. There were

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[11] *Rollo*, p. 68.

[12] *People v. De Chavez*, G.R. No. 188105, April 23, 2010, 619 SCRA 464, 476-477.

[13] G.R. No. 185195, March 17, 2010, 615 SCRA 597.

no overt acts attributed to her adequate to hold her equally guilty of the crime proved.

Article 168 of the RPC, under which petitioner was charged, provides:

> ART. 168. *Illegal possession and use of false treasury or bank notes and other instruments of credit*. Unless the act be one of those coming under the provisions of any of the preceding articles, any person who shall knowingly use or have in his possession, with intent to use any of the false or falsified instruments referred to in this section, shall suffer the penalty next lower in degree than that prescribed in said articles.

The elements of the crime charged for violation of said law are: (1) that any treasury or bank note or certificate or other obligation and security payable to bearer, or any instrument payable to order or other document of credit not payable to bearer is forged or falsified by another person; (2) that the offender knows that any of the said instruments is forged or falsified; and (3) that he either used or *possessed with intent to use* any of such forged or falsified instruments.[14]

None of these elements are present in the case of petitioner. The prosecution was not able to prove that she was even aware of the counterfeit US$ notes. Moreover, there was no showing that petitioner had a hand or active participation in the consummation of the illegal transaction. In fact, petitioner was not present during the test-buy operation conducted by the team of Alex Muñez nor was she spotted during the surveillance.

Mere presence at the scene of the crime at the time of its commission is not, by itself, sufficient to establish conspiracy.[15] To establish conspiracy, evidence of actual cooperation rather than mere cognizance or approval of an illegal act is required.[16]

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[14] *Tecson v. Court of Appeals*, G.R. No. 113218, November 22, 2001, 370 SCRA 181, 188.

[15] *People v. Desoy*, G.R. No. 127754, August 16, 1999, 312 SCRA 432, 445; *Abad v. Court of Appeals*, 353 Phil. 247, 253 (1998).

[16] *People v. Tabuso*, G.R. No. 113708, October 26, 1999, 317 SCRA 454, 459; *People v. Alas*, 340 Phil. 423, 436 (1997).

Nevertheless, mere knowledge, acquiescence or approval of the act, without the cooperation or agreement to cooperate, is not enough to constitute one a party to a conspiracy, but that there must be intentional participation in the transaction with a view to the furtherance of the common design and purpose.[17]

The fact that petitioner accompanied her husband at the restaurant and allowed her husband to place the money inside her bag would not be sufficient to justify the conclusion that conspiracy existed. In order to hold an accused liable as co-principal by reason of conspiracy, he or she must be shown to have performed an overt act in pursuance or in furtherance of conspiracy.[18]

This Court has held that an overt or external act

is defined as some physical activity or deed, indicating the intention to commit a particular crime, more than a mere planning or preparation, which if carried out to its complete termination following its natural course, without being frustrated by external obstacles nor by the spontaneous desistance of the perpetrator, will logically and necessarily ripen into a concrete offense. The *raison d'etre* for the law requiring a direct overt act is that, in a majority of cases, the conduct of the accused consisting merely of acts of preparation has never ceased to be equivocal; and this is necessarily so, irrespective of his declared intent. It is that quality of being equivocal that must be lacking before the act becomes one which may be said to be a commencement of the commission of the crime, or an overt act or before any fragment of the crime itself has been committed, and this is so for the reason that so long as the equivocal quality remains, no one can say with certainty what the intent of the accused is. It is necessary that the overt act should have been the ultimate step towards the consummation of the design. It is sufficient if it was the first or some subsequent step in a direct movement towards the commission of the offense after the preparations are made. The act done need not constitute the last proximate one for completion. It is necessary, however, that the attempt must have a causal relation to the intended crime. In the

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[17] *People v. Del Rosario*, G.R. No. 127755, April 14, 1999, 305 SCRA 740, 755.

[18] *People v. Santiago*, G.R. No. 129371, October 4, 2000.

words of *Viada*, the overt acts must have an immediate and necessary relation to the offense.[19]

The record is bereft of any hint that petitioner cooperated in the commission of the crime under Article 168 of the RPC. Taken together, the evidence of the prosecution does not meet the test of moral certainty in order to establish that petitioner conspired with her husband Romeo to commit the crime. Hence, in the absence of conspiracy, if the inculpatory facts and circumstances are capable of two or more explanations, one of which is consistent with the innocence of the accused and the other consistent with his guilt, then the evidence does not fulfill the test of moral certainty[20] and is not sufficient to support a conviction.[21] Exoneration must then be granted as a matter of right.[22] Thus, petitioner's acquittal is in order.

WHEREFORE, the Decision of the Court of Appeals dated September 6, 2016 is **REVERSED** and **SET ASIDE**. Petitioner Edwina Rimando is hereby **ACQUITTED** on the ground that her guilt was not proven beyond reasonable doubt.

SO ORDERED.

Bersamin, Leonen, and *Martires, JJ.*, concur.

Gesmundo, J., on leave.

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[19] *People v. Lizada*, G.R. Nos. 143468-71, January 24, 2003, 396 SCRA 62, 95.

[20] *People v. Marcos*, G.R. No. 115006, March 18, 1999, 305 SCRA 1, 13.

[21] *People v. Lomboy*, G.R. No. 129691, June 29, 1999, 309 SCRA 440, 465.

[22] *Monteverde v. People*, G.R. No. 139610, August 12, 2002, 387 SCRA 196, 215.

SECOND DIVISION

[G.R. No. 230682. November 29, 2017]

JOLO'S KIDDIE CARTS/ FUN4KIDS/ MARLO U. CABILI, *petitioners, vs.* **EVELYN A. CABALLA and ANTHONY M. BAUTISTA**, *respondents.*

SYLLABUS

1. **REMEDIAL LAW; SPECIAL CIVIL ACTIONS; PETITION FOR *CERTIORARI*; FILING OF A MOTION FOR RECONSIDERATION IS A CONDITION *SINE QUA NON*; RATIONALE.—** As a rule, the filing of a motion for reconsideration is a condition *sine qua non* to the filing of a petition for *certiorari*. The rationale for this requirement is that "the law intends to afford the tribunal, board or office an opportunity to rectify the errors and mistakes it may have lapsed into before resort to the courts of justice can be had."

2. **ID.; ID.; ID.; ID.; EXCEPTION, APPLIED; PETITIONERS WERE JUSTIFIED IN PURSUING A DIRECT RESORT TO THE COURT OF APPEALS WITHOUT FIRST MOVING FOR RECONSIDERATION BEFORE THE NATIONAL LABOR RELATIONS COMMISSION.—** [T]he CA erred in dismissing the petition for *certiorari* filed before it based on the aforesaid technical ground, as petitioners were justified in pursuing a direct recourse to the CA even without first moving for reconsideration before the NLRC. In such instance, court procedure dictates that the case be remanded to the CA for a resolution on the merits. However, when there is already enough basis on which a proper evaluation of the merits may be had, as in this case, the Court may dispense with the time-consuming procedure of remand in order to prevent further delays in the disposition of the case and to better serve the ends of justice. In view of the foregoing – as well as the fact that petitioners pray for a resolution on the merits – the Court finds it appropriate to exhaustively resolve the instant case.

