PHILIPPINE REPORTS

VOL. 827

MARCH 5, 2018 TO MARCH 13, 2018

VOLUME 827

REPORTS OF CASES

DETERMINED IN THE

SUPREME COURT

OF THE

PHILIPPINES

FROM

MARCH 5, 2018 TO MARCH 13, 2018

SUPREME COURT
MANILA
2019

Prepared
by

The Office of the Reporter
Supreme Court
Manila
2019

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REPORT OF CASES

DETERMINED IN THE

SUPREME COURT OF THE PHILIPPINES

SECOND DIVISION

[A.C. No. 9257. March 5, 2018]
(Formerly CBD Case No. 12-3490)

EDGAR M. RICO, *complainant, vs.* **ATTY. REYNALDO G. SALUTAN,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; BURDEN OF PROOF; DEFINED AS THE DUTY OF A PARTY TO PRESENT EVIDENCE ON THE FACTS IN ISSUE NECESSARY TO ESTABLISH HIS CLAIM OR DEFENSE BY THE AMOUNT OF EVIDENCE REQUIRED BY LAW; CASE AT BAR.— In administrative proceedings, the burden of proof rests upon the complainant. For the court to exercise its disciplinary powers, the case against the respondent must be established by convincing and satisfactory proof. Here, despite the charges hurled against Atty. Salutan, Rico failed to show any badge of deception on the lawyer's part. x x x The Court has consistently held that an attorney enjoys the legal presumption that he is innocent of the charges against him until the contrary is proved, and that as an officer of the court, he is presumed to have performed his duties in accordance with his oath. Burden of proof, on the other hand, is defined in Section 1 of Rule 131 as the duty of a party to present evidence on the facts in issue necessary to establish his claim or defense by the amount of evidence required by law. x x x In the case at bar, Rico seriously failed to discharge said burden of proof. He failed to establish his

claims through relevant evidence as a reasonable mind might accept as adequate to support a conclusion — that is that Atty. Salutan indeed misled the court, directly or indirectly, in the course of championing his client's cause.

2. POLITICAL LAW; ADMINISTRATIVE LAW; QUANTUM OF PROOF NECESSARY FOR A FINDING OF GUILT IN ADMINISTRATIVE PROCEEDINGS IS SUBSTANTIAL EVIDENCE.— In administrative proceedings, the quantum of proof necessary for a finding of guilt is substantial evidence, which is that amount of relevant evidence that a reasonable mind might accept as adequate to support a conclusion. Further, the complainant has the burden of proving by substantial evidence the allegations in his complaint. The basic rule is that mere allegation is not evidence and is not equivalent to proof. Likewise, charges based on mere suspicion and speculation cannot be given credence. Besides, the evidentiary threshold of substantial evidence — as opposed to preponderance of evidence — is more in keeping with the primordial purpose of and essential considerations attending this type of cases.

3. LEGAL ETHICS; ATTORNEYS; DISBARMENT AND DISCIPLINE OF ATTORNEYS; DISCIPLINARY PROCEEDINGS AGAINST LAWYERS ARE *SUI GENERIS* WHICH DO NOT INVOLVE A TRIAL OF AN ACTION OR A SUIT BUT IS AN INVESTIGATION BY THE COURT INTO THE CONDUCT OF ONE OF ITS OFFICERS.— [D]isciplinary 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 is rather an investigation by the Court into the conduct of one of its officers. Not being intended to inflict punishment, it is in no sense a criminal prosecution. Accordingly, it also involves neither a plaintiff nor a prosecutor. It may be initiated by the Court *motu proprio*. Public interest is its primary objective, and the real question for determination is whether or not the attorney is still a fit person to be allowed the privileges as such. Hence, in the exercise of its disciplinary powers, the Court merely calls upon a member of the Bar to account for his actuations as an officer of the Court with the end in view of preserving the purity of the legal profession and the proper and honest administration of justice by purging the profession of members who by their misconduct have proved themselves no longer worthy to be entrusted with the duties

and responsibilities pertaining to the office of an attorney. In such posture, there can thus be no occasion to speak of a complainant or a prosecutor.

D E C I S I O N

PERALTA, *J.*:

The present case was initiated through a letter complaint to Judge Antonio P. Laolao, Sr., Presiding Judge of Municipal Trial Court, Branch 6, Davao City, against respondent Atty. Reynaldo G. Salutan for purportedly misleading the court and for contempt of court.

The factual and procedural antecedents of the case are as follows:

Complainant Edgar M. Rico explained that his relatives were plaintiffs in a civil case for Forcible Entry before the Municipal Trial Court in Cities (*MTCC*), Branch 4, Davao City. The court had ordered the defendants to restore plaintiffs' possession of the subject properties, remove all structures that had been introduced on the same, and to pay reasonable sum for their occupation of the properties.

Milagros Villa Abrille, one of the defendants in the aforementioned case, filed a separate case for Unlawful Detainer against Rico covering the same property. On November 6, 2001, the MTCC ordered Rico to vacate the premises. Subsequently, the Regional Trial Court (*RTC*) affirmed the MTCC ruling and issued a Writ of Execution.

On July 9, 2004, the court's sheriff executed a Return Service stating that the writ could not be served on Rico since the property subject of the case was different from the lot which Rico was occupying. Thereafter, Villa Abrille, through her counsel, respondent Atty. Salutan, filed a motion for the issuance of an Alias Writ of Execution. On May 15, 2007, the sheriff executed a Return of Service again since the alias writ could not be enforced for the same reason as the first time. On April 4, 2008, Villa Abrille once again filed a motion for the issuance

of another Alias Writ of Execution, which, this time, the MTCC denied. Hence, Villa Abrille went to the Court for the issuance of a Writ of *Mandamus* to compel the MTCC to issue another Writ of Execution and for the sheriff to implement the same. The Court, however, dismissed the case.

For the fourth (4th) time, Villa Abrille filed another motion for the issuance of a Writ of Execution. This time, the MTCC granted it. Consequently, the court sheriff issued a Final Notice to Vacate to Rico on June 10, 2010. On June 15, 2010, the same sheriff led the demolition of the house and other improvements on the property. Thus, Rico filed the administrative complaint against Atty. Salutan.

For his part, Atty. Salutan denied the charges and argued that he merely advocated for his client's cause and did the same within the bounds of the law and of the rules. He merely did what a zealous lawyer would naturally do in representation of his client.

On January 2, 2013, the Commission on Bar Discipline of the Integrated Bar of the Philippines (*IBP*) recommended the dismissal of the administrative complaint against Atty. Salutan, to wit:

> Foregoing premises considered, the undersigned believes and so holds that the complaint is without merit. Accordingly, he recommends DISMISSAL of the same.[1]

On March 21, 2013, the IBP Board of Governors passed Resolution No. XX-2013-357,[2] which adopted the abovementioned recommendation, thus:

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

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[1] Report and Recommendation submitted by Commissioner Oliver A. Cachapero dated January 2, 2013; *rollo*, Vol. I, pp. 265-268.

[2] *Id*. at 347.

Thereafter, Rico moved for reconsideration of said Resolution. On March 23, 2014, the IBP Board of Governors passed another resolution, Resolution No. XXI-2014-183,[3] denying said motion for reconsideration and approving its 2013 Resolution, to wit:

RESOLVED to DENY Complainant's Motion for Reconsideration, there being no cogent reason to reverse the findings of the Commission and it being a mere reiteration of the matters which had already been threshed out and taken into consideration. Thus, Resolution No. XX-2013-357 dated March 21, 2013 is hereby ***AFFIRMED****.*

The Court's Ruling

The Court finds no cogent reason to depart from the findings and recommendation of the IBP that the instant administrative complaint against Atty. Salutan must be dismissed.

In administrative proceedings, the burden of proof rests upon the complainant. For the court to exercise its disciplinary powers, the case against the respondent must be established by convincing and satisfactory proof.[4]

Here, despite the charges hurled against Atty. Salutan, Rico failed to show any badge of deception on the lawyer's part. There was no court decision declaring that Villa Abrille's title was fake or that it had encroached on Rico's property. All that Atty. Salutan did was to zealously advocate for the cause of his client. He was not shown to have misled or unduly influenced the court through misinformation. He merely persistently pursued said cause and he did so within the bounds of the law and the existing rules. He succeeded at finally having the writ of execution, albeit at the fourth (4th) time, implemented.

The Court has consistently held that an attorney enjoys the legal presumption that he is innocent of the charges against him until the contrary is proved, and that as an officer of the court, he is presumed to have performed his duties in accordance with his oath. Burden of proof, on the other hand, is defined

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[3] *Id*. at 346.

[4] *Villatuya v. Tabalingcos*, 690 Phil. 381, 396 (2012).

in Section 1 of Rule 131 as the duty of a party to present evidence on the facts in issue necessary to establish his claim or defense by the amount of evidence required by law.[5]

Weight and sufficiency of evidence, under Rule 133 of the Rules of Court,is not determined mathematically by the numerical superiority of the witnesses testifying to a given fact. It depends on its practical effect in inducing belief for the party on the judge trying the case.[6]

In administrative proceedings, the quantum of proof necessary for a finding of guilt is substantial evidence, which is that amount of relevant evidence that a reasonable mind might accept as adequate to support a conclusion. Further, the complainant has the burden of proving by substantial evidence the allegations in his complaint. The basic rule is that mere allegation is not evidence and is not equivalent to proof. Likewise, charges based on mere suspicion and speculation cannot be given credence. Besides, the evidentiary threshold of substantial evidence — as opposed to preponderance of evidence — is more in keeping with the primordial purpose of and essential considerations attending this type of cases. As case law elucidates, 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 is rather an investigation by the Court into the conduct of one of its officers. Not being intended to inflict punishment, it is in no sense a criminal prosecution. Accordingly, it also involves neither a plaintiff nor a prosecutor. It may be initiated by the Court *motu proprio*. Public interest is its primary objective, and the real question for determination is whether or not the attorney is still a fit person to be allowed the privileges as such. Hence, in the exercise of its disciplinary powers, the Court merely calls upon a member of the Bar to account for his actuations as an officer of the Court with the end in view of preserving the purity of the legal profession and the proper and honest administration of justice by purging the profession of members who by their misconduct have proved themselves

[5] *Aba, et al. v. De Guzman, et al.*, 698 Phil. 588, 600 (2011).

[6] *Id*.

no longer worthy to be entrusted with the duties and responsibilities pertaining to the office of an attorney. In such posture, there can thus be no occasion to speak of a complainant or a prosecutor.[7]

In the case at bar, Rico seriously failed to discharge said burden of proof. He failed to establish his claims through relevant evidence as a reasonable mind might accept as adequate to support a conclusion — that is that Atty. Salutan indeed misled the court, directly or indirectly, in the course of championing his client's cause.

In a court battle, there must necessarily be a victor and a vanquished. A vain effort from the vanquished litigant should not, however, cause him to immediately accuse the victor of resorting to deceptive ploy or tactics, especially when he had been given sufficient opportunity to counter every move of the victor in court. One should be magnanimous enough to acknowledge the triumph of one who had waged a fair legal battle against another in a court of law.

Members of the Bar must be reminded that enthusiasm, or even excess of it, is no less a virtue, if channelled in the right direction. However, it must be circumscribed within the bounds of propriety and with due regard for the proper place of courts in our system of government. While zeal or enthusiasm in championing a client's cause is desirable, unprofessional conduct stemming from such zeal or enthusiasm is always disfavored.[8] Such undesirable conduct, however, is not shown to be extant in this case.

WHEREFORE, PREMISES CONSIDERED, the Court **DISMISSES** the instant Complaint against Atty. Reynaldo G. Salutan for utter lack of merit.

SO ORDERED.

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

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[7] *Reyes v. Atty. Nieva*, A.C. No. 8560, September 6, 2016, 802 SCRA 196, 220.

[8] *Bacatan v. Atty. Dadula*, 802 Phil. 289, 297 (2016).

[*] Acting Chief Justice per Special Order No. 2539 dated February 28, 2018.

SECOND DIVISION

[A.C. No. 11871. March 5, 2018]
(Formerly CBD Case No. 154520)

POTENCIANO R. MALVAR, *complainant, vs.* **ATTY. FREDDIE B. FEIR,** *respondent.*

SYLLABUS

1. **LEGAL ETHICS; ATTORNEYS; MAY BE DISBARRED OR SUSPENDED BY THE SUPREME COURT FOR ANY VIOLATION OF HIS OATH OF OFFICE OR OF HIS DUTIES AS AN ATTORNEY AND COUNSELOR.—** An attorney may be disbarred or suspended for any violation of his oath or of his duties as an attorney and counselor, which include statutory grounds enumerated in Section 27, Rule 138 of the Rules of Court.

2. **ID.; ID.; CODE OF PROFESSIONAL RESPONSIBILITY; CANON 19, RULE 19.01 THEREOF, NOT VIOLATED IN CASE AT BAR.—** Canon 19 of the Code of Professional Responsibility provides that "a lawyer shall represent his client with zeal within the bounds of the law." Moreover, Rule 19.01 thereof states that "a lawyer shall employ only fair and honest means to attain the lawful objectives of his client and shall not present, participate in presenting or threaten to present unfounded criminal charges to obtain an improper advantage in any case or proceeding." Under this Rule, a lawyer should not file or threaten to file any unfounded or baseless criminal case or cases against the adversaries of his client designed to secure a leverage to compel the adversaries to yield or withdraw their own cases against the lawyer's client. In the instant case, Malvar claims that Feir sent him the demand letters in order to interpose threats that should he fail to pay the sum of ₱18,000,000.00, Feir will file criminal, civil, and administrative complaints which were, in truth, unfounded for being based neither on valid nor relevant facts and law. Such demands, according to Malvar, are tantamount to blackmail or extortion. x x x It bears stressing, x x x that the monetary consideration Feir was demanding from Malvar in the amount of ₱18,000,000.00 cannot be considered as the subject of blackmail or extortion. Feir's demand for said

> amount is not an exaction of money for the exercise of an influence but is actually a legitimate claim for the remaining balance subject of a legitimate sale transaction. Contrary to Malvar's claims, there is nothing in the demand letters to show that the same was maliciously made with intent to extort money from him since it was based on a valid and justifiable cause. x x x In the absence, therefore, of any evidence preponderant to prove that Feir committed acts constituting grounds for disbarment, such as the violation of Canon 19, Rule 19.01 of the Code of Professional Responsibility and the Lawyer's Oath, Malvar's claims must necessarily fail.

APPEARANCES OF COUNSEL

Batungbacal and Associates Law Offices for complainant.

D E C I S I O N

PERALTA, *J.*:

This is a Petition for Disbarment filed by petitioner Potenciano R. Malvar against Atty. Freddie B. Feir for violation of Canon 19, Rule 19.01 of the Code of Professional Responsibility and the Lawyer's Oath.[1]

The antecedent facts are as follows:

On February 13, 2015, petitioner Potenciano R. Malvar filed a complaint for disbarment against respondent Atty. Freddie B. Feir alleging that on December 17, 2014 and January 22, 2015, he received threatening letters from Feir stating that should he fail to pay the sum of ₱18,000,000.00 to his client, Rogelio M. Amurao, a criminal complaint for Falsification of Public Documents and Estafa, a civil complaint for Annulment of Transfer Certificate of Title, and an administrative complaint for the revocation of his license as a physician would be filed against him.[2] According to Malvar, Feir's demands were

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[1] *Rollo,* pp. 2-3.

[2] *Rollo,* p. 108.

tantamount to blackmail or extortion due to the fact that Feir tried to obtain something of value by means of threats of filing complaints.[3] Said acts are in violation of the Lawyer's Oath which provides that: "I will do no falsehood, nor consent to the doing of any in court; I will not wittingly or willingly promote or sue any groundless, false or unlawful suit, or give aid nor consent to the same."[4] In support of his complaint, Malvar submitted the following affidavits executed by: (1) his staff stating that said staff witnessed Amurao deliver to the office a Deed of Absolute Sale signed by Amurao, Noemi Amurao, Teodorico Toribio, and Fatima Toribio;[5] and (2) Amurao himself stating that he is one of the sellers indicated in the Deed of Absolute Sale, that the signature appearing thereon is his, and that he personally witnessed Noemi Amurao, Teodorico Toribio, and Fatima Toribio sign said document.[6]

For his part, Feir countered that the said letters merely demanded Malvar to explain how certain parcels of land Malvar was purchasing from his client, Amurao, were already registered in Malvar's name when Amurao had never executed a Deed of Absolute Sale transferring the same. Feir narrated that sometime in 2008, Amurao was tasked by his co-owners, spouses Teodorico Toribio and Fatima Toribio, to sell their properties consisting of three (3) parcels of land located in Antipolo City for ₱21,200,000.00. The buyer of said properties was Malvar, who initially paid the sum of ₱3,200,000.00 with a promise to pay the remainder of the purchase price after verification of the authenticity of the owner's title to the properties. For this purpose, Malvar borrowed the original copies of said titles from Amurao. Malvar, however, failed to return the same despite several demands. To his surprise, Amurao later on learned that the subject properties were already transferred in Malvar's name despite the fact that he never executed the necessary Deed of Absolute

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[3] *Id.* at 109.

[4] *Id.* at 2.

[5] *Id.* at 8.

[6] *Id.* at 9.

Sale nor received the balance of the purchase price. Upon further verification, Amurao discovered that there exists a Deed of Absolute Sale covering the sale of the subject properties in favor of Malvar exhibiting not only the signatures of Amurao and Teodorico but also the signature of Fatima, who had long been dead.[7] But when asked, Malvar could not proffer any explanation as to the existence of the suspicious Deed of Absolute Sale or the fact that the subject properties were already in his name. It is for this reason that Amurao consulted Feir on his legal remedies as regards his recovery of the subject properties and/or collection of the remaining balance of the purchase price. Clearly, therefore, Malvar's complaint seeking his disbarment appears only to harass and intimidate Feir. The threat to sue Malvar based on the facts presented to Feir as a lawyer was not groundless as Amurao stands to lose his property while Malvar enriches himself at Amurao's expense.[8] Interestingly, moreover, it was pointed out that the purported Affidavit executed by Amurao must be a forgery in view of the fact that he never executed any such document and that his supposed Senior Citizen Identification Number indicated in the Acknowledgment thereof was left blank.[9]

After a careful review and evaluation of the case, the Commission on Bar Discipline of the Integrated Bar of the Philippines *(IBP)* recommended the dismissal of the complaint against Feir for lack of merit on February 23, 2016.[10] On November 5, 2016, the IBP Board of Governors passed a Resolution[11] adopting and approving the recommended dismissal of the complaint, thus:

RESOLVED to ADOPT the findings of fact and recommendation of the Investigating Commissioner dismissing the complaint.

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[7] *Id.* at 110.

[8] *Id.* at 12.

[9] *Id*. at 17.

[10] Report and Recommendation submitted by Commissioner Suzette A. Mamon; dated February 23, 2016; *id* at 108-113.

[11] *Rollo,* pp. 106-107.

The Court's Ruling

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

An attorney may be disbarred or suspended for any violation of his oath or of his duties as an attorney and counselor, which include statutory grounds enumerated in Section 27,[12] Rule 138 of the Rules of Court.[13]

Canon 19 of the Code of Professional Responsibility provides that "a lawyer shall represent his client with zeal within the bounds of the law." Moreover, Rule 19.01 thereof states that "a lawyer shall employ only fair and honest means to attain the lawful objectives of his client and shall not present, participate in presenting or threaten to present unfounded criminal charges to obtain an improper advantage in any case or proceeding." Under this Rule, a lawyer should not file or threaten to file any unfounded or baseless criminal case or cases against the adversaries of his client designed to secure a leverage to compel the adversaries to yield or withdraw their own cases against the lawyer's client.[14]

In the instant case, Malvar claims that Feir sent him the demand letters in order to interpose threats that should he fail to pay the sum of ₱18,000,000.00, Feir will file criminal, civil, and

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[12] Section 27 of Rule 138 of the Rules of Court provides:

Section 27. *Attorneys removed or suspended by Supreme Court on what grounds.* — A member of the bar may be removed 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 wilfull disobedience of any lawful order of a superior court, or for corruptly or willful 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.

[13] *Atty. Alcantara v. Atty. De Vera,* 650 Phil. 214, 221 (2010).

[14] *Pena v. Atty. Aparicio,* 552 Phil. 512, 523 (2007).

administrative complaints which were, in truth, unfounded for being based neither on valid nor relevant facts and law. Such demands, according to Malvar, are tantamount to blackmail or extortion.

The Court, however, does not find merit in Malvar's contention. Blackmail is defined as "the extortion of money from a person by threats of accusation or exposure or opposition in the public prints, x x x obtaining of value from a person as a condition of refraining from making an accusation against him, or disclosing some secret calculated to operate to his prejudice." In common parlance and in general acceptation, it is equivalent to and synonymous with extortion, the exaction of money either for the performance of a duty, the prevention of an injury, or the exercise of an influence. Not infrequently, it is extorted by threats, or by operating on the fears or the credulity, or by promises to conceal or offers to expose the weaknesses, the follies, or the crime of the victim.[15]

In the instant case, it is undisputed that Malvar is the buyer of the properties subject herein and that Amurao, Feir's client, is one of the owners of the same. It is also undisputed that said subject properties are already registered under Malvar's name. But according to Amurao, he has yet to receive the remaining balance of its purchase price. To the Court, this fact alone is enough reason for Amurao to seek the legal advice of Feir and for Feir to send the demand letters to Malvar. As the IBP held, these demand letters were based on a legitimate cause or issue, which is the alleged failure of Malvar to pay the full amount of the consideration in the sale transaction as well as the alleged falsified Deed of Sale used to transfer ownership over the lots subject of the instant case.[16] Whether the Deed of Sale used in transferring the properties in the name of Malvar was, indeed, forged and falsified is another matter for as far as the instant complaint for disbarment is concerned, Feir was simply acting in compliance with his lawyer's oath to protect and preserve the rights of his client.

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[15] *Id.* at 524.

[16] *Rollo,* p. 112.

It bears stressing, moreover, that the monetary consideration Feir was demanding from Malvar in the amount of ₱18,000,000.00 cannot be considered as the subject of blackmail or extortion. Feir's demand for said amount is not an exaction of money for the exercise of an influence but is actually a legitimate claim for the remaining balance subject of a legitimate sale transaction. Contrary to Malvar's claims, there is nothing in the demand letters to show that the same was maliciously made with intent to extort money from him since it was based on a valid and justifiable cause. Indeed, the writing of demand letters is a standard practice and tradition in this jurisdiction. It is usually done by a lawyer pursuant to the principal-agent relationship that he has with his client, the principal. Thus, in the performance of his role as agent, the lawyer may be tasked to enforce his client's claim and to take all the steps necessary to collect it, such as writing a letter of demand requiring payment within a specified period.[17]

In the absence, therefore, of any evidence preponderant to prove that Feir committed acts constituting grounds for disbarment, such as the violation of Canon 19, Rule 19.01 of the Code of Professional Responsibility and the Lawyer's Oath, Malvar's claims must necessarily fail.

WHEREFORE, PREMISES CONSIDERED, the Court **DISMISSES** the Petition for Disbarment against Atty. Freddie Feir for utter lack of merit.

SO ORDERED.

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

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[17] *Pena v. Atty. Lolito G. Aparicio, supra* note 14, at 525.

[*] Acting Chief Justice per Special Order No. 2539 dated February 28, 2018.

SECOND DIVISION

[G.R. No. 196094. March 5, 2018]

PEOPLE OF THE PHILIPPINES, *petitioner, vs.* **AMADO "JAKE" P. MACASAET,[*] ENRIQUE P. ROMUALDEZ AND JOY P. DELOS REYES (DECEASED),[**]** *respondents.*

[G.R. No. 196720. March 5, 2018]

AMADO "JAKE" P. MACASAET, ENRIQUE P. ROMUALDEZ AND JOY P. DELOS REYES (DECEASED), *petitioners, vs.* **PEOPLE OF THE PHILIPPINES AND NARCISO "JUN" Y. SANTIAGO, JR.,** *respondents.*

[G.R. No. 197324. March 5, 2018]

AMADO "JAKE" P. MACASAET, ENRIQUE P. ROMUALDEZ AND JOY P. DELOS REYES (DECEASED), *petitioners, vs.* **PEOPLE OF THE PHILIPPINES AND CASIMIRO "ITO" YNARES,** *respondents.*

SYLLABUS

1. CRIMINAL LAW; REVISED PENAL CODE, AS AMENDED; LIBEL; RULES ON VENUE OF CRIMINAL ACTION FOR

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[*] Amado "Jake" Macasaet passed away on January 7, 2018. See '*They dont make publishers like Jake Macasaet anymore*,' by Ellen Tordesillas, January 9, 2018, <http://www.malaya.com.ph/business-news/business/'they-don't-make-publishers-jake-macasaet-anymore'> (last visited on March 5, 2018).

[**] Per Resolution dated October 14, 2013, the case was considered closed and terminated as to accused Joy P. Delos Reyes, who died on May 3, 2013 per Notice of Death dated June 17, 2013, pursuant to Article 89 of the Revised Penal Code. The October 14, 2013 Resolution became final and executory on December 13, 2013; *rollo* (G.R. No. 196094), pp. 284-289, 301-302.

LIBEL; CASE AT BAR.— The rules on venue of criminal actions for libel were also restated in *Agbayani*, thus: 1. Whether the offended party is a public official or a private person, the criminal action may be filed in the Court of First Instance of the province or city where the libelous article is printed and first published. 2. If the offended party is a private individual, the criminal action may also be filed in the Court of First Instance of the province where he actually resided at the time of the commission of the offense. 3. If the offended party is a public officer whose office is in Manila at the time of the commission of the offense, the action may be filed in the Court of First Instance of Manila. 4. If the offended party is a public officer holding office outside of Manila, the action may be filed in the Court of First Instance of the province or city where he held office at the time of the commission of the offense. In the present case, the venue is apparently the place where the alleged defamatory article in *Malaya* was printed and first published.

2. ID.; ID.; ID.; ID.; THE INFORMATION MUST ALLEGE WITH PARTICULARITY WHERE THE DEFAMATORY ARTICLE WAS PRINTED AND FIRST PUBLISHED; COMPLIED WITH IN CASE AT BAR.— The Court disagrees with the CA; it finds the Information sufficient. x x x According to *Bonifacio*, "the Information must allege with particularity where the defamatory article was printed and first published, as evidenced or supported by, for instance, the address of their editorial or business offices in the case of newspapers." The Information in question complies with the *Bonifacio* directive because it alleges with particularity Port Area, Manila as the place where the alleged defamatory article was printed and first published as evidenced or supported by the records of the case. The Information need not parrot the provisions of Article 360 of the RPC and expressly use the phrase "printed and first published." If there is no dispute that the place of publication indicated in the Information, which is Manila in the present case, is the place where the alleged defamatory article was "printed and first published," then the law is substantially complied with. After all, the filing of the Information before an RTC of the City of Manila would, borrowing the phraseology of *Bonifacio*, forestall any inclination to harass the accused. Besides, it is incumbent upon the accused to show that Port Area, Manila is not the business or editorial office of *Malaya* in the face of evidence in the records of the

case that it is so. x x x Thus, the CA erred in dismissing the Information in Criminal Case No. 08-263273 and nullifying the Orders dated November 3, 2009 and January 29, 2010 of the RTC Manila, Br. 37, denying the accused's motion to dismiss.

3. POLITICAL LAW; CONSTITUTIONAL LAW; BILL OF RIGHTS; RIGHT TO SPEEDY TRIAL; MAY BE WAIVED BY FAILURE TO ASSERT SUCH RIGHT AT THE EARLIEST POSSIBLE TIME; LENGTH OF DELAY AND REASON FOR THE DELAY ARE FACTORS TO CONSIDER BEFORE SUCH RIGHT MAY BE CONSIDERED TO HAVE BEEN WAIVED; CASE AT BAR.— The right to speedy disposition of one's case, similar to the right to speedy trial, may be waived. The Court in *Nepomuceno v. The Secretary of National Defense* observed that the right to speedy trial as any other constitutionally or statutory conferred right, except when otherwise expressly so provided by law, may be waived. Therefore, it must be asserted. The assertion of such right is entitled to strong evidentiary weight in determining whether the accused is being deprived thereof such that the failure to claim the right will make it difficult to prove that there was a denial of a speedy trial. The accused's failure to timely question the delay would be an implied acceptance of such delay and a waiver of the right to question the same. Also, his silence may amount to laches. x x x In the instant case, the Court disagrees with the CA. The CA failed to consider the other factors that must be present before the right to speedy case determination may be considered to have been waived. **The CA did not consider the length of delay and the reason for the delay.** The length of delay must be commensurate with the reason thereof. In these cases, it must be recalled that in a Consolidated Review Resolution dated September 28, 2007 of the Rizal Provincial Prosecutor, the complaints filed by Ynares and Santiago were dismissed, without prejudice, for want of jurisdiction by reason of improper venue. It took the Rizal Provincial Prosecutor **more than eight years** from the filing of the complaints to dismiss without prejudice the complaints. The issue on venue in libel cases is neither a novel nor difficult one. **The more than eight years it took the Rizal Provincial Prosecutor to resolve a rather routine issue is clearly inordinate, unreasonable and unjustified.** Under the circumstances, it cannot be said "that there was no

more delay than is reasonably attributable to the ordinary processes of justice."

APPEARANCES OF COUNSEL

Office of the Solicitor General for People of the Philippines.
Tan Acut Lopez & Pison for Amado "Jake" Macasaet, *et al.*
Santiago Cruz & Associates Law Offices for Narciso "Jun" Y. Santiago, Jr. and Casimiro "ITO" Ynares.

D E C I S I O N

CAGUIOA, *J.*:

Before the Court are three consolidated petitions for review on *certiorari*[1] (Petitions) under Rule 45 of the Rules of Court assailing:

1. In G.R. No. 196094, the Decision[2] dated October 19, 2010 (October 2010 Decision) of the Court of Appeals[3] (CA) in CA-G.R. SP No. 113449, granting the petition, nullifying the Orders dated November 3, 2009[4] and January 29, 2010[5] of the Regional Trial Court of Manila, Branch 37 (RTC Manila, Br. 37) in Criminal Case No. 08-263273 and dismissing the Information for libel as well as the CA Resolution[6] dated March 8, 2011 denying the Office of the Solicitor General's motion for reconsideration;

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[1] *Rollo* (G.R. No. 196094), pp. 9-28, excluding Annexes; *rollo* (G.R. No. 196720), pp. 3-37, excluding Annexes; *rollo* (G.R. No. 197324), pp. 3-38, excluding Annexes.

[2] *Id.* at 29-40. Penned by Associate Justice Mario V. Lopez, with Associate Justices Magdangal M. De Leon and Samuel H. Gaerlan concurring.

[3] Special Fifteenth Division.

[4] *Rollo* (G.R. No. 196094), pp. 65-70. Issued by Presiding Judge Virgilio V. Macaraig.

[5] *Id.* at 219-220.

[6] *Id.* at 41-43.

2. In G.R. No. 196720, the CA[7] Decision[8] dated February 10, 2011 (February 2011 Decision) in CA-G.R. SP No. 110224, denying the petition and affirming the Orders dated February 19, 2009[9] and June 1, 2009[10] of the RTC Manila, Br. 37 in Criminal Case No. 08-263273 as well as the CA Resolution[11] dated April 28, 2011 denying the motion for reconsideration; and

3. In G.R. No. 197324, the CA[12] Decision[13] dated January 26, 2011 (January 2011 Decision) in CA-G.R. SP No. 110010, denying the petition and affirming the Orders dated November 20, 2008[14] and May 5, 2009[15] of the Regional Trial Court of Manila, Branch 36 (RTC Manila, Br. 36) in Criminal Case No. 08-263272 as well as the CA Resolution[16] dated June 16, 2011 denying the motion for reconsideration.

The Facts and Antecedent Proceedings

These three consolidated cases originated from complaints for nine counts of libel on account of nine interrelated newspaper articles which appeared in the newspapers *Malaya* and *Abante* where statements allegedly derogatory to then Governor Casimiro "Ito" M. Ynares, Jr. (Ynares) and former Undersecretary of the Department of Interior and Local Government Atty. Narciso "Jun" Y. Santiago, Jr. (Santiago) were written by Amado "Jake"

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[7] Special Thirteenth Division.

[8] *Rollo* (G.R. No. 196720), pp. 39-52. Penned by Associate Justice Antonio L. Villamor, with Associate Justices Jose C. Reyes, Jr. and Franchito N. Diamante concurring.

[9] *Id*. at 109-112. Issued by Presiding Judge Virgilio V. Macaraig.

[10] *Id*. at 122.

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

[12] Fourth Division.

[13] *Rollo* (G.R. No. 197324), pp. 40-52. Penned by Associate Justice Josefina Guevara-Salonga, with Associate Justices Mariflor P. Punzalan Castillo and Franchito N. Diamante concurring.

[14] *Id*. at 96-97. Issued by Judge Emma S. Young.

[15] *Id*. at 110-112.

[16] *Id*. at 54-55.

Macasaet (Macasaet). Ynares filed the two counts of libel while Santiago filed the other seven counts of libel.[17]

Of the nine counts of libel, probable causes for libel were found in relation to the April 21, 1999 issue of *Malaya* with respect to the article entitled "Santiago's gambling habits" and the March 1, 1999 issue of *Malaya* regarding the article entitled "NCA-UCAP FEUD: Walang trabaho, personalan lang." Both articles were written by Macasaet. The libel complaint involving the newspaper *Abante* was dismissed.[18]

Thus, separate Informations[19] for the two counts of libel were filed against Macasaet, *Malaya*'s Publisher, Chairman and writer, Enrique P. Romualdez (Romualdez),*Malaya*'s Executive Editor, and Joy P. Delos Reyes (Delos Reyes), *Malaya*'s Editor (collectively, the accused). The present cases revolve around these two libel cases.

Pursuant to the Court's Resolution[20] dated October 14, 2013, the cases were considered closed and terminated as to Delos Reyes who died on May 3, 2013 per Notice of Death[21] dated June 17, 2013, pursuant to Article 89 of the Revised Penal Code. The October 14, 2013 Resolution became final and executory on December 13, 2013.[22]

According to *Malaya*, "Amado 'Jake' P. Macasaet peacefully was brought home by his Creator at 8:35 am, January 7, 2018 surrounded by his family."[23] To date, however, no notice of his death has been filed with the Court.

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[17] Department of Justice (DOJ) Consolidated Resolution dated July 9, 2008, *rollo* (G.R. No. 196720), p. 75.

[18] DOJ Consolidated Resolution, *id*. at 74-84.

[19] Records (Vol. I), pp. 1-3, 104-105.

[20] *Rollo* (G.R. No. 196094), pp. 288-289.

[21] *Id*. at 284-286.

[22] *Id*. at 301-302.

[23] '*They don't make publishers like Jake Macasaet anymore*,' by Ellen Tordesillas, January 9, 2018, <http://www.malaya.com.ph/business-news/

The deaths of Delos Reyes and Macasaet notwithstanding, these Petitions have not been mooted because there remains an accused, Romualdez.

G.R. No. 196720 (first petition)

The assailed CA February 2011 Decision in the first petition summarizes the facts as follows:

> x x x Macasaet is the Publisher and Chairman of Malaya, a newspaper of general circulation while x x x Romualdez and x x x [D]elos Reyes are the Executive Editor and Editor, respectively, of said publication.
>
> On April 27, 1999, x x x Santiago, who was then the Secretary-General of the National Cockers Association (NCA), filed an Affidavit-Complaint against [the accused], accusing them of publishing an allegedly libelous article entitled, "Santiago's gambling habits." The relevant portion of the complaint states:
>
> ***"3. In the April 21, 1999 issue of Malaya, a newspaper of general circulation, [accused], conspiring and confederating with one another, caused to be published a libelous article entitled ['']Santiago's gambling habits['], a photocopy of which is hereto attached as Annex "A".***
>
> ***4. The above article imputes defamatory statements against me in that I allegedly have a vice or defect, particularly, that I have a serious gambling habit which is widely known, x x x."***
>
> The affidavit-complaint was filed in Pasig City, where the article was allegedly first printed and published. x x x Macasaet filed his counter-affidavit stating, among others, that venue was improperly laid since x x x Santiago was a resident of Quezon City and Malaya was published in Manila.
>
> The Office of the Provincial Prosecutor of Rizal issued a Consolidated [Review] Resolution, dated September 28, 2007, ruling in this wise:
>
> ***"As earlier stated, venue is jurisdictional in criminal actions. Hence, the Provincial Prosecution Office of Rizal does not***

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business/'they-don't-make-publishers-iake-macasaet-anymore'> (last visited on March 5, 2018).

have jurisdiction to take cognizance over all these complaints for libel. This office may assume jurisdiction over a libel case only when the established venue is within the Province of Rizal.

WHEREFORE, for want of jurisdiction by reason of improper venue, we have no authority to resolve these cases on their merits. Consequently, we hereby dismiss the same without prejudice. Therefore, let the records of these cases be forwarded to the Office of the Pasig City Prosecutor for further appropriate action.

SO ORDERED, Pasig City, September 28, 2007." (Underscoring supplied)

Sometime in January 2008, [the accused] received a subpoena from the Department of Justice (DOJ), dated January 29, 2008, pertinent to the complaint for libel. Pursuant thereto, [the accused] submitted their Memorandum, dated April 25, 2008, alleging mainly that the subject articles involved matters of public interest and that no malice attended its publication.

On July 9, 2008, the DOJ issue a Consolidated Resolution, the dispositive portion of which reads:

"WHEREFORE, premises considered, we find probable cause for libel covered by I.S. No.s (sic) ***99-00959 (07-10-12640); and 99-01511 (07-10-12645) against respondents Amado "Jake" Macasaet, Enrique P. Romualdez and Joy De Los Reyes and the charges for libel covered by I.S. Nos. 99-01412 (07-10-12643); 99-01413 (07-10-12644); 99-00960 (07-10-12641); 99-00960-A; 00-01713 (07-10-12647); 99-01512 (07-10-12646); 99-01081 (07-10-12642) against all respondents be DISMISSED for want of merit.***

SO ORDERED. Manila City, July 9, 2008."

Resultantly, on July 9, 2008,[24] an Information for libel was filed against [the accused before the RTC Manila, Br. 37 and was docketed as Criminal Case No. 08-263273], thus:

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[24] The Information was filed on August 21, 2008 (*rollo* [G.R. No. 196094], pp. 44-46) not July 9, 2008, which is the date of the DOJ Consolidated Resolution.

"That on April 21, 1999, in Manila City, and within the jurisdiction of this Honorable Court, above-named accused, as publisher/writer, executive editor and editor, respectively of Malaya with address at Port Area, Manila City defamed private complainant Narciso Y. Santiago, Jr., did then and there knowingly, willfully, unlawfully and feloniously by writing and publishing an article in the Malaya which states that [']Now that Narciso "Jun" Santiago has been appointed undersecretary of local government, it would be interesting to examine his statement of assets and liabilities which is presumed to be joint with that of his wife, Sen. Miriam Defensor Santiago. If Jun continues his cockfights- and there is no reason he should not, inspite (sic) of is (sic) being a public official-the public is entitled to know how much money he bets on one rooster. If it turns out that the bet is not in proportion to his net asset, questions should be raised. Of course, Jun can always place his entry in the derby circuit in a friend's name. That way, it will appear he is not betting at all. But who, in cockfighting, was born yesterday as far as Jun Santiago is concerned? Hardly anybody. They all know him[']

which is a libelous statement and to the prejudice of private complainant."

CONTRARY TO LAW."

[The accused] subsequently filed before [the RTC Manila, Br. 37] a motion to dismiss, dated November 26, 2008, stating that their right to the speedy disposition of their cases was violated, considering that almost ten years had lapsed without any resolution of their cases under preliminary investigation. The motion was denied in the assailed Order, dated February 19, 2009, thus:

"In any event, accused have voluntarily agreed to be arraigned on January 29, 2009 (Macasaet and Romualdez) and February 17, 2009 (Delos Reyes). Such consent amounts to a waiver of their right to raise the issue of any alleged unreasonable delay in the disposition of their case during the preliminary investigation.