3. **LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; TERMINATION OF EMPLOYMENT; ILLEGAL DISMISSAL, NOT A CASE OF; RESPONDENTS**

FAILED TO PROVE THAT PETITIONERS DISMISSED THEM FROM THEIR WORK; IN THE SAME VEIN, PETITIONERS FAILED TO ESTABLISH THAT RESPONDENTS COMMITTED UNEQUIVOCAL ACTS THAT WOULD CLEARLY CONSTITUTE INTENT TO ABANDON THEIR EMPLOYMENT.— [R]espondents failed to prove their allegation that petitioners dismissed them from work, as there was no indication as to how the latter prevented them from reporting to their work stations; or that the petitioners made any overt act that would suggest that they indeed terminated respondents' employment. In the same vein, petitioners failed to prove that respondents committed unequivocal acts that would clearly constitute intent to abandon their employment. It may even be said that respondents' failure to report for work may have been a direct result of their belief, albeit misplaced, that they had already been dismissed by petitioners. Such mistaken belief on the part of the employee should not lead to a drastic conclusion that he has chosen to abandon his work. More importantly, respondents' filing of a complaint for illegal dismissal negates any intention on their part to sever their employment relations with petitioners. To reiterate, abandonment of position is a matter of intention and cannot be lightly inferred, much less legally presumed, from certain equivocal acts.

4. ID.; ID.; ID.; ID.; WHERE THERE WAS NEITHER EMPLOYEES' ABANDONMENT OF THEIR WORK NOR DISMISSAL BY THE EMPLOYER, REINSTATEMENT TO THEIR FORMER POSITION BUT WITHOUT BACK WAGES IS THE PROPER REMEDY; OTHER MONETARY CLAIMS, ADJUSTED TO REFLECT THE LABOR ARBITER'S COMPUTATION.— In light of the finding that respondents neither abandoned their employment nor were illegally dismissed by petitioners, it is only proper for the former to report back to work and for the latter to reinstate them to their former positions or a substantially-equivalent one in their stead. In this regard, jurisprudence provides that in instances where there was neither dismissal by the employer nor abandonment by the employee, the proper remedy is to reinstate the employee to his former position but without the award of backwages. x x x [T]he awards of wage differential and 13th month pay due to respondents must be adjusted to properly reflect the computation made by the LA, in that: (*a*) Caballa is entitled to wage differential and 13th month pay

in the amounts of ₱75,156.12 and ₱10,608.00, respectively; while (*b*) Bautista's entitlement to such claims are in the amounts of ₱74,480.12 and ₱10,608.00, respectively.

APPEARANCES OF COUNSEL

The Law Firm of Ellen Christine W. Uy for petitioners.
Public Attorney's Office for respondents.

D E C I S I O N

PERLAS-BERNABE, *J.*:

Assailed in this petition for review on *certiorari*[1] are the Resolutions dated July 28, 2016[2] and February 22, 2017[3] of the Court of Appeals (CA) in CA-G.R. SP No. 146460 which dismissed the petition for *certiorari*[4] filed by petitioners Jolo's Kiddie Carts/Fun4Kids/Marlo U. Cabili (petitioners), due to a technical ground, *i.e.*, non-filing of a motion for reconsideration before filing a petition for *certiorari*.

The Facts

The instant case stemmed from a complaint[5] for illegal dismissal, underpayment of salaries/wages and 13th month pay, non-payment of overtime pay, holiday pay, and separation pay, damages, and attorney's fees filed by Evelyn A. Caballa (Caballa), Anthony M. Bautista (Bautista; collectively, respondents), and one Jocelyn[6] S. Colisao (Colisao) against petitioners before

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[1] *Rollo*, pp. 12-43.

[2] *Id*. at 56-60. Penned by Associate Justice Romeo F. Barza with Presiding Justice Andres B. Reyes, Jr. (now a member of the Court) and Associate Justice Agnes Reyes-Carpio concurring.

[3] *Id*. at 46-55.

[4] See Petition for Review with Urgent Motion for the Immediate Issuance of a Temporary Restraining Order and/or Injunction dated July 4, 2011; CA *rollo*, pp. 3-23A.

[5] *Id*. at 208-209.

[6] Jocely in some parts of the record.

the National Labor Relations Commission (NLRC). Respondents and Colisao alleged that petitioners hired them as staff members in the latter's business; Caballa and Bautista were assigned to man petitioners' stalls in SM Bacoor and SM Rosario in Cavite, respectively, while Colisao was assigned in several SM branches, the most recent of which was in SM North EDSA.[7] They were paid a daily salary that reached ₱330.00 for a six (6)-day work week from 9:45 in the morning until 9:00 o'clock in the evening.[8] They claimed that they were never paid the monetary value of their unused service incentive leaves, 13th month pay, overtime pay, and premium pay for work during holidays; and that when petitioners found out that they inquired from the Department of Labor and Employment about the prevailing minimum wage rates, they were prohibited from reporting to their work assignment without any justification.[9]

For their part,[10] petitioners denied dismissing respondents and Colisao, and maintained that they were the ones who abandoned their work.[11] They likewise maintained that they paid respondents and Colisao their wages and other benefits in accordance with the law and that their money claims were bereft of factual and legal bases.[12]

The Labor Arbiter's (LA) Ruling

In a Decision[13] dated November 27, 2015, the LA dismissed the case insofar as Colisao is concerned for failure to prosecute.[14] However, the LA ruled in favor of respondents, and accordingly, ordered petitioners to solidarily pay them the following, plus

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[7] See *id*. at 57 and 68. See also *rollo*, p. 25.

[8] *Id*. at 130-131.

[9] *Id*. at 131.

[10] See Position Paper dated March 4, 2015; *id*. at 55-69.

[11] See *id*. at 61-62.

[12] See *id*. at 64-66.

[13] *Rollo*, pp. 78-86. Penned by Labor Arbiter Zosima C. Lameyra.

[14] *Id*. at 86.

attorney's fees equivalent to ten percent (10%) of the total monetary awards:

	Separation Pay	Back-wages	Wage Differential	13th month pay	Moral damages	Exemplary damages	Total
Caballa	60,580.00	109,870.80	75,156.12	10,608.00	10,000.00	5,000.00	₱271,214.92
Bautista	60,580.00	112,294.00	74,480.12	10,608.00	10,000.00	5,000.00	272,962.12
							544,177.04
				Plus 10% Attorney's Fees			54,417.70
				GRAND TOTAL			**₱598,594.74**[15]

The LA found that respondents' adequate substantiation of their claim that they were no longer given any work assignment and were not allowed to go anywhere near their respective workstations, coupled with petitioners' failure to prove abandonment, justifies the finding that respondents were indeed dismissed without just cause nor due process.[16]

Aggrieved, petitioners appealed[17] to the NLRC.

The NLRC Ruling

In a Decision[18] dated April 28, 2016, the NLRC modified the LA ruling, finding no illegal dismissal nor abandonment of work. Accordingly, the NLRC ordered petitioners to reinstate respondents to their former or substantially equivalent positions without loss of seniority rights and privileges; deleted the awards for payment of backwages, separation pay, and moral and exemplary damages; and affirmed the rest of the awards.[19] For this purpose, the NLRC attached a Computation of Monetary Award[20] detailing the monetary awards due to respondents, as follows: (*a*) for Caballa, ₱15,623.00 as holiday pay, ₱109,870.80 as wage differential, and ₱75,156.12 as 13th month pay; (*b*) for

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[15] *Id*.

[16] See *id*. at 84.

[17] See Memorandum of Appeal dated February 5, 2016; CA *rollo*, pp. 180-204.

[18] *Rollo*, pp. 62-75. Penned by Presiding Commissioner Grace E. Maniquiz-Tan with Commissioners Dolores M. Peralta-Beley and Mercedes R. Posada-Lacap concurring.

[19] *Id*. at 74.

[20] *Id*. at 76. Computed by Administrative Assistant V Madelaine F. Basilio.

Bautista, ₱15,623.00 as holiday pay, ₱112,294.00 as wage differential, and ₱74,480.12 as 13th month pay; and (*c*) attorney's fees amounting to ten percent (10%) of the total monetary value awarded.[21]

Anent the procedural matters raised by petitioners, the NLRC ruled that: (*a*) petitioners waived the issue of improper venue when they failed to raise the same before the filing of position papers; and (*b*) respondents substantially complied with the requirement of verifying their position papers, and thus, the same is not fatal to their complaint.[22] As to the merits, while the NLRC agreed with the LA's finding that there was no abandonment on the part of respondents, the latter were unable to adduce any proof that petitioners indeed committed any overt or positive act operative of their dismissal.[23] In view of the finding that there was neither dismissal on the part of petitioners nor abandonment on the part of respondents, the NLRC ordered the latter's reinstatement but without backwages. Finally, the NLRC held that respondents should be entitled to their holiday pay as it is a statutory benefit which payment petitioners failed to prove.[24]

Dissatisfied, petitioners directly filed a petition for *certiorari*[25] before the CA, without moving for reconsideration before the NLRC.

The CA Ruling

In a Resolution[26] dated July 28, 2016, the CA denied the petition due to petitioners' failure to file a motion for reconsideration before the NLRC prior to the filing of a petition for *certiorari* before the CA. It held that the prior filing of

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[21] *Id*.

[22] See *id*. at 69-70.

[23] See *id*. at 71-72.

[24] *Id*. at 73.

[25] CA *rollo*, pp. 3-23A.

[26] *Rollo*, pp. 56-60.

such motion before the lower tribunal is an indispensable requisite in elevating the case to the CA via *certiorari*, and that petitioners' failure to do so resulted in the NLRC ruling attaining finality.[27]

Petitioners moved for reconsideration,[28] but the same was denied in a Resolution[29] dated February 22, 2017; hence, this petition.[30]

The Issue Before the Court

The issues for the Court's resolution are whether or not the CA was correct in: (*a*) dismissing the petition for *certiorari* before it due to petitioners' non-filing of a prior motion for reconsideration before the NLRC; and (*b*) effectively affirming the NLRC ruling, which not only increased respondents' awards of wage differential and 13th month pay, but also awarded an additional monetary award as holiday pay.

The Court's Ruling

The petition is partly meritorious.

I.

As a rule, the filing of a motion for reconsideration is a condition *sine qua non* to the filing of a petition for *certiorari*.[31] The rationale for this requirement is that "the law intends to afford the tribunal, board or office an opportunity to rectify the errors and mistakes it may have lapsed into before resort to the courts of justice can be had."[32] Notably, however, there

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[27] See *id*. at 58-60.

[28] See Motion for Reconsideration with Urgent Motion for the Immediate Issuance of a Temporary Restraining Order and/or Injunction dated September 13, 2016; CA *rollo*, pp. 151-177.

[29] *Rollo*, pp. 46-55.

[30] *Id*. at 12-43.

[31] *Republic of the Philippines v. Bayao*, 710 Phil. 279, 287 (2013), citing *Commissioner of Internal Revenue v. Court of Tax Appeals*, 695 Phil. 55, 61 (2012).

[32] *Olores v. Manila Doctors College*, 731 Phil. 45, 58 (2014), citing *Alcosero v. NLRC*, 351 Phil. 368, 378 (1998).

are several recognized exceptions to the rule, one of which is when the order is a patent nullity.[33]

In this case, records show that the LA ruled in favor of respondents, and accordingly, ordered petitioners to pay them the following monetary awards:

	Separation Pay	Back-wages	Wage Differential	13th month pay	Moral damages	Exemplary damages	Total
Caballa	60,580.00	109,870.80	75,156.12	10,608.00	10,000.00	5,000.00	₱271,214.92
Bautista	60,580.00	112,294.00	74,480.12	10,608.00	10,000.00	5,000.00	272,962.12
							544,177.04
					Plus 10% Attorney's Fees		54,417.70
					GRAND TOTAL		**₱598,594.74**

Upon petitioners' appeal to the NLRC, the LA ruling was modified, deleting the awards for separation pay, backwages, moral damages, and exemplary damages, while affirming the awards for wage differential and 13th month pay. In the Computation of Monetary Award[34] attached to the NLRC ruling — which according to the NLRC itself, shall form part of its decision[35] — it was indicated that Caballa's awards for wage differential and 13th month pay are in the amounts of ₱109,870.80 and ₱75,156.12, respectively; while the awards in Bautista's favor were pegged at ₱112,294.00 and ₱74,480.12, respectively. However, a simple counterchecking of the NLRC's computation with the LA ruling readily reveals that: (*a*) the amounts of ₱109,870.80 and ₱112,294.00 clearly pertain to the awards of backwages, which were already deleted in the NLRC ruling; (*b*) the amounts of ₱75,156.12 and ₱74,480.12 pertain to the awards of wage differential; and (*c*) the amount of ₱10,608.00 which pertain to the awards of 13th month pay for both respondents, were no longer reflected in the NLRC computation. While this is obviously just an oversight on the part of the NLRC, it is not without any implications as such oversight resulted in an unwarranted increase in the monetary awards due to respondents. Clearly, such an increase is a patent nullity as it is bereft of any factual and/or legal basis.

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[33] See *id*., citing *Abraham v. NLRC*, 406 Phil. 310, 316 (2001).

[34] *Rollo*, p. 76.

[35] *Id*. at 74.

Verily, the CA erred in dismissing the petition for *certiorari* filed before it based on the aforesaid technical ground, as petitioners were justified in pursuing a direct recourse to the CA even without first moving for reconsideration before the NLRC. In such instance, court procedure dictates that the case be remanded to the CA for a resolution on the merits. However, when there is already enough basis on which a proper evaluation of the merits may be had, as in this case, the Court may dispense with the time-consuming procedure of remand in order to prevent further delays in the disposition of the case and to better serve the ends of justice.[36] In view of the foregoing — as well as the fact that petitioners pray for a resolution on the merits[37] — the Court finds it appropriate to exhaustively resolve the instant case.

II.

It must be stressed that to justify the grant of the extraordinary remedy of *certiorari*, petitioners must satisfactorily show that the court or quasi-judicial authority gravely abused the discretion conferred upon it. Grave abuse of discretion connotes judgment exercised in a capricious and whimsical manner that is tantamount to lack of jurisdiction. To be considered "grave," discretion must be exercised in a despotic manner by reason of passion or personal hostility, and must be so patent and gross as to amount to an evasion of positive duty or to a virtual refusal to perform the duty enjoined by or to act at all in contemplation of law.[38]

In labor cases, grave abuse of discretion may be ascribed to the NLRC when its findings and conclusions are not supported by substantial evidence, which refers to that amount of relevant evidence that a reasonable mind might accept as adequate to

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[36] See *Sy-Vargas v. The Estate of Rolando Ogsos, Sr.*, G.R. No. 221062, October 5, 2016, citing *Gonzales v. Marmaine Realty Corporation*, G.R. No. 214241, January 13, 2016, 781 SCRA 63, 71.

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

[38] *Gadia v. Sykes Asia, Inc.*, 752 Phil. 413, 420 (2015), citing *Omni Hauling Services, Inc. v. Bon*, 742 Phil. 335, 342 (2014).

justify a conclusion. Thus, if the NLRC's ruling has basis in the evidence and the applicable law and jurisprudence, then no grave abuse of discretion exists and the CA should so declare and, accordingly, dismiss the petition.[39]

Guided by the foregoing considerations and as will be explained hereunder, the Court finds that the NLRC did not gravely abuse its discretion in ruling that: (*a*) petitioners are barred from raising improper venue and that the verification requirement in respondents' position paper was substantially complied with; and (*b*) respondents were neither dismissed by petitioners nor considered to have abandoned their jobs. However and as already discussed, the NLRC committed grave abuse of discretion amounting to lack or excess of jurisdiction when it awarded respondents increased monetary benefits without any factual and/or legal bases.