WHEREFORE, for lack of merit, the Motion to Dismiss filed by the accused is DENIED.

SO ORDERED."

[The accused] filed a motion for reconsideration, which was likewise denied for lack of merit in the second assailed Order, dated June 1, 2009.[25]

The accused filed a petition for *certiorari* under Rule 65 of the Rules of Court before the CA, seeking the annulment of the RTC Manila, Br. 37 Orders dated February 19, 2009 and June 1, 2009. The CA rendered the February 2011 Decision, the dispositive portion of which reads:

WHEREFORE, premises considered, the Petition for Certiorari is **DENIED**. The Orders, dated February 19, 2009 and June 1, 2009, issued by the Regional Trial Court of Manila, Branch 37, in Criminal Case No. 08-263273 are **AFFIRMED**.

SO ORDERED.[26]

The accused filed a Motion for Reconsideration,[27] which the CA[28] denied in its Resolution[29] dated April 28, 2011. Hence, the first petition, which was filed on May 19, 2011.

The Office of the Solicitor General (OSG) filed a Comment[30] on September 2, 2011. Santiago filed his Comment/Opposition[31] on August 13, 2013. The accused filed a Reply[32] on September 26, 2013.

G.R. No. 196094 (second petition)

The filing of the second petition on May 3, 2011 antedated that of the first petition. However, the second petition arose from an incident before the RTC Manila, Br. 37 that occurred after the incident that precipitated the first petition.

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[25] *Rollo* (G.R. No. 196720), pp. 40-44.

[26] *Id*. at 51.

[27] *Id*. at 311-324.

[28] Former Special Thirteenth Division.

[29] *Rollo* (G.R. No. 196720), pp. 54-56.

[30] *Id*. at 458-475.

[31] *Id*. at 519-545.

[32] *Id*. at 554-570.

After the denial of the accused's motion to dismiss dated November 26, 2008 based on the ground that the filing of the Information dated July 9, 2008 violated their constitutionally guaranteed right to speedy disposition of their cases, the accused filed before RTC Manila, Br. 37 another Motion to Dismiss[33] dated September 24, 2009 on the ground that the said court has no criminal jurisdiction over the case.

RTC Manila, Br. 37, in denying the Motion to Dismiss for lack of merit, reasoned out in its Order[34] dated November 3, 2009 that:

> x x x [T]he Information in the case at bar categorically stated the address of Malaya at Port Area, Manila. While it is the position of [the] accused that this allegation is insufficient, it must be stressed that this was followed by the phrase, "did then and there x x x by writing, and publishing an article in the Malaya x x x." This shows that the alleged libelous article was first published in Manila particularly at the address of Malaya stated in the Information.[35]

The accused filed a Motion for Reconsideration,[36] which the RTC denied in the Order[37] dated January 29, 2010. The accused filed a Petition for *Certiorari* and Injunction[38] before the CA and was docketed as CA-G.R. SP No. 113449. The Office of the Solicitor General (OSG) filed a Comment[39] on behalf of the People of the Philippines.

The CA rendered its October 2010 Decision, the dispositive portion of which reads:

FOR THESE REASONS, the petition is **GRANTED**. The Orders dated November 3, 2009 and January 29, 2010, respectively, of the

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[33] *Rollo* (G.R. No. 196094), pp. 47-64.

[34] *Id*. at 65-70.

[35] *Id*. at 70.

[36] *Id*. at 71-77.

[37] *Id*. at 219-220.

[38] *Id*. at 78-103, excluding annexes.

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

Regional Trial Court of Manila are **NULLIFIED** and the Information for libel is **DISMISSED**.

SO ORDERED.[40]

The OSG filed a Motion for Reconsideration,[41] which was denied in the CA[42] Resolution[43] dated March 8, 2011.

Hence, the second petition.

The accused filed their Comment[44] on August 3, 2011.

G.R. No. 197324 (third petition)

The CA January 2011 Decision summarizes the facts in the third petition in this wise:

> x x x Macasaet x x x is the publisher and also a writer of Malaya, a newspaper of general circulation. x x x Romualdez x x x and x x x [D]elos Reyes x x x, on the other hand, are Malaya's Executive Editor and Editor, respectively.
>
> In its 1 March 1999 issue, Malaya caused to be published an article written by Macasaet, entitled "NCA-UCAP Feud: Walang trabaho, personalan lang," which tackled the alleged brewing feud between the National Cockers Association (NCA) and a group organized by its former members, called the United Cockers Association of the Philippines (UCAP). The article depicted x x x Santiago x x x, husband of Senator Miriam Defensor-Santiago, x x x Ynares x x x and Jorge Araneta of the Araneta Coliseum as the key players involved in the dirty campaign to undermine the operations of the UCAP.
>
> Also in said article, Macasaet claimed that Ynares had pressured Pasig Mayor Vicente Eusebio to cancel UCAP's permit to use its Pasig Square Garden for its cock derbies. It was claimed that Ynares had bluntly told said mayor that UCAP's permit should be cancelled;

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[40] *Id*. at 39-40.

[41] *Id*. at 121-126.

[42] Special Former Special Fifteenth Division.

[43] *Rollo* (G.R. No. 196094), pp. 41-43.

[44] *Id*. at 135-167, exclusive of Annexes.

otherwise, the city will not be allowed to dump its garbage in Antipolo. Macasaet further insinuated that Ynares will apply the same threat on all municipalities in Rizal.

Aggrieved by the content of said article, x x x Ynares immediately filed an Affidavit-Complaint dated 16 March 1999 before the Office of the Provincial Prosecutor of Rizal. Nine (9) other criminal complaints were subsequently filed by x x x Ynares and Santiago, all in connection with the series of subsequent articles that was (sic) also written by Macasaet regarding said NCA-UCAP dispute.

In his Counter-Affidavit filed on 12 April 1999, x x x Macasaet argued that the 1 March 1999 Malaya article has been a fair and true report based not only on the conversations he personally had with the complainant but also on personal verification and interview conducted by him with a reliable source. Claiming that the assailed article is qualifiedly privileged and considering further the absence of malice on his part, the instant libel complaint should be dismissed.

In a Consolidated Review Resolution of 28 September 2007, the instant libel complaint and the other complaints filed by x x x Ynares and Santiago were dismissed by the Provincial Prosecutor, without prejudice, for want of jurisdiction by reason of improper venue.

On 29 January 2008, [the accused] were summoned and required to appear before the [DOJ] in relation to the previously dismissed complaints. As directed, the parties filed their respective Memoranda covering all nine (9) complaints.

On 9 July 2008, the DOJ issued a Consolidated Resolution finding probable cause to indict [the accused] for libel on two (2) out of the nine (9) complaints. Pursuant to said Consolidated Resolution, an Information was filed before the [RTC Manila, Br. 36] against [the accused] for libel committed as follows:

> *"That on March 1, 1999, in Manila City, and within the jurisdiction of this Honorable Court, above-named accused, as publisher/writer, executive editor and editor, respectively of Malaya with address at Port Area, Manila City defamed private complainant Casimiro A. Ynares, Jr., did then and there, knowingly, willfully, unlawfully and feloniously by writing and publishing an article in the Malaya, which states that ['']To the surprise and chagrin of UCAP members but to the joy of NCA, it turned out that Rizal Gov. Casimiro "Ito" Ynares,*

president of the NCA, pressured Eusebio to cancel permit['] which is a libelous statement and to the prejudice of private complainant.

CONTRARY TO LAW."

[The case was docketed as Criminal Case No. 08-263272.]

Accordingly, [the accused] were arraigned on 6 October 2008.

On 7 October 2008, [the accused] filed a motion to dismiss on the ground that the filing of the present Information, after the lapse of more than nine (9) years after the filing of the libel complaints, violates their constitutionally guaranteed right to speedy disposition of cases.

In the now assailed Order of 20 November 2008, the [RTC Manila, Br. 36], in denying [the accused's] motion to dismiss, opined that the [accused] should have moved for the dismissal of the case and espoused violation of their right to speedy disposition of cases when the same was still pending before the Provincial Prosecutor or the DOJ. It was further ruled that said ground should have been raised by petitioners in a motion to quash before arraignment, and not by way of a motion to dismiss.

Dissatisfied by the said pronouncement, [the accused] moved for its reconsideration, which was denied by [RTC Manila, Br. 36] in its Order dated 5 May 2009.

Ascribing grave abuse of discretion amounting to lack or excess of jurisdiction on the part of [RTC Manila, Br. 36] judge, [the accused filed before the CA a petition for certiorari].[45]

The CA rendered the January 2011 Decision, the dispositive portion of which reads as follows:

WHEREFORE, the foregoing considered, the instant petition is hereby **DENIED** and the assailed Orders **AFFIRMED** in toto. No costs.

SO ORDERED.[46]

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[45] *Rollo* (G.R. No. 197324), pp. 41-44.

[46] *Id*. at 52.

The accused filed a Motion for Reconsideration,[47] which the CA denied in its Resolution[48] dated June 16, 2011.

Hence, the third petition, which was filed on July 7, 2011. Ynares filed a Comment/Opposition[49] on August 18, 2011. The OSG filed a Comment[50] on September 19, 2011. The accused filed a Consolidated Reply[51] on November 10, 2011.

Issues

There are two principal issues in the three cases:

(1) In the second petition (G.R. No. 196094), whether the Information is sufficient in form and substance to charge Macasaet and Romualdez[52] with the crime of libel; and

(2) In the first and third petitions (G.R. Nos. 196720 and 197324), whether the cases filed against Macasaet and Romualdez should be dismissed because their right to a speedy disposition of the cases has been violated.

The Court's Ruling

G.R. No. 196094

There is merit in the second petition.

As to the persons who may be liable for libel and the venue of the libel case, Article 360 of the Revised Penal Code, as amended (RPC), provides:

> ART. 360. *Persons responsible*. — Any person who shall publish, exhibit, or cause the publication or exhibition of any defamation in writing or by similar means, shall be responsible for the same.

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[47] *Id*. at 385-397.

[48] *Id*. at 54-55.

[49] *Id*. at 429-464, exclusive of Annex.

[50] *Id*. at 479-497.

[51] *Id*. at 515-535.

[52] Delos Reyes is no longer a party by reason of his death.

The author or editor of a book or pamphlet, or the editor or business manager of a daily newspaper, magazine or serial publication, shall be responsible for the defamations contained therein to the same extent as if he were the author thereof.

The criminal and civil action for damages in cases of written defamations as provided for in this chapter, shall be filed simultaneously or separately with the court of first instance of the province or city where the libelous article is printed and first published or where any of the offended parties actually resides at the time of the commission of the offense: *Provided, however*, That where one of the offended parties is a public officer whose office is in the City of Manila at the time of the commission of the offense, the action shall be filed in the Court of First Instance of the City of Manila or of the city or province where the libelous article is printed and first published, and in case such public officer does not hold office in the City of Manila, the action shall be filed in the Court of First Instance of the province or city where he held office at the time of the commission of the offense or where the libelous article is printed and first published and in case one of the offended parties is a private individual, the action shall be filed in the Court of First Instance of the province or city where he actually resides at the time of the commission of the offense or where the libelous matter is printed and first published: *Provided, further*, That the civil action shall be filed in the same court where the criminal action is filed or vice versa: *Provided, furthermore*, That the court where the criminal action or civil action for damages is first filed, shall acquire jurisdiction to the exclusion of other courts: *And provided, finally*, That this amendment shall not apply to cases of written defamations, the civil and/or criminal actions for which have been filed in court at the time of the effectivity of this law.

Preliminary investigation of criminal actions for written defamations as provided for in this chapter shall be conducted by the provincial or city fiscal of the province or city, or by the municipal court of the city or capital of the province where such action may be instituted in accordance with the provisions of this article.

No criminal action for defamation which consists in the imputation of a crime which cannot be prosecuted *de officio* shall be brought except at the instance of and upon complaint expressly filed by the offended party. (*As amended by R.A. No. 1289, June 15, 1955 and R.A. No. 4363, June 19, 1965.*)

In *Agbayani v. Sayo*,[53] a case about the venue of a criminal action for written defamation or libel, the amendment of Article 360 of the RPC was explained, *viz.*:

> Article 360 in its original form provided that the venue of the criminal and civil actions for written defamations is the province wherein the libel was published, displayed or exhibited, regardless of the place where the same was written, printed or composed. Article 360 originally did not specify the public officers and the courts that may conduct the preliminary investigation of complaints for libel.
>
> Before Article 360 was amended, the rule was that a criminal action for libel may be instituted in any jurisdiction where the libelous article was published or circulated, irrespective of where it was written or printed x x x. Under that rule, the criminal action is transitory and the injured party has a choice of venue.
>
> Experience had shown that under that old rule the offended party could harass the accused in a libel case by laying the venue of the criminal action in a remote or distant place.
>
> x x x x x x x x x
>
> To forestall such harassment, Republic Act No. 4363 was enacted. It lays down specific rules as to the venue of the criminal action so as to prevent the offended party in written defamation cases from inconveniencing the accused by means of out-of-town libel suits, meaning complaints filed in remote municipal courts. (Explanatory Note for the bill which became Republic Act No. 4363, Congressional Record of May 20, 1965, pp. 424-5; x x x).[54]

The rules on venue of criminal actions for libel were also restated in *Agbayani*, thus:

> 1. Whether the offended party is a public official or a private person, the criminal action may be filed in the Court of First Instance of the province or city where the libelous article is printed and first published.
>
> 2. If the offended party is a private individual, the criminal action may also be filed in the Court of First Instance of the province where he actually resided at the time of the commission of the offense.

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[53] 178 Phil. 574 (1979).

[54] *Id*. at 579-580.

3. If the offended party is a public officer whose office is in Manila at the time of the commission of the offense, the action may be filed in the Court of First Instance of Manila.

4. If the offended party is a public officer holding office outside of Manila, the action may be filed in the Court of First Instance of the province or city where he held office at the time of the commission of the offense.[55]

In the present case, the venue is apparently the place where the alleged defamatory article in *Malaya* was printed and first published.

The CA's ruling that the criminal action for libel was filed with the wrong venue was founded on the following:

Ostensibly, the Information only shows that the article was written and published in Malaya which has an address in Port Area, Manila. There is no allegation of the *situs* where the article was printed and first published. It is fatally defective because it failed to specify whether the address of Malaya, is the same place where the article was printed and first published. We must emphasize that the address of the publisher is not necessarily the place of publication. The address would generally refer to the name or description of a place of residence, business, etc., where a person may be found or communicated with. It may include the business address, billing address, mailing address or the residence address of an entity or establishment. To be sure, it is not identical with the place of publication. While it is possible that the address of Malaya is the same place where it conducts its business of publication, We cannot presume such identity without transgression to the basic principle that penal laws are strictly interpreted against the State and liberally construed in favor of the accused. Presumption will be disfavored when it collides against the constitutional right of the accused to be presumed innocent. Thus, without stating more, We find the allegations in the Information insufficient to confer the RTC of Manila with jurisdiction over the case.[56]

The Court in *Bonifacio v. Regional Trial Court of Makati, Branch 149*[57] made the following clarification in case the basis

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[55] *Id*. at 580.

[56] *Rollo* (G.R. No. 196094), pp. 35-36.

[57] 634 Phil. 348 (2010).

of the venue of the libel criminal action is the place where the libel was printed and first published:

> If the circumstances as to where the libel was printed and first published are used by the offended party as basis for the venue in the criminal action, the Information must allege with particularity where the defamatory article was printed and first published, **as evidenced or supported by, for instance, the address of their editorial or business offices in the case of newspapers, magazines or serial publications**. This pre-condition becomes necessary in order to forestall any inclination to harass.[58] (Emphasis supplied)

Admittedly, the Information under scrutiny, without using the phrase "printed and first published," merely states:

> That on April 21, 1999, in Manila City, and within the jurisdiction of this Honorable Court, above-named accused, as publisher/writer, executive editor and editor, respectively of Malaya with address at Port Area, Manila City defamed private complainant Narciso Y. Santiago, Jr., did then and there, knowingly, willfully, unlawfully and feloniously by writing and publishing an article in the Malaya x x x.[59]

The Information does not specifically indicate that Port Area, Manila is the editorial or business office of *Malaya*, following the formulation in *Bonifacio*. And, it cannot be presumed as the CA further claims that the "address of Malaya is the same place where it conducts its business of publication."[60]

The Court disagrees with the CA; it finds the Information sufficient.

Paraphrasing the Information, the accused, as publisher/writer, executive editor and editor defamed Santiago on April 21, 1999, in Manila City, by writing and publishing an article in the *Malaya* with address at Port Area, Manila. To the Court, it is clear that Port Area, Manila is where the defamatory article was written

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[58] *Id*. at 362.

[59] *Rollo* (G.R. No. 196094), p. 44; records (Vol. I), p. 1.

[60] *Id*. at 36.

and published because that is the address of *Malaya*, an unquestionably printed newspaper, wherein the article appeared. That the Information did not expressly state "first published" is of no moment because the word "published" does not exclude the first publication.

In turn, the accused do not deny that Port Area, Manila is the editorial and business offices of *Malaya* and interestingly, they did not raise the ground of lack of jurisdiction to dismiss Criminal Case No. 08-263272 despite the fact that the Information filed before RTC Manila, Br. 36 is similarly worded as the Information in Criminal Case No. 08-263273 filed before RTC Manila, Br. 37 as to the address of *Malaya* being at Port Area, Manila City and the non-inclusion of the phrase "printed and first published."

According to *Bonifacio*, "the Information must allege with particularity where the defamatory article was printed and first published, as evidenced or supported by, for instance, the address of their editorial or business offices in the case of newspapers."[61] The Information in question complies with the *Bonifacio* directive because it alleges with particularity Port Area, Manila as the place where the alleged defamatory article was printed and first published as evidenced or supported by the records of the case.[62] The Information need not parrot the provisions of Article 360 of the RPC and expressly use the phrase "printed and first published." If there is no dispute that the place of publication indicated in the Information, which is Manila in the present case, is the place where the alleged defamatory article was "printed and first published," then the law is substantially complied with. After all, the filing of the Information before an RTC of the City of Manila would, borrowing the phraseology of *Bonifacio*, forestall any inclination to harass the accused. Besides, it is incumbent upon the accused to show that Port Area, Manila is not the business or editorial office of *Malaya* in the face of evidence in the records of the case that it is so.

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[61] *Supra* note 57, at 362.

[62] See Annex "A" of Macasaet's Counter-Affidavit, *rollo* (G.R. No. 196720), p. 67.

The DOJ Consolidated Resolution in its summary of the pertinent facts stated that: "Records also show that Malaya is published by the People's Independent Media, Inc., with editorial and business offices at Port Area, Manila x x x."[63] The Consolidated Review Resolution[64] of the Provincial Prosecutor of Rizal dated September 28, 2007 which initially dismissed the nine libel complaints of Santiago and Ynares for lack of jurisdiction indicated the venue where the complaints should be filed, *viz.*:

> In the case of complainant Santiago, Jr., his libel complaints should be filed either in Manila, where the libelous matters appearing in ABANTE and MALAYA were first printed and published, or in the place where he actually resided at the time of the commission of the alleged offense. However, the records do not show Pasig City as to (sic) the actual residence of complainant Santiago, Jr. at the time of the commission of the offense charged, except to say that he held office at No. 3 West Fourth St., West Triangle, Quezon City. And even if we consider this address as his actual place of residence, or his office address as a public official, which he did not state in his complaints, still, the filing of these complaints before the Provincial Prosecutor's Office of Rizal violates the rule on venue as provided for in Article 360 of the Revised Penal Code.[65]

Thus, the CA erred in dismissing the Information in Criminal Case No. 08-263273 and nullifying the Orders dated November 3, 2009 and January 29, 2010 of the RTC Manila, Br. 37, denying the accused's motion to dismiss.

G.R. Nos. 196720 and 197324

The first and third petitions are also meritorious.

The accused posit that the CA erred in affirming the RTC ruling that, even though the delay was not disputed or the reason for it was not explained by the Prosecution, the accused's right to speedy trial was not violated, and that the accused are deemed to have waived their right to speedy disposition of their cases

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[63] *Rollo* (G.R. No. 196720), p. 75; Records (Vol. I), p. 5.

[64] Records (Vol. I), pp. 69-72.

[65] *Id*. at 71.

for failing to plead such defense during the preliminary investigation.

Indeed, the Constitution guarantees in the Bill of Rights, Article III, Section 14(2) that: "In all criminal prosecutions, the accused x x x shall enjoy the right x x x to have a speedy, impartial, and public trial x x x" and in Article III, Section 16 that: "All persons shall have the right to a speedy disposition of their cases before all judicial, quasi-judicial, or administrative bodies." Congress has also enacted in February 12, 1998 Republic Act No. (RA) 8493, otherwise known as the "Speedy Trial Act of 1998." For its part, the Court promulgated Circular No. 38-98 on August 11, 1998 for the purpose of implementing the provisions of RA 8493. The provisions of the Circular were adopted in the 2000 Revised Rules of Criminal Procedure.[66]

The right to speedy disposition of the accused's case is explained in *Caballes v. CA*,[67] thus:

> The right of the accused to a speedy trial and to a speedy disposition of the case against him was designed to prevent the oppression of the citizen by holding criminal prosecution suspended over him for an indefinite time, and to prevent delays in the administration of justice by mandating the courts to proceed with reasonable dispatch in the trial of criminal cases. Such right to a speedy trial and a speedy disposition of a case is violated only when the proceeding is attended by vexatious, capricious and oppressive delays. The inquiry as to whether or not an accused has been denied such right is not susceptible by precise qualification. The concept of a speedy disposition is a relative term and must necessarily be a flexible concept.
>
> While justice is administered with dispatch, the essential ingredient is orderly, expeditious and not mere speed. It cannot be definitely said how long is too long in a system where justice is supposed to be swift, but deliberate. It is consistent with delays and depends upon circumstances. It secures rights to the accused, but it does not preclude the rights of public justice. Also, it must be borne in mind that the rights given to the accused by the Constitution and the Rules of Court are shields, not weapons; hence, courts are to give meaning to that intent.

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[66] See RULES OF COURT, Rule 119.

[67] 492 Phil. 410 (2005).

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A balancing test of applying societal interests and the rights of the accused necessarily compels the court to approach speedy trial cases on an *ad hoc* basis.

In determining whether the accused has been deprived of his right to a speedy disposition of the case and to a speedy trial, four factors must be considered: (a) length of delay; (b) the reason for the delay; (c) the defendant's assertion of his right; and (d) prejudice to the defendant. Prejudice should be assessed in the light of the interest of the defendant that the speedy trial was designed to protect, namely: to prevent oppressive pre-trial incarceration; to minimize anxiety and concerns of the accused to trial; and to limit the [p]ossibility that his defense will be impaired. Of these, the most serious is the last, because the inability of a defendant adequately to prepare his case skews the fairness of the entire system. There is also prejudice if the defense witnesses are unable to recall accurately the events of the distant past. Even if the accused is not imprisoned prior to trial, he is still disadvantaged by restraints on his liberty and by living under a cloud of anxiety, suspicion and often, hostility. His financial resources may be drained, his association is curtailed, and he is subjected to public obloquy.

Delay is a two-edged sword. It is the government that bears the burden of proving its case beyond reasonable doubt. The passage of time may make it difficult or impossible for the government to carry its burden. The Constitution and the Rules do not require impossibilities or extraordinary efforts, diligence or exertion from courts or the prosecutor, nor contemplate that such right shall deprive the State of a reasonable opportunity of fairly prosecuting criminals. As held in *Williams v. United States*, for the government to sustain its right to try the accused despite a delay, it must show two things: (a) that the accused suffered no serious prejudice beyond that which ensued from the ordinary and inevitable delay; and (b) that there was no more delay than is reasonably attributable to the ordinary processes of justice.

Closely related to the length of delay is the reason or justification of the State for such delay. Different weights should be assigned to different reasons or justifications invoked by the State. For instance, a deliberate attempt to delay the trial in order to hamper or prejudice the defense should be weighted heavily against the State. Also, it is improper for the prosecutor to intentionally delay to gain some tactical

advantage over the defendant or to harass or prejudice him. On the other hand, the heavy case load of the prosecution or a missing witness should be weighted less heavily against the State.[68]

The right to speedy disposition of one's case, similar to the right to speedy trial, may be waived. The Court in *Nepomuceno v. The Secretary of National Defense*[69] observed that the right to speedy trial as any other constitutionally or statutory conferred right, except when otherwise expressly so provided by law, may be waived. Therefore, it must be asserted.[70] The assertion of such right is entitled to strong evidentiary weight in determining whether the accused is being deprived thereof such that the failure to claim the right will make it difficult to prove that there was a denial of a speedy trial.[71] The accused's failure to timely question the delay would be an implied acceptance of such delay and a waiver of the right to question the same. Also, his silence may amount to laches.[72]

To recall, the Affidavit-Complaint which triggered the filing of the Information in the first petition was filed by Santiago on April 27, 1999 before the Provincial Prosecutor of Rizal. Macasaet filed his Counter-Affidavit on May 24, 1999. On the other hand, the Affidavit-Complaint that triggered the filing of the Information in the third petition was filed by Ynares on March 16, 1999. Macasaet filed his Counter-Affidavit on April 12, 1999. The Provincial Prosecutor of Rizal dismissed without prejudice the complaints on September 28, 2007, or ***more than eight years from the filing of the complaints***. On January 29, 2008, the DOJ issued Summons requiring accused to appear before the said office in relation to the complaints for libel. On July 9, 2008, the DOJ issued a Consolidated Resolution finding

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[68] *Id*. at 428-430, citing *Corpuz v. Sandiganbayan*, 484 Phil. 899, 917-919 (2004).

[69] 195 Phil. 467 (1981).

[70] *Id*. at 473.

[71] *Sps. Uy v. Adriano*, 536 Phil. 475, 504 (2006); citation omitted.

[72] *Id*. at 505. See also *Dela Peña v. Sandiganbayan*, 412 Phil. 921, 932 (2001).

probable cause for both. On August 21, 2008, two separate Informations for libel were filed against the accused. One was docketed as Criminal Case No. 08-263272 and raffled to RTC Manila, Br. 36. And the other was docketed as Criminal Case No. 08-263273 and raffled to RTC Manila, Br. 37.

In the first criminal case, the accused were arraigned on October 6, 2008 and they filed their motion to dismiss grounded on their right to speedy disposition of their case on October 7, 2008 while in the second criminal case, they filed their motion to dismiss based on same ground on November 26, 2008.

Given such backdrop, in both the CA[73] January 2011 Decision (assailed in the third petition) and the CA[74] February 2011 Decision (assailed in the first petition), the CA uniformly applied the principle of laches or implied acquiescence in construing the silence of the accused or their inaction to object to the delay and/or failure to seasonably raise the right to speedy disposition of their cases as waiver thereof.

The CA invoked *Valencia v. Sandiganbayan*,[75] which cited the Court's ruling in *Guerrero v. CA*,[76] in justifying that the failure of the accused to seasonably raise the right to speedy trial precludes them from relying on the alleged violation of such right as a ground to dismiss the case and that by not asserting such right at the earliest possible opportunity they are deemed to have slept on their right. The CA likewise relied on *Dela Peña v. Sandiganbayan*,[77] cited in *Valencia*, as its justification in construing the silence of the accused and the absence of any signs or overt acts of asserting their right to a speedy disposition of their cases in the nine years from the filing of the complaint to the filing of the Information and their arraignment as waiver

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[73] Fourth Division.

[74] Special Thirteenth Division.

[75] 510 Phil. 70, 88 (2005).

[76] 327 Phil. 496 (1996).

[77] *Supra* note 72.

of their right, and their inaction on and lack of objection to the delay can be perceived as implied acquiescence by them.

The Court disagrees with the CA. The CA failed to consider the other factors that must be present before the right to speedy case determination may be considered to have been waived. **The CA did not consider the length of delay and the reason for the delay.** The length of delay must be commensurate with the reason thereof. In these cases, it must be recalled that in a Consolidated Review Resolution dated September 28, 2007 of the Rizal Provincial Prosecutor, the complaints filed by Ynares and Santiago were dismissed, without prejudice, for want of jurisdiction by reason of improper venue.[78] It took the Rizal Provincial Prosecutor **more than eight years**from the filing of the complaints to dismiss without prejudice the complaints. The issue on venue in libel cases is neither a novel nor difficult one. **The more than eight years it took the Rizal Provincial Prosecutor to resolve a rather routine issue is clearly inordinate, unreasonable and unjustified.** Under the circumstances, it cannot be said "that there was no more delay than is reasonably attributable to the ordinary processes of justice."[79]

Furthermore, the silence of the accused during such period could not be viewed as an unequivocal act of waiver of their right to speedy determination of their cases. That the accused could have filed a motion for early resolution of their cases is immaterial. The more than eight years delay the Rizal Provincial Prosecutor incurred before issuing his resolution of the complaints is an affront to a reasonable dispensation of justice and such delay could only be perpetrated in a vexatious, capricious and oppressive manner.

All told, the CA erroneously denied the accused's petitions questioning the denial by the RTC Manila, Br. 36 and Br. 37 of their motions to dismiss based on their right to speedy disposition of their cases.

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[78] Records (Vol. I), p. 71.

[79] *Caballes v. CA*, *supra* note 67, at 430.

Since the dismissal of the complaints against the accused is warranted because of the violation of their right to speedy disposition of their cases, the Court's finding that the second petition has merit is rendered superfluous. The dismissal of the Information for libel by the CA in the second petition is maintained but on a different ground — the denial of the right of the accused to speedy disposition of their case. Thus, the second petition is denied on that ground.

WHEREFORE, premises considered:

(1) the Petition for Review on *Certiorari* in G.R. No. 196094 is hereby **DENIED**, the Court of Appeals' Decision dated October 19, 2010 and Resolution dated March 8, 2011 in CA-G.R. SP No. 113449 are **MODIFIED** insofar as the ground for dismissal of the Information for libel in Criminal Case No. 08-263273 filed before the Regional Trial Court of Manila, Branch 37 is concerned;

(2) the Petition for Review on *Certiorari* in G.R. No. 196720 is hereby **GRANTED**, the Court of Appeals' Decision dated February 10, 2011 and Resolution dated April 28, 2011 in CA-G.R. SP No. 110224 are **REVERSED** and **SET ASIDE**, and Criminal Case No. 08-263273 filed before the Regional Trial Court of Manila, Branch 37 is **DISMISSED**; and

(3) the Petition for Review on *Certiorari* in G.R. No. 197324 is hereby **GRANTED**, the Court of Appeals' Decision dated January 26, 2011 and Resolution dated June 16, 2011 in CA-G.R. SP No. 110010 are hereby **REVERSED** and **SET ASIDE**, and Criminal Case No. 08-263272 filed before the Regional Trial Court of Manila, Branch 36 is **DISMISSED**.

SO ORDERED.

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

[***] Acting Chief Justice per Special Order No. 2539 dated February 28, 2018.

FIRST DIVISION

[G.R. No. 202206. March 5, 2018]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **TENG MONER *y* ADAM,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (R.A. 9165); ILLEGAL SALE OF DANGEROUS DRUGS; ESSENTIAL ELEMENTS, ESTABLISHED.— For a successful prosecution of an offense of illegal sale of dangerous drugs, the following essential elements must be proven: (1) that the transaction or sale took place; (2) that the *corpus delicti* or the illicit drug was presented as evidence; and (3) that the buyer and seller were identified. A perusal of the records of this case would reveal that the aforementioned elements were established by the prosecution. The illegal drugs and the marked money were presented and identified in court. More importantly, Police Officer (PO) 2 Joachim Panopio (PO2 Panopio), who acted as poseur-buyer, positively identified Moner as the seller of the *shabu* to him for a consideration of ₱8,000.00.

2. ID.; ID.; ID.; FAILURE TO PRESENT THE INFORMANT IN COURT IS NOT FATAL SINCE THE POSEUR-BUYER AND OTHER MEMBERS OF THE BUY-BUST TEAM HAD ALREADY TESTIFIED.— With regard to Moner's contention that the prosecution's failure to present the informant in court diminishes the case against him, we reiterate our pronouncement on this matter in the recent case of *People v. Lafaran*: It has oft been held that the presentation of an informant as witness is not regarded as indispensable to the success of a prosecution of a drug-dealing accused. x x x Thus, we concur with the appellate court's finding that there is no need to present the informant because PO2 Panopio, who acted as the poseur-buyer, had testified in court. Furthermore, the other members of the buy-bust team, namely PO3 Junnifer Tuldanes (PO3 Tuldanes) and PO3 Edwin Lirio (PO3 Lirio), gave clear and credible testimonies with regard to the criminal transaction that was consummated by appellant and PO2 Panopio.

3. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; MINOR VARIANCES IN THE TESTIMONIES OF WITNESSES THAT DO NOT DEVIATE FROM THE MAIN NARRATIVE THAT ACCUSED SOLD ILLEGAL DRUGS TO A POSEUR-BUYER DO NOT DESTROY WITNESSES' CREDIBILITY. — [W]e rule that inconsistencies in the testimonies of the prosecution witnesses that were pointed out by Moner consist merely of minor variances that do not deviate from the main narrative which is the fact that Moner sold illegal drugs to a poseur-buyer. It has been held, time and again, that minor inconsistencies and contradictions in the declarations of witnesses do not destroy the witnesses' credibility but even enhance their truthfulness as they erase any suspicion of a rehearsed testimony. It bears stressing, too, that the determination by the trial court of the credibility of witnesses, when affirmed by the appellate court, is accorded full weight and credit as well as great respect, if not conclusive effect.

4. CRIMINAL LAW; COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (R.A. 9165); ILLEGAL SALE OF DANGEROUS DRUGS; CHAIN OF CUSTODY RULE; THAT THE DIVERGENCE FROM THE RULE WAS NOT WHIMSICAL SINCE THE BUY-BUST TEAM COULD NOT LINGER AT THE CRIME SCENE AS IT WOULD UNDULY EXPOSE THEM TO SECURITY RISKS CONSIDERED AS JUSTIFIABLE GROUND.— [N]oncompliance with the chain of custody rule is excusable as long as there exist justifiable grounds which prevented those tasked to follow the same from strictly conforming to the said directive. The preceding discussion clearly show that the apprehending officers in this case did not totally disregard prescribed procedure but, instead, demonstrated substantial compliance with what was required. It was likewise explained that the divergence in procedure was not arbitrary or whimsical but because the buy-bust team decided that they could not linger at the crime scene as it would unduly expose them to security risks since they were outside their area of responsibility.

5. ID.; ID.; ID.; ID.; WHERE RIGID OBEDIENCE TO THE CHAIN OF CUSTODY RULE WOULD CREATE A SCENARIO WHEREIN THE SAFEGUARDS TO SHIELD THE INNOCENT ARE LIKEWISE EXPLOITED BY THE

GUILTY TO ESCAPE PUNISHMENT, STRICT COMPLIANCE MAY BE DISPENSED WITH AS LONG AS THE INTEGRITY AND EVIDENTIARY VALUE OF THE SEIZED ITEMS WAS DULY PRESERVED.— This is not the first time that this Court has been confronted with the question of whether or not to uphold the conviction of a person arrested for the illegal sale of dangerous drugs who had been positively identified by credible witnesses as the perpetrator of said crime but the manner by which the evidence of illegal drugs was handled did not strictly comply with the chain of custody rule. To reiterate past pronouncements, while ideally the procedure on the chain of custody should be perfect and unbroken, in reality, it is not as it is almost always impossible to obtain an unbroken chain. Unfortunately, rigid obedience to procedure creates a scenario wherein the safeguards that we set to shield the innocent are likewise exploited by the guilty to escape rightful punishment. Realizing the inconvenient truth that no perfect chain of custody can ever be achieved, this Court has consistently held that the most important factor in the chain of custody rule is the preservation of the integrity and evidentiary value of the seized items.

6. ID.; ID.; CHAIN OF CUSTODY RULE UNDER SECTION 21 OF R.A. 9165 *VIS-À-VIS* RULES ON EVIDENCE, DISCUSSED; CHAIN OF CUSTODY RULE IS A MATTER OF EVIDENCE AND A RULE OF PROCEDURE WHICH ARE WELL WITHIN THE POWER OF THE COURTS TO APPRECIATE AND RULE UPON.— It should be noted that Section 21(a) of the IRR of Republic Act No. 9165 x x x recognizes that the credibility of the prosecution's witnesses and the admissibility of other evidence are well within the power of trial court judges to decide. x x x The power to promulgate rules concerning pleading, practice and procedure in all courts is a traditional power of this Court. This includes the power to promulgate the rules of evidence. On the other hand, the Rules of Evidence are provided in the Rules of Court issued by the Supreme Court. However, the chain of custody rule is not found in the Rules of Court. Section 21 of Republic Act No. 9165 was passed by the legislative department and its implementing rules were promulgated by PDEA, in consultation with the Department of Justice (DOJ) and other agencies under and within the executive department. x x x Under the doctrine of separation

of powers, it is important to distinguish if a matter is a proper subject of the rules of evidence, which as shown above are promulgated by the Court, or it is a subject of substantive law, and should be passed by an act of Congress. x x x [T]he distinction in criminal law is this: substantive law is that which declares what acts are crimes and prescribes the punishment for committing them, as distinguished from the procedural law which provides or regulates the steps by which one who commits a crime is to be punished. Based on the above, it may be gleaned that the chain of custody rule is a matter of evidence and a rule of procedure. It is therefore the Court who has the last say regarding the appreciation of evidence. x x x These are matters well within the powers of courts to appreciate and rule upon, and so, when the courts find appropriate, substantial compliance with the chain of custody rule as long as the integrity and evidentiary value of the seized items have been preserved may warrant the conviction of the accused. This is the rationale, grounded on the constitutional power of the Court, to pass upon the credibility and admissibility of evidence that underlies the proviso in Section 21(a) of the IRR of Republic Act No. 9165.

PERLAS-BERNABE, *J.*, *dissenting opinion*:

1. CRIMINAL LAW; COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (R.A. 9165); REQUIREMENTS OF SECTION 21, ARTICLE II OF R.A. 9165, EXPLAINED; THE PURPOSE OF THE RULE IS TO ENSURE THE ESTABLISHMENT OF THE CHAIN OF CUSTODY AND TO REMOVE ANY SUSPICION OF SWITCHING, PLANTING, OR CONTAMINATION OF EVIDENCE.— Under Section 21, Article II of RA 9165, prior to its amendment by RA 10640, the physical inventory and photography of the seized items should be conducted in the presence of the accused or the person from whom the items were seized, or his representative or counsel, with an elected public official, and representatives from the media and the Department of Justice (DOJ), who shall be required to sign the copies of the inventory. The purpose of this rule is to ensure the establishment of the chain of custody and remove any suspicion of switching, planting, or contamination of evidence which could considerably affect a case. Non-compliance with this requirement, however, would not *ipso facto* render the seizure and custody over the items as

void and invalid, provided that the prosecution satisfactorily proves that: *(a)* there is justifiable ground for non-compliance; **and** *(b)* the integrity and evidentiary value of the seized items are properly preserved.

2. ID.; ID.; ID.; IN DETERMINING WHETHER OR NOT JUSTIFIABLE REASON EXISTS TO DEVIATE FROM THE RULE, THE PROSECUTION MUST SHOW THAT EARNEST EFFORTS WERE EMPLOYED IN CONTACTING THE REPRESENTATIVES ENUMERATED UNDER THE LAW.— Case law states that in determining whether or not there was indeed a justifiable reason for the deviation in the aforesaid rule on witnesses, the prosecution must show that **earnest efforts** were employed in contacting the representatives enumerated under the law for "a sheer statement that representatives were unavailable — without so much as an explanation on whether serious attempts were employed to look for other representatives, given the circumstances — is to be regarded as a flimsy excuse." Verily, mere statements of unavailability, absent actual serious attempts to contact the required witnesses, are unacceptable as justified grounds for non-compliance.