III.

Anent the first procedural issue, petitioners insist that since respondents worked in Cavite, they should have filed their complaint before the Regional Arbitration Branch IV of the NLRC and not in Manila, pursuant to Section 1, Rule IV of the 2011 NLRC Rules of Procedure. As such, the LA in Manila where the complaint was filed had no jurisdiction to rule on the same.[40] However, such insistence is misplaced as the aforesaid provision of the 2011 Rules of Procedure clearly speaks of venue and not jurisdiction. Moreover, paragraph (c) of the same provision explicitly provides that "[w]hen venue is not objected to before the first scheduled mandatory conference, such issue shall be deemed waived." Here, the NLRC aptly pointed out that petitioners only raised improper venue for the first time in their position paper,[41] and as such, they are deemed to have waived the same.

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[39] *University of Santo Tomas (UST) v. Samahang Manggagawa ng UST*, G.R. No. 184262, April 24, 2017, citing *Quebral v. Angbus Construction, Inc.,* G.R. No. 221897, November 7, 2016.

[40] See *rollo*, pp. 25-26.

[41] See *id*. at 69.

In this relation, Article 224 (formerly Article 217)[42] of the Labor Code, as amended, clearly provides that the LAs shall have exclusive and original jurisdiction to hear and decide, *inter alia*, termination disputes and money claims arising from employer-employee relations, as in this case. As such, the LA clearly had jurisdiction to resolve respondents' complaint.

Another procedural issue raised by petitioners is that respondents signed the Verification and Affidavit of Non-Forum Shopping attached to their Position Paper a day earlier than the date such pleading was filed by their counsel. In this regard, petitioners assert that such is a fatal infirmity that necessitates the dismissal of respondents' complaint.[43] However, the NLRC correctly ruled that respondents' substantial compliance with the requirement, coupled with their meritorious claims against petitioners, necessitates dispensation with the strict compliance with the rules on verification and certification against forum shopping in order to better serve the ends of justice. In *Fernandez v. Villegas*,[44] the Court held:

> The Court laid down the following guidelines with respect to non-compliance with the requirements on or submission of a defective verification and certification against forum shopping, *viz.*:
>
> 1) A distinction must be made between non-compliance with the requirement on or submission of defective verification, and non-compliance with the requirement on or submission of defective certification against forum shopping.
>
> 2) **As to verification, non-compliance therewith or a defect therein does not necessarily render the pleading fatally defective.**

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[42] As renumbered pursuant to 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. See also Department Advisory NO. 01, Series of 2015 OF THE Department OF Labor and Employment entitled "RENUMBERING OF THE LABOR CODE OF THE PHILIPPINES, AS AMENDED."

[43] See *rollo*, pp. 26-28.

[44] G.R. No. 200191, August 20, 2014, 733 SCRA 548.

The court may order its submission or correction or act on the pleading if the attending circumstances are such that strict compliance with the Rule may be dispensed with in order that the ends of justice may be served thereby.

3) Verification is deemed *substantially complied* with when one who has ample knowledge to swear to the truth of the allegations in the complaint or petition signs the verification, and when matters alleged in the petition have been made in good faith or are true and correct.

4) **As to certification against forum shopping, non-compliance therewith or a defect therein, unlike in verification, is generally not curable by its subsequent submission or correction thereof, unless there is a need to relax the Rule on the ground of "substantial compliance" or presence of "special circumstances or compelling reasons."**

5) The certification against forum shopping must be signed by all the plaintiffs or petitioners in a case; otherwise, those who did not sign will be dropped as parties to the case. Under reasonable or justifiable circumstances, however, as when all the plaintiffs or petitioners share a common interest and involve a common cause of action or defense, the signature of only one of them in the certification against forum shopping substantially complies with the Rule.

6) Finally, the certification against forum shopping must be executed by the party-pleader, not by his counsel. If, however, for reasonable or justifiable reasons, the party-pleader is unable to sign, he must execute a Special Power of Attorney designating his counsel of record to sign on his behalf.

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Besides, it is settled that **the verification of a pleading is only a formal, not a jurisdictional requirement intended to secure the assurance that the matters alleged in a pleading are true and correct. Therefore, the courts may simply order the correction of the pleadings or act on them and waive strict compliance with the rules**, as in this case.

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Similar to the rules on verification, **the rules on forum shopping are designed to promote and facilitate the orderly administration of justice; hence, it should not be interpreted with such absolute literalness as to subvert its own ultimate and legitimate objectives.**

The requirement of strict compliance with the provisions on certification against forum shopping merely underscores its mandatory nature to the effect that the certification cannot altogether be dispensed with or its requirements completely disregarded. It does not prohibit substantial compliance with the rules under justifiable circumstances, as also in this case.[45] (Emphases and underscoring supplied)

IV.

In *Claudia's Kitchen, Inc. v. Tanguin*,[46] the Court was faced with a situation where, on the one hand, the employee claimed she was illegally dismissed by her employer; on the other, the employer denied ever dismissing such employee and even accused the latter of abandoning her job, as in this case. In resolving the matter, the Court extensively discussed:

> In cases of illegal dismissal, the employer bears the burden of proof to prove that the termination was for a valid or authorized cause. **But before the employer must bear the burden of proving that the dismissal was legal, the employees must first establish by substantial evidence that indeed they were dismissed. If there is no dismissal, then there can be no question as to the legality or illegality thereof**. In *Machica v. Roosevelt Services Center, Inc.*, the Court enunciated:
>
> > **The rule is that one who alleges a fact has the burden of proving it; thus, petitioners were burdened to prove their allegation that respondents dismissed them from their employment.** It must be stressed that the evidence to prove this fact must be clear, positive and convincing. The rule that the employer bears the burden of proof in illegal dismissal cases finds no application here because the respondents deny having dismissed the petitioners.
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> x x x x x x x x x
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> The Court further agrees with the findings of the LA, the NLRC[,] and the CA that Tanguin was not guilty of abandonment. *Tan Brothers Corporation of Basilan City v. Escudero* extensively discussed abandonment in labor cases:

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[45] *Id.* at 556-560; citations omitted.

[46] See G.R. No. 221096, June 28, 2017.

> As defined under established jurisprudence, abandonment is the deliberate and unjustified refusal of an employee to resume his employment. It constitutes neglect of duty and is a just cause for termination of employment under paragraph (b) of Article 282 [now Article 296] of the Labor Code. **To constitute abandonment, however, there must be a clear and deliberate intent to discontinue one's employment without any intention of returning. In this regard, two elements must concur: (1) failure to report for work or absence without valid or justifiable reason; and (2) a clear intention to sever the employer-employee relationship, with the second element as the more determinative factor and being manifested by some overt acts.** Otherwise stated, absence must be accompanied by overt acts unerringly pointing to the fact that the employee simply does not want to work anymore. It has been ruled that the employer has the burden of proof to show a deliberate and unjustified refusal of the employee to resume his employment without any intention of returning.[47] (Emphases and underscoring supplied)

As aptly ruled by the NLRC, respondents failed to prove their allegation that petitioners dismissed them from work, as there was no indication as to how the latter prevented them from reporting to their work stations; or that the petitioners made any overt act that would suggest that they indeed terminated respondents' employment.[48] In the same vein, petitioners failed to prove that respondents committed unequivocal acts that would clearly constitute intent to abandon their employment. It may even be said that respondents' failure to report for work may have been a direct result of their belief, albeit misplaced, that they had already been dismissed by petitioners. Such mistaken belief on the part of the employee should not lead to a drastic conclusion that he has chosen to abandon his work.[49] More importantly, respondents' filing of a complaint for illegal

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[47] See *id*.; citations omitted.