3. ID.; ID.; ID.; WHERE NO ELECTED PUBLIC OFFICIALS OR REPRESENTATIVES WERE PRESENT DURING THE CONDUCT OF INVENTORY, THE ARRESTING OFFICERS ARE COMPELLED NOT ONLY TO STATE REASONS FOR NON-COMPLIANCE BUT MUST ALSO CONVINCE THE COURT THAT THEY EXERTED EARNEST EFFORTS TO COMPLY WITH THE RULE AND THAT THEIR ACTIONS WERE REASONABLE.— In this case, while the police officers indeed conducted an inventory of the seized items as evidenced by the Receipt of Property Turned Over, a review of such document readily shows that no elected public official, representative from the DOJ, or representative from the media signed the same; thus, indicating that such required witnesses were absent during the conduct of inventory. The foregoing facts were confirmed by no less than the members of the buy-bust team who, unfortunately, offered no explanation for the non-compliance with the rule on required witnesses. To reiterate, the arresting officers are compelled not only to state reasons for their non-compliance, but must in fact, also convince the Court that they exerted earnest

efforts to comply with the mandated procedure, and that under the given circumstance, their actions were reasonable. Thus, for failure of the prosecution to provide justifiable grounds or show that special circumstances exist which would excuse their transgression, I respectfully submit that the integrity and evidentiary value of the items purportedly seized from the accused-appellant have been compromised. To stress, the chain of custody procedure enshrined in Section 21, Article II of RA 9165 is a matter of substantive law, and cannot be brushed aside as a simple procedural technicality.

APPEARANCES OF COUNSEL

The Solicitor General for plaintiff-appellee.
Palad Lauron & Palad Law Firm for accused-appellant.

D E C I S I O N

LEONARDO-DE CASTRO,[*] *J.*:

This is an appeal of the Decision[1] dated July 27, 2011 of the Court of Appeals in CA-G.R. CR-H.C. No. 04399 entitled, *People of the Philippines v. Teng Moner y Adam*, which affirmed the Joint Decision[2] dated August 4, 2009 of the Regional Trial Court (RTC) of Quezon City, Branch 95 in Criminal Case Nos. Q-05-133982 and Q-05-133983. Anent Criminal Case No. Q-05-133982, the trial court found appellant Teng Moner *y* Adam (Moner) guilty beyond reasonable doubt of violating Section 5, Article II (sale of dangerous drugs) of Republic Act No. 9165 otherwise known as the Comprehensive Dangerous Drugs Act of 2002. In the same judgment, Moner and his co-accused were acquitted of the charge of violating Section 11, Article II (possession of dangerous drugs) of the same statute which was the subject of Criminal Case No. Q-05-133983.

[*] Per Special Order No. 2540 dated February 28, 2018.

[1] *Rollo*, pp. 2-20; penned by Associate Justice Priscilla J. Baltazar-Padilla with Associate Justices Fernanda Lampas Peralta and Agnes Reyes-Carpio concurring.

[2] CA *rollo*, pp. 73-92; penned by Presiding Judge Henri Jean-Paul Inting.

The crime of which Moner was convicted is described in the Information dated April 25, 2005, as follows:

> That on or about the 23rd day of April, 2005, in Quezon City, Philippines, the said accused, not being authorized by law to sell, dispense, deliver, transport or distribute any dangerous drug, did then and there, willfully and unlawfully sell, dispense, deliver, transport, distribute or act as broker in the said transaction, three point ninety-one (3.91) grams of methylamphetamine hydrochloride, a dangerous drug.[3]

Subsequently, on May 16, 2005, Moner pleaded "NOT GUILTY" to the aforementioned charge of illegal sale of dangerous drugs upon his arraignment.[4]

In its assailed Decision, the Court of Appeals presented the factual milieu of this case in this manner:

> To establish the guilt of accused-appellant, the prosecution presented three (3) witnesses namely: PO2 Joachim Panopio, PO3 Junnifer Tuldanes and PO3 Edwin Lirio.
>
> The prosecution's evidence tends to establish the following facs:
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> On April 23, 2005, the police operatives of Las Piñas Police Station Anti-Illegal Drugs Special Operation Task Force (SAIDSOTF) had arrested a certain Joel Taudil for possession of illegal drugs. Upon investigation, they gathered from Taudil that the source of the illegal drugs was Teng Moner (herein accused-appellant) who hails from Tandang Sora, Quezon City.
>
> As per this information, Police Chief Inspector Jonathan Cabal formed a team that would conduct a buy-bust operation for the apprehension of accused-appellant. The team was composed of himself, SPO4 Arnold Alabastro, SPO1 Warlie Hermo, PO3 Junnifer Tuldanes, PO3 Edwin Lirio, PO2 Rodel Ordinaryo, PO1 Erwin Sabbun and PO2 Joachim Panopio. The marked and boodle money were given to PO2 Panopio who acted as the poseur-buyer.

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[3] Records, p. 2.

[4] *Id*. at 35-36.

Before proceeding with the buy-bust operation, the team prepared the pre-operation report addressed to the Philippine Drug Enforcement Agency (PDEA), the authority to operate outside their jurisdiction and the coordination paper. Thereafter, they proceeded to the Central Police District Office (CPDO), Camp Karingal, Quezon City for proper coordination. Thereafter, the team together with Taudil and a CPD-DIID personnel proceeded [to] No. 26 Varsity Lane, Barangay Culiat, Tandang Sora, Quezon City. Upon reaching the place they made a surveillance and assumed their respective positions.

At the target area, PO2 Panopio and Taudil went to accused-appellant's house. While outside the gate, Taudil summoned accused-appellant and the latter came out after a few minutes. The two men talked with each other in the Muslim dialect. Taudil introduced PO2 Panopio as his friend to accused-appellant and told him that PO2 Panopio was interested to buy *shabu*. PO2 Panopio asked for the price of five (5) grams of *shabu*. Accused-appellant replied that the same would cost him ₱8,000.00 and asked him if he has the money. When PO2 Panopio confirmed that he has the money with him, accused-appellant asked them to wait and he went inside the house. When he returned after a few minutes, he handed a plastic sachet containing a substance suspected as *shabu* to PO2 Panopio who in turn gave him the marked and boodle money. Accused-appellant was about to count the money when PO2 Panopio gave the pre-arranged signal to his team and introduced himself as [a] police officer.

Accused-appellant resisted arrest and ran inside the house but PO2 Panopio was able to catch up with him. The other members of the team proceeded inside the house and they saw the other accused gather[ed] around a table re-packing *shabu*. PO3 Lirio confiscated the items from them and placed the same inside a plastic bag.

After accused-appellant and his co-accused were arrested, the team proceeded to the Las Piñas City Police Station. The items confiscated from them were turned over by PO2 Panopio to PO3 Dalagdagan who marked them in the presence of the police operatives, accused-appellant and his co-accused. PO3 Dalagdagan prepared the corresponding inventory of the confiscated items. The specimens were then brought to the police crime laboratory for testing. The specimens yielded positive to the test for methylamphetamine hydrochloride or *shabu*.

Consequently, a case for Violation of Section 5, Article II of R.A. 9165 was filed against accused-appellant and another for Violation of Section 11, Article II of R.A. 9165 against him and his co-accused.

In refutation of the prosecution's version, the defense presented four (4) witnesses, to wit: Judie Durado, Fatima Macabangen, accused-appellant and Richard Pascual.

It is the contention of the defense that on April 23, 2005, accused-appellant and his co-accused in Criminal Case No. Q-05-133983 were at the house located along No. 26 Varsity Lane, Philam, Tandang Sora, Quezon City to prepare for the wedding of Fatima Macabangen and Abubakar Usman to be held the following day. While they were inside the house, several armed persons wearing civilian clothes entered and announced that they were police officers. They searched the whole house and gathered all of them in the living room.

The police officer who was positioned behind accused-appellant and Abubakar dropped a plastic sachet. The former asked accused-appellant and Abubakar who owns the plastic sachet. When accused-appellant denied its ownership, the police officer slapped him and accused him of being a liar. Thereafter, they were all frisked and handcuffed and were brought outside the house. Their personal effects and belongings were confiscated by the police officers. Then they boarded a jeepney and were brought to [the] Las Piñas Police Station.

Upon their arrival, they were investigated. A police officer asked them to call up anybody who can help them because they only needed money for their release. Judie Dorado called up [his] mother. They saw the other items allegedly confiscated from them only at the police station. At around 10:00 o'clock in the evening, they were brought to Camp Crame, Quezon City. From there, they went to Makati for drug testing and were returned to Las Piñas Police Station.

Subsequently, cases for Violation of R.A. No. 9165 were filed against them.[5]

After receiving the evidence for both sides, the trial court convicted Moner on the charge of selling *shabu* while, at the same time, acquitting him and his co-accused of the charge of possession of illegal drugs. The dispositive portion of the August 4, 2009 Joint Decision of the trial court reads:

[5] *Rollo*, pp. 6-9.

WHEREFORE, the Court renders its Joint Decision as follows:

1. In Criminal Case No. Q-05-133982:

The Court finds accused TENG MONER Y ADAM "GUILTY" beyond reasonable doubt for violation of Section 5, Article II of R.A. 9165 or illegal selling of three point ninety-one (3.91) grams of methylamphetamine hydrochloride, a dangerous drug and he is hereby sentenced to suffer the penalty of LIFE IMPRISONMENT and to pay a FINE of FIVE HUNDRED THOUSAND PESOS (Php500,000.00).

2. In Criminal Case No. Q-05-133983:

The Court finds accused TENG MONER Y ADAM, JUDIE DURADO Y MACABANGEN, FATIMA MACABANGEN Y NUÑEZ, ABUBAKAR USMAN Y MASTORA, GUIAMIL ABU Y JUANITEZ, NORODIN USMAN Y MASTORA, RICHARD PASCUAL Y TANGALIN and AMINA USMAN-MONER "NOT GUILTY" for violation of Section 11, Art. II of R.A. 9165 considering that the prosecution failed to prove their guilt beyond reasonable doubt.

The pieces of evidence subject matter of Crim. Case No. Q-05-133983 are hereby ordered to be safely delivered to the Philippine Drug Enforcement Agency for proper disposition.[6]

As can be expected, Moner elevated his case to the Court of Appeals which, unfortunately for him, ruled to affirm the findings of the trial court and dispositively held:

WHEREFORE, the appealed Decision dated August 4, 2009 of the Regional Trial Court, Branch 95, Quezon City in Criminal Case No. Q-05-133982 finding accused-appellant guilty beyond reasonable doubt is hereby AFFIRMED.[7]

Hence, Moner interposes this appeal wherein he reiterates the same errors on the part of the trial court contained in his Brief filed with the Court of Appeals, to wit:

A. THE COURT A QUO SERIOUSLY ERRED WHEN IT ISSUED ITS DECISION DATED AUGUST 4, 2009 FINDING THE

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[6] CA *Rollo*, p. 92.

[7] *Rollo*, p. 20.

ACCUSED-APPELLANT MONER GUILTY BEYOND REASONABLE DOUBT OF VIOLATING SECTION 5, ARTICLE II OF R.A. 9165, WHEN THE TESTIMONIES OF THE THREE (3) PROSECUTION WITNESSES (PO2 JOACHIM PANOPIO, PO3 JUNNIFER TULDANES, AND PO3 EDWIN LIRIO) ARE HIGHLY INCREDIBLE AND UNBELIEVABLE TO PROVE THE ALLEGED BUY-BUST.

B. THE COURT A QUO SERIOUSLY ERRED IN ITS DECISION WHEN IT RELIED SOLELY ON THE PERJURED TESTIMONIES OF THE PROSECUTION WITNESSES POLICE OFFICERS WHICH ARE FULL OF INCONSISTENCIES.

C. THE COURT A QUO SERIOUSLY ERRED IN ISSUING THE ASSAILED DECISION WHEN IT FAILED TO GIVE CREDENCE TO THE TESTIMONIES OF THE DEFENSE WITNESSES WHO CLEARLY TESTIFIED THAT THERE WAS REALLY NO BUY-BUST AND THAT APPELLANT MONER WAS NOT SELLING ANY PROHIBITED DRUGS.

D. THE COURT SERIOUSLY ERRED WHEN IT ISSUED THE ASSAILED DECISION DESPITE THE FACT THAT THE PROSECUTION WITNESSES FAILED TO COMPLY WITH THE MANDATORY PROVISION OF SEC. 19 OF R.A. NO. 9165, ON THE MATTER OF PHYSICAL INVENTORY, AND PICTURE TAKING OF THE EVIDENCE ALLEGEDLY SEIZED FROM THE ACCUSED, AS WELL AS THE PROVISION OF SECTION 86 THEREOF.[8]

In sum, Moner maintains that the prosecution failed to discharge its burden of proof to sustain his conviction for the charge of sale of dangerous drugs. He highlights the fact that the prosecution failed to present in court the informant who pointed to him as a supplier of *shabu*. He also stresses that the buy-bust operation was conducted without proper coordination with the Philippine Drug Enforcement Agency (PDEA). Likewise, he derides the testimonies of the prosecution witnesses as inconsistent, incredible and unworthy of belief. Most importantly, he underscores the failure of the arresting officers to comply with the statutorily mandated procedure for the

[8] CA *rollo*, p. 110.

handling and custody of the dangerous drugs allegedly seized from him.

The appeal is without merit.

For a successful prosecution of an offense of illegal sale of dangerous drugs, the following essential elements must be proven: (1) that the transaction or sale took place; (2) that the *corpus delicti* or the illicit drug was presented as evidence; and (3) that the buyer and seller were identified.[9]

A perusal of the records of this case would reveal that the aforementioned elements were established by the prosecution. The illegal drugs and the marked money were presented and identified in court. More importantly, Police Officer (PO) 2 Joachim Panopio (PO2 Panopio), who acted as poseur-buyer, positively identified Moner as the seller of the *shabu* to him for a consideration of ₱8,000.00.

With regard to Moner's contention that the prosecution's failure to present the informant in court diminishes the case against him, we reiterate our pronouncement on this matter in the recent case of *People v. Lafaran*:[10]

> It has oft been held that the presentation of an informant as witness is not regarded as indispensable to the success of a prosecution of a drug-dealing accused. As a rule, the informant is not presented in court for security reasons, in view of the need to protect the informant from the retaliation of the culprit arrested through his efforts. Thereby, the confidentiality of the informant's identity is protected in deference to his invaluable services to law enforcement. Only when the testimony of the informant is considered absolutely essential in obtaining the conviction of the culprit should the need to protect his security be disregarded. In the present case, as the buy-bust operation was duly witnessed by SPO2 Aro and PO3 Pera, their testimonies can take the place of that of the poseur-buyer.

Thus, we concur with the appellate court's finding that there is no need to present the informant because PO2 Panopio, who

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[9] *Ampatuan v. People,* 667 Phil. 747, 755 (2011).

[10] 771 Phil. 311, 326-327 (2015).

acted as the poseur-buyer, had testified in court. Furthermore, the other members of the buy-bust team, namely PO3 Junnifer Tuldanes (PO3 Tuldanes) and PO3 Edwin Lirio (PO3 Lirio), gave clear and credible testimonies with regard to the criminal transaction that was consummated by appellant and PO2 Panopio.

In addition, we rule that inconsistencies in the testimonies of the prosecution witnesses that were pointed out by Moner consist merely of minor variances that do not deviate from the main narrative which is the fact that Moner sold illegal drugs to a poseur-buyer. It has been held, time and again, that minor inconsistencies and contradictions in the declarations of witnesses do not destroy the witnesses' credibility but even enhance their truthfulness as they erase any suspicion of a rehearsed testimony.[11] It bears stressing, too, that the determination by the trial court of the credibility of witnesses, when affirmed by the appellate court, is accorded full weight and credit as well as great respect, if not conclusive effect.[12]

Lastly, we can give no credence to Moner's contention that the prosecution failed to prove an unbroken chain of custody in consonance with the requirements of law.

To ensure that the drug specimen presented in court as evidence against the accused is the same material seized from him or that, at the very least, a dangerous drug was actually taken from his possession, we have adopted the chain of custody rule. The Dangerous Drugs Board (DDB) has expressly defined chain of custody involving dangerous drugs and other substances in the following terms in Section 1(b) of DDB Regulation No. 1, Series of 2002:

> 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.

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[11] *People v. Mamalumpon,* 767 Phil. 845, 855 (2015).

[12] *People v. Castro,* 711 Phil. 662, 673 (2013).

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[.]

In relation to this, Section 21 of Republic Act No. 9165 pertinently provides the following:

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[.]

Furthermore, Section 21(a) of the Implementing Rules and Regulations (IRR) of Republic Act No. 9165 relevantly states:

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:

(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 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[.]** (Emphasis supplied.)

We have consistently ruled that noncompliance with the requirements of Section 21 of Republic Act No. 9165 will not necessarily render the illegal drugs seized or confiscated in a buy-bust operation inadmissible. Strict compliance with the letter of Section 21 is not required if there is a clear showing that the integrity and evidentiary value of the seized illegal drugs have been preserved, *i.e.*, the illegal drugs being offered in court as evidence is, without a specter of doubt, the very same item recovered in the buy-bust operation.[13]

With regard to the foregoing, Moner asserts that he should be acquitted of the criminal charges levelled against him specifically because of the following serious lapses in procedure committed by the apprehending officers: (a) the physical inventory was not conducted at the place where the seizure was made; (b) the seized item was not photographed at the place of seizure; and (c) there was no physical inventory and photograph of the seized item in the presence of the accused, or his representative or counsel, with an elected public official and a representative of the National Prosecution Service or the media who shall be required to sign the copies of the inventory and be given a copy thereof.

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[13] *People v. Cunanan,* 756 Phil. 40, 50 (2015).

The aforementioned concerns can be squarely addressed by a careful and assiduous review of the records of this case accompanied by a liberal application and understanding of relevant jurisprudence in support thereof. Both object and testimonial evidence demonstrate that the apprehending officers were able to mark the dangerous drugs seized and to prepare a physical inventory of the same at the Las Piñas Police Station which was the place where Moner and his co-accused were brought for processing. The following excerpts lifted from the transcript of the testimony of PO2 Panopio during trial confirm this fact:

Q Now, Mr. Witness, after your team recovered [the] evidence on top of the table inside the house, arrested those persons whom you identified a while ago **and also arrested Teng Moner recovered from him the buy-bust money, what happened next?**
A **We brought them to the police headquarters.**

Q In what headquarters did you bring the persons arrested?
A We brought them to Special Action… SAID-SOTF Las Piñas Police Station.

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Q Now, I would like to inform you that under Section 21 of the Republic Act 9165, the arresting officer immediately after the arrest of the accused or the person buy-bust for possession must prepare the inventory of seized evidence.
A Yes, sir.

Q What do you mean by "yes"?
A **We did prepare an inventory, sir.**

Q So, you are aware of that provision?
A I just forgot the Section 21, sir.

COURT: (to the witness)

Q You do not know that doing an inventory is a requirement under Section 21?
A Yes, your Honor.

PROS.: (to the witness)

Q Now, you said that you are aware of Section 21 an inventory must be made. Do you know whether your team complied with that provision of the law upon reaching the station?
A Yes, sir.

Q What do you mean by "yes"?
A We made an Inventory Report, sir.

Q Where is now that Inventory Report?
A It's with the documents I submitted earlier in court, sir.

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PROS: (to the Court)

This piece of document handed by the witness your Honor, the Inventory of Property Seized be marked as Exhibit "OOO".

COURT: (to the witness)

Q That is the original, Mr. Witness?
A Yes, your Honor.

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PROS.: (to the Court)

Q The signature of PO3 Rufino G. Dalagdagan under the heading "Received By:" be bracketed and be marked as Exhibit "OOO-1"; the list of the articles appearing [in] the body of Exhibit "OOO" be bracketed and be marked as Exhibit "OOO-2". **This Receipt of Property Turned-Over, your Honor, which states: "I, PO3 RUFINO G. DALAGDAGAN OF SAID-SOTF, LAS PIÑAS CITY POLICE STATION, SPD hereby acknowledge received (sic) the items/articles listed hereunder [from] PO2 JOACHIM P. PANOPIO"** and may we request, your honor that letters appearing on the top of the name TENG MONER ADAM, ET AL. (RTS) be marked as Exhibit "OOO-3".

PROS.: (to the witness)

Q **Where were you, Mr. Witness, when this Exhibit "OOO" was prepared?**
A **I was inside the office, sir.**

Q Who prepared this Exhibit "OOO"?
A PO3 Rufino Dalagdagan, sir.

Q These items listed [in] the body of marked as Exhibit "OOO", who made these items?
A I, myself, sir.

Q Now, showing to you this Exhibit marked as "OOO-3" particularly on [the] letters RPS appearing inside the parenthesis, who placed that entry (RPS)?
A Police Officer Dalagdagan, sir.

Q Where were you at the time when this (RPS) marked as Exhibit "OOO-3" was made?
A I was inside the office, sir.

Q **Where were those persons whom your team arrested when this evidence marked as Exhibit "OOO" was made?**
A **They were also inside the office, sir.**

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Q You said a while ago that in consideration with the buy-bust money, you received from the accused, Teng Moner, that plastic sachet containing shabu. **Upon reaching the station, what happened to the plastic sachet, subject matter of the buy-bust operation?**
A **I turned it over, sir.**

Q To whom?
A PO3 Dalagdagan, sir.

Q **And before you turned it over to the investigator, PO3 Dalagdagan, that shabu subject matter of the buy-bust operation, what did you do with it?**
A **He placed [the] markings on it, sir.**

Q So, you did not do anything on the shabu you bought from the accused when it was the investigator who made the markings on the shabu?
A Yes, sir.

Q And what were the markings placed by the investigator, PO3 Dalagdagan, when you turned over the shabu, subject matter of the buy-bust operation?
A He placed "TMA"… that's all I can recall, sir.

Q **Now, would you be able to identify that plastic sachet, subject matter of the buy-bust operation?**
A **Yes, sir.**

Q Showing to you several pieces of evidence placed inside the brown envelope. Kindly look at the same and pick from these several items that plastic sachet, subject matter of the buy-bust operation?
A (Witness picked from the bunch of evidence the plastic sachet which already marked as Exhibit "P" and he read [the] markings "TMAU1-23APR05".)

Q Now, you also stated a while ago that you were the one who personally recovered the buy-bust money used in the operation from the possession of the accused, Teng Moner. If the same would be shown to you, would you be able to identify it?
A Yes, sir.

x x x x x x x x x

Q **Now, you also stated that the Request for Laboratory Examination was made by the investigator, Now, who delivered the plastic sachet subject matter of the buy-bust operation for laboratory examination?**
A **We did, sir.**[14] (Emphases supplied.)

Judging from the cited testimony, it is apparent that the apprehending officers were able to substantially comply with the requirements of the law regarding the custody of confiscated or seized dangerous drugs. When cross-examined by the defense counsel during trial about the reason behind the buy-bust team's noncompliance with standard procedure, PO3 Tuldanes, one of the apprehending officers, gave the following response:

ATTY. PALAD: (to witness)
Q Meaning you had no time to make the inventory right at the scene of the alleged buy-bust?
A Yes, sir, because we were immediately instructed to pull out from the area.

Q Was there any threat on your lives that you immediately pulled out from the said area?
A It was not our area — Area of Responsibility — so we just wanted to make sure, for security and immediately left, sir.

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[14] TSN, October 18, 2005, pp. 27-40.

Q So this fear for security, you did not follow this photographing/inventory?
A We did not do that anymore, sir, because our security was at risk.[15]

Verily, the circumstances that the buy-bust team proceeded first to the Central Police District (CPD) Station, Camp Karingal in Quezon City and, from there, they were accompanied by a police officer from the CPD to the target location, aside from proving that it was a legitimate police operation, supported the existence of a security risk to the buy-bust team. These additional precautions taken by the buy-bust team underscored their unfamiliarity with the location of the operation and, in fact, corroborated the above-quoted testimony that the buy-bust team believed there was a threat to their security.

With regard to the accused's allegation that the buy-bust team failed to coordinate with the PDEA before proceeding with the operation that nabbed Moner, both the trial court and the Court of Appeals declare in unison that the requisite prior coordination with PDEA did happen. Likewise, our own review did not provide any reason for us to disbelieve said established fact.

To reiterate, noncompliance with the chain of custody rule is excusable as long as there exist justifiable grounds which prevented those tasked to follow the same from strictly conforming to the said directive. The preceding discussion clearly show that the apprehending officers in this case did not totally disregard prescribed procedure but, instead, demonstrated substantial compliance with what was required. It was likewise explained that the divergence in procedure was not arbitrary or whimsical but because the buy-bust team decided that they could not linger at the crime scene as it would unduly expose them to security risks since they were outside their area of responsibility.

Notably, in the recent case of *Palo v. People*,[16] we affirmed a conviction for illegal possession of dangerous drugs despite

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[15] TSN, July 25, 2006, p. 64.

[16] 780 Phil. 681 (2016).

the fact that the seized illegal substance was only marked at the police station and that there was no physical inventory or photograph of the same:

> The fact that the apprehending officer marked the plastic sachet at the police station, and not at the place of seizure, did not compromise the integrity of the seized item. Jurisprudence has declared that "marking upon immediate confiscation" contemplates even marking done at the nearest police station or office of the apprehending team. Neither does the absence of a physical inventory nor the lack of photograph of the confiscated item renders the same inadmissible. What is of utmost importance is the preservation of the integrity and evidentiary value of the seized items as these would be used in determining the guilt or innocence of the accused.[17]

With regard to the third breach of procedure highlighted by Moner, this Court cites *People v. Usman*[18] wherein we declared that the chain of custody is not established solely by compliance with the prescribed physical inventory and photographing of the seized drugs in the presence of the enumerated persons by law. In that case, the police officers who arrested and processed the accused did not perform the prescribed taking of photographs under the law but, nevertheless, the assailed conviction was upheld. The Court reasoned thus:

> [T]his Court has, in many cases, held that while the chain of custody should ideally be perfect, in reality it is not, "as it is almost always impossible to obtain an unbroken chain." The most important factor is the preservation of the integrity and the evidentiary value of the seized items as they will be used to determine the guilt or innocence of the accused. x x x.[19]

In the case at bar, the records indicate that the integrity and the evidentiary value of the seized items had been preserved despite the procedural infirmities that accompanied the process. On this score, we quote with approval the disquisition of the Court of Appeals:

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[17] *Id*. at 694-695.

[18] 753 Phil. 200 (2015).

[19] *Id*. at 214.

The record shows that upon the arrest of accused-appellant, the shabu and marked money were confiscated from him by PO2 Panopio. Accused-appellant was immediately brought to the Las Piñas Police Station where the items confiscated from him were turned-over by PO2 Panopio to PO3 Dalagdagan, the investigator-on-case. **The latter received the confiscated items and marked them in the presence of PO2 Panopio and accused-appellant. An inventory of the confiscated items was also made.**

Thereafter, the request for laboratory examination was prepared by PO3 Dalagdagan and signed by P/C Insp. Jonathan A. Cabal. The specimen together with the request was brought to the PNP Crime Laboratory, Camp Crame, Quezon City by PO2 Panopio and the other police officers. There, it was received by PSI Michael S. Holada, who delivered the specimen and request for laboratory test to the forensic chemist PIS Maridel C. Rodis. After examination, the specimen submitted for testing proved positive for Methylamphetamine Hydrochloride, a dangerous drug. The result of the test was reduced to writing and signed by the forensic chemist. It was duly noted by P/Sr. Supt. Ricardo Cacholaver. It is worth stressing that the prosecution and defense had agreed to dispense with the testimony of the forensic chemist and stipulated among others that she could identify the documents and the specimens she examined.[20] (Emphases supplied and citations omitted.)

Anent Moner's allegation that the buy-bust team asked money from him and his former co-accused in exchange for their liberty, it must be emphasized that the said allegation only came to light when defense counsel asked appellant what happened when he and his former co-accused were brought to the Las Piñas Police Station.[21] Curiously, however, defense counsel did not confront any of the prosecution witnesses regarding the said accusation. More importantly, based on the record, no criminal or administrative case relating thereto was ever filed by Moner or any of his former co-accused against their alleged extortionists. Nevertheless, on this particular issue, we would like to reiterate our ruling that the defense of denial or frame-up, like alibi, has

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[20] *Rollo*, p. 18.

[21] TSN, June 4, 2008, p. 7.

been invariably viewed by the courts with disfavor for it can just easily be concocted and is a common and standard defense ploy in most prosecution for violation of the Dangerous Drugs Act.[22]

At this juncture, it bears repeating that in cases involving violations of the Dangerous Drugs Act, credence is given to prosecution witnesses who are police officers, for they are presumed to have performed their duties in a regular manner, unless there is evidence to the contrary.[23] Admittedly, the buy-bust team did not follow certain aspects of procedure to the letter but this was excusable under the saving clause of the chain of custody rule and prevailing jurisprudence. As a consequence thereof, their arrest of Moner in the performance of their duty cannot be described as having been done so irregularly as to convince this Court to invalidate the credibility and belief bestowed by the trial court on the prosecution evidence. Accordingly, Moner must provide clear and convincing evidence to overturn the aforesaid presumption that the police officers regularly performed their duties but the records show that he has failed to do so. Absent any proof of mishandling, tampering or switching of evidence presented against him by the arresting officers and other authorities involved in the chain of custody, the presumption remains.

This is not the first time that this Court has been confronted with the question of whether or not to uphold the conviction of a person arrested for the illegal sale of dangerous drugs who had been positively identified by credible witnesses as the perpetrator of said crime but the manner by which the evidence of illegal drugs was handled did not strictly comply with the chain of custody rule. To reiterate past pronouncements, while ideally the procedure on the chain of custody should be perfect and unbroken, in reality, it is not as it is almost always impossible to obtain an unbroken chain.[24] Unfortunately, rigid obedience

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[22] *People v. Ygot,* G.R. No. 210715, July 18, 2016, 797 SCRA 87, 93.

[23] *People v. Minanga,* 751 Phil. 240, 249 (2015).

[24] *Ambre v. People*, 692 Phil. 681, 695 (2012).

to procedure creates a scenario wherein the safeguards that we set to shield the innocent are likewise exploited by the guilty to escape rightful punishment. Realizing the inconvenient truth that no perfect chain of custody can ever be achieved, this Court has consistently held that the most important factor in the chain of custody rule is the preservation of the integrity and evidentiary value of the seized items.[25]

We find it apropos to highlight this Court's discussion in *Zalameda v. People,*[26] which was restated in the recent case of *Saraum v. People*[27]:

> We would like to add that noncompliance with Section 21 of said law, particularly the making of the inventory and the photographing of the drugs confiscated and/or seized, will not render the drugs inadmissible in evidence. Under Section 3 of Rule 128 of the Rules of Court, evidence is admissible when it is relevant to the issue and is *not excluded by the law or these rules.* For evidence to be inadmissible, there should be a law or rule which forbids its reception. If there is no such law or rule, the evidence must be admitted subject only to the evidentiary weight that will accorded it by the court x x x.
>
> We do not find any provision or statement in said law or in any rule that will bring about the non-admissibility of the confiscated and/or seized drugs due to noncompliance with Section 21 of Republic Act No. 9165. The issue therefore, if there is noncompliance with said section, is not of admissibility, but of weight — evidentiary merit or probative value — to be given the evidence. The weight to be given by the courts on said evidence depends on the circumstances obtaining in each case.

Stated differently, if the evidence of illegal drugs was not handled precisely in the manner prescribed by the chain of custody rule, the consequence relates not to inadmissibility that would automatically destroy the prosecution's case but rather

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[25] *Saraum v. People*, 779 Phil. 122, 133 (2016).

[26] 614 Phil. 710, 741-742 (2009), citing *People v. Del Monte*, 575 Phil. 577, 586 (2008).

[27] *Supra* note 25 at 133.

to the weight of evidence presented for each particular case. In the case at bar, the trial court judge convicted Moner on the strength of the credibility of the prosecution's witnesses despite an imperfect chain of custody concerning the *corpus delicti*.

It should be noted that Section 21(a) of the IRR of Republic Act No. 9165 provides that:

> SEC. 21. *Custody and Disposition of Confiscated, Seized, and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/ Paraphernalia and/or Laboratory Equipment.* — The PDEA shall take charge and have custody of all dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment so confiscated, seized and/or surrendered, for proper disposition in the following manner:
>
> (1) The apprehending team having initial custody and control of the dangerous drugs, controlled precursors and essential chemicals, instruments/paraphernalia and/or laboratory equipment shall, immediately after seizure and confiscation, conduct a physical inventory of the seized items and photograph the same in the presence of the accused or the persons from whom such items were confiscated and/or seized, or his/her representative or counsel, with an elected public official and a representative of the National Prosecution Service or the media who shall be required to sign the copies of the inventory and be given a copy thereof: *Provided,* That the physical inventory and photograph shall be conducted at the place where the search warrant is served; or at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizures: ***Provided, finally*, That noncompliance of these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures and custody over said items.** (Emphases supplied.)

The above-quoted provision recognizes that the credibility of the prosecution's witnesses and the admissibility of other evidence are well within the power of trial court judges to decide. Paragraph (5), Section 5, Article VIII of the 1987 Constitution vests upon the Supreme Court the following power, among others:

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

Jurisprudence explains the above-quoted constitutional provision in the following manner:

Until the 1987 Constitution took effect, our two previous constitutions textualized a power sharing scheme between the legislature and this Court in the enactment of judicial rules. Thus, both the 1935 and the 1973 Constitutions vested on the Supreme Court the "power to promulgate rules concerning pleading, practice, and procedure in all courts, and the admission to the practice of law." However, these constitutions also granted to the legislature the concurrent power to "repeal, alter or supplement" such rules.

The 1987 Constitution textually altered the power-sharing scheme under the previous charters by deleting in Section 5(5) of Article VIII Congress' subsidiary and corrective power. This glaring and fundamental omission led the Court to observe in *Echegaray v. Secretary of Justice* that this Court's power to promulgate judicial rules "is no longer shared by this Court with Congress."[28]

The power to promulgate rules concerning pleading, practice and procedure in all courts is a traditional power of this Court.[29] This includes the power to promulgate the rules of evidence.

On the other hand, the Rules of Evidence are provided in the Rules of Court issued by the Supreme Court. However, the

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[28] *Baguio Market Vendors Multi-Purpose Cooperative v. Cabato-Cortes*, 627 Phil. 543, 548-549 (2010).

[29] *Re: Petition for Recognition of the Exemption of the GSIS from Payment of Legal Fees*, 626 Phil. 93, 106 (2010).

chain of custody rule is not found in the Rules of Court. Section 21 of Republic Act No. 9165 was passed by the legislative department and its implementing rules were promulgated by PDEA, in consultation with the Department of Justice (DOJ) and other agencies under and within the executive department.

In the United States, the chain of custody rule is followed by the federal courts using the provisions of the Federal Rules of Evidence. The Federal Court of Appeals applied this rule in *United States v. Ricco*[30] and held as follows:

> **The "chain of custody" rule is found in Fed.R.Evid. 901, which requires that the admission of an exhibit must be preceded by "evidence sufficient to support a finding that the matter in question is what its proponent claims." x x x.**
>
> x x x As we have pointed out, the "'chain of custody' is not an iron-clad requirement, and the fact of a 'missing link' does not prevent the admission of real evidence, so long as there is sufficient proof that the evidence is what it purports to be and has not been altered in any material respect." x x x.

According to Cornell University's online legal encyclopedia, "[r]ules of evidence are, as the name indicates, the rules by which a court determines what evidence is admissible at trial. In the U.S., federal courts follow Federal Rules of Evidence, while state courts generally follow their own rules."[31] In the U.S. State of Alaska, for example, the "chain of custody" rule is found in Alaska Evidence Rule 901(a).[32]

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[30] 52 F. 3d 58 – United States Court of Appeals, 4th Circuit 1995, citing *United States v. Howard-Arias,* 679 F.2d 363, 366 (4th Cir.1982).

[31] Cornell University Law School Legal Information Institute. https://www.law.cornell.edu/wex/evidence. Last visited on March 1, 2017.

[32] Evidence Rule 901(a) states that if the government offers physical evidence (or testimony describing physical evidence) in a criminal trial, and if that physical evidence "is of such a nature as not to be readily identifiable," or if the physical evidence is "susceptible to adulteration, contamination, modification, tampering, or other changes in form attributable to accident, carelessness, error or fraud," then the government must, as foundational matter, "demonstrate [to a] reasonable certainty that the evidence is x x x properly identified and free of the possible taints" identified in the rule.

Evidence is defined in Section 1 of Rule 128[33] as "the means, sanctioned by these rules, of **ascertaining in a judicial proceeding the truth respecting a matter of fact**." Section 2 of the same Rule provides that "[t]he rules of evidence shall be the same in all courts and in all trials and hearings, except as otherwise provided by law or these rules." Furthermore, the said Rule provides for the admissibility of evidence, and states that "[e]vidence is admissible when it is relevant to the issue and is not excluded by the law or these rules." The Rules of Admissibility provide that "[o]bjects as evidence are those addressed to the senses of the court. When an object is relevant to the fact in issue, it may be exhibited to, examined or viewed by the court."[34]

Under the doctrine of separation of powers, it is important to distinguish if a matter is a proper subject of the rules of evidence, which as shown above are promulgated by the Court, or it is a subject of substantive law, and should be passed by an act of Congress. The Court discussed this distinction in the early case of *Bustos v. Lucero*[35]:

> Substantive law creates substantive rights and the two terms in this respect may be said to be synonymous. Substantive rights is a term which includes those rights which one enjoys under the legal system prior to the disturbance of normal relations. (60 C. J., 980.) Substantive law is that part of the law which creates, defines and regulates rights, or which regulates the rights and duties which give rise to a cause of action; that part of the law which courts are established to administer; as opposed to adjective or remedial law, which prescribes the method of enforcing rights or obtains redress for their invasion. (36 C. J., 27; 52 C. J. S., 1026.)
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> **As applied to criminal law, substantive law is that which declares what acts are crimes and prescribes the punishment for committing them, as distinguished from the procedural law which provides or regulates the steps by which one who commits a crime is to be**

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[33] Rules of Court.

[34] Rules of Court, Rule 130, Section 1.

[35] 81 Phil. 640, 649-652 (1948).

punished. (22 C. J. S., 49.) Preliminary investigation is eminently and essentially remedial; it is the first step taken in a criminal prosecution.

As a rule of evidence, Section 11 of Rule 108 is also procedural. Evidence — which is "the mode and manner of proving the competent facts and circumstances on which a party relies to establish the fact in dispute in judicial proceedings" — is identified with and forms part of the method by which, in private law, rights are enforced and redress obtained, and, in criminal law, a law transgressor is punished. Criminal procedure refers to pleading, evidence and practice. (Stated *vs*. Capaci, 154 So., 429; 179 La., 462.) The entire rules of evidence have been incorporated into the Rules of Court. We can not tear down section 11 of Rule 108 on constitutional grounds without throwing out the whole code of evidence embodied in these Rules.

In Beazell *vs*. Ohio, 269 U. S., 167, 70 Law. ed., 216, the United States Supreme Court said:

> "Expressions are to be found in earlier judicial opinions to effect that the constitutional limitation may be transgressed by alterations in the rules of evidence or procedure. See Calder *vs*. Bull, 3 Dall. 386, 390, 1 L. ed., 648, 650; Cummings *vs*. Missouri, 4 Wall. 277, 326, 18 L. ed., 356, 364; Kring *vs*. Missouri, 107 U. S. 221, 228, 232, 27 L. ed., 507, 508, 510, 2 Sup. Ct. Rep., 443. And there may be procedural changes which operate to deny to the accused a defense available under the laws in force at the time of the commission of his offense, or which otherwise affect him in such a harsh and arbitrary manner as to fall within the constitutional prohibition. Kring *vs*. Missouri, 107 U. S., 221, 27 L. ed., 507, 2 Sup. Ct. Rep., 443; Thompson *vs*. Utah, 170 U. S., 343, 42 L. ed., 1061, 18 Sup. Ct. Rep., 620. But it is now well settled that statutory changes in the mode of trial or the rules of evidence, which do not deprive the accused of a defense and which operate only in a limited and unsubstantial manner to his disadvantage, are not prohibited. A statute which, after indictment, enlarges the class of persons who may be witnesses at the trial, by removing the disqualification of persons convicted of felony, is not an ex post facto law. Hopt *vs*. Utah, 110 U. S., 575, 28 L. ed., 263, 4 Sup. Ct. Rep., 202, 4 Am. Crim. Rep. 417. Nor is a statute which changes the rules of evidence after the indictment so as to render admissible against the accused evidence previously

held inadmissible, Thompson *vs*. Missouri, 171 U. S., 380, 43 L. ed., 204, 18 Sup. Ct. Rep., 922; or which changes the place of trial, Gut *vs*. Minnesota, 9 Wall. 35, 19 L. ed., 573; or which abolishes a court for hearing criminal appeals, creating a new one in its stead. See Duncan *vs*. Missouri, 152 U. S., 377, 382, 38 L. ed., 485, 487, 14 Sup. Ct. Rep., 570."

x x x x x x x x x

The distinction between "remedy" and "substantive right" is incapable of exact definition. The difference is somewhat a question of degree. (Dexter *vs*. Edmands, 89 F., 467; Beazell *vs*. Ohio, *supra*.) It is difficult to draw a line in any particular case beyond which legislative power over remedy and procedure can pass without touching upon the substantive rights of parties affected, as it is impossible to fix that boundary by general condition. (State *vs*. Pavelick, 279 P., 1102.) This being so, it is inevitable that the Supreme Court in making rules should step on substantive rights, and the Constitution must be presumed to tolerate if not to expect such incursion as does not affect the accused in a harsh and arbitrary manner or deprive him of a defense, but operates only in a limited and unsubstantial manner to his disadvantage. For the Court's power is not merely to compile, revise or codify the rules of procedure existing at the time of the Constitution's approval. This power is "to promulgate rules concerning pleading, practice, and procedure in all courts," which is a power to adopt a general, complete and comprehensive system of procedure, adding new and different rules without regard to their source and discarding old ones.

To emphasize, the distinction in criminal law is this: substantive law is that which declares what acts are crimes and prescribes the punishment for committing them, as distinguished from the procedural law which provides or regulates the steps by which one who commits a crime is to be punished.[36]

Based on the above, it may be gleaned that the chain of custody rule is a matter of evidence and a rule of procedure. It is therefore the Court who has the last say regarding the appreciation of evidence. Relevant portions of decisions elucidating on the chain of custody rule are quoted below:

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[36] 22 C.J.S. 49.

Saraum v. People[37]:

The chain of custody rule requires the identification of the persons who handled the confiscated items for the purpose of duly monitoring the authorized movements of the illegal drugs and/or drug paraphernalia from the time they were seized from the accused until the time they are presented in court. x x x. (Citation omitted.)

Mallillin v. People[38]:

Prosecutions for illegal possession of prohibited drugs necessitates that the elemental act of possession of a prohibited substance be established with moral certainty, together with the fact that the same is not authorized by law. The dangerous drug itself constitutes the very *corpus delicti* of the offense and the fact of its existence is vital to a judgment of conviction. Essential therefore in these cases is that the identity of the prohibited drug be established beyond doubt. Be that as it may, the mere fact of unauthorized possession will not suffice to create in a reasonable mind the moral certainty required to sustain a finding of guilt. More than just the fact of possession, the fact that the substance illegally possessed in the first place is the same substance offered in court as exhibit must also be established with the same unwavering exactitude as that requisite to make a finding of guilt. The chain of custody requirement performs this function in that it ensures that unnecessary doubts concerning the identity of the evidence are removed.

As a method of authenticating evidence, the chain of custody rule requires that the admission of an exhibit be preceded by evidence sufficient to support a finding that the matter in question is what the proponent claims it to be. It would include testimony about every link in the chain, from the moment the item was picked up to the time it is offered into evidence, in such a way that every person who touched the exhibit would describe how and from whom it was received, where it was and what happened to it while in the witness' possession, the condition in which it was received and the condition in which it was delivered to the next link in the chain. These witnesses would then describe the precautions taken to ensure that there had been no change in the condition of the item and no

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[37] *Supra* note 25 at 132.

[38] 576 Phil. 576, 586-587 (2008).

opportunity for someone not in the chain to have possession of the same. (Citations omitted.)

These are matters well within the powers of courts to appreciate and rule upon, and so, when the courts find appropriate, substantial compliance with the chain of custody rule as long as the integrity and evidentiary value of the seized items have been preserved may warrant the conviction of the accused. This is the rationale, grounded on the constitutional power of the Court, to pass upon the credibility and admissibility of evidence that underlies the proviso in Section 21(a) of the IRR of Republic Act No. 9165.

To conclude, this Court has consistently espoused the time-honored doctrine that where the issue is one of credibility of witnesses, the findings of the trial court are not to be disturbed unless the consideration of certain facts of substance and value, which have been plainly overlooked, might affect the result of the case.[39] We do not believe that the explainable deviations to the chain of custody rule demonstrated by the police officers involved in this case are reason enough to overturn the findings of the trial court judge, who personally observed and weighed the testimony of the witnesses during trial and examined the evidence submitted by both parties.

In light of the foregoing, we are compelled to dismiss the present appeal and affirm the conviction of Moner for the crime of illegal sale of dangerous drugs.

WHEREFORE, premises considered, the present appeal is **DISMISSED** for lack of merit. The assailed Decision dated July 27, 2011 of the Court of Appeals in CA-G.R. CR-H.C. No. 04399 is **AFFIRMED**.

SO ORDERED.

Del Castillo and *Tijam, JJ.,* concur.

Perlas-Bernabe, J., see dissenting opinion; per Raffle dated February 28, 2018.

Sereno, C.J., on leave.

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[39] *People v. Mercado*, 755 Phil. 863, 874 (2015).

DISSENTING OPINION

PERALS-BERNABE *J.*:

I respectfully submit my dissent to the *ponencia* which affirmed the conviction of accused-appellant Teng Moner *y* Adam for violation of Section 5, Article II of Republic Act No. (RA)9165,[1] otherwise known as the Comprehensive Dangerous Drugs Act of 2002." As will be explained hereunder, my dissent is centered on the police officers' unjustified deviation from the chain of custody procedure as required by RA 9165, as amended.

Under Section 21, Article of RA 9165, prior to its amendment by RA 10640,[2] the physical inventory and photography of the seized items should be conducted in the presence of the accused or the person from whom the items were seized, or his representative or counsel, with an elected public official, and representatives from the media and the Department of Justice (DOJ), who shall be required to sign the copies of the inventory. The purpose of this rule is to ensure the establishment of the chain of custody and remove any suspicion of switching, planting, or contamination of evidence which could considerably affect a case.[3] Non-compliance with this requirement, however, would not *ipso facto* render the seizure and custody over the items as void and invalid, provided that the prosecution satisfactorily proves that: (*a*) there is justifiable ground for non-compliance;

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[1] Entitled "An Act instituting the Comprehensive Dangerous Drugs Act of 2002, Repealing Republic Act No. 6425, Otherwise Known as the Dangerous Drugs Act of 1972, As Amended, Providing Funds Therefor, and for Other Purposes," approved on June 7, 2002.

[2] Entitled "AN ACT TO FURTHER STRENGTHEN THE ANTI-DRUGS CAMPAIGN OF THE GOVERNMENT, AMENDING FOR THE PURPOSES SECTION 21 OF REPUBLIC ACT NO. 9165, OTHERWISE KNOWN AS THE 'COMPREHENSIVE DANGEROUS DRUG ACT OF 2002,'" approved on July 15, 2014. The crime subject of this case as allegedly committed on April 23, 2005, prior to the enactment of RA 10640.

[3] See *People v. Mendoza,* 736 Phil. 749, 764 (2014).

and (*b*) the integrity and evidentiary value of the seized items are properly preserved.[4]

Case law states that in determining whether or not there was indeed justifiable reason for the deviation in the aforesaid rule on witnesses, the prosecution must show that **earnest efforts** were employed in contacting the representatives enumerated under the law for "a sheer statement that repesentatives were unavailable — without so much as an explanation on whether serious attempts were employed to look for other representatives, given the circumstances — is to be regarded as a flimsy excuse."[5] Verily, mere statements of unavailability, absent actual serious attempts to contact the required witnesses, are unacceptable as justifiable grounds for non-compliance.

In this case, while the police officers indeed conducted an inventory of the seized items as evidenced by the Receipt of Property Turned Over,[6] a review of such document readily shows that no elected public official, representative from the DOJ, or representative from the media signed the same; thus, indicating that such required witnesses were absent during the conduct of inventory. The foregoing facts were confirmed by no less than the members of the buy-bust team who, unfortunately, offered no explanation for the non-compliance with the rule on required witnesses.[7] To reiterate, the arresting officers are compelled not only to state reasons for their non-compliance, but must in fact, also convince the Court that they exerted earnest efforts to comply with the mandated procedure, and that under the given circumstances, their actions were reasonable. Thus, for failure of the prosecution to provide justifiable grounds or show

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[4] *People v. Goco,* G.R. No. 219584, October 17, 2016, 806 SCRA 240, 252. See also *People v. Almorfe,* 631 Phil. 51, 60 (2010).

[5] *People v. Umipang,* 686 Phil. 1024, 1053 (2012).

[6] See records, p. 100.

[7] See Testimony of Police Officers (PO) 3 Edwin Lirio, TSN, September 19, 2006, pp. 65-66; Testimony of PO2 Joachim Panopio, TSN, February 14, 2006, pp. 10-19; Testimony of PO2 Joachim Panopio, TSN, October 18, 2005, pp. 29-33.

that special circumstances exist which would excuse their transgression, I respectfully submit that the integrity and evidentiary value of the items purportedly seized from the accused-appellant have been compromised. To stress, the chain of custody procedure enshrined in Section 21, Article II of RA 9165 is a matter of substantive law, and cannot be brushed aside as a simple procedural technicality.[8]

In the recent case of *People v. Miranda,*[9] the Court held that "as the requirements are clearly set forth in the law, then the State retains the **positive duty** to account for any lapses in the chain of custody of the drugs/items seized from the accused, regardless of whether or not the defense raised the same in the proceedings *a quo*; otherwise it risks the possibility of having a conviction overturned on grounds that go into the evidence's integrity and evidentiary value, albeit the same are raised only for the first time on appeal, or even not raised, become apparent upon further review."

ACCORDINGLY, in view of the above-stated reasons, I vote to **GRANT** the appeal, and consequently, **ACQUIT** accused-appellant Teng Moner *y* Adam.

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[8] *Gamboa v. People,* G.R. No. 220333, November 14, 2016, 808 SCRA 624, 637.

[9] See G.R. No. 229671, January 31, 2018.

FIRST DIVISION

[G.R. No. 213669. March 5, 2018]

JEROME K. SOLCO, *petitioner, vs.* **MEGAWORLD CORPORATION,** *respondent.*

SYLLABUS

1. **REMEDIAL LAW: PRESIDENTIAL DECREE NO. 1529; THE REGIONAL TRIAL COURT *A QUO* HAD JURISDICTION TO RULE ON MATTERS NECESSARY FOR THE DETERMINATION OF THE ISSUE OF OWNERSHIP INCLUDING THE VALIDITY OF THE TAX SALE.—** [T]his Court has declared that Presidential Decree (PD) No. 1529, with the intention to avoid multiplicity of suits and to promote expeditious termination of cases, had eliminated the distinction between the general jurisdiction vested in the regional trial court and the latter's limited jurisdiction when acting merely as a land registration court. Land registration courts, as such, can now hear and decide even controversial and contentious cases, as well as those involving substantial issues. Certainly, thus, the courts *a quo* had jurisdiction to rule on all matters necessary for the determination of the issue of ownership, including the validity of the tax sale.

2. **POLITICAL LAW; THE LOCAL GOVERNMENT CODE (R.A. 7160); TAX DELINQUENCY SALE; SECTION 267 OF R.A. 7160, WHICH REQUIRES THE POSTING OF A JURISDICTIONAL BOND BEFORE A COURT CAN ENTERTAIN AN ACTION ASSAILING A TAX SALE, APPLIES ONLY TO INITIATORY ACTIONS ASSAILING THE VALIDITY OF TAX SALES.—** Solco cannot invoke the provision under Section 267 of RA 7160, requiring the posting of a jurisdictional bond before a court can entertain an action assailing a tax sale, x x x[.] A simple reading of the title readily reveals that the provision relates to actions for annulment of tax sales. The section likewise makes use of terms "entertain" and "institution" to mean that the deposit requirement applies only to *initiatory* actions assailing the validity of tax sales. Again, the suit filed by Solco was an action for nullity of title and issuance of new title in lieu thereof; the issue of nullity of

the tax sale was raised by the Megaworld merely as a defense and in no way converted the action to an action for annulment of a tax sale.

3. ID.; ID.; ID.; ID.; WHERE THE ISSUE ON THE VALIDITY OF A TAX SALE WAS RAISED ONLY AS A DEFENSE, NON-COMPLIANCE WITH THE REQUIREMENT OF POSTING JURISDICTIONAL BOND CANNOT PREVENT THE COURT FROM TAKING COGNIZANCE THEREOF; THE PROPER PARTY MAY BE DIRECTED TO POST THE REQUIRED DEPOSIT PURSUANT TO THE SAID PROVISION.— [I]t is imperative to discuss the importance and indispensability of the deposit required by Section 267 of RA 7160. To be clear, however, it bears stressing that in this particular case, We rule that the non-compliance to such requirement cannot prevent the court from taking cognizance of the issue on the validity of the tax sale considering that the same was raised merely as a defense, but nonetheless, We emphasize that the purpose of such requirement cannot be disregarded. As expressly stated in Section 267, the amount deposited shall be paid to the purchaser at the auction sale if the deed is declared invalid; otherwise, it shall be returned to the depositor. In fine, such deposit is meant to reimburse the purchaser of the amount he had paid at the tax sale should the court declare the sale invalid. Clearly, the deposit is an ingenious legal device to guarantee the satisfaction of the tax delinquency, with the local government unit keeping the payment on the bid price whether the tax sale be nullified or not by the court. In view of such purpose and considering Megaworld's manifest willingness to comply with Section 267, We find it proper to direct Megaworld to post the required deposit before the trial court pursuant to the said provision. With this, there is an assurance that the public funds shall not be made liable whatever may be the outcome of the case. Thus, contrary to Solco's contention, the City Government of Makati is not an indispensable party in this annulment of title/land registration case, wherein the validity of the tax sale upon which the applicant's claim is grounded, is in issue.

4. ID.; ID.; ID.; THE BURDEN TO PROVE THAT DUE PROCESS REQUIREMENT WAS FOLLOWED IN THE TAX SALE PROCEEDINGS LIES ON THE PERSON CLAIMING ITS VALIDITY; FAILURE TO DISCHARGE

THIS BURDEN, THE COURT IS CONSTRAINED TO STRIKE DOWN THE TAX SALE AS NULL AND VOID.— [T]he Court has been consistent in ruling that the burden to prove compliance with the validity of the proceedings leading up to the tax delinquency sale is incumbent upon the buyer or the winning bidder. Indeed, the burden to show that such steps were taken lies on the person claiming its validity, who in this case is Solco. x x x [A] judicious study of the records of this case led Us to the same conclusion that Solco patently failed to discharge the burden of proving that the tax sale was conducted with conformity to the governing rules above-cited. x x x [I]t bears stressing that the requirements for tax delinquency sale under RA 7160 are mandatory. x x x For these reasons, We are constrained to affirm the CA's ruling, which is to strike down the tax sale as null and void. We cannot deny that there is insufficiency of evidence to prove compliance with the above-cited mandatory requirements under RA 7160 for a valid tax delinquency sale.

5. **ID.; ID.; ID.; PRESUMPTION OF REGULARITY IN THE PERFORMANCE OF OFFICIAL DUTY CANNOT BE APPLIED TO THOSE INVOLVED IN THE CONDUCT OF A TAX SALE.—** [I]n consonance with the strict and mandatory character of the requirements for validity of a tax delinquency sale, well-established is the rule that the presumption of regularity in the performance of a duty enjoyed by public officials, cannot be applied to those involved in the conduct of a tax sale. In the case of *Camo* above-cited, it was written that no presumption of regularity exists in any administrative action which resulted in depriving a citizen or taxpayer of his property. This is an exception to the rule that administrative proceedings are presumed to be regular.

6. **ID.; ID.; ID.; PETITIONER CANNOT INVOKE THAT HE WAS A BUYER IN GOOD FAITH BY MERELY RELYING UPON THE PRESUMPTION OF GOOD FAITH UNDER THE RULES OF COURT.—** [G]ood faith is a question of intention, determined by outward acts and proven conduct. The circumstances of the case restrain Us from ruling that Solco was a buyer in good faith. Records show that the subject property had been in Dimaporo's possession since 1999. Notably, this fact has never been refuted by Solco in the entire proceedings even up to the instant petition. Settled is the rule that one who

purchases a real property which is in possession of another should at least make some inquiry beyond the face of the title. A purchaser cannot close his eyes to facts which should put a reasonable man upon his guard, and then claim that he acted in good faith under the belief that there was no defect in the title of the vendor. Admittedly, in this case, Solco never made any inquiry to such a significant fact.

APPEARANCES OF COUNSEL

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Manlangit Maquinto Salomon & De Guzman Law Office for respondent.

D E C I S I O N

TIJAM, *J.*:

This is a Petition for Review on *Certiorari*[1] under Rule 45, assailing the Decision[2] dated May 12, 2014 and Resolution[3] dated July 23, 2014 of the Court of Appeals (CA) in CA-G.R. CV No. 100636, which reversed and set aside the Orders dated October 2, 2012[4] and February 19, 2013[5] of the Regional Trial Court (RTC) of Makati City, Branch 133 in LRC Case No. M-5031.

Factual Antecedents

Megaworld Corporation (Megaworld) was the registered owner of parking slots covered by Condominium Certificates of Title (CCT) Nos. 593823[6] (Two Lafayette property) and

[1] *Rollo*, pp. 27-70.

[2] Penned by Associate Justice Celia C. Librea-Leagogo with Associate Justices Franchito N. Diamante and Melchor Q.C. Sadang concurring, *id*. at 78-94.

[3] *Id*. at 106-108.

[4] Penned by Presiding Judge Elpidio R. Calis, *id*. at 96-101.

[5] *Id*. at 103-104.

[6] *Id*. at 246-249.

64023[7] (Manhattan property) located in Two Lafayette Square Condominium and Manhattan Square Condominium, respectively, in Makati City.

For failure to pay real property taxes thereon from the year 2000 to 2008, the City Government of Makati issued a Warrant of Levy[8] over the subject properties. On December 20, 2005, the properties were sold at a public auction, wherein Jerome Solco (Solco) emerged as the highest bidder in the amount of ₱33,080.03 for the Two Lafayette property and ₱32,356.83 for the Manhattan property.[9]

On the same day, the City Government of Makati issued the certificates of sale to Solco. There being no redemption by Megaworld, a Final Deed of Conveyance was executed by the local treasurer dated February 22, 2007.[10]

As the CCTs are still under Megaworld's name and the owner's duplicate copies of the same are still in Megaworld's possession, Solco filed a Petition for Issuance of Four New Condominium Certificates of Title and to Declare Null and Void Condominium Certificates of Title Nos. 593823 and 64023[11] before the RTC of Makati docketed as LRC Case No. M-5031.

Megaworld filed a Comment on/Opposition to the Petition with Compulsory Counterclaims[12] dated March 24, 2008, averring, among others, that on November 2, 1994, it entered into a Contract to Buy and Sell[13] with Abdullah D. Dimaporo (Dimaporo) covering a unit in the condominium and the Two Lafayette property, which was delivered to Dimaporo on March 18, 1999; while on February 24, 1996 another Contract to Buy

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

[8] *Id*. at 150.

[9] *Id*. at 79.

[10] *Id.*

[11] *Id*. at 142-144.

[12] *Id*. at 176-205.

[13] *Id*. at 211-216.

and Sell[14] was entered into by it with Jose V. Delos Santos (Delos Santos), covering another unit in the condominium and the Manhattan property, which was delivered to Delos Santos on May 5, 1999. By virtue of such transfers, the buyers assumed all the respective obligations, assessments, and taxes on the property from the time of delivery pursuant to their agreements. Hence, starting year 2000, Megaworld admittedly did not pay the real property taxes thereon.[15]

It was further alleged that sometime in the third quarter of 2006, during the process of transferring the CCTs from Megaworld to the buyers, Megaworld learned that the subject properties were already auctioned off and that the redemption period therefor has already expired. Allegedly, it conducted its own investigation which revealed that the auction proceedings were tainted with fatal anomalies, to wit: (1) Megaworld nor Dimaporo or Delos Santos were notified of the warrants of levy purportedly issued by the city government; (2) the Notice of Delinquency was not posted in a conspicuous place in each barangay of Makati; (3) the published notice did not state the necessary recitals prescribed in Section 254 of the Republic Act No. 7160 or The Local Government Code (RA 7160); (4) the purported warrants of levy were not properly served upon the Register of Deeds and the City Assessor as the same were not annotated by the Register of Deeds in the CCTs and by the City Assessor in the tax declarations in violation of Section 258 of the RA 7160; (5) the levying officer did not verify receipt by Megaworld of the alleged warrants of levy and did not submit a written report on the completion of the service warrants to the City Council; (6) the City Treasurer proceeded with the advertisement of the public sale of the subject properties despite the absence of due notice to Megaworld and the service to the Register of Deeds and the City Assessor of the warrants of levy; (7) the subject properties were auctioned off at measly amounts; (8) that Solco as the lone bidder was also suspicious

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[14] *Id*. at 217-222.

[15] *Id*. at 80.

considering the prime location and marketability of the subject properties; (9) stenographic notes and minutes of the purported auction proceedings were not taken down and prepared; and, (10) an examination of the CCTs reveals that the warrants of levy were annotated only on January 5, 2006, on the same date that the Certificates of Sale were annotated only upon the instance of Solco's representative.[16]

Delos Santos instituted a separate action with the RTC impleading Solco, Megaworld, the City Treasurer of Makati, and the Register of Deeds as defendants, basically averring the same factual circumstances and arguments that Megaworld has in its Comment on/Opposition to the Petition above-cited. This, however, was settled between Solco and Delos Santos by virtue of a Compromise Agreement.[17] Consequently, on April 15, 2010, Solco moved to dismiss the case[18] insofar as the Manhattan property is concerned, which was granted by the RTC in its Order[19] dated May 21, 2010.

Hence, the case proceeded only with respect to the Two Lafayette property.

On January 27, 2011, Megaworld filed a Demurrer to Evidence,[20] which was denied by the RTC in an Order[21] dated June 15, 2011 for lack of merit.

On October 2, 2012, the RTC rendered its Order,[22] the dispositive portion of which reads:

WHEREFORE, premises considered, finding the petition to be sufficiently established being supported by the evidence on records,

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[16] *Id*. at 81.

[17] *Id*. at 259-265.

[18] *Id*. at 268-269.

[19] *Id*. at 278.

[20] *Id*. at 279-298.

[21] *Id*. at 299-300.

[22] *Supra* note 4.

judgment is hereby rendered in favor of x x x Jerome K. Solco ordering the oppositor Megaworld Corporation (formerly known as Megaworld Properties and Holdings, Inc.) and/or any other person withholding the owner's duplicate Condominium Certificate of Title No. 59382 of the Registry of Deeds of Makati to surrender the same to the Registry of Deeds, and directing it to issue a new condominium certificate of title upon such surrender.

In the event that the said certificate of title is not surrendered, the same is hereby annulled, and the Registrar (sic) of Deeds for the City of Makati is ordered to issue a new one in the name of Jerome K. Solco on the basis of the Certificate of Sale in his favor, after payment of the required legal fees.

SO ORDERED.[23]

Megaworld's Motion for Reconsideration[24] dated October 31, 2012 was denied in the RTC Order[25] dated February 19, 2013.

On appeal, the CA, citing Sections 254, 256, 258, and 260 of RA 7160 found merit on Megaworld's arguments as to the irregularities which attended the entire delinquency proceedings. The CA found that Solco failed to present proof of compliance to the aforesaid provisions. Specifically, Solco did not present:

1. Proof of posting of the notice of delinquency at the main entrance of Makati City Hall and in a publicly accessible and conspicuous place in each barangay of Makati, violating Sec. 254;

2. Proof of publication of the notice of delinquency, once a week for two consecutive weeks, in a newspaper of general circulation in Makati in violation of Sec. 254;

3. Proof that the warrant of levy was mailed to or served upon Megaworld, the registered owner of the subject unit in violation of Sec. 258. In fact, the CA found that while the Warrant of Levy was addressed to Megaworld, there is no indication that the same was received by any of its representatives;

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[23] *Id*. at 100-101.

[24] *Id*. at 303-327.

[25] *Supra* note 5.

4. Report on the levy submitted by the levying officer to the sanggunian of Makati supposedly within ten (10) days after Megaworld's receipt of the Warrant of Levy in violation of Sec. 258;

5. Report of the sale to the sanggunian of Makati made by the local treasurer or his deputy supposedly within thirty (30) days after the sale in violation of Sec. 260;

6. Proof that before the auction sale, a written notice of levy with attached warrant was mailed to or served upon the assessor and the Register of Deeds, who shall annotate the levy on the tax declaration and CCT, respectively, in violation of Section 258. The CA found that the Notice of Levy was annotated on the CCT and the Certificate of Sale on the same day on 5 January 2006, while the auction sale was held on 20 December 2005.[26]

The CA held that strict adherence to the statutes governing tax sales is imperative not only for the protection of taxpayers but also to allay any possible suspicion of collusion between the buyer and the public officials called upon to enforce the laws. It held that the notice of sale to the delinquent land owners and to the public in general is an essential and indispensable requirement of law, the non-fulfillment of which vitiates the sale. The CA further held that the auction sale of land to satisfy alleged delinquencies in the payment of real estate taxes derogates property rights and due process, ruling thus that steps prescribed by law for the sale, particularly the notices of delinquency and of sale, must be followed strictly.

Thus, the appellate court disposed of the appeal as follows:

WHEREFORE, premises considered, the appeal is **GRANTED**. The Orders dated 02 October 2012 and 19 February 2013 of the Regional Trial Court, National Capital Judicial Region, Branch 133, City of Makati in LRC Case No. M-5031, are **REVERSED** and **SET ASIDE**. The entire auction proceedings of the subject parking slot covered by Condominium Certificate of Title No. 593823 of the Registry of Deeds for the City of Makati, including the levy thereof and the auction sale as well as the Certificate of Sale dated 20 December 2005 and Final Deed of Conveyance dated 22 February 2007 are all

[26] *Id*. at 90.

NULLIFIED. The Makati City Register of Deeds is hereby **ORDERED** to cancel Entry Nos. 26362 and 26363 inscribed on CCT No. 593823. The Petition dated 05 October 2007 is **DISMISSED** as to CCT No. 593832. Costs against [Solco].

SO ORDERED.[27]

Solco's Motion for Reconsideration[28] dated June 2, 2014 was denied by the CA in its Resolution[29] dated July 23, 2014 which reads:

WHEREFORE, premises considered, the Motion for Reconsideration is **DENIED** for lack of merit.

SO ORDERED.[30]

Hence, this petition.

Issues

Essentially, the petition raises the following issues for this Court's resolution, to wit:

I. May the validity of a tax sale be the subject of a land registration case?

II. In the affirmative, was the tax sale subject of this case valid?

III. Assuming the tax sale was invalid, may Solco be considered as a purchaser in good faith to uphold the sale of the subject property in his favor?

This Court's Ruling

The issues shall be discussed *in seriatim.*

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[27] *Id*. at 92.

[28] *Id*. at 109-117.

[29] *Id*. at 106-108.

[30] *Id*. at 107.

I.

Solco contends that the issue on the validity of a tax sale should be threshed out in a proper forum as: (1) the land registration court has limited jurisdiction; (2) Section 267 of RA 7160 requires a jurisdictional bond before a court can entertain any action assailing a tax sale; and (3) giving due course to the issue in a land registration case violated the local government's right to due process as it was not impleaded to answer the issue, as well as a violation to its immunity from suit as it is placed on a risk to be liable to return the proceeds of the tax sale in case the same shall be adjudged invalid.

Solco is patently mistaken.

First. It must be remembered that LRC Case No. M-5031 is a petition for declaration of nullity of a condominium certificate of title and the issuance of a new one in lieu thereof. Solco basically seeks for consolidation of ownership and issuance of a new title under his name over the subject property. Needless to say, in such a case, the resolution of the propriety of the claimant's right necessitates the determination of the issue of ownership over the subject property. Simply put, the court cannot just order the cancellation of a title registered under a certain person and the issuance of a new one in lieu thereof under the claimant's name without first ascertaining whether the claimant is the true and rightful owner of the subject property.

Thus, this Court has declared that Presidential Decree (PD) No. 1529, with the intention to avoid multiplicity of suits and to promote expeditious termination of cases, had eliminated the distinction between the general jurisdiction vested in the regional trial court and the latter's limited jurisdiction when acting merely as a land registration court. Land registration courts, as such, can now hear and decide even controversial and contentious cases, as well as those involving substantial issues.[31]

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[31] *Talusan v. Tayag*, 408 Phil. 373, 386 (2001).

Certainly, thus, the courts *a quo* had jurisdiction to rule on all matters necessary for the determination of the issue of ownership, including the validity of the tax sale.[32]

Second. Solco cannot invoke the provision under Section 267 of RA 7160, requiring the posting of a jurisdictional bond before a court can entertain an action assailing a tax sale, which provides:

> SEC. 267. Action Assailing Validity of Tax Sale. — No court shall entertain any action assailing the validity of any sale at public auction of real property or rights therein under this Title until the taxpayer shall have deposited with the court the amount for which the real property was sold, together with interest of two percent (2%) per month from the date of sale to the time of the institution of the action. The amount so deposited shall be paid to the purchaser at the auction sale if the deed is declared invalid but it shall be returned to the depositor if the action fails.
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> Neither shall any court declare a sale at public auction invalid by reason of irregularities or informalities in the proceedings unless the substantive rights of the delinquent owner of the real property or the person having legal interest therein have been impaired.

A simple reading of the title readily reveals that the provision relates to actions for annulment of tax sales. The section likewise makes use of terms "entertain" and "institution" to mean that the deposit requirement applies only to *initiatory* actions assailing the validity of tax sales.[33] Again, the suit filed by Solco was an action for nullity of title and issuance of new title in lieu thereof; the issue of nullity of the tax sale was raised by the Megaworld merely as a defense and in no way converted the action to an action for annulment of a tax sale.[34]

Besides, Megaworld cannot be faulted for the non-posting of the jurisdictional bond as the records clearly show that Megaworld offered to comply with such requirement under

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[32] *Id*.

[33] *Spouses Plaza v. Lustiva, et al.*, 728 Phil. 359, 369 (2014).

[34] *Id*. at 370.

Section 267 of RA 7160 at the earliest opportune time. In paragraph 17 of its Comment/Opposition to the Petition with Compulsory Counterclaims filed before the RTC, Megaworld clearly stated:

> 17. Pursuant to Sec. 267 of the LGC and Sec. 2A.56, Megaworld is willing to deposit with this Honorable Court the amount for which the real property was sold, together with interest of two percent (2%) per month from the date of sale.[35]

The RTC, however, never addressed the said stipulation. Neither did Solco raise any objection to the submission and trial of the issue on the validity of the tax sale despite the non-payment of the required deposit under Section 267 throughout the entire proceedings until the case reached this Court.

To be sure, however, this Court is not undermining the importance and indispensability of such requirement under Section 267 of RA 7160, which shall be discussed herein below.

Third. Contrary to Solco's asseveration, the city government is not an indispensable party in this case as it shall not be prejudiced whatever the outcome of the case will be.

Solco theorizes that the CA necessarily held the City Government of Makati liable for the return of the proceeds of the tax sale to him when it nullified the tax sale proceedings. According to Solco, this could not be done without violating the principle of the State's immunity from suit as the payment he made in the tax sale already formed part of the public funds of the State as taxes, having been paid to answer a delinquent tax, and as such cannot be withdrawn therefrom without the proper appropriation law. Solco pointed out, in addition, the importance of taxes as the lifeblood of the government.[36]

This theory is misplaced.

At this juncture, it is imperative to discuss the importance and indispensability of the deposit required by Section 267 of

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[35] *Rollo,* p. 184.

[36] *Id.* at 63-64.

RA 7160. To be clear, however, it bears stressing that in this particular case, We rule that the non-compliance to such requirement cannot prevent the court from taking cognizance of the issue on the validity of the tax sale considering that the same was raised merely as a defense, but nonetheless, We emphasize that the purpose of such requirement cannot be disregarded.

As expressly stated in Section 267, the amount deposited shall be paid to the purchaser at the auction sale if the deed is declared invalid; otherwise, it shall be returned to the depositor. In fine, such deposit is meant to reimburse the purchaser of the amount he had paid at the tax sale should the court declare the sale invalid. Clearly, the deposit is an ingenious legal device to guarantee the satisfaction of the tax delinquency, with the local government unit keeping the payment on the bid price whether the tax sale be nullified or not by the court.[37]

In view of such purpose and considering Megaworld's manifest willingness to comply with Section 267, We find it proper to direct Megaworld to post the required deposit before the trial court pursuant to the said provision.

With this, there is an assurance that the public funds shall not be made liable whatever may be the outcome of the case. Thus, contrary to Solco's contention, the City Government of Makati is not an indispensable party in this annulment of title/land registration case, wherein the validity of the tax sale upon which the applicant's claim is grounded, is in issue.

II.

Having established that the court has jurisdiction to adjudicate upon the matter of the validity of the tax sale in this case, We now determine if the CA correctly ruled that the subject tax sale should be nullified as the process was attended with fatal irregularities.

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[37] *National Housing Authority v. Iloilo City, et al.*, 584 Phil. 604, 611 (2008).

Preliminarily, We quote herein this Court's pronouncement as regards the importance of strictly complying with the rules on tax deliquency proceedings in *Spouses Ramon and Rosita Tan v. Gorgonia Bantegui, represented by Guadalupe B. Bautista, and Spouses Florante and Florencia B. Caedo*:[38]

> The auction sale of land to satisfy alleged delinquencies in the payment of real estate taxes derogates or impinges on property rights and due process. Thus, the steps prescribed by law for the sale, particularly the notices of delinquency and of sale, must be followed strictly. Failure to observe those steps invalidates the sale.[39]

Solco argues that the CA erred in its findings and conclusion as Megaworld has not proven the irregularities in the tax sale as found by the CA. Essentially, it is Solco's position that Megaworld has the burden to prove the alleged non-compliance with the procedures of the tax sale.

As early as 1915, in the case of *Arsenio Camo v. Jose Riosa Boyco*,[40] this Court has clearly settled that the due process of law to be followed in tax proceedings must be established by proof and the general rule was that the purchaser of a tax title was bound to take upon himself the burden of showing the regularity of all proceedings leading up to the sale. Since then, the Court has been consistent in ruling that the burden to prove compliance with the validity of the proceedings leading up to the tax delinquency sale is incumbent upon the buyer or the winning bidder. Indeed, the burden to show that such steps were taken lies on the person claiming its validity,[41] who in this case is Solco.

A careful review of the records of the case would show that the CA correctly ruled that Solco utterly failed to present evidence to show compliance with the rules on tax delinquency sale.

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[38] 510 Phil. 434 (2005).

[39] *Id.* at 439.

[40] 29 Phil. 437, 445 (1915).

[41] *Corporate Strategies Development Corp., et al. v. Agojo*, 747 Phil. 607, 620 (2014).

Sections 254, 258, and 260 of RA 7160 provide:

Section 254. Notice of Delinquency in the Payment of the Real Property Tax. — (a) When the real property tax or any other tax imposed under this Title becomes delinquent, the provincial, **city** or municipal treasurer **shall immediately cause a notice of the delinquency to be posted at the main entrance of the provincial capitol, or city or municipal hall and in a publicly accessible and conspicuous place in each barangay of the local government unit concerned. The notice of delinquency shall also be published once a week for two (2) consecutive weeks, in a newspaper of general circulation in the province, city, or municipality.**

(b) **Such notice shall specify the date upon which the tax became delinquent and shall state that personal property may be distrained to effect payment. It shall likewise state that at any time before the distraint of personal property, payment of the tax with surcharges, interests and penalties may be made** in accordance with the next following section, and unless the tax, surcharges and penalties are paid before the expiration of the year for which the tax is due except when the notice of assessment or special levy is contested administratively or judicially pursuant to the provisions of Chapter 3, Title II, Book II of this Code, the delinquent real property will be sold at public auction, and the title to the property will be vested in the purchaser, subject, however, to the right of the delinquent owner of the property or any person having legal interest therein to redeem the property within one (1) year from the date of sale.

Section 258. Levy on Real Property. — After the expiration of the time required to pay the basic real property tax or any other tax levied under this Title, real property subject to such tax may be levied upon **through the issuance of a warrant on or before, or simultaneously with, the institution of the civil action for the collection of the delinquent tax**. The provincial or **city treasurer**, or a treasurer of a municipality within the Metropolitan Manila Area, as the case may be, **when issuing a warrant of levy shall prepare a duly authenticated certificate showing the name of the delinquent owner of the property or person having legal interest therein, the description of the property, the amount of the tax due and the interest thereon.** The warrant shall operate with the force of a legal execution throughout the province, city or a municipality within the Metropolitan Manila Area. **The warrant shall be mailed to or served upon the delinquent owner of the real property or person**

having legal interest therein, or in case he is out of the country or cannot be located, the administrator or occupant of the property. **At the same time, written notice of the levy with the attached warrant shall be mailed to or served upon the assessor and the Registrar of Deeds** of the province, city or municipality within the Metropolitan Manila Area where the property is located, **who shall annotate the levy on the tax declaration and certificate of title of the property, respectively**.

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Section 260. Advertisement and Sale. — Within thirty (30) days after service of the warrant of levy, the local treasurer shall proceed to publicly advertise for sale or auction the property or a usable portion thereof as may be necessary to satisfy the tax delinquency and expenses of sale. The advertisement shall be effected by posting a notice at the main entrance of the provincial, city or municipal building, and in a publicly accessible and conspicuous place in the barangay where the real property is located, and by publication once a week for two (2) weeks in a newspaper of general circulation in the province, city or municipality where the property is located. The advertisement shall specify the amount of the delinquent tax, the interest due thereon and expenses of sale, the date and place of sale, the name of the owner of the real property or person having legal interest therein, and a description of the property to be sold. At any time before the date fixed for the sale, the owner of the real property or person having legal interest therein may stay the proceedings by paying the delinquent tax, the interest due thereon and the expenses of sale. The sale shall be held either at the main entrance of the provincial, city or municipal building, or on the property to be sold, or at any other place as specified in the notice of the sale.

Within thirty (30) days after the sale, the local treasurer or his deputy shall make a report of the sale to the sanggunian concerned, and which shall form part of his records. The local treasurer shall likewise prepare and deliver to the purchaser a certificate of sale which shall contain the name of the purchaser, a description of the property sold, the amount of the delinquent tax, the interest due thereon, the expenses of sale and a brief description of the proceedings: Provided, however, That proceeds of the sale in excess of the delinquent tax, the interest due thereon, and the expenses of sale shall be remitted to the owner of the real property or person having legal interest therein.

The local treasurer may, by ordinance duly approved, advance an amount sufficient to defray the costs of collection through the remedies provided for in this Title, including the expenses of advertisement and sale. (Emphasis supplied)

Records show that only the following were presented and formally offered in evidence before the RTC, to wit: (a) the Petition;[42] (b) the RTC's February 29, 2008[43] Order in the same land registration case which stated that the petition was sufficient in form and substance; (c) Certificate of Posting dated March 17, 2008;[44] (d) Certificate of Sale dated December 20, 2005;[45] (e) CCT No. 593823 and Entry No. 76363, which was the annotation of the Certificate of Sale on January 5, 2006; (f) Final Deed of Conveyance dated February 22, 2007;[46] (g) Certificate Authorizing Registration to prove that the transfer taxes were paid;[47] and (h) Tax Clearance Certificate.[48]

Clearly, as correctly found by the CA, nothing in the said evidence presented and formally offered would sufficiently show that the tax sale, from which Solco's claim upon the subject property is based, was properly conducted in accordance with the rules governing the same.