[48] See *rollo*, p. 71.

[49] See *Uniwide Sales Warehouse Club v. NLRC*, 570 Phil. 535, 552-553 (2008), citing *Lemery Savings & Loan Bank v. NLRC*, G.R. No. 96439, January 27, 1992, 205 SCRA 492, 499.

dismissal negates any intention on their part to sever their employment relations with petitioners.[50] To reiterate, abandonment of position is a matter of intention and cannot be lightly inferred, much less legally presumed, from certain equivocal acts.[51]

In light of the finding that respondents neither abandoned their employment nor were illegally dismissed by petitioners, it is only proper for the former to report back to work and for the latter to reinstate them to their former positions or a substantially-equivalent one in their stead. In this regard, jurisprudence provides that in instances where there was neither dismissal by the employer nor abandonment by the employee, the proper remedy is to reinstate the employee to his former position but without the award of backwages.[52]

As for respondents' money claims for holiday pay, wage differential, and 13th month pay, the NLRC properly observed that petitioners failed to show that payment has been made. As such, they must be held liable for the same. It is well-settled that "with respect to labor cases, the burden of proving payment of monetary claims rests on the employer, the rationale being that the pertinent personnel files, payrolls, records, remittances and other similar documents — which will show that overtime, differentials, service incentive leave and other claims of workers have been paid — are not in the possession of the worker but in the custody and absolute control of the employer."[53] However and as already adverted to earlier, the awards of wage differential and 13th month pay due to respondents must be adjusted to properly reflect the computation made by the LA, in that: (*a*) Caballa is entitled to wage differential and 13th month pay in the amounts of ₱75,156.12 and ₱10,608.00, respectively;

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[50] *Mallo v. Southeast Asian College, Inc.*, 771 Phil. 410, 421 (2015), citing *Fianza v. NLRC*, 712 Phil. 275, 283 (2013).

[51] *Id.*, citing *Macahilig v. NLRC*, 563 Phil. 683, 693 (2007).

[52] *Id.* at 432, citing *MZR Industries v. Colambot*, 716 Phil. 617, 628 (2013).

[53] *G & M (Phil.), Inc. v. Batomalaque*, 499 Phil. 724, 729-730 (2005), citing *Villar v. NLRC,* 387 Phil. 706, 716 (2000).

while (*b*) Bautista's entitlement to such claims are in the amounts of ₱74,480.12 and ₱10,608.00, respectively.

In the same manner, the NLRC correctly awarded attorney's fees to respondents, in light of Article 111(a) of the Labor Code which states that: "[i]n cases of unlawful withholding of wages, the culpable party may be assessed attorney's fees equivalent to ten percent (10%) of the amount of wages recovered," as in this case.

Finally, all monetary awards due to respondents shall earn legal interest at the rate of six percent (6%) per annum from the finality of this Decision until fully paid, pursuant to prevailing jurisprudence.[54]

WHEREFORE, the petition is **PARTLY GRANTED**. The Resolutions dated July 28, 2016 and February 22, 2017 of the Court of Appeals in CA-G.R. SP No. 146460 are hereby **SET ASIDE**. Accordingly, the Decision dated April 28, 2016 of the National Labor Relations Commission is **AFFIRMED** with **MODIFICATION**, ordering petitioners Jolo's Kiddie Carts/ Fun4Kids/Marlo U. Cabili to pay:

a) Respondent Evelyn A. Caballa the amounts of ₱15,623.00 as holiday pay, ₱75,156.12 as wage differential, and ₱10,608.00 as 13th month pay, plus attorney's fees amounting to ten percent (10%) of the aforesaid monetary awards. Further, said amounts shall then earn legal interest at the rate of six percent (6%) per annum from the finality of the Decision until fully paid; and

b) Respondent Anthony M. Bautista the amounts of ₱15,623.00 as holiday pay, ₱74,480.12 as wage differential, and ₱10,608.00 as 13th month pay, plus attorney's fees amounting to ten percent (10%) of the aforesaid monetary awards. Further, said amounts shall then earn legal interest at the rate of six percent (6%) per annum from the finality of the Decision until fully paid.

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[54] See *Nacar v. Gallery Frames*, 716 Phil. 267, 279-283 (2013).

Finally, the Temporary Restraining Order dated May 26, 2017 issued in relation to this case is hereby **LIFTED**. The Decision dated April 28, 2016 of the National Labor Relations Commission in NLRC NCR Case No. 03-03168-15 (NLRC LAC No. 02-000701-16), as modified, shall be implemented in accordance with this Decision.

SO ORDERED.

Carpio (Chairperson), Peralta, Bersamin, and *Caguioa, JJ.,* concur.

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delays his performance; and third, the creditor judicially or extrajudicially requires the debtor's performance. (*Id.*)

ACTS OF LASCIVIOUSNESS

Commission of — Designating or charging the proper offense in case lascivious conduct is committed under Sec. 5(b) of R.A. No. 7610, and in determining the imposable penalty, guidelines would be, if the victim of lascivious conduct is under twelve (12) years of age, the nomenclature of the crime should be acts of lasciviousness under Art. 336 of the Revised Penal Code in relation to Sec. 5(b), Art. III of R.A. No. 7610' and pursuant to the second *proviso* thereof, the imposable penalty is *reclusion temporal* in its medium period. (People *vs.* Macapagal *y* Manalo, G.R. No. 218574, Nov. 22, 2016) p. 569

ADMINISTRATIVE LAW

Administrative proceedings — In administrative proceedings, the burden of proof that respondent committed the acts complained of rests on the complainant. (Engr. Reci *vs.* Atty. Villanueva, A.M. No. P-17-3763, Nov. 21, 2017) p. 54

Doctrine of exhaustion of administrative remedies — May be disregarded in certain instances but justification thereof must be specifically discussed and sufficiently proved. (Rep. of the Phils. *vs.* O.G. Holdings Corp., G.R. No. 189290, Nov. 29, 2017) p. 814

— Requires that resort must first be made with the appropriate administrative authorities in the resolution of a controversy falling under their jurisdiction before the same may be elevated to the courts for review; if a remedy within the administrative machinery is still available, with a procedure pursuant to law for an administrative officer to decide a controversy, a party should first exhaust such remedy before going to court. (*Id.*)

AGENCY

Contract of — A power of attorney must be strictly construed and pursued; the instrument will be held to grant only

afford the public respondent an opportunity to correct any actual or fancied error attributed to it by way of re-examination of the legal and factual aspects of the case. (Rep. of the Phils. *vs.* O.G. Holdings Corp., G.R. No. 189290, Nov. 29, 2017) p. 814

— A second motion for reconsideration, albeit prohibited, may be entertained in the higher interest of justice, such as when the assailed decision is not only legally erroneous but also patently unjust and potentially capable of causing unwarranted and irremediable injury or damage to the moving party. (Fortune Life Ins. Co., Inc. *vs.* COA Proper, G.R. No. 213525, Nov. 21, 2017) p. 159

— As a condition for the filing of a petition for *certiorari*, there must be no appeal, nor any plain, speedy, and adequate remedy available in the ordinary course of law. (Gov. Cerilles *vs.* CSC, G.R. No. 180845, Nov. 22, 2017) p. 221

— As a rule, the filing of a motion for reconsideration is a condition *sine qua non* to the filing of a petition for *certiorari*; the rationale for this requirement is that the law intends to afford the tribunal, board or office an opportunity to rectify the errors and mistakes it may have lapsed into before resort to the courts of justice can be had. (Jolo's Kiddie Carts *vs.* Caballa, G.R. No. 230682, Nov. 29, 2017) p. 1101

— Non-compliance with the rule on proof of service and the petitioner's unjustified reliance on the Fresh Period Rule as the basis to extend the period for filing of the special civil actions for *certiorari* under Rule 64 of the Rules of Court were already enough ground to dismiss the petition for *certiorari*; only matters of life, liberty, honor or property may warrant the suspension of the rules of the most mandatory character; it is also true that other justifications may be considered, like: (1) the existence of special or compelling circumstances; (2) the merits of the case; (3) a cause not entirely attributable to the fault or negligence of the party favored by the suspension of the rules; (4) a lack of any showing that the review sought is

judgment equivalent to lack of jurisdiction; or the exercise of power was done in an arbitrary or despotic manner by reason of passion, prejudice, or personal hostility. (Polytechnic University of the Phils. *vs.* Nat'l. Dev't Co., G.R. No. 213039, Nov. 27, 2017) p. 740

CIVIL SERVICE COMMISSION

Powers — The only function of the CSC is merely to ascertain whether the appointee possesses the minimum requirements under the law; if it is so, then the CSC has no choice but to attest to such appointment. (Gov. Cerilles *vs.* CSC, G.R. No. 180845, Nov. 22, 2017) p. 221

Security of tenure — Reorganization is a recognized valid ground for separation of civil service employees, subject only to the condition that it be done in good faith; a reorganization in good faith is one designed to trim the fat off the bureaucracy and institute economy and greater efficiency in its operation; it is not a mere tool of the spoils system to change the face of the bureaucracy and destroy the livelihood of hordes of career employees in the civil service so that the new-powers-that-be may put their own people in control of the machinery of government. (Gov. Cerilles *vs.* CSC, G.R. No. 180845, Nov. 22, 2017) p. 221

— R.A. No. 6656 was enacted to implement the State's policy of protecting the security of tenure of officers and employees in the civil service during the reorganization of government agencies. (*Id.*)

— The following may be derived from Secs. 2, 3 and 4 of R.A. No. 6656, first, an officer or employee may be validly removed from service pursuant to a *bona fide* reorganization; in such case, there is no violation of security of tenure and the aggrieved employee has no cause of action against the appointing authority; second, if, on the other hand, the reorganization is done in bad faith, as when the enumerated circumstances in Sec. 2 are present, the aggrieved employee, having been removed without valid cause, may demand for his reinstatement

(Metropolitan Waterworks and Sewerage System *vs.* COA, G.R. No. 195105, Nov. 21, 2017) p. 117

— The 1987 Constitution has expressly made COA the guardian of public funds, vesting it with broad powers over all accounts pertaining to government revenue and expenditures and the uses of public funds and property, including the exclusive authority to define the scope of its audit and examination, establish the techniques and methods for such review, and promulgate accounting and auditing rules and regulations. (*Id.*)

COMPENSATION AND POSITION CLASSIFICATION OF 1989 (R.A. NO. 6758)

Application of — To standardize salary rates among government personnel and to do away with multiple allowances and other incentive packages as well as the resulting differences in compensation among them; the general rule now is that all allowances are deemed included in the standardized salary, unless excluded by law or by an issuance by the DBM; the integration of the benefits and allowances is by legal fiction. (Metropolitan Waterworks and Sewerage System *vs.* COA, G.R. No. 195105, Nov. 21, 2017) p. 117

— Upon the effective repeal of the MWSS Charter, the Board of Trustees could no longer fix salaries, pay rates or allowances of its officials and employees upon the effectivity of R.A. No. 6758. (*Id.*)

COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (R.A. NO. 9165)

Chain of custody — Links that must be established in the chain of custody in a buy-bust situation: 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

violations of R.A. No. 9165 is proving that there was no hiatus in the chain of custody of the dangerous drugs and paraphernalia. (People *vs.* Arposeple *y* Sanchez, G.R. No. 205787, Nov. 22, 2017) p. 340

CONDOMINIUM ACT (R.A. NO. 4726)

Application of — Unit means a part of the condominium project intended for any type of independent use or ownership, including one or more rooms or spaces located in one or more floors or part or parts of floors in a building or buildings and such accessories as may be appended thereto. (Poole-Blunden *vs.* Union Bank of the Phils., G.R. No. 205838, Nov. 29, 2017) p. 915

CONSPIRACY

Existence of — A trial court's "honest belief" cannot be the basis of a finding of implied conspiracy because a finding of conspiracy must be supported by evidence constituting proof beyond reasonable doubt. (Manangan *vs.* People, G.R. No. 218570, Nov. 22, 2017) p. 552

— An implied conspiracy exists when two or more persons are shown to have aimed their acts towards the accomplishment of the same unlawful object, each doing a part so that their combined acts, though apparently independent, were in fact connected and cooperative; their acts must indicate a closeness of personal association and a concurrence of sentiment; it is proved not by direct evidence or mere conjectures, but through the mode and manner of the commission of the offense, or from the acts of the accused before, during, and after the commission of the crime indubitably pointing to a joint purpose, a concert of action, and a community of interest. (*Id.*)

— Conspiracy must be established with the same quantum of proof as the crime itself and must be shown as clearly as the commission of the crime; a finding of implied conspiracy must be proven beyond reasonable doubt, and must not be merely based on the trial court's honest belief. (*Id.*)

CONTRACTS

Elements of — For there to be a valid contract, all three (3) elements of consent, subject matter, and price must be present; consent wrongfully obtained is defective; the party to a contract whose consent was vitiated is entitled to have the contract rescinded. (Poole-Blunden *vs.* Union Bank of the Phils., G.R. No. 205838, Nov. 29, 2017) p. 915

CORPORATIONS

Piercing the veil of corporate fiction — A legal precept that allows a corporation's separate personality to be disregarded under certain cirumstances, so that a corporation and its stockholders or members, or a corporation and another related corporation could be treated as a single entity; the doctrine is an equitable principle, it being meant to apply only in situations where the separate corporate personality of a corporation is being abused or being used for wrongful purposes. (Veterans Federation of the Phils. *vs.* Montenejo, G.R. No. 184819, Nov. 29, 2017) p. 788

COUNTERCLAIMS

Compulsory counterclaim — A counterclaim purely for damages and attorney's fees by reason of the unfounded suit filed by the respondent, has long been settled as falling under the classification of compulsory counterclaim and it must be pleaded in the same action, otherwise, it is barred. (Villanueva-Ong *vs.* Ponce Enrile, G.R. No. 212904, Nov. 22, 2017) p. 538

— Allegation citing the Civil Code do not dilute the compulsory nature of her counterclaims. (*Id.*)

— Docket fees are not required to be paid in compulsory counterclaims. (*Id.*)

— One which, being cognizable by the regular courts of justice, 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

elements of the crime charged should, in all reasonable likelihood, be present; this is based on the principle that every crime is defined by its elements, without which there should be, at the most, no criminal offense. (*Id.*)

DAMAGES

Attorney's fees — Even when a claimant is compelled to incur expenses to protect his rights, attorney's fees may still be withheld where no sufficient showing of bad faith could be reflected in a party's persistence in a suit other than an erroneous conviction of the righteousness of his cause. (Rep. of the Phils. *vs.* Ng, G.R. No. 229335, Nov. 29, 2017) p. 1070

Exemplary damages — May be granted in *quasi-delicts* if the defendant acted with gross negligence pursuant to Art. 2231 of the Civil Code. (Coca-Cola Bottlers Phils., Inc. *vs.* Guingona Meñez, G.R. No. 209906, Nov. 22, 2017) p. 468

Moral damages — In the absence of sufficient evidence on physical injuries that respondent sustained, he is not entitled to moral damages. (Coca-Cola Bottlers Phils., Inc. *vs.* Guingona Meñez, G.R. No. 209906, Nov. 22, 2017) p. 468

— To be entitled to an award of moral damages, it is not enough for an employee to prove that he was dismissed without just cause or due process; moral damages are recoverable only where the dismissal or suspension of the employee was attended by bad faith or fraud, or constituted an act oppressive to labor, or was done in a manner contrary to morals, good customs or public policy. (Sy *vs.* Neat, Inc., G.R. No. 213748, Nov. 27, 2017) p. 751

Nominal damages — Adjudicated in order that a right of the plaintiff, which has been violated or invaded by the defendant, may be vindicated or recognized, and not for the purpose of indemnifying the plaintiff for any loss suffered by him. (Sy *vs.* Neat, Inc., G.R. No. 213748, Nov. 27, 2017) p. 751

for it and the courts clearly explain the reason for such deviation. (*Id*.)