Except for mere photocopies of the Affidavit of Publication,[49] Certification issued by the City Administrator,[50] and the

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[42] *Rollo*, pp. 142-145.

[43] *Id*. at 172-174.

[44] *Id*. at 175.

[45] *Id*. at 149.

[46] *Id*. at 151-152.

[47] *Id*. at 153.

[48] *Id*. at 154.

[49] *Id*. at 135.

[50] Certifying that "the list of Properties for Public Auction scheduled on December 20, 2005 issued by the Treasurer's Office of Makati City were posted on the Bulletin Board of the City Hall" of Makati, *id*. at 140.

Certification issued by the barangay captain,[51] which were all belatedly submitted to the CA with Solco's motion for Reconsideration of the CA's assailed Decision, no other proof was adduced to prove compliance with the other requirements of Sections 254, 258, and 260. Even if We are to consider these documents despite their defects considering that these are mere photocopies and were not even formally offered in evidence as they were presented only on the motion for reconsideration before the appellate court, irregularities in the tax sale are still very much apparent, which notably, were not even refuted by Solco in the instant petition. Solco's arguments in this petition mainly attempted to put the burden upon Megaworld to prove the alleged irregularities.

It has been held that matters of notice and publication in tax sales are factual questions that cannot be determined by this Court, especially in a petition for review under Rule 45. As a rule, this Court will not inquire into the evidence relied upon by the lower courts to support their findings.[52] As the CA had already ruled on the question of compliance with the requirements of the conduct of a tax sale, We must uphold the same in accordance with the said rule.

At any rate, a judicious study of the records of this case led Us to the same conclusion that Solco patently failed to discharge the burden of proving that the tax sale was conducted with conformity to the governing rules above-cited.

The record is barren of any proof that the warrant of levy was served upon Megaworld or Dimaporo as the beneficial owner/possessor, either personally or by registered mail. As correctly observed by the CA, the acknowledgment portion of the warrant of levy is blank and does not indicate any signature or printed name of Megaworld's representative or Dimaporo to prove the receipt of the same. Also, the warrant of levy on

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[51] Certifying that the delinquent taxpayers which are subject for public auction on December 20, 2005 were posted in the bulletin boards located in different conspicuous places within the area of jurisdiction, *id*. at 141.

[52] *Talusan v. Tayag*, *supra* note 31, *id*. at 387.

its face shows that it was issued on December 20, 2005, which was also the date of the auction sale. Indeed, it is highly irregular that the warrant of levy was issued on the same date of the auction sale. It is essential that there be an actual notice to the delinquent taxpayer, otherwise, the sale is null and void even if it be preceded by proper advertisement or publication.[53]

There was likewise no evidence presented and offered that a written notice of levy with the attached warrant was mailed to or served upon the assessor and the Register of Deeds for the latter to be able to annotate the levy on the tax declaration and the title, respectively. In this case, the inscription of the Notice of Levy on the CCT No. 593823 was dated January 5, 2006 or 16 days after the auction sale. Such annotation was done on the same date that the Certificate of Sale was inscribed on the title. Further, the reportorial requirements to the *Sanggunian* to be done by the levying officer and the local treasurer, respectively, were not proven to be complied with. Clearly, these are violation of RA 7160's provisions above-cited.

At the risk of being repetitive, it bears stressing that the requirements for tax delinquency sale under RA 7160 are mandatory. As We have held in *Corporate Strategies Development Corp. and Rafael R. Prieto v. Norman A. Agojo*:[54]

> Strict adherence to the statutes governing tax sales is imperative not only for the protection of the taxpayers, but also to allay any possible suspicion of collusion between the buyer and the public officials called upon to enforce the laws. Particularly, the notice of sale to the delinquent land owners and to the public in general is an essential and indispensable requirement of law, the non-fulfilment of which vitiates the sale.

For these reasons, We are constrained to affirm the CA's ruling, which is to strike down the tax sale as null and void. We cannot deny that there is insufficiency of evidence to prove

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[53] *Corporate Strategies Development Corp., et al. v. Agojo*, *supra* note 41, *id.* at 621.

[54] *Supra* at 624-625.

compliance with the above-cited mandatory requirements under RA 7160 for a valid tax delinquency sale.

III.

In arguing that he was a buyer in good faith, Solco merely relied upon the presumption of good faith under Section 3(a), Rule 131[55] of the Rules of Court and also averred that he merely relied on the presumption of regularity of the acts of public officials in the conduct of the tax sale.

Foremost, in consonance with the strict and mandatory character of the requirements for validity of a tax delinquency sale, well-established is the rule that the presumption of regularity in the performance of a duty enjoyed by public officials, cannot be applied to those involved in the conduct of a tax sale. In the case of *Camo*[56] above-cited, it was written that no presumption of regularity exists in any administrative action which resulted in depriving a citizen or taxpayer of his property. This is an exception to the rule that administrative proceedings are presumed to be regular.[57]

Secondly, good faith is a question of intention, determined by outward acts and proven conduct.[58] The circumstances of the case restrain Us from ruling that Solco was a buyer in good faith. Records show that the subject property had been in Dimaporo's possession since 1999. Notably, this fact has never been refuted by Solco in the entire proceedings even up to the instant petition. Settled is the rule that one who purchases a real property which is in possession of another should at least make some inquiry beyond the face of the title. A purchaser cannot close his eyes to facts which should put a reasonable man upon his guard, and then claim that he acted in good faith under the belief that there was no defect in the title of the vendor.[59]

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[55] Section 3. *Disputable presumptions.* —
(a) That a person is innocent of crime or wrong.

[56] *Camo v. Boyco*, *supra* note 40.

[57] *Sps. Sarmiento v. Court of Appeals,* 507 Phil. 101, 123 (2005).

[58] *Spouses Tan v. Bantegui, supra* note 39, *id.* at 449.

[59] *Sps. Sarmiento v. Court of Appeals, supra* note 57, *id.* at 124.

Admittedly, in this case, Solco never made any inquiry to such a significant fact.[60]

In all, We find no cogent reason to deviate from the findings and conclusion of the CA.

WHEREFORE, premises considered, the instant petition is **DENIED**. Accordingly, the Decision dated May 12, 2014 and Resolution dated July 23, 2014 of the Court of Appeals in CA-G.R. CV No. 100636 are hereby **AFFIRMED**. In view hereof, respondent Megaworld Corporation is **ORDERED** to deposit with the trial court the amount to be paid to petitioner Jerome Solco, pursuant to Section 267 of Republic Act No. 7160, as the buyer in the tax delinquency sale adjudged to be null and void in this case.

SO ORDERED.

Leonardo-de Castro[*] (*Acting Chairperson*), *del Castillo,* and *Jardeleza, JJ.,* concur.

Sereno, C.J., on leave.

FIRST DIVISION

[G.R. No. 215281. March 5, 2018]

ROLANDO DE ROCA, *petitioner, vs.* **EDUARDO C. DABUYAN, JENNIFER A. BRANZUELA, JENNYLYN A. RICARTE, and HERMINIGILDO F. SABANATE,** *respondents.*

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[60] *Rollo*, pp. 490-491.

[*] Designated Acting Chairperson, First Division, per Special Order No. 2540 dated February 28, 2018.

SYLLABUS

1. CIVIL LAW; CONTRACTS; TAKE EFFECT ONLY BETWEEN THE PARTIES, THEIR ASSIGNS AND HEIRS; THE CONTRACT OF EMPLOYMENT BETWEEN RESPONDENTS AND THEIR EMPLOYER IS EFFECTIVE ONLY BETWEEN THEM; IT DOES NOT EXTEND TO PETITIONER, WHO IS NOT A PARTY THERETO.— "Contracts take effect only between the parties, their assigns and heirs, except in case where the rights and obligations arising from the contract are not transmissible by their nature, or by stipulation or by provision of law." The contract of employment between respondents, on the one hand, and Oceanic and Ewayan on the other, is effective only between them; it does not extend to petitioner, who is not a party thereto. His only role is as lessor of the premises which Oceanic leased to operate as a hotel; he cannot be deemed as respondent's employer — not even under the pretext that he took over as the "new management" of the hotel operated by Oceanic. There simply is no truth to such claim.

2. LABOR AND SOCIAL LEGISLATION; LABOR CODE; EMPLOYER-EMPLOYEE RELATIONSHIP, NOT A CASE OF; SINCE THERE IS NO EMPLOYMENT RELATION BETWEEN PETITIONER AND RESPONDENTS, ALLOWING THE LATTER TO RECOVER MONETARY CLAIMS FROM THE FORMER WOULD RESULT IN THEIR UNJUST ENRICHMENT.— x x x [T]o allow respondents to recover their monetary claims from petitioner would necessarily result in their unjust enrichment. x x x "In rendering justice, courts have always been, as they ought to be, conscientiously guided by the norm that on the balance, technicalities take a backseat against substantive rights, and not the other way around." In short, substantive law outweighs procedural technicalities as in this case. x x x Taking this to mind, the labor tribunals and the CA should have considered petitioner's repeated pleas to scrutinize the facts and particularly the lease agreement executed by him and Oceanic, which would naturally exculpate him from liability as this would prove the absence of an employment relation between him and respondents. x x x

3. ID.; ID.; ID.; ID.; IN VIEW OF THE ABSENCE OF EMPLOYMENT RELATION BETWEEN THE PARTIES,

THE DECISION OF THE LABOR ARBITER, WHICH FOUND HEREIN PETITIONER LIABLE FOR ILLEGAL DISMISSAL, MUST BE SET ASIDE FOR BEING ERRONEOUS AND UNJUST.— With the view taken of the case, it necessarily follows that the decision of the Labor Arbiter must be set aside for being grossly erroneous and unjust. At worst, it is null and void, and, as petitioner correctly put it, it is a "lawless thing, which can be treated as an outlaw and slain at sight, or ignored wherever it exhibits its head." Being of such nature, it could not have acquired finality, contrary to what respondents believe — as it "creates no rights and imposes no duties. Any act performed pursuant to it and any claim emanating from it have no legal effect."

APPEARANCES OF COUNSEL

Nelson C. Delgado, Jr. for petitioner.
Public Attorney's Office for respondents.

D E C I S I O N

DEL CASTILLO, *J.*:

This Petition for Review on *Certiorari*[1] seeks to set aside the June 19, 2014 Decision[2] and October 28, 2014 Resolution[3] of the Court of Appeals (CA) dismissing the Petition for *Certiorari*[4] in CA-G.R. SP No. 127974 and denying herein petitioner's Motion for Reconsideration,[5] respectively.

Factual Antecedents

As found by the CA, the facts are as follows:

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[1] *Rollo*, pp. 3-27.

[2] *Id*. at 29-34; penned by Associate Justice Ricardo R. Rosario and concurred in by Associate Justices Amelita G. Tolentino and Leoncia Real-Dimagiba.

[3] *Id*. at 99; penned by Associate Justice Ricardo R. Rosario and concurred in by Associate Justices Amy C. Lazaro-Javier and Leoncia Real-Dimagiba.

[4] *Id*. at 35-53.

[5] *Id.* at 101-110.

In 2012, private respondents filed a complaint[6] for illegal dismissal against "RAF Mansion Hotel Old Management and New Management and Victoriano Ewayan." Later, private respondents amended the complaint and included petitioner Rolando De Roca as [co]-respondent. Summons was sent through registered mail to petitioner but it was returned.

Thereafter, a conference was set but only complainants attended. Thus, another summons was issued and personally served to petitioner by the bailiff of the NLRC as evidenced by the latter's return dated 14 March 2012. Despite service of summons, petitioner did not attend the subsequent hearings prompting the labor arbiter to direct private respondents to submit their position paper.

On 18 April 2012, private respondents submitted their position paper. On the same day, petitioner filed his motion to dismiss[7] on the ground of lack of jurisdiction. He alleged that[,] while he [was] the owner of RAF Mansion Hotel building, the same [was being] leased by Victoriano Ewayan, the owner of Oceanics Travel and Tour Agency. Petitioner claims that Ewayan was the employer of private respondents, Consequently, he asserted that there was no employer-employee relationship between him and private respondents and the labor arbiter had no jurisdiction.

On 29 June 2012, the labor arbiter rendered a decision directing petitioner, among others, to pay backwages and other monetary award to private respondents. In said decision, the labor arbiter also denied the motion to dismiss for having been filed beyond the reglementary period. Petitioner received a copy of the decision on 3 August 2012.

On 4 September 2012, petitioner filed a petition[8] for annulment of judgment on the ground of lack of jurisdiction before the NLRC. However, the petition was dismissed because it was also filed beyond the period allowed by the 2011 NLRC Rules of Procedure. Petitioner sought reconsideration but the same was also denied.[9]

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[6] Docketed as NLRC-NCR-Case No. 02-02490-12.

[7] *Rollo*, pp. 85-90.

[8] *Id*. at 59-68.

[9] *Id*. at 29-30.

Ruling of the Labor Arbiter

In the above-mentioned June 29, 2012 Decision[10] in NLRC-NCR-Case No. 02-02490-12, Labor Arbiter J. Potenciano F. Napenas, Jr. held, among others, that —

> x x x [R]espondent Rolando De Roca surprisingly filed a "Motion to Dismiss" on the ground of lack of jurisdiction. In substance, the motion is anchored on the alleged lack of employer-employee relationship between the parties thereto. In support thereof, respondent De Roca further alleged that it was rather the Oceanic Travel and Tour Agency and respondent Ewayan in whose favor respondent De Roca leased the subject Hotel, are the true employers of the complainants as evidenced by the Contract of Lease of Buildings (Annex "1" respondent's Motion to Dismiss).
>
> Subsequent thereof [sic], complainants filed an Opposition with Motion to Implead (to Respondent's Motion to Dismiss), seeking, among others, that the corporation "Oceanic Travel and Tour Agency" be impleaded as additional respondent.
>
> x x x x x x x x x
>
> Anent the Motion to Dismiss, Rule V, Sections 6 and 7 of the Revised 2011 NLRC Rules of Procedure explicitly provide:
>
> > 'SECTION 6. MOTION TO DISMISS. — Before the date set for the mandatory conciliation and mediation conference, the respondent may file a motion to dismiss on grounds provided under Section 5, paragraph (a) hereof. Such motion shall be immediately resolve[d] by the Labor Arbiter through a written order. An order denying the motion to dismiss, or suspending its resolution until the final determination of the case, is not appealable.
> >
> > SECTION 7. EFFECT OF FAILURE TO FILE. — No motion to dismiss shall be allowed or entertained after the lapse of the period provided in Section 6 hereof.'
>
> Clearly, respondent De Roca's Motion to Dismiss, having been filed long after the date set for the mandatory conference, should be dismissed on such ground being a prohibited pleading.

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[10] *Id*. at 91-97.

Coming now on [sic] the meat of the controversy, since respondents obviously failed to controvert the allegations by the complainants in their Position Papers accompanied with supporting evidence, We have no recourse but to accord them credence for being uncontradicted.

x x x x x x x x x

Obviously, respondents had failed to discharge such burden.

WHEREFORE, premises considered, judgement is hereby rendered finding all the respondents liable for illegal dismissal.

Accordingly, all of them are hereby ordered to pay complainants their full backwages and other monetary claims computed from date of their dismissal up to the promulgation of this decision plus 10% of the total monetary award as attorney's fees.

x x x x x x x x x

Lastly, the Motion to Dismiss is denied for being filed beyond the period allowed by the rules, thus, a prohibited pleading. Also, the Motion to implead Oceanic Travel and Tours Agency as additional respondent is denied for the same reason.

SO ORDERED.[11]

Ruling of the National Labor Relations Commission

Instead of filing an appeal before the National Labor Relations Commission (NLRC), petitioner instituted the petition for annulment of judgment referred to above, which the NLRC dismissed in its September 28, 2012 Resolution[12] for being tardy, as it was filed beyond the 10-day reglementary period prescribed under Section 3, Rule XII of the 2011 NLRC Rules of Procedure.

Ruling of the Court of Appeals

Petitioner filed a Petition for *Certiorari* before the CA, where he argued, among others, that he was never an employer of the respondents, as he was merely the owner of the premises which

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[11] *Id*. at 92-97.

[12] *Id*. at 54-58; penned by Presiding Commissioner Alex A. Lopez and concurred in by Commissioners Gregorio O. Bilog III and Pablo C. Espiritu, Jr.

were leased out to and occupied by respondents' true employer, Victoriano Ewayan (Ewayan), who owned Oceanic Travel and Tours Agency which operated the RAF Mansion Hotel where respondents were employed as cook, waitress, and housekeeper; and that his inclusion in the labor case was borne of malice which is shown by the fact that when the labor complaint was filed, he was not originally impleaded as a respondent, and was made so only after respondents discovered that their employer had already absconded — in which case he was impleaded under the pretext that he constituted the "new management of RAF Mansion Hotel".

On June 19, 2014, the CA rendered the assailed Decision dismissing the petition, decreeing thus:

> At the outset, We note that the issue raised by petitioner is imprecise because the NLRC did not rule on the propriety of finding petitioner liable to private respondents. It is obvious from the assailed resolution that the petition for annulment of judgment was denied because it was tiled after the lapse of the period prescribed under the 2011 NLRC Rules of Procedure and this is the issue that this Court will resolve.
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> x x x x x x x x x
>
> Record shows that petitioner received the decision of the labor arbiter on 3 August 2012 but he filed his petition on 4 September 2012 or thirty-one days after such receipt. In this regard, the NLRC did not commit any error in denying the petition much more grave abuse of discretion. The rule is clear and the NLRC may not 'arbitrarily disregard specific provisions of the Rules which are precisely intended to assist the parties in obtaining just, expeditious and inexpensive settlement of labor disputes.'
>
> Similarly, the labor arbiter did not commit any grave abuse of discretion because he just observed the NLRC rules when he denied petitioner's motion to dismiss. x x x
>
> In addition, We also cannot attribute grave abuse of discretion in the labor arbiter's resolution of the motion to dismiss in the decision itself. While this may seem peculiar, it must be emphasized that the motion to dismiss was filed at about the period when the case was about to be submitted for decision. x x x

In the case at bar, the inclusion of the denial of the motion to dismiss in the decision is not without justification. Petitioner not only failed to submit the motion to dismiss on time but also forfeited the right to submit his position paper because he did not attend the conference and subsequent hearings. Even if the labor arbiter denied the motion to dismiss in a separate order, petitioner would still be precluded from submitting a position paper where he can buttress his claim of lack of jurisdiction. The labor arbiter, therefore, could not be said to have committed grave abuse of discretion in denying the motion to dismiss and in incorporating its order in the decision.

x x x x x x x x x

As regards the claim of petitioner on the merits of his ground, We cannot consider his arguments and assume that his allegation of lack of employer-employment [sic] relationship between him and private respondents is true. First, he did not present any evidence to support his claim because he lost the opportunity to submit a position paper. Thus, his allegations will remain mere allegations.

Second, it would transgress fairness if his allegations in this petition should be given any attention because the private respondents never had the [opportunity to] present evidence to meet his claims. Private respondents' arguments were correctly centered on the provisions of the 2011 NLRC Rules of Procedure because they were the bases for the denial of petitioner's motion to dismiss and petition for annulment of judgment.

Furthermore, petitioner did not submit the position paper of private respondents where We can find their averments on the employment relationship between them and petitioner or lack thereof. This omission not only rendered useless the evaluation of the asseverations in the petition but also gave Us another reason to dismiss this petition under Section 3, Rule 46 of the Rules of Court. Petitioner is well-aware that this pleading is material to the resolution of his petition and in neglecting to attach the same to his petition, the same would warrant the dismissal of this petition.

Lastly, the ultimate aim of petitioner is for Us to review the findings of the labor arbiter on the employment relationship between him and the private respondents. 'The basic issue of whether or not the NLRC has jurisdiction over the case resolves itself into the question of whether an employer-employee relationship existed' between them. Thus, it is an issue which necessitates presentation of evidence on

the part of petitioner and evaluation of the pieces of evidence of each party. Again, this is not proper in a petition for certiorari.

WHEREFORE, the petition is DISMISSED.

SO ORDERED.[13]

Petitioner filed a motion for reconsideration, but the CA denied the same *via* its October 28, 2014 Resolution. Hence, the instant Petition, which includes a prayer for injunctive relief against execution of the judgment pending appeal.

On December 10, 2014 and January 12, 2015, the Court issued Resolutions[14] respectively granting temporary injunctive relief and issuing in favor of petitioner a Temporary Restraining Order[15] upon filing of a cash or surety bond.

In a November 9, 2015 Resolution,[16] the Court resolved to give due course to the Petition.

Issue

Petitioner frames the issue in this Petition thus —

> Petitioner submits before this Honorable Court that the Court of Appeals erred in affirming the findings of both the labor arbiter and the NLRC and in concluding that they did not abuse their discretion and acted beyond their jurisdiction when they asserted their authorities and found petitioner DE ROCA solidarily liable with EWAYAN/ OCEANIC TRAVEL AND TOUR AGENCY to private respondents, despite the patent lack of employer-employee relationship between the petitioner and private respondents.[17]

Petitioner's Arguments

In his Petition and Reply[18] seeking reversal of the assailed CA dispositions as well as the nullification of the decisions of

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[13] *Id*. at 30-34.

[14] *Id*. at 115-116, 127-128.

[15] *Id*. at 129-130.

[16] *Id*. at 168-169.

[17] *Id*. at 8.

[18] *Id*. at 160-166.

the labor tribunals, petitioner argues that the Labor Arbiter's decision is null and void as there was no determination of facts and evidence relative to his supposed liability to respondents; that he was not at any time the respondents' employer, but merely the owner-lessor of the premises where Ewayan and his Oceanic Travel and Tours Agency operated the RAF Mansion Hotel where respondents were employed as hotel staff; that the labor tribunals did not acquire jurisdiction over him since the element of employer-employee relationship was lacking; that he was impleaded in the case only because respondents could no longer trace the whereabouts of their true employer, Ewayan, who appears to have absconded — for which reason respondents aim to unduly recover their claims from him; that the labor tribunals and the CA strictly applied the labor procedural laws and rules, when the rule in labor cases is that technical rules of procedure are not binding and must yield to the merits of the case and the interests of justice and due process; and that since the labor tribunals did not have jurisdiction over him as he was not at any given period the respondents' employer, their decisions are a nullity.

Respondents' Arguments

In their Comment[19] to the Petition, respondents argue that the Petition should be denied for lack of merit; that the CA's dispositions are just and correct; that the issue in this case does not involve the merits of the labor arbiter's decision, but merely the propriety of the NLRC's dismissal of petitioner's petition for annulment of judgment; that nonetheless, they have satisfactorily proved below that petitioner is their employer, by the evidence they submitted — consisting of identification cards (IDs) issued to them and signed by Ewayan, and pay envelopes and advise slips showing their salaries as the basis for their claims; that since petitioner owned the building which was a hotel, it follows that he is their employer; that since he is their employer, the labor arbiter acquired jurisdiction over him; and that since the decision of the labor arbiter on the merits became final and executory for petitioner's failure to appeal the same, the same may no longer be impugned.

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[19] *Id.* at 141-157.

Our Ruling

The Court grants the Petition.

All throughout the proceedings, petitioner has insisted that he was not the employer of respondents; that he did not hire the respondents, nor pay their salaries nor exercise supervision or control over them, nor did he have the power to terminate their services. In support of his claim, he attached copies of a lease agreement — a Contract of Lease of a Building[20] — executed by him and Oceanic Tours and Travel Agency (Oceanic) represented by Ewayan through his attorney-in-fact Marilou Buenafe. The agreement would show that petitioner was the owner of a building called the RAF Mansion Hotel in Roxas Boulevard, Baclaran, Parañaque City; that on September 25, 2007, Oceanic agreed to lease the entire premises of RAF Mansion Hotel, including the elevator, water pump, airconditioning units, and existing furnishings and all items found in the hotel and included in the inventory list attached to the lease agreement, except for certain portions of the building where petitioner conducted his personal business and which were leased out to other occupants, including a bank; that the lease would be for a period of five years, or from October 15, 2007 up to October 15, 2012; that the monthly rental would be ₱450,000.00; and that all expenses, utilities, maintenance, and taxes — except real property taxes — incurred and due on the leased building would be for the lessee's account.

Petitioner likewise attached to the instant Petition copies of: 1) a January 23, 2012 letter[21] of demand to pay and vacate sent to Ewayan, directing the latter's attention to previous demand letters sent to him and making a final demand to pay rentals in arrears; and 2) a written waiver and acknowledgment[22] executed by respondents — except respondent Herminigildo Sabanate — and other Oceanic employees to the effect that petitioner

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[20] *Id*. at 79-82.

[21] *Id*. at 83.

[22] *Id*. at 84.

should not be held liable as owner of the premises for the "problems" caused by Ewayan.

Thus, it would appear from the facts on record and the evidence that petitioner's building was an existing hotel called the "RAF Mansion Hotel", which Oceanic agreed to continue to operate under the same name. There is no connection between petitioner and Oceanic oilier than through the lease agreement executed by them; they are not partners in the operation of RAF Mansion Hotel. It just so happens that Oceanic decided to continue operating the hotel using the original name — "RAF Mansion Hotel".

The only claim respondents have in resorting to implead petitioner as a co-respondent in the labor case is the fact that he is the owner of the entire building called "RAF Mansion Hotel" which happens to be the very same name of the hotel which Ewayan and Oceanic continued to adopt, for reasons not evident in the pleadings. It must be noted as well that when they originally filed the labor case, respondents did not include petitioner as respondent therein. It was only later on that they moved to amend their complaint, impleading petitioner and thus amending the title of the case to "x x x, Complainants, versus RAF Mansion Hotel **Old Management and New Management/** Victoriano Ewayan and **Rolando De Roca**, Respondents."

As correctly observed by petitioner, such belated attempt to implead him in the labor case must be seen as an afterthought. Moreover, the fact that respondents recognize petitioner as embodying the "new management" of RAF Mansion Hotel betrays an admission on their part that he had no hand in the "old management" of the hotel under Ewayan, during which they were hired and maintained as hotel employees — meaning that petitioner was never considered as Ewayan's partner and co-employer; respondents merely viewing petitioner as the subsequent manager taking over from Ewayan, which bolsters petitioner's allegation that Ewayan had absconded and left respondents without recourse other than to implead him as the "new management" upon whom the obligation to settle the claims abandoned by Ewayan now fell.

"Contracts take effect only between the parties, their assigns and heirs, except in case where the tights and obligations arising from the contract are not transmissible by their nature, or by stipulation or by provision of law."[23] The contract of employment between respondents, on the one hand, and Oceanic and Ewayan on the other, is effective only between them; it does not extend to petitioner, who is not a party thereto. His only role is as lessor of the premises which Oceanic leased to operate as a hotel; he cannot be deemed as respondent's employer — not even under the pretext that he took over as the "new management" of the hotel operated by Oceanic. There simply is no truth to such claim.

Thus, to allow respondents to recover their monetary claims from petitioner would necessarily result in their unjust enrichment.

> There is unjust enrichment 'when a person unjustly retains a benefit to the loss of another, or when a person retains money or property of another against the fundamental principles of justice, equity and good conscience.' The principle of unjust enrichment requires two conditions: (1) that a person is benefited without a valid basis or justification, and (2) that such benefit is derived at the expense of another.
>
> The main objective of the principle against unjust enrichment is to prevent one from enriching himself at the expense of another without just cause or consideration. x x x[24]

"In rendering justice, courts have always been, as they ought to be, conscientiously guided by the norm that on the balance, technicalities take a backseat against substantive rights, and not the other way around."[25] In short, substantive law outweighs procedural technicalities as in this case.

Indeed, where as here, there is a strong showing that grave miscarriage of justice would result from the strict application of the

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[23] CIVIL CODE, Article 1311.

[24] *Flores v. Spouses Lindo, Jr.*, 664 Phil. 210, 221 (2011).

[25] *7107 Islands Publishing, Inc. v. The House Printers Corporation*, 771 Phil. 161, 168 (2015).

[r]ules, we will not hesitate to relax the same in the interest of substantial justice. It bears stressing that the rules of procedure are merely tools designed to facilitate the attainment of justice. They were conceived and promulgated to effectively aid the court in the dispensation of justice. Courts are not slaves to or robots of technical rules, shorn of judicial discretion. In rendering justice, courts have always been as they ought to be, conscientiously guided by the norm that on the balance, technicalities take a backseat against substantive rights, and not the other way around. Thus, if the application of the Rules would tend to frustrate rather than promote justice, it is always within our power to suspend the rules, or except a particular case from its operation.[26]

Taking this to mind, the labor tribunals and the CA should have considered petitioner's repeated pleas to scrutinize the facts and particularly the lease agreement executed by him and Oceanic, which would naturally exculpate him from liability as this would prove the absence of an employment relation between him and respondents. Instead, the case was determined on pure technicality which in labor disputes, is not necessarily sanctioned — given that proceedings before the Labor Arbiter and the NLRC are non-litigious in nature where they are encouraged to avail of all reasonable means to ascertain the facts of the case without regard to technicalities of law or procedure.[27] Petitioner's motion to dismiss, though belated, should have been given due attention.

In arriving at the foregoing conclusions, the Court is guided by the allegations and arguments of the parties on the existence of an employment relation between them, which may be found in their pleadings — even at this stage. In particular, respondents squarely addressed the issue in their Comment to the herein Petition. On the other hand, petitioner has consistently raised the issue and argued against it all throughout. Since the issue was raised in the Petition and adequately met by the respondents in their Comment thereto, the Court is not precluded from ruling

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[26] *Coronel v. Hon. Desierto*, 448 Phil. 894, 903 (2003).

[27] 2011 NLRC Rules of Procedure, Rule V, Section 2, and Rule VII, Section 10, then in force.

thereon. There is thus no need to remand the case to the Labor Arbiter for further proceedings. Finally, this resolves respondents' claim that the issue here involves only the propriety of the NLRC's dismissal of petitioner's petition for annulment of judgment; having argued against petitioner's claim of absence of an employment relation between them — and having presented documentary evidence below to prove their case against petitioner — the issue relative to existence or non-existence of an employment relation is ripe for adjudication before this Court.

With the view taken of the case, it necessarily follows that the decision of the Labor Arbiter must be set aside for being grossly erroneous and unjust. At worst, it is null and void, and, as petitioner correctly put it, it is a "lawless thing, which can be treated as an outlaw and slain at sight, or ignored wherever it exhibits its head."[28] Being of such nature, it could not have acquired finality, contrary to what respondents believe — as it "creates no rights and imposes no duties. Any act performed pursuant to it and any claim emanating from it have no legal effect."[29]

WHEREFORE, the Petition is **GRANTED.** The June 19, 2014 Decision and October 28, 2014 Resolution of the Court of Appeals in CA-G.R. SP No. 127974 are **REVERSED** and **SET ASIDE**. NLRC-NCR-Case No. 02-02490-12 is ordered **DISMISSED**, but only as against petitioner Rolando De Roca.

RULE V, SECTION 2. NATURE OF PROCEEDINGS. — The proceedings before the Labor Arbiter shall be non-litigious in nature. Subject to the requirements of due process, the technicalities of law and procedure and the rules obtaining in the courts of law shall not strictly apply thereto. The Labor Arbiter may avail himself/herself of all reasonable means to ascertain the facts of the controversy speedily, including ocular inspection and examination of well-informed persons.

RULE VII, SECTION 10. TECHNICAL RULES NOT BINDING. — The rules of procedure and evidence prevailing in courts of law and equity shall not be controlling and the Commission shall use every and all reasonable means to ascertain the facts in each case speedily and objectively, without regard to technicalities of law or procedure, all in the interest of due process.

[28] *Saldana v. Court of Appeals*, 268 Phil. 424, 432 (1990).

[29] *Imperial v. Arnes,* G.R. Nos. 178842 &195509, January 30, 2017.

SO ORDERED.

Leonardo-de Castro[*] *(Acting Chairperson), Jardeleza,* and *Tijam, JJ.,* concur.

Sereno, C.J., on leave.

THIRD DIVISION

[G.R. No. 217974. March 5, 2018]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **RESURRECION JUANILLO MANZANO, JR. and REZOR JUANILLO MANZANO,** *accused*, **REZOR JUANILLO MANZANO,** *accused-appellant.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; FINDINGS OF THE REGIONAL TRIAL COURT AS AFFIRMED BY THE COURT OF APPEALS, ACCORDED RESPECT.— It must be noted that it is a general rule in criminal cases that an examination of the entire records of a case may be explored for the purpose of arriving at a correct conclusion; as an appeal in criminal cases throws the whole case open for review, it being the duty of the appellate court to correct such error as may be found in the judgment appealed from, whether they are made the subject of the assignment of errors or not. It is for this reason that the Court has painstakingly reviewed the records of this case; yet, it found no reason to depart from the well-entrenched rule that the findings of the RTC as to the credibility of witnesses should not be disturbed considering the absence of any showing that it had overlooked a material fact that otherwise would change the outcome of the

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[*] Acting Chairperson per Special Order No. 2540 dated February 28, 2018.

case or had misunderstood a circumstance of consequence in their evaluation of the credibility of the witnesses.

2. ID.; ID.; ID.; ALLEGED INCONSISTENCIES IN THE TESTIMONY OF THE WITNESS ARE INCONSEQUENTIAL AS TO WARRANT THE REVERSAL OF THE TRIAL COURT'S FINDINGS.— We underscore that, except for the alleged inconsistencies which to the mind of the Court are inconsequential, the accused-appellant failed to proffer any convincing and material variations in the testimony of Victoria that would warrant the Court to reverse the RTC's finding as to her credibility. It is settled in this jurisdiction that as long as the testimony of the witness is coherent and intrinsically believable as a whole, discrepancies in minor details and collateral matters do not affect the veracity or detract from the essential credibility of the witnesses' declarations.

3. CRIMINAL LAW; REVISED PENAL CODE; JUSTIFYING CIRCUMSTANCES; SELF-DEFENSE; MUST BE ESTABLISHED BY CREDIBLE, CLEAR, AND CONVINCING EVIDENCE.— Jurisprudence instructs that an accused who pleads a justifying circumstance under Article 11 of the Revised Penal Code admits to the commission of acts, which would otherwise engender criminal liability. Corollary thereto, the rule consistently adhered to in this jurisdiction is that when the accused admit that they are the authors of the death of the victim, and their defense is anchored on self-defense, it becomes incumbent upon them to prove the justifying circumstance to the satisfaction of the court. With this admission, the burden of evidence is shifted to the appellant to prove that all the essential elements of self-defense are present. Verily, to invoke self-defense effectually, there must have been an unlawful and unprovoked attack that endangered the life of the accused, who was then forced to inflict severe wounds upon the assailant by employing reasonable means to resist the attack. Self-defense, to be successfully invoked, must be proven by clear and convincing evidence that excludes any vestige of criminal aggression on the part of the person invoking it. Conviction follows if the evidence for the accused fails to prove the existence of justifying circumstances.

4. ID.; ID.; ID.; ID.; ELEMENTS THAT MUST BE ESTABLISHED TO SUCCESSFULLY INVOKE SELF-DEFENSE; UNLAWFUL AGGRESSION, ABSENT IN

CASE AT BAR; NO SELF-DEFENSE UNLESS THE VICTIM COMMITTED UNLAWFUL AGGRESSION AGAINST THE PERSON WHO COMMITTED SELF-DEFENSE.— To successfully invoke self-defense, an accused must establish: (1) unlawful aggression on the part of the victim; (2) reasonable necessity of the means employed to prevent or repel such aggression; and (3) lack of sufficient provocation on the part of the person resorting to self-defense. x x x The evidence before the Court palpably lend negative credence to the presence of unlawful aggression. Primarily, when compared to Victoria's testimony which withstood the crucible of intense cross-examination by the defense and the clarificatory questioning by the trial court, accused-appellant's testimony was not only incongruous with the evidence on record but also improbable. x x x It is vigorously underscored that the pith and soul of the justifying circumstance of self-defense is the presence of unlawful aggression; thus, the absence of this requisite readily converts the claim of self-defense into nothingness even with the existence of the other elements because the two other essential elements of self-defense would have no factual and legal bases without any unlawful aggression to prevent or repel. As case law puts it, there can be no self-defense unless the victim committed unlawful aggression against the person who resorted to self-defense.

5. **ID.; ID.; QUALIFYING CIRCUMSTANCES; TREACHERY, EXPLAINED; ELEMENTS TO BE APPRECIATED.—** Treachery is present when the offender commits any of the crimes against a person, employing means, methods, or forms in the execution thereof which tend directly and specially to insure its execution, without risk to himself arising from the defense which the offended party might make. Treachery is not presumed but must be proved as conclusively as the crime itself. Treachery, whenever alleged in the information and competently and clearly proved, qualifies the killing and raises it to the category of murder. For the qualifying circumstance of treachery to be appreciated, the following elements must be shown: (1) the employment of means, method, or manner of execution would ensure the safety of the malefactor from the defensive or retaliatory acts of the victim, no opportunity being given to the latter to defend himself or to retaliate; and (2) the means, method, or manner of execution was deliberately or consciously adopted by the offender.

6. ID.; ID.; MURDER; HOW COMMITTED; ESSENTIAL ELEMENTS NECESSARY FOR CONVICTION; WHERE TREACHERY QUALIFIED THE CRIME TO MURDER, THE GENERIC AGGRAVATING CIRCUMSTANCE OF ABUSE OF SUPERIOR STRENGTH IS INCLUDED THEREIN.— The crime of murder, under Article *(Art.)* 248 of the Revised Penal Code *(RPC),* is committed by any person who, not falling within the provisions of Art. 246 of the same Code, shall kill another 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. Jurisprudence provides that to warrant a conviction for the crime of murder, the following essential elements must be present: (a) that a person was killed; (b) that the accused killed him or her; (c) that the killing was attended by any of the qualifying circumstances mentioned in Art. 248 of the RPC; and (d) that the killing is not parricide or infanticide. x x x It must be pointed out that since treachery had qualified the crime to murder, the generic aggravating circumstance of abuse of superior strength is necessarily included in the former.

7. ID.; ID.; MITIGATING CIRCUMSTANCES; VOLUNTARY SURRENDER; ELEMENTS AND ESSENCE THEREOF TO BE APPRECIATED.— For voluntary surrender to be appreciated as a mitigating circumstance, the following elements must be present, to wit: (1) the accused has not been actually arrested; (2) the accused surrenders himself to a person in authority or the latter's agent; and (3) the surrender is voluntary. The essence of voluntary surrender is spontaneity and the intent of the accused to give himself up and submit himself to the authorities, either because he acknowledges his guilt or he wishes to save the authorities the trouble and expense that may be incurred for his search and capture.

8. ID.; ID.; ID.; ID.; WHERE THE CLEAR REASONS FOR THE SUPPOSED SURRENDER ARE THE INEVITABILITY OF ARREST AND THE NEED TO ENSURE ACCUSED'S SAFETY, IT CANNOT BE CHARACTERIZED AS "VOLUNTARY SURRENDER" TO SERVE AS A MITIGATING CIRCUMSTANCE.— Records show that it was Reno who went to the Hamtic police station to request that they take custody of the accused-appellant who was then in his house. Undoubtedly, when the police went to

Reno's house at San Angel, San Jose, Antique, it was for the purpose of arresting the accused-appellant and not because he was surrendering to them voluntarily. Simply put, Reno merely facilitated the accused-appellant's arrest. Thus, without the elements of voluntary surrender, and where the clear reasons for the supposed surrender are the inevitability of arrest and the need to ensure his safety, the surrender is not spontaneous and therefore cannot be characterized as "voluntary surrender" to serve as a mitigating circumstance.

9. ID.; ID.; MURDER; PENALTY IS *RECLUSION PERPETUA* IN VIEW OF THE ABSENCE OF ANY MITIGATING OR AGGRAVATING CIRCUMSTANCE; CIVIL LIABILITY. — Pursuant to Art. 248 of the RPC, the penalty for murder is *reclusion perpetua* to death. Applying Art. 63(2) of the RPC, the lesser of the two indivisible penalties, i.e., *reclusion perpetua*, shall be imposed upon the accused-appellant in view of the absence of any mitigating or aggravating circumstance that attended the killing of Lucio. Following the jurisprudence laid down by the Court in *People v. Jugueta,* accused-appellant shall be held liable for civil indemnity, moral damages, and exemplary damages in the amount of ₱75,000.00 each. It was also ruled in *Jugueta* that when no documentary evidence of burial or funeral expenses is presented in court, the amount of ₱50,000.00 as temperate damages shall be awarded. In this case, Victoria showed that she spent a total of ₱13,000.00 for the funeral expenses of Lucio. In conformity with the jurisprudence in *Ocampo v. People*, the temperate damages of ₱50,000.00 shall likewise be awarded instead of the damages substantiated by the receipts. In addition, interest at the rate of six percent (6%) per annum shall be imposed on all monetary awards from date of finality of this decision until fully paid.

APPEARANCES OF COUNSEL

Office of the Solicitor General for plaintiff-appellee.
Public Attorney's Office for accused-appellant.

D E C I S I O N

MARTIRES, *J.*:

This resolves the appeal of accused-appellant Rezor Juanillo Manzano (*accused-appellant*) from the 29 October 2014 Decision[1] of the Court of Appeals (*CA*), Twentieth Division in CA-G.R. CR-HC No. 01473 affirming *in toto* the 17 April 2012 Decision[2] of the Regional Trial Court (*RTC*), Branch 12, San Jose, Antique, finding him guilty beyond reasonable doubt of Murder under Article (*Art.*) 248 of the Revised Penal Code (*RPC*).

THE FACTS

The accused-appellant and his elder brother Resurrecion Manzano (*Resurrecion*) were charged with murder before the RTC of San Jose, Antique, in an Information[3] docketed as Crim. Case No. 10-07-8009, the accusatory portion of which reads:

> That on or about the 19th day of March 2010, in the Municipality of Hamtic, Province of Antique, Republic of the Philippines and within the jurisdiction of this Honorable Court, the above-named accused, being then armed with knives, conspiring, confederating, and mutually helping one another, with intent to kill, did then and there, willfully, unlawfully, and feloniously attack, assault, and stab with said knives one Lucio Silava, thereby inflicting upon the latter wounds on his body which caused his instantaneous death.
>
> With qualifying circumstance of treachery and abuse of superior strength.
>
> Contrary to the provisions of Article 248 of the Revised Penal Code, as amended.

The parties agreed to have an inverted trial after the accused-appellant who, pleading not guilty during the arraignment, raised

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[1] *Rollo*, pp. 4-22. Penned by Associate Justice Ma. Luisa C. Quijano-Padilla and concurred in by Associate Justices Ramon Paul L. Hernando and Marie Christine Azcarraga-Jacob.

[2] Records, pp. 236-249. Penned by Judge Rudy P. Castrojas.

[3] *Id*. at 1.

the justifying circumstance of self-defense. Resurrecion remained at large.

To prove his claim of self-defense, the accused-appellant himself testified. SPO2 Roberto Javier (*SPO2 Javier*) of the Hamtic police office took the witness stand to prove that the accused-appellant voluntarily surrendered.

The prosecution tried to prove its case against the accused-appellant by calling to the witness stand Dr. Ma. Eva D. Pacificador (*Dr. Pacificador*), Victoria N. Silava (*Victoria*), Atty. Rean S. Sy (*Atty. Sy*), and Luisa P. Monteclaro (*Luisa*).

Version of the Defense

At about 9:30 p.m. on 19 March 2010, while the accused-appellant was home sitting by the window, he saw Lucio Silava (*Lucio*) throwing stones at his house. The electric lamppost was lighted, thus, the accused-appellant, who was then eighteen years old, was sure that it was Lucio.[4]

The accused-appellant immediately went out to inquire from Lucio why he was throwing stones at his house but Lucio threw a stone at him that hit his right knee and caused him to fall down. Lucio rushed towards the accused-appellant to stab him with a knife but was unsuccessful as they grappled for its possession. It was at that instance that the accused-appellant called out to Resurrecion, who was home that time, to run away so that he would not be involved. Because Lucio was very drunk, the accused-appellant was able to take hold of the knife, but blacked out and started stabbing Lucio. Thereafter, the accused-appellant ran away and proceeded to the house of Reno Manzano (*Reno*), an elder brother, at Barangay San Angel, San Jose, Antique, where he also met Resurrecion. The following day, the accused-appellant surrendered to the police authorities.[5]

The accused-appellant had known Lucio for eight years already since the latter's house was in front of his house and were

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[4] TSN, 7 March 2011, pp. 4-9.

[5] *Id*. at 9-17, 25-26 and 29.

separated only by the road. Accused-appellant was as tall as Lucio but the latter had a bigger body build. Resurrecion had a dislocated right shoulder and a smaller build than that of Lucio and the accused-appellant.[6]

Version of the Prosecution

At about 9:00 p.m. on 19 March 2010, the spouses Lucio and Victoria were inside their store fronting the accused-appellant's house. Lucio was having his dinner at the kitchen inside the store while Victoria was watching the store when the accused-appellant and Resurrecion called out from the gate saying that they would buy cigarettes. Because the gate leading to the store was already closed, Lucio told the accused-appellant and Resurrecion to come in.[7]

Resurrecion stood outside the store and told Victoria that he wanted to buy Fortune white cigarettes and handed her ₱20.00. The accused-appellant entered the store and proceeded to where Lucio was having dinner. After realizing that she had no more stock of the Fortune white cigarette, Victoria told Resurrecion who, in reply, said that he would no longer buy cigarettes and then proceeded towards the kitchen. Thereafter, Victoria heard Lucio ask, "What wrong have I committed?" Victoria rushed to the kitchen and there saw Lucio bloodied and leaning on the door, while the accused-appellant and Resurrecion were stabbing him.[8]

Victoria went out of the store shouting for help and saying that the accused-appellant and Resurrecion were stabbing Lucio. When Victoria went back inside, she saw Lucio run outside the store but still within the fenced premises, and the accused-appellant and Resurrecion were going after him. From where she stood, Victoria saw Resurrecion hold Lucio's hands while the accused-appellant, who was positioned behind Lucio, held Lucio's body with one arm while with his other hand stabbed

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[6] *Id*. at 8, 10-11 and 14-15.

[7] TSN, 14 June 2011, pp. 15-17.

[8] *Id*. at 17-23.

Lucio's back. When Resurrecion released his grip on Lucio, the latter fell face down but the accused-appellant and Resurrecion continued to stab him causing Victoria to utter, "I will let you eat the whole body of my husband alive." The accused-appellant and Resurrecion thereafter ran towards the direction of the farm.[9]

Lucio was brought to the hospital but Victoria had to stay behind to find money for his medical expenses. On her way to the hospital, Victoria was informed that Lucio had died. Luisa, a cousin of Lucio, took pictures of the dead body. Victoria had the pictures[10] developed and secured Lucio's death certificate.[11] Victoria incurred a total of ₱15,000.00[12] for the funeral expenses.[13]

On 23 March 2010, Dr. Pacificador conducted a postmortem examination on the body of Lucio, the results of which follow:

Left Anterior Thorax

Stab Wound # 1 - Horizontal in direction about 3 cm in length located at the left anterior chest below the left clavicle penetrating the upper lobe of the left lung and aorta.

Stab Wound # 2 - Vertical in direction about 3 cm in length located below wound #1 resulting into fracture of 3rd rib.

Right Anterior Thorax

Stab Wound # 3 - Vertical in direction about 2 cm in length on the left shoulder, non-penetrating.

Stab Wound # 4 - Vertical in direction about 4.5 cm in length located below right clavicle penetrating the upper lobe of the right lung.

Stab Wound # 5 - Vertical in direction about 4 cm in length below the sternum penetrating the liver.

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[9] *Id*. at 23-27.

[10] Records, pp. 50-51; Exhs. "B to "B-3".

[11] *Id*. at 52; Exh. "C".

[12] *Id.* at 53-57; Exhs. "D" to "D-4".

[13] TSN, 14 June 2011, pp. 29-30; TSN, 9 August 2011, p. 3; TSN, 29 November 2011, pp. 17-19.

Stab Wound # 6 - Vertical in direction about 4.5 cm in length about 3 cm below wound # 5 penetrating the liver.

Stab Wound # 7 - Vertical in direction about 1.5 cm in length below wound # 6 non-penetrating.

Extremities

Stab Wound # 8 - Vertical in direction about 3.5 cm in length located on the left upper arm going through the axilla.

Stab Wound # 9- Horizontal in direction about 2.5 cm in length on the left lower arm below the left antecubital fossa, non-penetrating.

Stab Wound# 10- Horizontal in direction about 3 cm in length just below wound # 9 left lower arm.

Stab Wound# 11 -Horizontal in direction about 2 cm in length located below left wrist, non-penetrating.

Posterior Thorax

Stab Wound # 12- Vertical in direction about 2.5 cm in length just below the neck in between scapula, non-penetrating.

Stab Wound# 13- Vertical in direction about 5 cm in length just below wound # 12, non-penetrating.

Stab Wound # 14 - Vertical in direction about 2 cm in length below wound # 13, non-penetrating.

Stab Wound # 15- Horizontal in direction about 1.5 cm in length on the right lumbar area, non-penetrating.

Cause of death:

Hypovolemic Shock secondary to Hemorrhage secondary to Multiple Stab Wounds.[14]

It was a week after the stabbing incident that Atty. Sy took pictures[15] of the place where Lucio was attacked. He saw splatters of dried blood inside the store and within the fenced perimeter enclosing the crime scene.[16]

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[14] Records, p. 15.

[15] *Id*. at 58-79, Exhs. "E" to "E-21".

[16] TSN, 29 November 2011, pp. 10-14.

The Ruling of the RTC

According to the RTC, a careful and deeper examination of the facts and circumstances tend to contradict the accused-appellant's version of the incident and his claim that he acted in self-defense. In so ruling, the RTC considered the following: that if there was no intention on the part of the accused-appellant and Resurrecion to kill Lucio, they could have easily overpowered him because he was very drunk at that time; it was not convinced that Lucio hit the accused-appellant on his right knee causing him to fall since the latter failed to present a medical certificate notwithstanding his contention that he was brought by a police officer to a doctor for his knee injury; it was not satisfied with the accused-appellant's version that after he fell down, Lucio held his neck and stabbed him because not once was the accused-appellant hit; the number of stab wounds sustained by Lucio negates self-defense; the serious injuries sustained by Lucio demonstrate the accused-appellant's intent to kill; the splattered blood inside the store and on the bamboo slats serving as wall of the kitchen are proofs that the incident started at the kitchen of Lucio's store and continued outside but still within the fenced perimeter; that when the accused-appellant blacked out, he was still able to shout at Resurrecion to run away so as not to be involved in the incident; the portrayal on how the accused-appellant singlehandedly stabbed Lucio was not worthy of credence; the claim of the accused-appellant that he hit Lucio frontally was denied by the postmortem examination results; the only plausible explanation for Lucio's back injuries was that these were inflicted by either the accused-appellant or Resurrecion or by both of them; and the accused-appellant had not assailed or contradicted, by testimonial or documentary evidence, the truthfulness and trustworthiness of Victoria's testimony.[17]

On the one hand, the RTC found that the accused-appellant and Resurrecion conspired as shown by their concerted action of surprising Lucio in the kitchen and, without justifiable reason,

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[17] Records, pp. 245-248.

helping each other assault their victim. Moreover, the RTC ruled that the commission of the felony was attended by the aggravating circumstance of nocturnity which facilitated the assailants' escape. According to the RTC, it was unfortunate that this circumstance was not properly appreciated as this was not alleged in the information.[18]

The RTC, however, was not convinced that the accused-appellant voluntarily surrendered considering the following reasons: he fled from the locus criminis and proceeded to Reno's house in San Jose instead of going to the Hamtic police station; he did not surrender to the San Jose police; and it was Reno who informed the Hamtic police station of the accused-appellant's presence in San Jose, thus, the policemen proceeded to Reno's house and took custody of the accused-appellant.

The dispositive portion of the RTC decision reads:

> PREMISES CONSIDERED, judgment is hereby rendered **convicting** accused **REZOR MANZANO *y* JUANILLO**, beyond reasonable doubt, of Murder under Art. 248 of the Revised Penal Code. Accordingly, he is hereby sentenced to suffer the penalty of **reclusion perpetua**.
>
> He is also ordered to indemnify the legal heirs of Lucio Silava the amount of ₱75,000.00 for the death of the said victim and to pay the said legal heirs actual expenses in the amount of ₱15,000.00 as well as moral damages amounting to ₱25,000.00 and to pay the costs.
>
> SO ORDERED.[19]

Feeling aggrieved with the decision of the RTC, the accused-appellant appealed before the CA.

The Ruling of the CA

The CA noted the absence of unlawful aggression on the part of Lucio which made the claim of self-defense unavailable. According to the CA, the accused-appellant must rely on the

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[18] *Id*. at 248.

[19] *Id*. at 249.

strength of his evidence and not on the weakness of the prosecution's evidence since he had admitted that he killed Lucio. The CA held that there was no proof that the RTC failed to appreciate facts and circumstances which would have merited the accused-appellant's acquittal.[20]

The CA sustained the ruling of the RTC that treachery and abuse of superior strength attended the killing of Lucio, and that the accused- appellant had not voluntarily surrendered to the police authorities.[21]

In view of its findings, the CA affirmed *in toto* the decision of the RTC, thus:

> WHEREFORE, the appeal is hereby DENIED. The Decision dated March 20, 2012 of the RTC, Branch 12, San Jose, Antique in Criminal Case No. 10-07-8009 is hereby AFFIRMED *in toto*.
>
> SO ORDERED.[22]

ISSUES

I

THE TRIAL COURT ERRED IN GIVING CREDENCE TO THE INCONSISTENT AND IMPROBABLE TESTIMONY OF VICTORIA SILAVA.

II

THE TRIAL COURT ERRED IN NOT APPRECIATING INCOMPLETE SELF-DEFENSE BY ACCUSED-APPELLANT REZOR MANZANO, AS A PRIVILEGED MITIGATING CIRCUMSTANCE.

III

THE TRIAL COURT ERRED IN FINDING THAT THE ACCUSED-APPELLANT ACTED WITH ABUSE OF SUPERIOR STRENGTH.

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[20] *Rollo*, pp. 15-18.

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

[22] *Id*. at 22.

IV

THE TRIAL COURT ERRED IN NOT APPRECIATING THE ACCUSED-APPELLANT'S VOLUNTARY SURRENDER AS A MITIGATING CIRCUMSTANCE.[23]

OUR RULING

The appeal does not deserve any merit.

The findings of the RTC as to the credibility of witnesses should be respected especially when these are affirmed by the CA.

It has been trenchantly maintained in a catena of cases 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.[24] The assessment of the credibility of the witnesses and their testimonies is best undertaken by the trial court because of its unique opportunity to observe the witnesses first hand and to note their demeanor, conduct, and attitude under gruelling examination. These factors are the most significant in evaluating the sincerity of witnesses and in unearthing the truth, especially in the face of conflicting testimonies.[25] The factual findings of the RTC, therefore, are accorded the highest degree of respect especially if the CA adopted and confirmed these,[26] unless some facts or circumstances of weight were overlooked, misapprehended or misinterpreted as to materially affect the disposition of the case.[27] In the absence of substantial reason to justify the reversal of the trial court's assessment and conclusion, as when no significant facts and

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[23] CA *rollo*, pp. 21-22.

[24] *People v. Dayaday*, G.R. No. 213224, 16 January 2017.

[25] *People v. Macaspac*, G.R. No. 198954, 22 February 2017.

[26] *People v. Delector*, G.R. No. 200026, 4 October 2017.

[27] *People v. Macaspac*, *supra,* note 25.

circumstances are shown to have been overlooked or disregarded, the reviewing court is generally bound by the former's findings.[28]

It must be noted that it is a general rule in criminal cases that an examination of the entire records of a case may be explored for the purpose of arriving at a correct conclusion; as an appeal in criminal cases throws the whole case open for review, it being the duty of the appellate court to correct such error as may be found in the judgment appealed from, whether they are made the subject of the assignment of errors or not.[29] It is for this reason that the Court has painstakingly reviewed the records of this case; yet, it found no reason to depart from the well-entrenched rule that the findings of the RTC as to the credibility of witnesses should not be disturbed considering the absence of any showing that it had overlooked a material fact that otherwise would change the outcome of the case or had misunderstood a circumstance of consequence in their evaluation of the credibility of the witnesses.[30]

The testimony of Victoria identifying the accused-appellant and Resurrecion as the ones who assaulted Lucio was positive, convincing, and straightforward, *viz*:

Q. You said a while ago that your store is lighted with bulb, what is the voltage of the electric bulb?
A. Ten (10) watts.

Q. So, what did you do after you heard your husband said those words?
A. I immediately went towards the door of the store towards the kitchen area and I saw my husband leaning on the wall full of blood and the two accused simultaneously stabbing my husband.

Q. So both of them are holding a knife?
A. Yes, sir.

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[28] *People v. Labraque*, G.R. No. 225065, 13 September 2017, citing *People v. Alberca*, G.R. No. 217459, 7 June 2017.

[29] *People v. Aycardo*, G.R. No. 218114, 5 June 2017.

[30] *People v. Amar*, G.R. No. 223513, 5 July 2017.

Q. And you saw both of them stabbing your husband?
A. Yes, sir.

Q. Please tell us how near is your door to the [location] of your husband when he was stabbed?
A. (Witness as this juncture pointed at the distance from the witness stand to the place occupied by Atty. Rivero which is estimated to be about two (2) meters, as agreed upon by the prosecution and the defense, as the distance from the door to the [location] where the husband was stabbed.)

Q. And when you came out of your door that was your distance from your husband after he was being stabbed?
A. Yes, sir.

Q. And please describe to us what did you do immediately after coming out of that door?
A. From the door, I saw my husband leaning on the wall full of blood with the two accused simultaneously stabbing him.

Q. And you saw that there was no structure blocking your side?
A. No, sir.

Q. While they were stabbing your husband, can you tell us if the two accused uttered any words?
A. Nothing, sir.

Q. Can you recall while standing how many times did the two accused stab your husband?
A. I cannot count how many times the two accused stabbed my husband but I saw both of them stabbing my husband.

Q. At that time your husband is facing you?
A. Yes, sir because he was leaning on the wall.

Q. What did you do next?
A. After that I ran out of [the] house and ran towards the fence and shouted that Resurrecion and Rezor are stabbing my husband and I went back inside the house after saying those words.

Q. When you [said] that, you went out and asked for help?
A. Yes, sir.

Q. When you said those words you came back to your house, please tell us when you came back to your house, you entered the main gate or front of the road?
A. Just in front of our store when I shouted for help.

Q. While standing on the road facing your husband, please tell us what did you see?
A. While I was standing on the road, I saw Resurrecion holding my husband and holding [his] hands while Rezor was behind my husband and one hand was holding the body of my husband and the other hand was stabbing at the back of my husband.

Q. At that point did you see on what portion of the body of your husband was Rezor stabbing him?
A. At the back.

Q. How far were you from them?
A. Very near. (x x x two (2) meters, as agreed upon by both counsel)

Q. Please tell us, when the two accused Resurrecion and Rezor were holding your husband and Resurrecion was stabbing on the back, in what portion were they located?
A. In front of our store.

COURT:

Q. Are you telling the court that the two accused were already outside the store?
A. Yes, sir.

ATTY. SY:

Q. Outside the store but within the gate?
A. Yes, sir.

COURT:

Q. From inside the kitchen, can you tell the court where did the three pass by?
A. My husband was able to run outside the house.

Q. So when your husband ran outside the house, the two accused followed him?
A. Yes, sir.

Q. When you saw your husband and the two accused in that position they were directly in front of your store but still within the gate?
A. Yes, sir.

Q. Is this store lighted?
A. Yes, sir, it is lighted with a bulb.

Q. And from your position you can properly see their faces?
A. Yes, sir.

Q. Tell us what happened next?
A. At that particular moment, I saw Resurrecion holding the two hands of my husband while Rezor's [other] hand was holding my husband while the other hand was stabbing my husband. I cannot recall which hand was used by him in stabbing my husband.

Q. You said you saw Rezor stabbing your husband, why [is it that] you cannot recall what hand was holding the knife?
A. Because at that time I was in a state of shock. Resurrecion was holding my husband with his two hands, while Rezor was stabbing my husband.

x x x x x x x x x

Q. So, are you telling the court that Rezor was in the grip of your husband?
A. Yes, sir.

x x x x x x x x x

Q. Now, do you realize that both injuries of your husband were in [the] front portion of his body?
A. Yes, sir.

Q. About how many times did you see Resurrecion stab your husband while he was at the back of your husband?
A. I saw Rezor stabbed my husband once and that was the time that Resurrecion released my husband from his grip and so my husband fell to the ground facing down.

x x x x x x x x x

ATTY. SY:

x x x x x x x x x

Q. So, when your husband fell down, what did you do next?
A. Rezor and Resurrecion helped each other in stabbing him and at that point in time I told Rezor and Resurrecion "I will let you eat the whole body of my husband alive," and then that was the time the two accused ran away."[31]

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[31] TSN, 14 June 2011, pp. 21-27.

It was clear from the testimony of Victoria that she was able to personally witness when the accused-appellant and Resurrecion assaulted Lucio; and that she could not be mistaken as to the assailants' identity since the place where the crime happened was well-lighted.

Accused-appellant tried to dent the credibility of Victoria by asserting that she did not actually see the scuffle between him and Lucio as verified by her admission during the cross-examination by the defense.[32]

The contention of the accused-appellant is without merit. The records bear out that Victoria admitted that right after she heard Lucio utter "What wrong did I commit," she immediately went to the kitchen and found her husband leaning on the kitchen door, bloodied, while the accused-appellant and Resurrecion were stabbing him. Contrary to the claim of the accused-appellant, a review of the testimony of Victoria would show that what she claimed she did not witness was the scuffle, if there was any, between Lucio and the accused-appellant prior to her hearing her husband utter "What wrong did I commit?" It was also pointed out that Victoria had claimed that she did not hear anything from the accused-appellant and Resurrecion before she heard Lucio utter these words in a soft and pleading manner, hence, accentuating the fact that no such scuffle had taken place.

In the same vein, the position of the accused-appellant that Victoria could not have seen the actions of Lucio and the accused-appellant as she had gone out of the house to ask for help,[33] fails to persuade. Victoria stated that after running out to the street and shouting for help, she went back inside the fenced premises of the store; thus, she was able to see Lucio run outside from the kitchen, and saw the accused-appellant and Resurrecion follow Lucio, get hold of him, and stab him again.[34]

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[32] CA *rollo*, pp. 27-28.

[33] *Id.* at 28.

[34] TSN, 14 June 2011, pp. 23-24.

In stark contrast to the allegation of the accused-appellant that Victoria's statements before the trial court were inconsistent and incredible, a perspicacious review of her testimony sustains a finding that her narration of what happened on that fateful day of 19 March 2010 was plausible, being consistent in all important details. For sure, the records are bereft of any showing that Victoria's testimony was inspired by ill motive or was attended by bad faith. Jurisprudence holds that when there is no evidence to show any improper motive on the part of the witness to testify falsely against the accused or to pervert the truth, the logical conclusion is that no such motive exists, and that the former's testimony is worthy of full faith and credit.[35]

We underscore that, except for the alleged inconsistencies which to the mind of the Court are inconsequential, the accused-appellant failed to proffer any convincing and material variations in the testimony of Victoria that would warrant the Court to reverse the RTC's finding as to her credibility. It is settled in this jurisdiction that as long as the testimony of the witness is coherent and intrinsically believable as a whole, discrepancies in minor details and collateral matters do not affect the veracity or detract from the essential credibility of the witnesses' declarations.[36] Of utmost meaning to this case is the ruling laid down in *Velasquez v. People*,[37] *viz*:

> Jurisprudence is replete with clarifications that a witness' recollection of [a] crime need not be foolproof: "Witnesses cannot be expected to recollect with exactitude every minute detail of an event. This is especially true when the witnesses testify as to facts which transpired in rapid succession, attended by flurry and excitement." This is especially true of a victim's recollection of his or her own harrowing ordeal. One who has undergone a horrifying and traumatic experience "cannot be expected to mechanically keep and then give an accurate account" of every minutiae.

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[35] *Ocampo v. People*, 759 Phil. 423, 433 (2015).

[36] *People v. Amoc*, G.R. No. 216937, 5 June 2017.

[37] G.R. No. 195021, 15 March 2017.

The accused-appellant assumes the burden of establishing his plea of self-defense by credible, clear, and convincing evidence.

Jurisprudence instructs that an accused who pleads a justifying circumstance under Article 11[38] of the Revised Penal Code admits to the commission of acts, which would otherwise engender criminal liability.[39] Corollary thereto, the rule consistently

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[38] Article II. *Justifying circumstances*.– The following do not incur any criminal liability:

1. Anyone who acts in defense of his person or rights, provided that the following circumstances concur;

First. Unlawful aggression;

Second. Reasonable necessity of the means employed to prevent or repel it;

Third. Lack of sufficient provocation on the part of the person defending himself.

2. Anyone who acts in defense of the person or rights of his spouse, ascendants, descendants, or legitimate, natural or adopted brothers or sisters, or his relatives by affinity in the same degrees and those consanguinity within the fourth civil degree, provided that the first and second requisites prescribed in the next preceding circumstance are present, and the further requisite, in case the revocation was given by the person attacked, that the one making defense had no part therein.

3. Anyone who acts in defense of the person or rights of a stranger, provided that the first and second requisites mentioned in the first circumstance of this Article are present and that the person defending be not induced by revenge, resentment, or other evil motive.

4. Any person who, in order to avoid an evil or injury, does not act which causes damage to another, provided that the following requisites are present;

First. That the evil sought to be avoided actually exists;

Second. that the injury feared be greater than that done to avoid it;

Third. That there be no other practical and less harmful means of preventing it.

5. Any person who acts in the fulfillment of a duty or in the lawful exercise of a right or office.

6. Any person who acts in obedience to an order issued by a superior for some lawful purpose.

[39] *Velasquez v. People*, *supra* note 37.

adhered to in this jurisdiction is that when the accused admit that they are the authors of the death of the victim, and their defense is anchored on self-defense, it becomes incumbent upon them to prove the justifying circumstance to the satisfaction of the court.[40] With this admission, the burden of evidence is shifted to the appellant to prove that all the essential elements of self-defense are present.[41] Verily, to invoke self-defense effectually, there must have been an unlawful and unprovoked attack that endangered the life of the accused, who was then forced to inflict severe wounds upon the assailant by employing reasonable means to resist the attack.[42] Self-defense, to be successfully invoked, must be proven by clear and convincing evidence that excludes any vestige of criminal aggression on the part of the person invoking it.[43] Conviction follows if the evidence for the accused fails to prove the existence of justifying circumstances.[44]

Accused-appellant contends that he merely repelled the unlawful aggression of Lucio, *viz*: when Lucio threw a stone at him that hit his knee; and when Lucio rushed towards him to stab him. Additionally, accused-appellant avers that his testimony was credible that he alone inflicted the stab wounds on Lucio.[45]

To successfully invoke self-defense, an accused must establish: (1) unlawful aggression on the part of the victim; (2) reasonable necessity of the means employed to prevent or repel such aggression; and (3) lack of sufficient provocation on the part of the person resorting to self-defense.[46]

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[40] *Ocampo v. People*, *supra* note 35 at 431.

[41] *People v. Ramos*, 715 Phil. 193, 204 (2013).

[42] *Belbis, Jr. v. People*, 698 Phil. 706, 720 (2012).

[43] *People v. Bosito*, 750 Phil. 183, 193 (2015).

[44] *Velasquez v. People*, *supra* note 37.

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

[46] *Velasquez v. People*, *supra* note 37.

On the first element, the consistent teaching by the Court on unlawful aggression is as follows:

> Unlawful aggression on the part of the victim is the primordial element of the justifying circumstance of self-defense. Without unlawful aggression, there can be no justified killing in defense of oneself. The test for the presence of unlawful aggression under the circumstances is whether the aggression from the victim put in real peril the life or personal safety of the person defending himself; the peril must not be an imagined or imaginary threat. Accordingly, the accused must establish the concurrence of three elements of unlawful aggression, namely: (a) there must be a physical or material attack or assault; (b) the attack or assault must be actual, or, at least, imminent; and (c) the attack or assault must be unlawful.
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> Unlawful aggression is of two kinds: (a) actual or material unlawful aggression; and (b) imminent unlawful aggression. Actual or material unlawful aggression means an attack with physical force or with a weapon, an offensive act that positively determines the intent of the aggressor to cause the injury. Imminent unlawful aggression means an attack that is impending or at the point of happening; it must not consist in a mere threatening attitude, nor must it be merely imaginary, but must be offensive and positively strong (like aiming a revolver at another with intent to shoot or opening a knife and making a motion as if to attack). Imminent unlawful aggression must not be a mere threatening attitude of the victim, such as pressing his right hand to his hip where a revolver was holstered, accompanied by an angry countenance, or like aiming to throw a pot.[47]

The evidence before the Court palpably lend negative credence to the presence of unlawful aggression. Primarily, when compared to Victoria's testimony which withstood the crucible of intense cross-examination by the defense and the clarificatory questioning by the trial court, accused-appellant's testimony was not only incongruous with the evidence on record but also improbable.

The version of the defense was that the unlawful aggression began with Lucio who was outside the accused-appellant's house

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[47] *People v. Dulin*, 762 Phil. 24, 37 (2015), citing *People v. Nugas*, 677 Phil. 168, 177-178 (2011).

throwing stones at its roof. Allegedly, Lucio likewise threw a stone at the accused-appellant when he came out of the house which hit his knee and caused him to fall down. Lucio was about to stab the accused-appellant with a knife but then a scuffle ensued for its possession. When the accused-appellant got hold of the knife, he "blacked out" and stabbed Lucio several times.

The defense's version of the events is swiftly denied by the prosecution's pictures[48] showing Lucio's blood splattered in the kitchen of Victoria's store and at the fenced premises. These pictures are silent evidence that confirm the truth of Victoria's testimony and easily weaken the defense's version that when the accused-appellant acted in self-defense to Lucio's unlawful aggression, they were at the road in front of accused-appellant's house. Where the physical evidence on record runs counter to the testimonies of witnesses, the primacy of the physical evidence must be upheld.[49]

It is noteworthy that the accused-appellant has neither witness nor evidence to fortify his claim that the unlawful aggression started with Lucio. Self-defense cannot be justifiably appreciated when uncorroborated by independent and competent evidence or when it is extremely doubtful by itself.[50] The fact that Resurrecion is still in hiding instead of giving his testimony before the trial court to boost the theory proffered by the accused-appellant well confirms the finding that the defense's version of the events was contrived.

To amplify his position that he acted in self-defense, the accused-appellant tried to make issue of his absence of motive to stab Lucio. The accused-appellant basically anchored his position on the ruling laid down by the Court in *Borguilla v. Court of Appeals*,[51] that "the absence of motive is important in ascertaining the truth as between two antagonistic theories or

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[48] Records, pp. 64-68, Exhs. "E-6", "E-7", "E-8", "E-9" and "E-10".

[49] *Ocampo v. People*, *supra* note 35 at 432.

[50] *Belbis, Jr. v. People*, *supra* note 42 at 719.

[51] 231 Phil. 9 (1987).

versions of the killing. Herein, it was the victim who had reason to harm the accused."[52]

The quoted ruling in *Borguilla* does not find meaning in this case considering that the identity of the accused-appellant as the assailant of Lucio has been firmly established by the prosecution. For sure, even the accused-appellant admitted that he stabbed Lucio several times after he blacked out. In *Borguilla*, because of the contradictory accounts of the event by both parties, the Court resorted to searching for facts or circumstances which could be used as valuable aids in evaluating the probability or improbability of a testimony; thus, the Court had appreciated the presence of motive of the victim to harm the accused in ascertaining which of the versions was true. In the present case, however, both the testimonial and documentary evidence of the prosecution demonstrably disproved the defense's version that unlawful aggression was initiated by Lucio. Also revealing was that, in contrast to the *Borguilla* ruling, there was conspicuous dearth of evidence to establish that Lucio had motive to kill the accused-appellant.

Notwithstanding the accused-appellant's contention that he has no motive in killing Lucio, we point out that motive is not material in this case. As a general rule, proof of motive for the commission of the offense charged does not show guilt; and the absence of proof of such motive does not establish the innocence of accused for the crime charged such as murder.[53] To emphasize, "motive is irrelevant when the accused has been positively identified by an eyewitness. Intent is not synonymous with motive. Motive alone is not a proof and is hardly ever an essential element of a crime."[54]

It is vigorously underscored that the pith and soul of the justifying circumstance of self-defense is the presence of unlawful

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[52] *Id.* at 26; cited in CA *rollo,* pp. 29-30.

[53] *People v. Buenafe*, G.R. No. 212930, 3 August 2016, 799 SCRA 454, 463.

[54] *Id.* at 463, citing *People v. Ducabo*, 560 Phil. 709, 723-724 (2007).

aggression; thus, the absence of this requisite readily converts the claim of self-defense into nothingness even with the existence of the other elements because the two other essential elements of self-defense would have no factual and legal bases without any unlawful aggression to prevent or repel.[55] As case law puts it, there can be no self-defense unless the victim committed unlawful aggression against the person who resorted to self-defense.[56]

Accused-appellant's plea of self-defense is controverted by the nature, number, and location of the wounds inflicted on the victim, since the gravity of said wounds is indicative of a determined effort to kill and not just to defend.[57] The postmortem examination[58] conducted by Dr. Pacificador on the body of Lucio revealed that he sustained fifteen wounds, four of which were fatal, and that the cause of his death was hypovolemic shock secondary to hemorrhage secondary to multiple stab wounds. The findings of Dr. Pacificador justify a declaration that there was undeniable intent on the part of the accused-appellant to kill Lucio.

The absence of unlawful aggression on the part of Lucio in this case unmistakably belies the accused-appellant's claim of self-defense, whether complete or incomplete. In view of this, the Court finds no reason to further discuss the other elements of the justifying circumstance of self-defense and will proceed to determine the offense committed by the accused-appellant.

The crime committed by the accused-appellant was murder.

The accused-appellant averred that the trial court erred in convicting him of murder; he maintained that he was guilty

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[55] *People v. Dulin*, *supra* note 47 at 36.

[56] *People v. Casas*, 755 Phil. 210, 219 (2015).

[57] *Ocampo v. People*, *supra* note 35 at 433.

[58] Records, p. 81, Exh. "G".

only of homicide in view of the absence of the qualifying circumstances of treachery and abuse of superior strength.[59]

The crime of murder, under Article (*Art.*) 248[60] of the Revised Penal Code (*RPC*), is committed by any person who, not falling within the provisions of Art. 246[61] of the same Code, shall kill another 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.[62] Jurisprudence provides that to warrant a conviction for the crime of murder, the following essential elements must be present: (a) that a person was killed; (b) that the accused killed him or

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[59] CA *rollo*, p. 31.

[60] Art. 248. Murder. — Any person who, not falling within the provisions of Article 246 shall kill another, shall be guilty of murder and shall be punished by *reclusion perpetua*, to death if committed with any of the following attendant circumstances:

1. With treachery, taking advantage of superior strength, with the aid of armed men, or employing means to weaken the defense or of means or persons to insure or afford impunity.

2. In consideration of a price, reward or promise.

3. By means of inundation, fire, poison, explosion, shipwreck, stranding of a vessel, derailment or assault upon a railroad, fall of an airship, or by means of motor vehicles, or with the use of any other means involving great waste and ruin.

4. On occasion of any of the calamities enumerated in the preceding paragraph, or of an earthquake, eruption of a volcano, destructive cyclone, epidemic or other public calamity.

5. With evident premeditation.

6. With cruelty, by deliberately and inhumanly augmenting the suffering of the victim, or outraging or scoffing at his person or corpse. (As amended by R.A. No. 7659 entitled "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.")

[61] Art. 246. Parricide. — Any person who shall kill his father, mother, or child, whether legitimate or illegitimate, or any of his ascendants, or descendants, or his spouse, shall be guilty of parricide and shall be punished by the penalty of *reclusion perpetua* to death.

[62] *People v. Bugarin*, G.R. No. 224900, 15 March 2017.

her; (c) that the killing was attended by any of the qualifying circumstances mentioned in Art. 248 of the RPC; and (d) that the killing is not parricide or infanticide.[63]

There is no question that the first, second, and fourth elements are present in this case. It is the resolution of the issue on whether the qualifying circumstances of treachery and abuse of superior strength that attended the killing of Lucio can determine whether the accused-appellant should be held liable for murder. The presence of any one of the circumstances enumerated in Article 248 of the Code is sufficient to qualify a killing as murder.[64] On the one hand, if the qualifying circumstances are not present or cannot be proven beyond reasonable doubt, the accused may only be convicted with homicide under Art. 249[65] of the RPC.[66]

Both the trial and the appellate courts appreciated treachery and abuse of superior strength in convicting the accused-appellant of murder.

Treachery is present when the offender commits any of the crimes against a person, employing means, methods, or forms in the execution thereof which tend directly and specially to insure its execution, without risk to himself arising from the defense which the offended party might make.[67] Treachery is not presumed but must be proved as conclusively as the crime itself.[68] Treachery, whenever alleged in the information and competently and clearly proved, qualifies the killing and raises it to the category of murder.[69]

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[63] *People v. Villanueva*, G.R. No. 226475, 13 March 2017.

[64] *People v. Jugueta*, G.R. No. 202124, 5 April 2016, 788 SCRA 331, 348.

[65] Article 249. *Homicide.* — Any person who, not falling within the provisions of Article 246, shall kill another without the attendance of any of the circumstances enumerated in the next preceding article, shall be deemed guilty of homicide and be punished by *reclusion temporal.*

[66] *Cirera v. People*, 739 Phil. 25, 39 (2014).

[67] *People v. Sibbu*, G.R. No. 214757, 29 March 2017.

[68] *People v. Bugarin*, *supra* note 62.

[69] *People v. Macaspac*, *supra* note 25.

For the qualifying circumstance of treachery to be appreciated, the following elements must be shown: (1) the employment of means, method, or manner of execution would ensure the safety of the malefactor from the defensive or retaliatory acts of the victim, no opportunity being given to the latter to defend himself or to retaliate; and (2) the means, method, or manner of execution was deliberately or consciously adopted by the offender.[70]

Relative to the first element, the legal teaching consistently upheld by the Court is that the essence of treachery is when 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 the sudden blow.[71]

As to the second element, jurisprudence requires that there must be evidence to show that the accused deliberately or consciously adopted the means of execution to ensure its success[72] since unexpectedness of the attack does not always equate to treachery.[73] The means adopted must have been a result of a determination to ensure success in committing the crime.[74]

Additionally, in murder or homicide, the offender must have the intent to kill; otherwise, the offender is liable only for physical injuries.[75] The evidence to prove intent to kill may consist of, inter alia, the means used; the nature, location, and number of wounds sustained by the victim; and the conduct of the malefactors before, at the time of or immediately after the killing of the victim.[76]

The prosecution established that the accused-appellant and Resurrecion deliberately made it appear to Victoria and Lucio

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[70] *People v. Bugarin*, *supra* note 62.

[71] *Id*.

[72] *People v. Oloverio,* 756 Phil. 435, 449 (2015).

[73] *Cirera v. People*, *supra* note 66 at 28.

[74] *Id*. at 45.

[75] *Id*. at 39.