— In using the replacement cost method to ascertain the value of improvements, the courts may also consider the relevant standards provided under Sec. 5 of RA 8974, as well as equity consistent with the principle that eminent domain is a concept of equity and fairness that attempts to make the landowner whole; it is not the amount of the owner's investment, but the value of the interest in land taken by eminent domain, that is guaranteed to the owner. (*Id*.)

— The property owner is entitled to compensation only for what he actually loses, and what he loses is only the actual value of the property at the time of the taking. (*Id*.)

— The replacement cost method is premised on the principle of substitution, which means that all things being equal, a rational, informed purchaser would pay no more for a property than the cost of building an acceptable substitute with like utility. (*Id*.)

— The veracity of the facts and figures which the parties used in their respective computations involves the resolution of questions of fact which is, as a rule, improper in a petition for review on *certiorari* since the Court is not a trier of facts; a remand of this case for reception of further evidence is necessary in order for the RTC to determine just compensation for the subject improvements in accordance with the guidelines set under R.A. No. 8974 and its IRR. (*Id*.)

EMPLOYMENT, TERMINATION OF

Abandonment — For abandonment to exist, the following requisites must be present: (1) that the employee must have failed to report for work or must have been absent without valid or justifiable reason; and (2) that there must have been a clear intention to sever the employer-employee relationship manifested by some overt acts; absence must be accompanied by overt acts unerringly

— In instances where there was neither dismissal by the employer nor abandonment by the employee, the proper remedy is to reinstate the employee to his former position but without the award of backwages. (Jolo's Kiddie Carts *vs.* Caballa, G.R. No. 230682, Nov. 29, 2017) p. 1101

— Separation pay is awarded because the petitioners could no longer be reinstated due to the abolition of their former positions and overall restructuring of the NPC; for purposes of computing separation pay in lieu of reinstatement, the length of service shall be computed until the time reinstatement was rendered impossible. (NPC Drivers and Mechanic Association (NPC DAMA) *vs.* Nat'l. Power Corp. (NPC), G.R. No. 156208, Nov. 21, 2017) p. 62

— The employer bears the burden of proving that the termination was for a valid or authorized cause; there are cases wherein the facts and the evidence do not establish *prima facie* that the employee was dismissed from employment; before the employer must bear the burden of proving that the dismissal was legal, the employee must first establish by substantial evidence the fact of his dismissal from service. (Doctor *vs.* Nii Enterprises, G.R. No. 194001, Nov. 22, 2017) p. 251

— The evidence to prove the fact of the employee's termination from employment must be clear, positive, and convincing; absent any showing of an overt or positive act proving that respondents had dismissed petitioners, the latter's claim of illegal dismissal cannot be sustained, as the same would be self-serving, conjectural and of no probative value. (*Id.*)

— Where an employee had already suffered the corresponding penalties for his infraction, to consider the same offenses as justification for his dismissal would be penalizing the employee twice for the same offense. (Sy *vs.* Neat, Inc., G.R. No. 213748, Nov. 27, 2017) p. 751

Just or authorized cause — In cases of regular employment, the employer shall not terminate the services of an

FORUM SHOPPING

Concept — The deliberate filing of multiple complaints by any party and his counsel to obtain favorable action constitutes forum shopping and shall be a ground for summary dismissal thereof and shall constitute direct contempt of court, without prejudice to disciplinary proceeding against the counsel and the filing of a criminal action against the guilty party; once there is a finding of forum shopping, the penalty is summary dismissal not only of the petition pending before this Court, but also of the other case that is pending in a lower court. (Zamora *vs.* Quinan, Jr., G.R. No. 216139, Nov. 29, 2017) p. 1009

— The rule proscribing forum shopping seeks to foster candor and transparency between lawyers and their clients in appearing before the courts to promote the orderly administration of justice, prevent undue inconvenience upon the other party and save the precious time of the courts. (*Id.*)

— There is identity of causes of action, parties and reliefs sought in the action he filed; constitutes abuse of court processes, which tends to degrade the administration of justice, to wreak havoc upon orderly juridical procedure and to add to the congestion of the already burdened dockets of the courts. (*Id.*)

GOVERNMENT PROCUREMENT REFORM ACT (R.A. NO. 9184)

Application of — Mandates that all acquisition of goods, consulting services, and the contracting for infrastructure projects by any branch, department, office, agency, or instrumentality of the government, including state universities and colleges, government-owned and/or -controlled corporations, government financial institutions, and local government units shall be done through competitive bidding. (De Guzman *vs.* Office of the Ombudsman, G.R. No. 229256, Nov. 22, 2017) p. 681

— Sec. 13, Art. V of RA 9184 and Sec. 13, Rule V of IRR-A underscore that written invitations should be sent to

— Failure to allege the assessed value of a real property in the complaint would result to a dismissal of the case; this is because absent any allegation in the complaint of the assessed value of the property, it cannot be determined whether the RTC or the MTC has original and exclusive jurisdiction over the petitioner's action; indeed, the courts cannot take judicial notice of the assessed or market value of the land; the failure to allege the real property's assessed value in the complaint would not be fatal if, in the documents annexed to the complaint, an allegation of the assessed value could be found. (*Id.*)

— In all civil actions which involve title to, or possession of, real property, or any interest therein, the RTC shall exercise exclusive original jurisdiction where the assessed value of the property exceeds ₱20,000.00 or, for civil actions in Metro Manila, where such value exceeds ₱50,000.00; for those below the foregoing threshold amounts, exclusive jurisdiction lies with the MeTC, MTC, MCTC, or MTCC. (*Id.*)

— It is a requirement under the Judiciary Reorganization Act of 1980, as amended, that the allegation of the real property's assessed value is in the complaint. (*Id.*)

— It is axiomatic that jurisdiction over the subject matter is the power to hear and determine the general class to which the proceedings in question belong; it is conferred by law and not by the consent or acquiescence of any or all of the parties or by erroneous belief of the court that it exists. (*Id.*)

— The rule on determining the assessed value of a real property, insofar as the identification of the jurisdiction of the first and second level courts is concerned, would be two-tiered: first, the general rule is that jurisdiction is determined by the assessed value of the real property as alleged in the complaint; and second, the rule would be liberally applied if the assessed value of the property, while not alleged in the complaint, could still be identified through a facial examination of the documents already attached to the complaint. (*Id.*)

MORTGAGES

Mortgagee in good faith — Based on the rule that buyers or mortgagees dealing with property covered by a Torrens Certificate of Title are not required to go beyond what appears on the face of the title; a mortgagee has a right to rely in good faith on the certificate of title of the mortgagor of the property given as security, and in the absence of any sign that might arouse suspicion, the mortgagee has no obligation to undertake further investigation. (Sps. Miles *vs.* Bautista Lao, G.R. No. 209544, Nov. 22, 2017) p. 455

— Good faith is defined as an honest intention to abstain from taking any unconscientiously advantage of another, even through the forms or technicalities of the law, together with an absence of all information or belief of fact which would render the transaction unconscientiously. (*Id.*)

— If the debtor fails or unjustly refuses to pay his debt when it falls due and the debt is secured by a mortgage and by a check, the creditor has three options against the debtor and the exercise of one will bar the exercise of the others; the remedies include foreclosure and filing of a criminal case for violation of BP 22; when respondent opted to foreclose, he merely exercised a privilege granted to him by law as a secured creditor. (*Id.*)

— In ascertaining good faith, or the lack of it, which is a question of intention, courts are necessarily controlled by the evidence as to the conduct and outward acts by which alone the inward motive may, with safety, be determined; good faith, or want of it, is capable of being ascertained only from the acts of one claiming its presence, for it is a condition of the mind which can be judged by actual or fancied token or signs; good faith, or want of it, is not a visible, tangible fact that can be seen or touched, but rather a state or condition of mind which can only be judged by actual or fancied token or signs. (*Id.*)

Pre-trial rules — The importance of pre-trial procedure as a means of facilitating the disposal of cases by simplifying or limiting the issues and avoiding unnecessary proof of facts at the trial, and to do whatever may reasonably be necessary to facilitate and shorten the formal trial; the need for strict adherence to the rules on pre-trial thus proceeds from its significant role in the litigation process; relaxation of these rules, however, is contingent upon a showing of compelling and persuasive reasons to justify the same. (Chua *vs.* Sps. Cheng and Sihiyon, G.R. No. 219309, Nov. 22, 2017) p. 594

PROPERTY REGISTRATION DECREE (P.D. NO. 1529)

Innocent purchaser for value — Every registered owner receiving certificate of title in pursuance of a decree of registration and every subsequent purchaser of registered land taking a certificate of title for value and good faith, shall hold the same free from all encumbrances except those noted in said certificate. (Calma *vs.* Atty. Lachica, Jr., G.R. No. 222031, Nov. 22, 2017) p. 607

— Refers to someone who buys the property of another without notice that some other person has a right to or interest in it and who pays in full and fair the price at the time of the purchase or without receiving any notice of another person's claim. (*Id.*)

PUBLIC OFFICERS AND EMPLOYEES

Dishonesty — For dishonesty to be considered serious, warranting the penalty of dismissal from the service the presence of any one of the following attendant circumstances must be present: (1) the dishonest act caused serious damage and grave prejudice to the Government; (2) the respondent gravely abused his authority in order to commit the dishonest act; (3) where the respondent is an accountable officer, the dishonest act directly involves property, accountable forms or money for which he is directly accountable and the respondent shows an intent to commit material gain, graft and corruption; (4) the dishonest act exhibits moral depravity

the accused employs means of execution that gives the person attacked no opportunity to defend himself or to retaliate; and (2) the means of execution was deliberate or consciously adopted. (People *vs.* Pantoja *y* Astorga, G.R. No. 223114, Nov. 29, 2017) p. 1052

— For treachery to be appreciated, two concurring conditions must be established: *first*, the employment of means of execution that gives the person attacked no opportunity to defend himself or to retaliate; and *second*, the means of execution was deliberately or consciously adopted. (People *vs.* Ramelo, G.R. No. 224888, Nov. 22, 2017) p. 636

— The killing of a child is characterized by treachery even if the manner of the assault is not shown because the weakness of the victim due to his tender age results in the absence of any danger to the accused. (People *vs.* Pantoja *y* Astorga, G.R. No. 223114, Nov. 29, 2017) p. 1052

— There is treachery when the offender commits any of the crimes against persons, employing means, methods or forms in their execution, and tending directly and specially to insure their execution without risk to himself arising from any defense which the offended party might make; the essence of treachery is the sudden and unexpected attack by the aggressor on the unsuspecting victim, depriving the latter of any real chance to defend himself, thereby ensuring its commission without risk to the aggressor and without the slightest provocation on the part of the victim. (People *vs.* Ramelo, G.R. No. 224888, Nov. 22, 2017) p. 636

QUASI-DELICTS

Elements — Elements of a quasi-delict are: (1) the damages suffered by the plaintiff; (2) the fault or negligence of the defendant or some other person for whose act he must respond; and (3) the connection of cause and effect between the fault or negligence and the damages incurred.

merely frivolous and dilatory; and (f) the other party will not be unjustly prejudiced thereby. (*Id*.)

— Not to be disdained as mere technicalities that may be ignored at will to suit the convenience of a party; adjective law is important in insuring the effective enforcement of substantive rights through the orderly and speedy administration of justice; these rules are not intended to hamper litigants or complicate litigation but, indeed, to provide for a system under which suitors may be heard in the correct form and manner and at the prescribed time in a peaceful confrontation before a judge whose authority they acknowledge. (*Id*.)

— Procedural rules do not exist for the convenience of the litigants; the rules were established primarily to provide order to, and enhance the efficiency of our judicial system. (*Id*.)

— The Court of Appeals should avoid dismissal of cases based merely on technical grounds; judicial economy requires the prosecution of cases with the least cost to the parties and to the court's time, effort, and resources. (*Id*.)

TAXATION

Final assessment notice — Contains not only a computation of tax liabilities but also a demand for payment within a prescribed period; as soon as it is served, an obligation arises on the part of the taxpayer concerned to pay the amount assessed and demanded; it also signals the time when penalties and interests begin to accrue against the taxpayer. (Commissioner of Internal Revenue *vs.* Transitions Optical Phils., G.R. No. 227544, Nov. 22, 2017) p. 664

Income taxation — PAGCOR is liable for payment of withholding taxes on fringe benefits unless the fringe benefit is required by the nature of its business or is for its convenience. (Phil. Amusement and Gaming Corp. (PAGCOR) *vs.* Commissioner of Internal Revenue, G.R. Nos. 210689-90, Nov. 22, 2017) p. 508

identification of the appellant prevails over the appellant's *alibi* that he was somewhere else when the crime was committed and that it was physically impossible for him to have been at the scene of the crime; unless substantiated by clear and convincing proof, *alibi* and denial are negative, self-serving, and undeserving of any weight in law. (People *vs.* Bragat, G.R. No. 222180, Nov. 22, 2017) p. 625

— Determination by a trial judge who could weigh and appraise the testimonies of the witnesses as to the facts duly proved is entitled to the highest respect, unless it could be shown that the trial judge ignored or disregarded circumstances of weight or influence sufficient to call for a different finding. (*Id.*)

— Factual findings of the trial court, its assessment of the credibility of witnesses and the probative weight of their testimonies, and the conclusions based on these factual findings are to be given the highest respect. (People *vs.* Tayaban, G.R. No. 207666, Nov. 22, 2017) p. 391

— Findings of trial courts on the credibility of witnesses deserve a high degree of respect and will not be disturbed during appeal in the absence of any clear showing that the trial court overlooked, misunderstood or misapplied some facts or circumstances of weight and substance which could have altered the conviction of the appellant. (Napone, Jr. *vs.* People, G.R. No. 193085, Nov. 29, 2017) p. 844

— The identification of the accused as the perpetrator of the crime is regarded as more important than ascertaining the name of the accused; confusion in the perpetrator's name, by itself, would be insufficient to overturn the positive identification made by a credible witness. (People *vs.* Balao *y* Lopez, G.R. No. 207805, Nov. 22, 2017) p. 407

— The trial courts' assessment of a witness' credibility is generally given great weight and respect by the appellate courts; trial courts are in the best position to gauge whether or not a witness has testified truthfully since

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