[76] *Escamilla v. People*, 705 Phil. 188, 196-197 (2013).

on the night of 19 March 2010, that their main purpose in coming to the store was to buy cigarettes. They came at night when neighbors were probably asleep which would make it impossible for them to lend assistance to Lucio. Once the accused-appellant and Resurrecion were allowed to enter the premises, the accused-appellant immediately went inside the store and proceeded to the kitchen where Lucio was having dinner. In the meantime, Resurrecion engaged Victoria in a talk by pretending that he was buying cigarettes but he, too, forthwith went to the kitchen upon being told by Victoria that she had run out of the cigarette he was looking for. Thereafter, Victoria heard Lucio uttering softly, "What wrong have I committed"; and then she saw her bloodied husband being stabbed by the accused-appellant and Resurrecion. The absence of scuffle among Lucio, the accused-appellant, and Resurrecion substantiate the finding that the attack was swift and deliberate so that the unarmed and unsuspecting Lucio had no chance to resist or escape the blow from his assailants.

The intent to kill by the accused-appellant and Resurrecion was confirmed by the fact that they were armed with knives when they attacked Lucio who sustained a total of fifteen wounds. Despite the fact that Lucio was already bleeding from his wounds, he was able to run away from his assailants who pursued him. Resurrecion stood in front of Lucio while the accused-appellant held him at the back and both assailants continued to stab him. According to Dr. Pacificador, there were four fatal wounds inflicted on Lucio, i.e., wounds numbered 1, 4, 5, and 6 which penetrated his major organs.[77]

It must be pointed out that since treachery had qualified the crime to murder, the generic aggravating circumstance of abuse of superior strength is necessarily included in the former.[78]

The RTC and the CA were correct in not appreciating the mitigating circumstance of voluntary surrender.

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[77] TSN, 14 June 2011, p. 8.

[78] *People v. Bosito*, *supra* note 43 at 193.

For voluntary surrender to be appreciated as a mitigating circumstance, the following elements must be present, to wit: (1) the accused has not been actually arrested; (2) the accused surrenders himself to a person in authority or the latter's agent; and (3) the surrender is voluntary.[79] The essence of voluntary surrender is spontaneity and the intent of the accused to give himself up and submit himself to the authorities, either because he acknowledges his guilt or he wishes to save the authorities the trouble and expense that may be incurred for his search and capture.[80]

Records show that it was Reno who went to the Hamtic police station to request that they take custody of the accused-appellant who was then in his house.[81] Undoubtedly, when the police went to Reno's house at San Angel, San Jose, Antique, it was for the purpose of arresting the accused-appellant and not because he was surrendering to them voluntarily. Simply put, Reno merely facilitated the accused-appellant's arrest. Thus, without the elements of voluntary surrender, and where the clear reasons for the supposed surrender are the inevitability of arrest and the need to ensure his safety, the surrender is not spontaneous and therefore cannot be characterized as "voluntary surrender" to serve as a mitigating circumstance.[82]

The penalty to be imposed upon the accused-appellant

Pursuant to Art. 248 of the RPC, the penalty for murder is *reclusion perpetua* to death. Applying Art. 63(2)[83] of the RPC,

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[79] *People v. Placer*, 719 Phil. 268, 281-282 (2013).

[80] *Belbis, Jr. v. People*, *supra* note 42 at 724.

[81] TSN, 8 March 2011, p. 11.

[82] *Belbis, Jr. v. People*, *supra* note 42 at 724.

[83] 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:

the lesser of the two indivisible penalties, i.e., *reclusion perpetua*, shall be imposed upon the accused-appellant in view of the absence of any mitigating or aggravating circumstance that attended the killing of Lucio.

Following the jurisprudence laid down by the Court in *People v. Jugueta*,[84] accused-appellant shall be held liable for civil indemnity, moral damages, and exemplary damages in the amount of ₱75,000.00 each. It was also ruled in *Jugueta* that when no documentary evidence of burial or funeral expenses is presented in court, the amount of ₱50,000.00 as temperate damages shall be awarded. In this case, Victoria showed that she spent a total of ₱13,000.00 for the funeral expenses of Lucio. In conformity with the jurisprudence in *Ocampo v. People*,[85] the temperate damages of ₱50,000.00 shall likewise be awarded instead of the damages substantiated by the receipts. In addition, interest at the rate of six percent (6%) per annum shall be imposed on all monetary awards from date of finality of this decision until fully paid.[86]

On the loss of earning capacity, it is noted that Victoria failed to substantiate her claim that her husband was receiving a monthly income of ₱20,000.00. The Court reiterates its ruling that "for lost income due to death, there must be unbiased proof of the deceased' average income. Self-serving, hence unreliable statement, is not enough."[87]

WHEREFORE, the appeal is **DISMISSED**. The assailed Decision of the Court of Appeals in CA-G.R. CR-HC No. 01473 finding the accused-appellant Rezor Juanillo Manzano guilty

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1. x x x x x x x x x

2. When there are neither mitigating nor aggravating circumstances and there is no aggravating circumstance, the lesser penalty shall be applied.

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[84] *Supra* note 64.

[85] *Supra* note 35 at 435.

[86] *People v. Jugueta*, *supra* note 64 at 388.

[87] *People v. Sanchez*, 372 Phil. 129, 148 (1999).

beyond reasonable doubt of Murder and sentencing him to suffer the penalty of *reclusion perpetua* is **AFFIRMED** but with **MODIFICATION** as to the award of damages to the heirs of Lucio Silava, as follows: civil indemnity of ₱75,000.00; moral damages of ₱75,000.00; exemplary damages of ₱75,000.00; and temperate damages of ₱50,000.00. In addition, interest at the rate of six percent (6%) per annum shall be imposed on all monetary awards from the date of finality of this decision until fully paid.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 223998. March 5, 2018]

AMANDO JUAQUICO, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. CRIMINAL LAW; REVISED PENAL CODE; *ESTAFA*, ELEMENTS OF.— The elements of the offense are: (i) postdating or issuance of a check in payment of an obligation contracted at the time the check was issued; (ii) lack of or insufficiency of funds to cover the check; and (iii) the payee was not informed by the offender and the payee did not know that the offender had no funds or insufficient funds.

2. ID.; ID.; ID.; WHERE THERE WAS NO SHOWING THAT HEREIN PETITIONER HAD KNOWLEDGE OF THE INSUFFICIENCY OF FUNDS OF THE CHECKS HE ENDORSED TO PRIVATE COMPLAINANT AND THAT

THE LATTER WAS NOT DECEIVED TO ACCEPT THE CHECKS WARRANT PETITIONER'S ACQUITTAL.— [T]he Court held in *Ilagan v. People* that the prosecution must prove that the accused had guilty knowledge of the fact that the drawer of the check had no funds in the bank at the time the accused indorsed the same. In the present case, the prosecution failed to prove the same. There is no showing whatsoever that petitioner had knowledge of the insufficiency of funds of the check he endorsed to private complainant. Admittedly, the checks received by private complainant were checks issued and paid to petitioner by a certain Ham. Upon notice that the subject checks were dishonored, petitioner immediately searched for Ham but the same proved to be futile considering that the latter already left the country. Moreover, in *Lim v. People*, the Court reiterated that in the crime of *estafa* by postdating or issuing a bad check, deceit and damage are essential elements of the offense and have to be established with satisfactory proof to warrant conviction. Here, the 16-year business relationship and dealings between private complainant and petitioner coupled with the private complainant's practice of accepting checks of petitioner's clients, even if he did not personally know them, negates the petitioner's necessity of having to assure him that the subject checks would be sufficiently funded upon maturity before accepting the same. Clearly, private complainant was not deceived to accept the subject checks but did so out of a standard procedure which he and the petitioner developed over the years.

3. **ID.; ID.; ID.; ID.; LACK OF CRIMINAL LIABILITY FOR THE CRIME OF *ESTAFA* DOES NOT ABSOLVE PETITIONER FROM CIVIL LIABILITIES.—** The lack of criminal liability of petitioner, however, does not absolve him from his civil liabilities. Records show that the trial court, as affirmed by the CA, found that petitioner was able to obtain the amount of ₱329,000 from private complainant thru the checks which the former endorsed to the latter. Consequently, the Court finds petitioner civilly liable to private complainant in the amount of ₱329,000 plus legal interest at the rate of twelve percent (12%) *per annum* from October 17, 1991, and interest of six percent (6%) *per annum* from July 1, 2013 until its full satisfaction pursuant to *Nacar v. Gallery Frames, et al*., applying the Resolution No. 796 of the Bangko Sentral ng Pilipinas Monetary Board.

APPEARANCES OF COUNSEL

Public Attorney's Office for petitioner.
The Solicitor General for respondent.

D E C I S I O N

TIJAM, *J.*:

This is a Petition for Review on *Certiorari*[1] filed under Rule 45 of the Rules of Court assailing the Decision[2] dated October 14, 2015 and Resolution[3] dated March 14, 2016 of the Court of Appeals (CA) in CA-G.R. CR No. 36267, which upheld the Judgment[4] dated August 16, 2013 of the Regional Trial Court (RTC) of Manila, Branch 51 finding Amando Juaquico (petitioner) guilty for the crime of *Estafa* under Article 315 (2)(d) of the Revised Penal Code (RPC).

Facts of the Case

In 1991, petitioner went to Robert Chan's (private complainant) store in Juan Luna, Tondo, Manila and asked to exchange for cash the following checks all issued by Home Bankers Trust, namely: (i) Check No. 128033 dated October 3, 1991, for ₱9,000; (ii) Check No. 128038 dated October 4, 1991, for ₱30,000; (iii) Check No. 128040 dated October 10, 1991, for ₱20,000; (iv) Check No. 128039 dated October 11, 1991, for ₱30,000; (v) Check No. 128043 dated October 12, 1991, for ₱10,000; (vi) Check No. 128044 dated October 26, 1991, for ₱60,000; (vii) Check No. 128045 dated November 7, 1991, for ₱30,000; (viii) Check No. 128046 dated November 9, 1991, for ₱40,000; (ix) Check No. 147505 dated November

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[1] *Rollo*, pp. 13-29.

[2] Penned by Associate Justice Amy C. Lazaro-Javier, concurred in by Associate Justices Celia C. Librea-Leagogo and Melchor Q. C. Sadang; *id.* at 34-50.

[3] *Id.* at 52.

[4] Rendered by Presiding Judge Merianthe Pacita M. Zuraek; *id.* at 64-71.

20, 1991, for ₱50,000; and (x) Check No. 147504 dated November 24, 1991, for ₱50,000.[5]

Considering that private complainant knew petitioner, being both his customer and godson, he accommodated the latter's request. On their maturity dates, however, the checks were all returned due to insufficient funds.[6]

Immediately, private complainant sent a demand letter dated October 17, 1991 to petitioner. The same, however, was ignored by the petitioner. Consequently, private complainant was constrained to file the instant case.[7]

For his defense, petitioner averred that he is engaged in the embroidery business. Since 1977, he purchased the threads and other accessories for his business with private complainant. At first, he paid in cash, but starting 1980, he paid in the form of checks issued to him by his customers.[8]

According to him, he did not receive cash from petitioner in exchange of the checks indorsed to him. He explained that the subject checks were issued to him by his customer, Ho Myong Ham (Ham), a Korean lady,[9] which he subsequently indorsed as payment to private complainant for the materials he purchased from him. Upon learning that the checks bounced, he tried to search for the Korean, but his efforts remained futile.[10]

Ruling of the RTC

On August 16, 2013, the RTC rendered its Judgment wherein it convicted the petitioner for the crime charged. The dispositive portion thereof reads:

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[5] *Id*. at 36-37.

[6] *Id*. at 37.

[7] *Id*.

[8] *Id*. at 38.

[9] *Id*. at 66.

[10] *Id*. at 38-39.

WHEREFORE, having been found guilty beyond reasonable doubt of the crime of *Estafa* under Article 315 (2) (d) of the [RPC], and after applying the Indeterminate Sentence Law, [petitioner] is hereby sentenced to suffer the indeterminate penalty of imprisonment ranging from four (4) years and two (2) months of *prision correccional* as minimum to twenty (20) years of *reclusion temporal* as maximum and to pay [private complainant] the amount of three hundred twenty-nine thousand pesos (Php329,000.00) as actual damages, representing the amount of check that bounced.

SO ORDERED.[11]

The RTC held that the evidence presented by the prosecution was sufficient to prove the guilt of petitioner beyond reasonable doubt. It held that the act of petitioner in endorsing the subject checks to private complainant, in exchange of cash, and with the knowledge that the drawer had no sufficient funds in the bank, made him liable for estafa.[12]

Aggrieved, petitioner appealed the decision of the RTC to the CA.

Ruling of the CA

On October 14, 2015, the CA issued its Decision[13] wherein it denied the appeal of petitioner and accordingly affirmed the Judgment rendered by the RTC. The dispositive portion thereof reads:

ACCORDINGLY, the appeal is **DENIED** and the Decision dated August 16, 2013, **AFFIRMED**.

SO ORDERED.[14]

Hence, this Petition.

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[11] *Id*. at 70.

[12] *Id*.

[13] *Id*. at 34-50.

[14] *Id*. at 49.

Issue

Essentially, the issue in the present case is whether or not petitioner is guilty of the crime charged.

Ruling of the Court

The petition is meritorious.

Paragraph 2(d), Article 315 of the RPC provides:

> Art. 315. *Swindling (estafa).* Any person who shall defraud another by any of the means mentioned hereinbelow x x x:
>
> x x x x x x x x x
>
> 2. By means of any of the following false pretenses or fraudulent acts executed prior to or simultaneously with the commission of the fraud:
>
> x x x x x x x x x
>
> (d) By postdating a check, or issuing a check in payment of an obligation when the offender had no funds in the bank, or his funds deposited therein were not sufficient to cover the amount of the check. The failure of the drawer of the check to deposit the amount necessary to cover his check within three (3) days from receipt of notice from the bank and/or the payee or holder that said check has been dishonored for lack or insufficiency of funds shall be *prima facie* evidence of deceit constituting false pretense or fraudulent act. (As amended by R.A. 4885, approved June 17, 1967)

The elements of the offense are: (i) postdating or issuance of a check in payment of an obligation contracted at the time the check was issued; (ii) lack of or insufficiency of funds to cover the check; and (iii) the payee was not informed by the offender and the payee did not know that the offender had no funds or insufficient funds.

As to the third element, the Court held in *Ilagan v. People*[15] that the prosecution must prove that the accused had guilty

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[15] 550 Phil. 791 (2007).

knowledge of the fact that the drawer of the check had no funds in the bank at the time the accused indorsed the same.

In the present case, the prosecution failed to prove the same. There is no showing whatsoever that petitioner had knowledge of the insufficiency of funds of the check he endorsed to private complainant. Admittedly, the checks received by private complainant were checks issued and paid to petitioner by a certain Ham. Upon notice that the subject checks were dishonored, petitioner immediately searched for Ham but the same proved to be futile considering that the latter already left the country.

Moreover, in *Lim v. People*,[16] the Court reiterated that in the crime of *estafa* by postdating or issuing a bad check, deceit and damage are essential elements of the offense and have to be established with satisfactory proof to warrant conviction.

Here, the 16-year business relationship and dealings between private complainant and petitioner coupled with the private complainant's practice of accepting checks of petitioner's clients, even if he did not personally know them, negates the petitioner's necessity of having to assure him that the subject checks would be sufficiently funded upon maturity before accepting the same. Clearly, private complainant was not deceived to accept the subject checks but did so out of a standard procedure which he and the petitioner developed over the years.

The lack of criminal liability of petitioner, however, does not absolve him from his civil liabilities. Records show that the trial court, as affirmed by the CA, found that petitioner was able to obtain the amount of ₱329,000 from private complainant thru the checks which the former endorsed to the latter.[17] Consequently, the Court finds petitioner civilly liable to private complainant in the amount of ₱329,000 plus legal interest at the rate of twelve percent (12%) *per annum* from October 17, 1991, and interest of six percent (6%) *per annum*

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[16] 748 Phil. 649 (2014).

[17] *Rollo*, p. 70.

from July 1, 2013 until its full satisfaction pursuant to *Nacar v. Gallery Frames, et al.*,[18] applying the Resolution No. 796 of the Bangko Sentral ng Pilipinas Monetary Board.[19]

WHEREFORE, the challenged decision of the Court of Appeals convicting petitioner Amando Juaquico is **REVERSED and SET ASIDE**. Petitioner is thus **ACQUITTED** of the crime charged on the ground of reasonable doubt, but **ORDERS** him to pay private complainant Robert Chan the amount of ₱329,000 as actual damages, plus legal interest at the rate of twelve percent (12%) *per annum* from October 17, 1991, and interest of six percent (6%) *per annum* from July 1, 2013 until its full satisfaction.

SO ORDERED.

Leonardo-de Castro[*] (*Acting Chairperson*), *del Castillo,* and *Jardeleza, JJ.,* concur.

Sereno, C.J., on leave.

EN BANC

[A.M. No. 15-11-01-SC. March 6, 2018]

RE: APPLICATION FOR OPTIONAL RETIREMENT UNDER REPUBLIC ACT NO. 910, AS AMENDED BY REPUBLIC ACT NO. 5095 AND REPUBLIC ACT NO. 9946, OF ASSOCIATE JUSTICE MARTIN S. VILLARAMA, JR.

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[18] 716 Phil. 267 (2013).

[19] *People v. Villanueva*, 755 Phil. 28, 40 (2015).

[*] Designated Acting Chairperson, First Division per Special Order No. 2540 dated February 28, 2018.

Re: Application for Optional Retirement under R.A. No. 910 of Associate Justice Martin Villarama, Jr.

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; BATAS PAMBANSA BILANG 129 (BP 129) *VIS-À-VIS* A.C. NO. 58-2003; LONGEVITY PAY GRANTED TO JUSTICES AND JUDGES IN THE JUDICIARY; RATIONALE, DISCUSSED; THE AMOUNT IS EQUIVALENT TO FIVE PERCENT (5%) OF THE MONTHLY BASIC PAY AND IT INCREASES BY AN INCREMENT OF 5% FOR EVERY ADDITIONAL CYCLE OF FIVE (5) YEARS.— A.C. No. 58-2003 is an implementation of Section 42 of B.P. Blg. 129, or the basic provision on longevity pay granted by law to justices and judges in the judiciary. Section 42 of B.P. Blg. 129 is intended to recompense justices and judges for each five-year period of continuous, efficient, and meritorious service rendered in the Judiciary. The purpose of the law is to reward long service, from the lowest to the highest court in the land. A plain reading of Section 42 of B.P. Blg. 129 readily reveals that the longevity pay is given the justice or judge on a monthly basis together with his or her basic pay, provided that the justice or judge has completed at least five (5) years of continuous, efficient, and meritorious service in the Judiciary. The amount is equivalent to five percent (5%) of the monthly basic pay, and it increases by an increment of 5% for every additional cycle of five (5) years of continuous, efficient, and meritorious service. It is given while the justice or judge is still in active service *and* becomes part of the monthly pension benefit upon his or her retirement, or survivorship benefit upon his or her death after retirement.

2. ID.; ID.; ID.; FOR PURPOSES OF COMPUTING THE LONGEVITY PAY, THE TACKING OF LEAVE CREDITS TO THE LENGTH OF JUDICIAL SERVICE RENDERED BY QUALIFIED JUSTICES AND JUDGES SHALL APPLY TO COVER BOTH THE COMPULSORY AND OPTIONAL RETIREES.— Upon deeper reflection, no discernible reason exists to deny optional retirees the tacking of leave credits for purposes of computing their longevity pay. If the rationale of such longevity pay is to reward loyalty to the government, then it makes no sense to limit the tacking of earned leave credits to the service of compulsory retirees only. x x x When juxtaposed with Section 42 of B.P. Blg. 129, the very same law sought to

be implemented by A.C. No. 58-2003, it becomes evident that limiting its scope only to justices and judges who retire compulsorily cannot stand. As previously discussed, the longevity pay is paid to justices or judges who had proven their loyalty to the judiciary, regardless of the manner by which they retire. Thus, for purposes of computing longevity pay, the tacking of leave credits to the length of judicial service rendered by qualified justices and judges should be applied to optional retirees as well. What comes to the fore in our discussion is that allowing the tacking of leave credits only to compulsory retirees is simply wrong. To avoid this error, A.C. No. 58-2003, regardless of its title and the contents of its dispositive portion, should be read to likewise cover justices and judges who retire optionally. We believe it a better policy to consider A.C. No. 58-2003 as complete in its scope, effectively covering both compulsory and optional retirees. Not only is it consistent with the moral fiber of B.P. Blg. 129, it makes unnecessary the issuance of a separate circular to cover optional retirees only.

3. ID.; ID.; ID.; THE APPLICATION OF A.C. NO. 58-2003 TO JUSTICES AND JUDGES WHO OPTIONALLY RETIRE NEED NOT BE ON *PRO HAC VICE* BASIS BUT ON DUE CONSIDERATION OF THE MANIFEST INTENT OF THE LAW TO MAKE THE LONGEVITY PAY AVAILABLE TO ALL TYPES OF RETIREES; HENCE, MEMBER OF THE JUDICIARY WHO ARE SIMILARLY SITUATED CAN FIND DOCTRINAL VALUE IN THIS DECISION.— [T]he idea that the tacking of leave credits, as authorized by A.C. No. 58-2003, is for compulsory retirees only is erroneous. By consequence, the inference that A.C. No. 58-2003 may be applied to optional retirees *pro hac vice,* proceeding as it does from a wrong premise, must be rejected. The application of A.C. No. 58-2003 to justices and judges who optionally retire need not be on *pro hac vice* basis but on due consideration of the manifest intent of the law to make the longevity pay available to all types of retirees. x x x It bears repeating that despite Justice Villarama's plea for a *pro hac vice* ruling, what we have forged today henceforth lays a precedent. Members of the judiciary who are similarly situated can find doctrinal value in this decision.

4. ID.; ID.; ID.; THE COMPUTATION OF LONGEVITY PAY SHALL INCLUDE THE FRACTIONAL PERCENTAGE

OF THE UNEXPIRED FIVE-YEAR PERIOD.— We uphold the computation of the longevity pay to include the fractional percentage of the unexpired five-year period. x x x We reiterate our reason for including any fraction of the five-year period in computing the longevity pay of retiring Justices and Judges. When the Court approved A.C. No. 58-2003, it was with due consideration of Justice Bellosillo's observation that despite the predilection to extend one's service in the judiciary in order to complete the five-year period, a retiring justice or judge is precluded from doing so because of the constitutional limitation to his term of office. In line with the liberal approach, we adopted Justice Bellosillo's viewpoint which has since been the norm. We hasten to add that the fractional portion of the five-year period is actual service rendered, a fact that cannot be reversed. It would be a mockery of the liberal approach in the treatment of retirement laws for government personnel if such fractional portion is disregarded to the detriment of the retiring justice or judge.

5. ID.; ID.; ID.; ID.; ROUNDING OFF THE FRACTIONAL PERIOD; THE COURT CONSIDERED A FRACTION OF AT LEAST TWO (2) YEARS AND SIX (6) MONTHS AS ONE WHOLE 5-YEAR CYCLE; BELOW SUCH THRESHOLD, THE COMPUTATION OF ADDITIONAL LONGEVITY PAY SHALL BE AN ADDITIONAL ONE PERCENT (1%) FOR EVERY YEAR OF SERVICE IN THE JUDICIARY.— We are fully aware that the fractional portion of the unexpired five-year period immediately preceding retirement is the direct consequence of the tacking of leave credits to the judicial service of every retired justice or judge. However, we also recognize that Section 42 of B.P. Blg. 129 was crafted in such a way as to grant a full 5% adjustment of the longevity pay for every cycle of five years of judicial service. All attempts must be made in order to realize the granting of a full 5% as adjustment in the computation of the longevity pay. Thus, in order to align the tacking of leave credits under A.C. No. 58-2003 with the full 5% adjustment for every five-year expired period specified in Section 42 of B.P. Blg. 129, and in pursuance of our rule-making power under Section 10 of Rule XVI of the Omnibus Rules Implementing Book V of Executive Order No. 292, we deem it appropriate to consider a fraction of at least two (2) years and six (6) months as one whole 5-year cycle. In this instance, the additional percentage

of monthly basic pay which is added to the monthly pension pay of a retired justice or judge as longevity pay is always divisible by five (5). For those whose service (inclusive of the tacked-in leave credits) during the unexpired 5-year period immediately preceding retirement is below the threshold above, the adjustment of the computation of additional longevity pay shall be an additional one percent (1%) for every year of service in the judiciary.

6. ID.; ID.; ID.; ID.; SERVICE AS BAR EXAMINER BY AN INCUMBENT MEMBER OF THE JUDICIARY IS EXCLUDED IN COMPUTING LONGEVITY PAY; REASON.— The reason for denying an incumbent member of the judiciary the inclusion of his or her service as bar examiner in the computation of the longevity pay is simple. At the time of his or her appointment as bar examiner, an incumbent justice or judge is already concurrently serving in the judiciary. The regular functions of the justice or judge and the service performed as bar examiner cannot appropriately be considered as two separable and finite judicial services ***if they supposedly coincide at the same time or period***. It would be defying logic and sensible reasoning if one is to be tacked to the other, in effect extending the length of judicial service, ***even if no additional time was really spent in the performance of the service as bar examiner outside of the time or period actually served as justice or judge***. Not even the liberal approach in the treatment of retirement laws could save the argument for tacking such service as bar examiner in favor of an incumbent justice or judge. Thus, for purposes of computing longevity pay, we find no justifiable reason in tacking the service as bar examiner to the judicial service of one who is already a member of the judiciary. Accordingly, Justice Villarama's service as bar examiner could not be credited in the computation of his longevity pay.

R E S O L U T I O N

MARTIRES, *J.*:

The present matter concerns the computation of the longevity pay of Associate Justice Martin S. Villarama, Jr. (*Justice Villarama*), a former member of this Court.

Previously, Justice Villarama, in a letter[1] dated 2 November 2015, applied for optional retirement under Republic Act (*R.A.*) No. 910, as amended by R.A. No. 5095 and R.A. No. 9946, to be effective on 15 January 2016. In a Resolution[2] dated 10 November 2015, the Court granted Justice Villarama's request for optional retirement and approved the payment of Justice Villarama's retirement gratuity and terminal leave benefits, exclusive of the longevity pay component, pending the resolution of his requests for adjustments to his longevity.

We are tasked to determine the amount of longevity pay due to Justice Villarama.

THE FACTS

Antecedents

On 14 August 1981, *Batas Pambansa Bilang* 129 (*B.P. Blg. 129*), known as "The Judiciary Reorganization Act of 1980," became effective and, by virtue thereof, created or established the Court of Appeals, Regional Trial Courts, Metropolitan Trial Courts, Municipal Trial Courts, and Municipal Circuit Trial Courts. Section 42 of the law granted to justices and judges of the said courts a monthly longevity pay equivalent to 5% of the monthly basic pay for each five-year period of continuous, efficient, and meritorious service in the judiciary.

Since the Supreme Court, the Sandiganbayan, and the Court of Tax Appeals were not covered by B.P. Blg. 129, the justices and judges of these courts were not entitled to the monthly longevity pay provided in Section 42 of B.P. Blg. 129. Presidential Decree No. 1927, approved on 2 May 1985, corrected the gap.

On 25 September 2003, Justice Josue N. Bellosillo (*Justice Bellosillo*), a former member of this Court who was then due to retire compulsorily, requested that his earned leave credits be tacked to his judicial service in order to increase his longevity

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[1] *Rollo*, (no proper pagination); letter of Justice Villarama, pp. 1-4.

[2] *Id.* at (no proper pagination).

pay. Justice Bellosillo's letter-request was docketed as A.M. No. 03-9-20-SC. He wrote:

> In the past, the Court had allowed the tacking of earned leave credits to government service in order to enable retiring members of the judiciary to complete the age/service requirement under R.A. No. 910 or to increase their longevity pay for purposes of computing their retirement benefits.
>
> Invoking past judicial precedents, may I request that my earned leave credits be tacked to my judicial service to increase my longevity pay.
>
> Tacking my earned leave credits to my judicial service I would have served, upon my retirement, for thirty-seven (37) years, six (6) months and twenty (20) days, that would entitle me to additional longevity pay in accordance with B.P. Blg. 129.
>
> While Sec. 42 provides for entitlement to longevity pay for every five (5)-year period of judicial service, fairness and justice dictate a liberal construction of the provision if the member of the judiciary concerned is retiring compulsorily and therefore is left with no option, unlike one who retires optionally, to complete the five (5)-year period requirement in order to be entitled to the whole five percent (5%) additional longevity pay.
>
> In other words, even if he opts to extend his stay to complete at least another five (5)-year period, he cannot do so because of the constitutional limitation to his term of office.[3] (emphasis omitted)

In its resolution in A.M. No. 03-9-20-SC, the Court granted the request of Justice Bellosillo. The approved resolution became the basis of Administrative Circular (*A.C.*) No. 58-2003 which this Court approved on 11 November 2003. Entitled "*ALLOWING THE TACKING OF EARNED LEAVE CREDITS IN THE COMPUTATION OF LONGEVITY PAY UPON* ***COMPULSORY*** *RETIREMENT OF JUSTICES AND JUDGES*," the circular reads:

> WHEREAS, The Court has studied proposals to allow the tacking of earned leave credits to the length of judicial service for computation of the longevity pay.

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[3] *Id.* at (no proper pagination); memorandum of the Special Committee on Retirement Benefits and Civil Service Benefits dated 12 January 2017, p. 4.

WHEREAS, Section 42 of Batas Pambansa (BP) 129 provides for a monthly longevity pay equivalent to 5% of the monthly basic pay for every five years of service rendered in the judiciary;

WHEREAS, it is true that vacation and sick leave credits earned during the period of employment are, by their nature and purpose, generally enjoyed during employment; however, the law does not preclude the accumulation of these leave credits, not to be paid while one is working, but to be reserved for senior age;

WHEREAS, retirement laws are liberally interpreted in favor of the retiree because their intention is to provide for his sustenance, and hopefully even comfort, when he no longer has the stamina to continue earning his livelihood and the liberal approach aims to achieve the humanitarian purposes of the law in order that the efficiency, security, and well-being of government personnel may be enhanced;

WHEREAS, laws pertaining to retiring government personnel should be liberally construed to benefit retiring personnel, following an interpretation that rightly expresses the nation's gratitude towards the women and men who have tirelessly and faithfully served the government;

WHEREAS, earned leave credits, computed in accordance with Section 40, Rule XVI of the Omnibus Rules on Leave, should accordingly be allowed to increase the longevity pay of Justices and Judges reaching the age of compulsory retirement;

NOW, THEREFORE, the COURT RESOLVED, as it hereby RESOLVES, that earned leave credits shall be allowed to be tacked to the length of judicial service for the purpose of increasing the longevity pay of Justices and Judges who reach the age of ***compulsory retirement***. The computation should also include the additional percentage of longevity pay that corresponds to any fraction of a five-year period in the total number of years of continuous, efficient and meritorious service rendered, considering that the retiree would no longer be able to complete the period because of his ***compulsory retirement***.[4] (emphasis supplied)

Gleaned from the text of A.C. No. 58-2003, the benefits provided therein seemed to apply only to justices and judges who retire compulsorily.

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[4] *Rollo*, (no proper pagination); resolution dated 11 November 2003.

Perhaps cognizant of the limitation, Justice Ma. Alicia Austria-Martinez (*Justice Austria-Martinez*), also a former member of this Court who was to retire ***optionally***, requested that the tacking of leave credits under A.C. No. 58-2003 be applied in her favor. The Court, in a resolution dated 24 February 2009, approved the request of Justice Austria-Martinez but with a qualification that the ruling be only ***pro hac vice***.

The letter-request of Justice Villarama

Like Justice Austria-Martinez, Justice Villarama also applied for optional retirement. In his 2 November 2015 letter, Justice Villarama requests that the benefits of A.C. No. 58-2003 be applied in computing his longevity pay in view of the following considerations:

1. He would have completed 28 years, 2 months and 8 days of judicial service by 6 January 2016, lacking only 2 months and 29 days to reach the mandatory age of 70 for compulsory retirement from the judiciary on 14 April 2016;
2. In its resolution adopted on 24 February 2009, the Court considered Administrative Circular No. 58-2003 applicable, *pro hac vice*, to Justice Ma. Alicia Austria-Martinez who optionally retired on 30 April 2009 and whose compulsory retirement date was on December 19, 2010 or 1 year and 8 months short of the mandatory date of compulsory retirement;
3. In its Resolution adopted on 3 February 2009, the Court allowed the service as bar examiner be credited as part of government service and be tacked in the computation of the longevity pay upon compulsory or optional retirement.[5]

Justice Villarama prays that, in the light of his attendant circumstances, A.C. No. 58-2003 should be applied to him, *pro hac vice*. He also prays that his earned leave credits and services as Bar Examiner in 2004 be tacked to the length of his judicial service for purposes of computing his longevity pay.

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[5] *Id*. at (no proper pagination); letter of Justice Villarama, p. 2.

We referred the matter to the Special Committee on Retirement and Civil Service Benefits (*the committee*) for its recommendation.

The recommendation of the committee

Based on its 12 January 2017 memorandum, the committee recommended the denial of the requests of Justice Villarama.

The committee's recommendation is based on the consideration that A.C. No. 58-2003 was intended to apply only to those who retire compulsorily. Further, the committee believes that the *pro hac vice* ruling in the case of Justice Austria-Martinez cannot be considered a precedent to be applied in subsequent cases as in the case of Justice Villarama. The committee also adds that neither tacking of leave credits nor fractional longevity pay finds support in Section 42 of B.P. Blg. 129; thus, it recommends that A.C. No. 58-2003 be abandoned.

Anent Justice Villarama's service as bar examiner, the committee opines that it cannot also be tacked to his judicial service because at the time Justice Villarama served as such, he was an incumbent member of the Judiciary. A.M. No. 08-12-7-SC[6] adverted to by Justice Villarama, as the committee puts it, explicitly covers only service prior to appointment to the Judiciary.

THE ISSUES

At the outset, we note the letter-request of Justice Villarama seeking a *pro hac vice* ruling. However, in order to put to rest this lingering issue, our disposition of the present matter should not bind Justice Villarama only but include other members of the judiciary who may be similarly situated in the present or will be so in the future.

Thus, the issues may be couched in broad terms to cast a general interpretative effect for the guidance of the Bar and the bench in future cases, *viz*:

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[6] *Re: Request of Associate Justice Dante O. Tinga that his service as Examiner in Mercantile Law be Credited as Part of his Government Service*, 3 February 2009.

I. Whether the benefits under A.C. No. 58-2003 may be applied to optional retirees, particularly that: (a) earned leave credits are tacked to judicial service, thereby increasing longevity pay, and (b) the fraction of a five-year period is included in computing longevity pay; and

II. Whether the service rendered by a member of the judiciary as bar examiner is credited as part of judicial service, thereby increasing longevity pay.

OUR RULING

After careful deliberation, the Court rules to grant Justice Villarama's request to tack his earned leave credits, but not his services as Bar Examiner in 2004, to his years in judicial service for purposes of computing his longevity pay. The fraction of the five-year period immediately prior to Justice Villarama's optional retirement shall also be included in the computation.

On the application of A.C. No. 58-2003

The committee insists that A.C. No. 58-2003 should not be construed liberally to extend its benefits to those who retire optionally. It explains that the circular was issued, through A.M. No. 03-9-20-SC,[7] in response to the request of Justice Bellosillo to adjust his longevity pay by tacking his earned leave credits to government service. Such issuance was already a liberal interpretation of Section 42 of B.P. Blg. 129 and must, accordingly, no longer be given further liberal interpretation without undermining the proscription against judicial legislation. The committee lengthily quotes this Court's discussion in *Re*: *Letter of Court of Appeals Justice Vicente S.E. Veloso for Entitlement to Longevity Pay for his Services as Commission Member III of the National Labor Relations Commission*[8] *(Veloso case).*

We are not persuaded. It is unnecessary even to treat whatever beclouds the committee's mind in suggesting that the Court is

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[7] Dated 11 November 2003.

[8] 760 Phil. 62 (2015).

crossing the realm of judicial legislation when it (the Court) topped the exercise of liberal interpretation in Sec. 42 of B.P. Blg. 129 with another liberal interpretation, as was this Court's fear in *Veloso*. Incidentally, we would be amiss not to mention that whatever result was reached by this Court in **Veloso** was later reversed in our 26 July 2016 resolution on the motion for reconsideration in A.M. No. 12-8-07-CA.[9]

A.C. No. 58-2003 is an implementation of Section 42 of B.P. Blg. 129, or the basic provision on longevity pay granted by law to justices and judges in the judiciary.

Section 42 of B.P. Blg. 129 is intended to recompense justices and judges for each five-year period of continuous, efficient, and meritorious service rendered in the Judiciary.[10] The purpose of the law is to reward long service, from the lowest to the highest court in the land.[11]

A plain reading of Section 42 of B.P. Blg. 129 readily reveals that the longevity pay is given the justice or judge on a monthly basis together with his or her basic pay, provided that the justice or judge has completed at least five (5) years of continuous, efficient, and meritorious service in the Judiciary. The amount is equivalent to five percent (5%) of the monthly basic pay, and it increases by an increment of 5% for every additional cycle of five (5) years of continuous, efficient, and meritorious service. It is given while the justice or judge is still in active service *and* becomes part of the monthly pension benefit upon his or her retirement, or survivorship benefit upon his or her death after retirement.

In granting the longevity pay to the justice or judge still in active service, taking into consideration its salutary purpose,

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[9] *Re: Letter of Court of Appeals Justice Vicente S.E. Veloso for Entitlement to Longevity Pay for his Services as Commission Member III of the National Labor Relations Commission*, A.M. No. 12-8-07-CA, 26 July 2016, 798 SCRA 179.

[10] *In Re: Request of Justice Bernardo P. Pardo for Adjustment of his Longevity Pay,* 547 Phil. 170, 173-174 (2007).

[11] *Id*. at 174.

the law did not qualify whether the recipient is to subsequently retire compulsorily or optionally. Upon his or her retirement, whether compulsory or optional, the justice or judge continues to enjoy the longevity pay by receiving the same together with the monthly pension benefit. Thus, if a justice or judge has rendered long service in the judiciary, he or she must be rewarded even if the retirement is optional; and the purpose of the law is served no more than it would be in the case of one who is retired compulsorily. Hence, there is no rhyme or reason why the benevolent objective of the law should be limited to justices or judges who retire compulsorily.

On the other hand, A.C. No. 58-2003 was issued by this Court pursuant to its constitutional power to interpret laws and, as such, has the force and effect of law. In crafting the circular, the Court duly considered the long-standing policy of according liberal construction to retirement laws covering government personnel. The liberal approach in construing retirement laws, which are enacted as social legislations, is necessary in order to achieve the humanitarian considerations of promoting the physical and mental well-being of public servants.[12] Given this legal milieu, the Court allowed the tacking of earned leave credits to the length of judicial service in order to increase the longevity pay of justices and judges. Thus, the wisdom behind the issuance of A.C. No. 58-2003 is to ensure the comfort and security of ***retired*** justices and judges who had tirelessly and faithfully served the government.[13]

As noted above, A.C. No. 58-2003 was issued as the Court's response to the letter-request of Justice Bellosillo who sought the adjustment of his longevity pay by tacking his earned leave credits to the length of his judicial service *and* at the same time recognizing the fractional portion of the unexpired 5-year period of his service immediately prior to his ***compulsory***

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[12] See *Chua v. Civil Service Commission*, 282 Phil. 970, 989 (1992) citing Joint CSC-DBM Circular No. 1, series of 1991, 27 June 1991.

[13] *Re: Computation of Longevity Pay Upon Compulsory Retirement*, 561 Phil. 491, 499 (2007).

retirement. In circularizing the tacking of earned leave credits and recognition of fractional longevity pay, however, the Court styled A.C. No. 58-2003 as "*ALLOWING THE TACKING OF EARNED LEAVE CREDITS IN THE COMPUTATION OF LONGEVITY PAY UPON* ***COMPULSORY*** *RETIREMENT OF JUSTICES AND JUDGES*." Under the circular, all those who may be similarly situated with Justice Bellosillo can then be entitled to its benefits.

The seeming express limitation of the benefits of A.C. No. 58-2003 only to justices and judges who retire compulsorily apparently developed the view that the circular's benevolent provisions are beyond the reach of those who retire optionally. This is the same view advanced by the committee when it mentioned in its memorandum that on the face and articulated rationale of A.C. No. 58-2003, it applies to and is intended only for those who retire compulsorily.

Upon deeper reflection, no discernible reason exists to deny optional retirees the tacking of leave credits for purposes of computing their longevity pay. If the rationale of such longevity pay is to reward loyalty to the government, then it makes no sense to limit the tacking of earned leave credits to the service of compulsory retirees only. The question therefore arises:

Are members of the judiciary who optionally retire necessarily considered less loyal, and therefore less deserving, than those who compulsorily retire?

An affirmative answer can hardly be justified. Otherwise, an absurd situation ensues when a justice or judge who had rendered, say, only 7 years of judicial service but is compulsorily retired because he entered the judiciary at a late stage in his professional career, is allowed to tack earned but relatively few leave credits to his judicial service thus gaining from an increase in his longevity pay; as compared to another justice or judge, who had rendered 30 long years of service in the judiciary and had opted to retire before reaching the compulsory retirement age, yet is precluded from tacking a possibly substantial amount of earned leave credits, and is thus denied the reward intended for long and loyal service to the public.

When juxtaposed with Section 42 of B.P. Blg. 129, the very same law sought to be implemented by A.C. No. 58-2003, it becomes evident that limiting its scope only to justices and judges who retire compulsorily cannot stand. As previously discussed, the longevity pay is paid to justices or judges who had proven their loyalty to the judiciary, regardless of the manner by which they retire.

Thus, for purposes of computing longevity pay, the tacking of leave credits to the length of judicial service rendered by qualified justices and judges should be applied to optional retirees as well.

What comes to the fore in our discussion is that allowing the tacking of leave credits only to compulsory retirees is simply wrong. To avoid this error, A.C. No. 58-2003, regardless of its title and the contents of its dispositive portion, should be read to likewise cover justices and judges who retire optionally.

We believe it a better policy to consider A.C. No. 58-2003 as complete in its scope, effectively covering both compulsory and optional retirees. Not only is it consistent with the moral fiber of B.P. Blg. 129, it makes unnecessary the issuance of a separate circular to cover optional retirees only.

On the pro hac vice ruling in Austria-Martinez

It is unfortunate that the ruling of this Court in the case of Justice Austria-Martinez was qualified as *pro hac vice*. As discussed herein, this qualification could have been avoided and the result could have been just as persuasive.

To recall, Justice Villarama cites the ruling in *Austria-Martinez* wherein the Court, taking cognizance of the special circumstances of Justice Austria-Martinez, granted the magistrate's request to tack her earned leave credits to her judicial service even though she had not reached the compulsory retirement age. Justice Villarama, an optional retiree, also points to special circumstances that, according to him, justify a *pro hac vice* application of A.C. No. 58-2003.

The committee asserts that Justice Villarama may not benefit from the *pro hac vice* ruling in *Austria-Martinez*. As the committee has pointed out, the said ruling does not in any way detract from the prevailing ruling that A.C. No. 58-2003 applies only to those who retire compulsorily, nor should it be considered as an exception to nor a departure from it.

Concededly, the Court had, in not a few occasions, disposed of a matter before it on a *pro hac vice* basis.

From a survey of these cases, we have invariably imputed to the term *pro hac vice* the meaning of "**for this one particular occasion**."[14] We have also said that a ruling expressly qualified as such cannot be relied upon as a precedent to govern other cases.[15]

Yet, a *pro hac vice* ruling in favor of Justice Villarama in this case is decidedly pointless. As has already been presented, justices and judges who retire optionally are also entitled to the benefit of tacking their earned leave credits to their judicial service in order to increase the longevity pay due them.

To reiterate, the idea that the tacking of leave credits, as authorized by A.C. No. 58-2003, is for compulsory retirees only is erroneous. By consequence, the inference that A.C. No. 58-2003 may be applied to optional retirees *pro hac vice*, proceeding as it does from a wrong premise, must be rejected. The application of A.C. No. 58-2003 to justices and judges who optionally retire need not be on *pro hac vice* basis but on due consideration of the manifest intent of the law to make the longevity pay available to all types of retirees.

Thus, Justice Villarama's earned leave credits should be included in the computation of his longevity pay upon his optional retirement.

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[14] *Partido Ng Manggagawa (PM) v. Commission on Elections*, 519 Phil. 644, 671 (2006).

[15] *Tadeja v. People*, 704 Phil. 260, 277 (2013).

On the submission that the tacking of leave credits to judicial service has no legal basis

In essence, the committee proposes that when Section 42 of B.P. Blg. 129 states that the grant of longevity pay is based on *continuous, efficient*, and *meritorious service* rendered in the judiciary, the law means **actual** service. Unused but earned leave credits, according to the committee, refer to commutable terminal leave. Following the prevailing treatment of terminal leave as excluded from "service," unused leave credits cannot therefore be tacked to lengthen one's actual years of service.

Such view is not novel.

In *Re: Computation of Longevity Pay Upon Compulsory Retirement*,[16] the question on whether the continuous, efficient, and meritorious service contemplated by A.C. No. 58-2003 is "actual" or not was squarely raised. The incident stemmed from the refusal by the Department of Budget and Management (*DBM*) to release Justice Bellosillo's longevity pay, computed in accordance with A.C. No. 58-2003. It appeared that the DBM's negative response to the application of the subject circular was rooted in its view that Section 42 of B.P. Blg. 129 covers actual service only. Then Secretary Emilia T. Boncodin (Secretary Boncodin) of the DBM expressed her observations on the tacking of leave credits in a letter, dated 6 May 2004, that was conveyed to the Court. To Secretary Boncodin, unused leave credit is not actual service and, thus, cannot be tacked to the length of service in computing longevity pay.

In no uncertain terms, the Court rejected the view of Secretary Boncodin. The Court emphasized that it had already sufficiently settled its position on the matter in the resolution of Justice Bellosillo's request. Accordingly, A.C. No. 58-2003 explicitly dictates the tacking of earned leave credits.

On the payment of fractional longevity pay

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[16] *Supra* note 13 at 497.

We uphold the computation of the longevity pay to include the fractional percentage of the unexpired five-year period.

The position taken by the Committee against the payment of fractional longevity pay in favor of retired justices and judges was also taken up in *Re: Computation of Longevity Pay Upon Compulsory Retirement*. Secretary Boncodin also held the view that the payment of longevity pay is conditioned on the full expiration of the five-year period; it cannot be granted before the expiration of the five-year period.

Such reasoning failed to convince us then; it fails to persuade us now.

We reiterate our reason for including any fraction of the five-year period in computing the longevity pay of retiring Justices and Judges. When the Court approved A.C. No. 58-2003, it was with due consideration of Justice Bellosillo's observation that despite the predilection to extend one's service in the judiciary in order to complete the five-year period, a retiring justice or judge is precluded from doing so because of the constitutional limitation to his term of office. In line with the liberal approach, we adopted Justice Bellosillo's viewpoint which has since been the norm.

We hasten to add that the fractional portion of the five-year period is actual service rendered, a fact that cannot be reversed. It would be a mockery of the liberal approach in the treatment of retirement laws for government personnel if such fractional portion is disregarded to the detriment of the retiring justice or judge. Going back to the rationale behind the grant of longevity pay, it cannot be gainsaid that service during such fractional portion of the five-year period is an eloquent manifestation as well of the justice's or judge's loyalty to the judiciary as the service rendered during the previously completed five-year periods.

Rounding off the fractional period

We are fully aware that the fractional portion of the unexpired five- year period immediately preceding retirement is the direct

consequence of the tacking of leave credits to the judicial service of every retired justice or judge. However, we also recognize that Section 42 of B.P. Blg. 129 was crafted in such a way as to grant a full 5% adjustment of the longevity pay for every cycle of five years of judicial service. All attempts must be made in order to realize the granting of a full 5% as adjustment in the computation of the longevity pay. Thus, in order to align the tacking of leave credits under A.C. No. 58-2003 with the full 5% adjustment for every five-year expired period specified in Section 42 of B.P. Blg. 129, and in pursuance of our rule-making power under Section 10 of Rule XVI of the Omnibus Rules Implementing Book V of Executive Order No. 292,[17] we deem it appropriate to consider a fraction of at least two (2) years and six (6) months as one whole 5-year cycle. In this instance, the additional percentage of monthly basic pay which is added to the monthly pension pay of a retired justice or judge as longevity pay is always divisible by five (5).

For those whose service (inclusive of the tacked-in leave credits) during the unexpired 5-year period immediately

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[17] Section 10. *Leave Credits of Officials and Employees Covered by Special Leave Law*.— The leave credits of the following officials and employees are covered by special laws:

(a) Justices of the Supreme Court, Court of Appeals and Sandiganbayan;

(b) Judges of Regional Trial Courts, Municipal Trial Courts, Metropolitan Trial Courts, Court of Tax Appeals and Shari'a Circuit Court; and Shari'a District Court;

(c) Heads of the Executive Departments, Heads of Departments, Undersecretaries;

(d) Chairmen and Commissioners of Constitutional Commissions;

(e) Filipino officers and employees in the Foreign Service;

(f) Faculty members of state universities and colleges including those teaching in universities and colleges created pursuant to ordinance of the LGUs;and

(g) Other officials and employees covered by special laws.

Hence, Justices and other government officials and employees covered by special laws should promulgate their own implementing rules relative thereto. Said implementing rules should be submitted to the Civil Service Commission for record purposes.

preceding retirement is below the threshold above, the adjustment of the computation of additional longevity pay shall be an additional one percent (1%) for every year of service in the judiciary.

Thus, in the case of Justice Villarama whose total judicial service is 28 years, 2 months, and 8 days, and whose total leave credits (1,386 days) is equivalent to 5 years and 3 months, his judicial service for purposes of the longevity pay is 33 years, 5 months and 8 days. The fraction of 3 years, 5 months and 8 days in the unexpired 5-year period immediately preceding Justice Villarama's optional retirement is well above the aforestated threshold. Thus, consistent with the foregoing formula, the longevity pay of Justice Villarama shall be thirty-five percent (35%) of his basic monthly pay.

On Justice Villarama's service as bar examiner

The committee likewise recommended the denial of Justice Villarama's request to count his service as bar examiner part of his judicial service. It explains that A.M. No. 08-12-7-SC, the basis of Justice Villarama's claim, is inapplicable because while the subject resolution of the Court covers service (as bar examiner) prior to one's appointment to the judiciary, Justice Villarama was already a member of the judiciary when he served as such.

We agree.

Indeed, by the express terms of A.M. No. 08-12-7-SC relied upon by Justice Villarama, we quote:

> Henceforth, services rendered by all Justices of the Supreme Court as Bar Examiners prior to their appointment to the Judiciary shall be credited as part of their government service and be tacked in the computation of their longevity pay upon compulsory or optional retirement.[18]

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[18] *Rollo*, (no proper pagination); memorandum of the Special Committee on Retirement and Civil Service Benefits dated 12 January 2017, p. 26.

Clearly, this does not apply to Justice Villarama since he was already a member of the judiciary when he was tasked to serve as bar examiner.

The reason for denying an incumbent member of the judiciary the inclusion of his or her service as bar examiner in the computation of the longevity pay is simple. At the time of his or her appointment as bar examiner, an incumbent justice or judge is already concurrently serving in the judiciary. The regular functions of the justice or judge and the service performed as bar examiner cannot appropriately be considered as two separable and finite judicial services ***if they supposedly coincide at the same time or period***. It would be defying logic and sensible reasoning if one is to be tacked to the other, in effect extending the length of judicial service, ***even if no additional time was really spent in the performance of the service as bar examiner outside of the time or period actually served as justice or judge***. Not even the liberal approach in the treatment of retirement laws could save the argument for tacking such service as bar examiner in favor of an incumbent justice or judge.

Thus, for purposes of computing longevity pay, we find no justifiable reason in tacking the service as bar examiner to the judicial service of one who is already a member of the judiciary. Accordingly, Justice Villarama's service as bar examiner could not be credited in the computation of his longevity pay.

In sum, a justice or judge who retires optionally, just like Justice Villarama, is entitled to the tacking of leave credits provided in A.C. No. 58-2003 for the purpose of computing the longevity pay as granted in Section 42 of B.P. 129; likewise, a fraction of the unexpired five-year period immediately prior to retirement is with sufficient basis. In the case of Justice Villarama, there remains a fraction of the 5-year period prior to his optional retirement on 6 January 2016 which must correspondingly be counted in computing his longevity pay. Lastly, service as bar examiner by a member of the judiciary is not to be factored in computing longevity pay.

It bears repeating that despite Justice Villarama's plea for a *pro hac vice* ruling, what we have forged today henceforth lays

a precedent. Members of the judiciary who are similarly situated can find doctrinal value in this decision.

WHEREFORE, the request of Justice Martin S. Villarama, Jr. is hereby **PARTIALLY GRANTED**. The Court **DIRECTS** that Justice Martin S. Villarama be paid his longevity pay in accordance with Administrative Circular No. 58-2003, that is, to include his unused and earned leave credits, subject to adjustment in accordance with the "*Rounding off the Fractional Period*" portion of this resolution, but to exclude his service as Bar Examiner in 2004.

The 12 January 2017 Memorandum of the Special Committee on Retirement and Civil Service Benefits is **NOTED**.

SO ORDERED.

Carpio (*Acting Chief Justice*), *Velasco, Jr., Leonardo-de Castro, Peralta, Bersamin, del Castillo, Perlas-Bernabe, Leonen, Jardeleza, Caguioa, Tijam, Reyes, Jr.*, and *Gesmundo, JJ.*, concur.

Sereno, C.J., on leave.

EN BANC

[A.M. No. RTJ-15-2435. March 6, 2018]
(Formerly A.M. No. 15-08-246-RTC)

OFFICE OF THE COURT ADMINISTRATOR, *complainant, vs.* **JUDGE WINLOVE M. DUMAYAS, BRANCH 59, REGIONAL TRIAL COURT, MAKATI CITY,** *respondent.*

SYLLABUS

1. LEGAL ETHICS; JUDGES; BY DOWNGRADING THE OFFENSE CHARGED FROM MURDER TO HOMICIDE

AND INAPPROPRIATELY APPRECIATING THE MITIGATING CIRCUMSTANCES OF INCOMPLETE SELF-DEFENSE AND VOLUNTARY SURRENDER DESPITE THE OVERWHELMING EVIDENCE TO THE CONTRARY, RESPONDENT JUDGE COMMITTED GROSS IGNORANCE OF THE LAW AND GROSS MISCONDUCT; PENALTY.— Judge Dumayas never denied the existence of evidence showing that Anikow fled from the accused after the first fist and after that the accused went after him. But he claims that the fatal wound was inflicted on Anikow during the first scuffle when the aggression on his part was still existing, which placed the accused in legitimate self-defense. In his Decision, however, it is clear that he appreciated the existence of the mitigating circumstance of incomplete self-defense even without the accused invoking and proving the same, simply because the prosecution itself clearly and convincingly proved the existence of unlawful aggression and lack of sufficient provocation from any of the accused. His complete disregard of the settled rules and jurisprudence on self-defense and of the events that transpired after the first fight, despite the existence of testimonial and physical evidence to the contrary, in the appreciation of the privileged mitigating circumstance of incomplete self-defense casts serious doubt on his impartiality and good faith. Such doubt cannot simply be brushed aside despite his belated justification and explanation. Under Canon 3 of the New Code of Judicial Conduct, impartiality applies not only to the decision itself, but also to the process by which the decision is made. When Judge Dumayas chose to simply ignore all the evidence showing that the accused still pursued Anikow after the latter had already run away, not even bothering to explain the irrelevance or lack of weight of the same, such act necessarily put the integrity of his entire Decision in question. Likewise, his failure to cite in the Decision his factual and legal bases for finding the presence of the ordinary mitigating circumstance of voluntary surrender is not a mere matter of judicial ethics. No less than the Constitution provides that no decision shall be rendered by any court without expressing clearly and distinctly the facts and the law on which it is based. The Court cannot simply accept the lame excuse that Judge Dumayas failed to cite said bases due to a mere oversight on his part that was made in good faith. Moreover, even if Judge Dumayas' explanation to such omission was acceptable, he still

failed to sufficiently justify why he appreciated the ordinary mitigating circumstance of voluntary surrender on the part of the accused. x x x In the case at bar, it was not shown from the evidence presented that the accused intended to surrender and admit the commission of the crime; they did not even invoke self-defense during trial. On the contrary and far from being spontaneous, security guard Saavedra even testified that accused warned him not to report the incident or note their plate number as they were fleeing the scene of the incident. Indeed, it is settled that, unless the acts were committed with fraud, dishonesty, corruption, malice or ill-will, bad faith, or deliberate intent to do an injustice, the respondent judge may not be administratively liable for gross misconduct, ignorance of the law, or incompetence of official acts in the exercise of judicial functions and duties, particularly in the adjudication of cases. However, when the inefficiency springs from a failure to recognize such a basic and fundamental rule, law, or principle, the judge is either too incompetent and undeserving of the position and title vested upon him, or he is too vicious that he deliberately committed the oversight or omission in bad faith and in grave abuse of authority. Here, the attendant circumstances would reveal that the acts of Judge Dumayas contradict any claim of good faith. And since the violated constitutional provision is so elementary, failure to abide by it constitutes gross ignorance of the law, without even a need for the complainant to prove any malice or bad faith on the part of the judge. Corollarily, the Court finds Judge Dumayas guilty of gross ignorance of the law and gross misconduct. x x x and hereby **DISMISSES** him from the service with **FORFEITURE** of retirement benefits, except leave credits, and with prejudice to re-employment in any branch or instrumentality of the government, including government-owned and controlled corporations.

2. ID.; ID.; GROSS IGNORANCE OF THE LAW, DEFINED AND ELABORATED.— Gross ignorance of the law is the disregard of basic rules and settled jurisprudence. A judge may also be administratively liable if shown to have been motivated by bad faith, fraud, dishonesty or corruption in ignoring, contradicting or failing to apply settled law and jurisprudence. Though not every judicial error bespeaks ignorance of the law and that, if committed in good faith, does not warrant administrative sanction, the same applies only in cases within

the parameters of tolerable misjudgment. x x x Where the law is straightforward and the facts so evident, failure to know it or to act as if one does not know it constitutes gross ignorance of the law. A judge is presumed to have acted with regularity and good faith in the performance of judicial functions. But a blatant disregard of a clear and unmistakable provision of the Constitution upends this presumption and subjects the magistrate to corresponding administrative sanctions. For liability to attach for ignorance of the law, the assailed order, decision or actuation of the judge in the performance of official duties must not only be found erroneous but, most importantly, it must also be established that he was moved by bad faith, dishonesty, hatred, or some other similar motive. Judges are expected to exhibit more than just cursory acquaintance with statutes and procedural laws. They must know the laws and apply them properly in all good faith. Judicial competence requires no less. Thus, unfamiliarity with the rules is a sign of incompetence. Basic rules must be at the palm of his hand. When a judge displays utter lack of familiarity with the rules, he betrays the confidence of the public in the courts. Ignorance of the law is the mainspring of injustice. Judges owe it to the public to be knowledgeable, hence, they are expected to have more than just a modicum of acquaintance with the statutes and procedural rules; they must know them by heart.

3. ID.; ID.; MISCONDUCT, DEFINED; DISTINGUISHED FROM GRAVE MISCONDUCT; NATURE OF MISCONDUCT TO WARRANT DISMISSAL FROM SERVICE.— Misconduct is a transgression of some established and definite rule of action, more particularly, unlawful behavior or gross negligence by the public officer. To warrant dismissal from service, the misconduct must be grave, serious, important, weighty, momentous, and not trifling. The misconduct must imply wrongful intention and not a mere error of judgment and must also have a direct relation to and be connected with the performance of the public officer's official duties amounting either to maladministration or willful, intentional neglect, or failure to discharge the duties of the office. In order to differentiate gross misconduct from simple misconduct, the elements of corruption, clear intent to violate the law, or flagrant disregard of established rule, must be manifest in the former. To hold a judge administratively liable for gross misconduct, ignorance of the law or incompetence of official acts in the

exercise of judicial functions and duties, it must be shown that his acts were committed with fraud, dishonesty, corruption, malice or ill-will, bad faith, or deliberate intent to do an injustice.

D E C I S I O N

***PER CURIAM*:**

This case stemmed from the charges against respondent Judge Winlove M. Dumayas of Branch 59, Regional Trial Court (*RTC*), Makati City, for allegedly rendering a decision without citing the required factual and legal bases and by ignoring the applicable jurisprudence, which constitutes gross misconduct and gross ignorance of the law.

The antecedents of the case at bar are as follows:

In the July 7, 2015 issue of the Philippine Daily Inquirer, Ramon Tulfo wrote an article entitled "*What's Happening to Makati Judges*?," where he raised certain issues against three (3) Makati City judges, one of whom is respondent Judge Dumayas for supposedly imposing a light sentence against the accused in one criminal case, when he should have found them guilty of committing murder instead. Said case is Criminal Case No. 12-2065, entitled *People v. Juan Alfonso Abastillas, et al*.

Upon investigation and review of the July 2, 2014 Decision penned by Judge Dumayas in the aforecited case, the Office of the Court Administrator (*OCA*) found two (2) issues with said *ponencia*, particularly in the imposition of the penalties:

First, he appreciated the presence of the privileged mitigating circumstance of incomplete self-defense by concluding that there was unlawful aggression on the part of American national George Anikow and that there was no sufficient provocation on the part of accused Crispin C. Dela Paz and Galiciano S. Datu III. In doing so, he totally ignored the positive testimony of security guard Jose Romel Saavedra and the physical evidence consisting of closed circuit television (*CCTV*) video footages of the incident clearly showing that Anikow had already fled, but was still

pursued and viciously attacked and hit by the accused when they finally caught up with him. It is a well-settled rule that the moment the first aggressor runs away, unlawful aggression on the part of the first aggressor ceases to exist, and when the unlawful aggression ceases, the defender no longer has any right to kill or wound the former aggressor; otherwise, retaliation and not self-defense is committed. Retaliation is not the same as self-defense. In retaliation, the aggression that the injured party started had already ceased when the accused attacked him, while in self-defense, aggression was still existing when the aggressor was injured by the accused.

Second, without mentioning any factual or legal basis therefor, Judge Dumayas appreciated in favor of Dela Paz and Datu III the ordinary mitigating circumstance of voluntary surrender, contrary to Saavedra's positive testimony that the four (4) accused, including Dela Paz and Datu III, warned him not to report the incident or note their plate number as they were leaving the scene of the incident. Besides, two (2) other Rockwell security guards testified that they apprehended the four (4) accused in the vehicle as they were leaving the Rockwell Center before they were turned over to the custody of the police. In appreciating said ordinary mitigating circumstance, Judge Dumayas never cited any factual or legal reason to justify the same, as there was nothing in the record that supports his conclusion. In fact, the evidence presented show otherwise. By deliberately not explaining in his Decision how he arrived at his conclusion that Dela Paz and Datu III voluntarily surrendered, Judge Dumayas violated Section 14, Article VIII[1] of the Constitution.

In a Resolution dated August 25, 2015, the Court *En Banc* directed Judge Dumayas to show cause why no disciplinary action should be taken against him for ignoring existing jurisprudence on unlawful aggression and for inappropriately appreciating the ordinary mitigating circumstance of voluntary

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[1] No decision shall be rendered by any court without expressing therein clearly and distinctly the facts and the law on which it is based.

surrender without citing any basis, when he rendered his Decision dated July 2, 2014 in Criminal Case No. 12-2065.

In his Compliance dated October 18, 2015, Judge Dumayas argued that judges cannot be held civilly, criminally, and administratively liable for any of their official acts, no matter how erroneous, as long as they act in good faith. He vehemently denied having conveniently ignored the existing jurisprudence on unlawful aggression. He explained that his ruling was based on the fact that the mortal wound on Anikow's neck was inflicted when there was still unlawful aggression on his part against the accused, which placed the latter in legitimate self-defense. It was only after the first fist fight that Anikow ran away.

He likewise apologized for failing to quote in his Decision the portions of the testimony of the prosecution witnesses attesting to the voluntary surrender of the accused. He quoted the testimony of Dominador H. Royo, one of the security guards who apprehended the accused when they were trying to leave Rockwell Center:

x x x x x x x x x

Q: What did you tell to the driver again?
A: I told him that there was a problem at the upper part of Rockwell Driver so I asked him to surrender his license to me, sir.

Q: Was there any resistance on his part to surrender his license or he just gave it to you voluntarily?
A: Voluntarily sir.

x x x x x x x x x

Q: Now if the driver intended to leave he could just left you there and then he could just spread out correct?
A: Yes sir.

Q: But he did not?
A: Yes sir.

Q: So there was really no intention to escape, correct?
A: Yes sir.[2]

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[2] *Rollo*, pp. 35-36.

Judge Dumayas stressed that the aforementioned testimony clearly shows that the accused indeed voluntarily surrendered to the security guards who stopped them, and later to the police officers, when they were turned over to the latter's custody.

On April 18, 2017, the OCA recommended the imposition of the extreme penalty of dismissal, thus:

> **PREMISES CONSIDERED**, we respectfully recommend for the consideration of the Court that **Judge Winlove M. Dumayas,** Branch 59, Regional Trial Court, Makati City, be **ADJUDGED GUILTY** of gross ignorance of the law or procedure and gross misconduct, and be **METED** the penalty of **DISMISSAL** from the service, with forfeiture of his retirement benefits, except his accrued leave credits, and with prejudice to reinstatement in any branch of the government, including government-owned and controlled corporations.
>
> RESPECTFULLY SUBMITTED.[3]

The Court's Ruling

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

It is clear that Judge Dumayas failed to hear and decide the subject case with the cold neutrality of an impartial judge. As aptly found by the OCA after its exhaustive investigation, first, Judge Dumayas downgraded the offense charged from murder to homicide. Second, he inappropriately appreciated the privileged mitigating circumstance of self-defense and the ordinary mitigating circumstance of voluntary surrender despite the overwhelming testimonial and physical evidence to the contrary. Third, he sentenced Dela Paz and Datu III to suffer an indeterminate penalty of imprisonment of four (4) years, two (2) months, and one (1) day, as minimum, to six (6) years of *prision correccional*, as maximum, which made them eligible for probation. Finally, he granted the separate applications for probation of Dela Paz and Datu III, effectively sparing them from suffering the penalties they rightfully deserve. The pattern of said acts appears to be deliberate, calculated, and meant to

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[3] *Id.* at 57.

unduly favor the accused, and at the same time, can be characterized as flagrant and indifferent to the consequences caused to the other parties, including the State.

On November 27, 2012, an Information was filed charging Juan Alfonso Abastillas, Crispin Dela Paz, Osric Cabrera, and Galiciano Datu III with the crime of murder under Article 248 of The Revised Penal Code, thus:

> On the 24th day of November 2012, in the City of Makati, Philippines, accused, conspiring and confederating with one another and all of them mutually helping and aiding, one another, with intent to kill and with the qualifying circumstance of abuse of superior strength did then and there wilfully, unlawfully and feloniously attack, assault, employ personal violence and stab one George Anikow with a knife, thereby inflicting upon the latter injuries and wounds on the different parts of his body, the fatal one of which is the stab wound on his neck, which directly caused his death.[4]

In his Decision, Judge Dumayas discussed his findings on the existence of self-defense, thus:

> The prosecution's evidence, however, likewise proves that (1) there was unlawful aggression on the part of Anikow; and (2) there was no provocation on the part of any of the accused.
>
> To quote again from the February 21, 2013 Resolution of the Court, "No Less than the sworn statement of the eyewitness Saavedra was explicit on this account."
>
> > "x x x at nagulat na lang ako ng may kumalabog at nakita ko na hinampas nitong foreigner gamit ang kanyang kamay ang gawing kaliwa ng sasakyan, at napatigil ang sasakyan at bumaba ang apat na lalaking sakay nito, at ito naman foreigner ay sumugod papalapit sa apat, at ako naman ay umawat at namagitan at don nakakasalitaan na at galit na din itong apat na lalaki, at don biglang sinugod at sinuntok ni foreigner ang isa sa apat at nagkagulo na, at ako naman at sige pa rin sa ka-aawat at ini-iwas ko rin ang aking hawak na shot gun dahil baka ito ay ma-agaw sa akin at don tumakbo na itong foreigner

[4] RTC Decision in Criminal Case No. 12-2065, dated July 2, 2014, records, p. 904.

papalayo sa direksyon ng Burgos, mga 30 meters siguro ang estimate ko na nilayo niya at sumugod pa ang dalawa sa suspect, samantalang yung dalawa pang suspect ay naiwan sa tabi ng Volvo nila nang abutan nila ang foreigner ay nagakasuntokan pa uli hanggang sa bumagsak ang foreigner there be actual and positive attack." [*Exhibit "C,"* emphasis supplied]

In fine, the prosecution's own evidence clearly and convincingly proves: (1) unlawful aggression on the part of Anikow, the primordial element of self-defense; and (2) lack of sufficient provocation on the part of the accused. Generally, aggression is considered unlawful when it is unprovoked or unjustified. (*People vs. Valencia*, 133 SCRA 82) The unlawful aggression of Anikow resulted in injuries to the accused. This Court takes judicial notice of the Medical Certificates issued by Dr. Nulud attesting to the said injuries attached to the records of this case.

In so far, however, as the second element of self-defense is concerned, this Court is convinced that the means employed by accused Dela Paz and Datu were unreasonable — there was no rational equivalence between the means of attack and the means of defense. Reasonableness of the means employed depends on the imminent danger of the injury to the person attacked; he acts under the impulse of self-preservation. He is not going to stop and pause to find out whether the means he has in his hands is reasonable. (*Eslabon vs. People, 127 SCRA 785*) True, Anikow committed unlawful aggression against the accused with his fists. However, the means used by the accused were unreasonable.[5]

Curiously, Judge Dumayas himself stated in his Decision that the accused never invoked self-defense, and yet, he was quick to declare that there was unlawful aggression based on clear and convincing evidence, to wit:

x x x x x x x x x

Accused Abastillas did not invoke self-defense but attempted to cast doubt on the prosecution's evidence that he inflicted the fatal wound on the neck of Anikow and a wound on his back.

x x x x x x x x x

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[5] *Id.* at 918-919.

The Court attaches great significance and importance to the CCTV video footage and the image frames extracted from it. Bereft of the aforesaid objectionable evidence of the prosecution, the CCTV footages and images would show that it was not accused Abastillas who inflicted the fatal blow neither was he who inflicted the wound on the back of Anikow. x x x

x x x x x x x x x

In this jurisdiction, in self-defense, the burden of proof rests upon the accused and must be established by clear and convincing evidence. (*People vs. Corecor, 159 SCRA 84*) In this case, however, **the prosecution's own evidence clearly and convincingly establishes unlawful aggression and lack of provocation on the part of any of the accused, which relieves them from the duty of proving the same.**[6]

It is settled that self-defense is an affirmative allegation and offers exculpation from liability for crimes only if timely invoked and satisfactorily proved. When the accused admits the act charged but interposes a lawful defense, the order of trial may be modified[7] and the burden shifts to the accused to prove that he indeed acted in self-defense by establishing the following with clear and convincing evidence: (1) unlawful aggression on the part of the victims; (2) reasonable necessity of the means employed to prevent or repel the aggression; and (3) lack of sufficient provocation on his part. Self-defense cannot be justifiably appreciated when it is extremely doubtful by itself. Indeed, in invoking self-defense, the burden of evidence is shifted and the accused claiming self-defense must rely on the strength of his own evidence and not on the weakness of the prosecution.[8] Without a doubt, respondent judge seems to have forgotten this established legal principle.

In his Compliance, Judge Dumayas never denied the existence of evidence showing that Anikow fled from the accused after the first fist and after that the accused went after him. But he

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[6] *Id*. at 919, 920, and 921. (Emphasis ours.)

[7] Sec. 11(e), Rule 119 of the Rules of Court.

[8] *People v. Nestor M. Bugarin*, G.R. No. 224900, March 15, 2017.

claims that the fatal wound was inflicted on Anikow during the first scuffle when the aggression on his part was still existing, which placed the accused in legitimate self-defense. In his Decision, however, it is clear that he appreciated the existence of the mitigating circumstance of incomplete self-defense even without the accused invoking and proving the same, simply because the prosecution itself clearly and convincingly proved the existence of unlawful aggression and lack of sufficient provocation from any of the accused. His complete disregard of the settled rules and jurisprudence on self-defense and of the events that transpired after the first fight, despite the existence of testimonial and physical evidence to the contrary, in the appreciation of the privileged mitigating circumstance of incomplete self-defense casts serious doubt on his impartiality and good faith. Such doubt cannot simply be brushed aside despite his belated justification and explanation.

Under Canon 3 of the New Code of Judicial Conduct, impartiality applies not only to the decision itself, but also to the process by which the decision is made. When Judge Dumayas chose to simply ignore all the evidence showing that the accused still pursued Anikow after the latter had already run away, not even bothering to explain the irrelevance or lack of weight of the same, such act necessarily put the integrity of his entire Decision in question.

Likewise, his failure to cite in the Decision his factual and legal bases for finding the presence of the ordinary mitigating circumstance of voluntary surrender is not a mere matter of judicial ethics. No less than the Constitution provides that no decision shall be rendered by any court without expressing clearly and distinctly the facts and the law on which it is based.[9] The Court cannot simply accept the lame excuse that Judge Dumayas failed to cite said bases due to a mere oversight on his part that was made in good faith.

Moreover, even if Judge Dumayas' explanation to such omission was acceptable, he still failed to sufficiently justify

[9] Sec. 14, Article VIII of the 1987 Constitution.

why he appreciated the ordinary mitigating circumstance of voluntary surrender on the part of the accused. For voluntary surrender to be appreciated, the following requisites must be present: 1) the offender has not been actually arrested; 2) the offender surrendered himself to a person in authority or the latter's agent; and 3) the surrender was voluntary. The essence of voluntary surrender is spontaneity and the intent of the accused to give himself up and submit himself to the authorities either because he acknowledges his guilt or he wishes to save the authorities the trouble and expense that may be incurred for his search and capture.[10] In the case at bar, it was not shown from the evidence presented that the accused intended to surrender and admit the commission of the crime; they did not even invoke self-defense during trial. On the contrary and far from being spontaneous, security guard Saavedra even testified that accused warned him not to report the incident or note their plate number as they were fleeing the scene of the incident.

Indeed, it is settled that, unless the acts were committed with fraud, dishonesty, corruption, malice or ill-will, bad faith, or deliberate intent to do an injustice, the respondent judge may not be administratively liable for gross misconduct, ignorance of the law, or incompetence of official acts in the exercise of judicial functions and duties, particularly in the adjudication of cases.[11] However, when the inefficiency springs from a failure to recognize such a basic and fundamental rule, law, or principle, the judge is either too incompetent and undeserving of the position and title vested upon him, or he is too vicious that he deliberately committed the oversight or omission in bad faith and in grave abuse of authority.[12] Here, the attendant circumstances would reveal that the acts of Judge Dumayas contradict any claim of good faith. And since the violated constitutional provision is so elementary, failure to abide by it constitutes gross ignorance of the law, without even a need for the complainant to prove any malice or bad faith on the part of the judge.

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[10] *De Vera v. De Vera*, 602 Phil. 877, 886 (2009).

[11] *Andrada v. Judge Banzon*, 592 Phil. 229, 233-234 (2008).

[12] *DOJ v. Judge Mislang*, 798 Phil. 225, 235 (2016).

Corollarily, the Court finds Judge Dumayas guilty of gross ignorance of the law and gross misconduct.

Gross ignorance of the law is the disregard of basic rules and settled jurisprudence. A judge may also be administratively liable if shown to have been motivated by bad faith, fraud, dishonesty or corruption in ignoring, contradicting or failing to apply settled law and jurisprudence. Though not every judicial error bespeaks ignorance of the law and that, if committed in good faith, does not warrant administrative sanction, the same applies only in cases within the parameters of tolerable misjudgment. Such, however, is not the case with Judge Dumayas. Where the law is straightforward and the facts so evident, failure to know it or to act as if one does not know it constitutes gross ignorance of the law. A judge is presumed to have acted with regularity and good faith in the performance of judicial functions. But a blatant disregard of a clear and unmistakable provision of the Constitution upends this presumption and subjects the magistrate to corresponding administrative sanctions.[13]

For liability to attach for ignorance of the law, the assailed order, decision or actuation of the judge in the performance of official duties must not only be found erroneous but, most importantly, it must also be established that he was moved by bad faith, dishonesty, hatred, or some other similar motive. Judges are expected to exhibit more than just cursory acquaintance with statutes and procedural laws. They must know the laws and apply them properly in all good faith. Judicial competence requires no less. Thus, unfamiliarity with the rules is a sign of incompetence. Basic rules must be at the palm of his hand. When a judge displays utter lack of familiarity with the rules, he betrays the confidence of the public in the courts. Ignorance of the law is the mainspring of injustice. Judges owe it to the public to be knowledgeable, hence, they are expected to have more than just a modicum of acquaintance with the statutes and procedural rules; they must know them by heart.[14]

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[13] *Id.*
[14] *Id.*

Although a judge may not always be subjected to disciplinary actions for every erroneous order or decision he issues, that relative immunity is not a license to be negligent or abusive and arbitrary in performing his adjudicatory prerogatives. If judges wantonly misuse the powers granted to them by the law, there will be, not only confusion in the administration of justice, but also oppressive disregard of the basic requirements of due process. For showing partiality towards the accused, Judge Dumayas can be said to have misused said powers.

Indubitably, Judge Dumayas violated the Code of Judicial Conduct ordering judges to ensure that his or her conduct, both in and out of court, maintains and enhances the confidence of the public, the legal profession and litigants in the impartiality of the judge and of the judiciary.[15] He simply used oversight, inadvertence, and honest mistake as convenient excuses. He acted with conscious indifference to the possible undesirable consequences to the parties involved.

Indeed, Judge Dumayas is also guilty of gross misconduct. Misconduct is a transgression of some established and definite rule of action, more particularly, unlawful behavior or gross negligence by the public officer. To warrant dismissal from service, the misconduct must be grave, serious, important, weighty, momentous, and not trifling. The misconduct must imply wrongful intention and not a mere error of judgment and must also have a direct relation to and be connected with the performance of the public officer's official duties amounting either to maladministration or willful, intentional neglect, or failure to discharge the duties of the office. In order to differentiate gross misconduct from simple misconduct, the elements of corruption, clear intent to violate the law, or flagrant disregard of established rule, must be manifest in the former.[16]

To hold a judge administratively liable for gross misconduct, ignorance of the law or incompetence of official acts in the

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[15] Sec. 2, Canon 3 of the Code of Judicial Conduct.

[16] *Office of the Ombudsman v. De Zosa, et al.*, 751 Phil. 293, 300 (2015)

exercise of judicial functions and duties, it must be shown that his acts were committed with fraud, dishonesty, corruption, malice or ill-will, bad faith, or deliberate intent to do an injustice.[17] The Court has repeatedly and consistently held that the judge must not only be impartial but must also appear to be impartial as an added assurance to the parties that his decision will be just. The litigants are entitled to no less than that. They should be sure that when their rights are violated they can go to a judge who shall give them justice. They must trust the judge, otherwise they will not go to him at all. They must believe in his sense of fairness, otherwise they will not seek his judgment. Without such confidence, there would be no point in invoking his action for the justice they expect.[18]

Interestingly, Judge Dumayas has the following administrative cases filed against him:

	Complainant	Docket Number	Date Filed	Nature	Status
1.	Asuncion, Gliceria	64-03-CA-J	Aug. 9, 2003	Rendering Unjust Decision	Case Dismissed (Oct. 7, 2003)
2.	Fortun, Raymond A.	08-2784	Jan. 18, 2008	Gross Ignorance of the Law	Dismissed (March 17, 2008)
3.	Co, Felix S.	08-3002- RTJ	Sept. 25, 2008	Knowingly Rendering Unjust Judgment	Case Dismissed (June 17, 2011)
4.	Reyes, Gemma	10-3555- RTJ	Nov. 17, 2010	Gross Ignorance of the law	Case Dismissed (March 14, 2012)
5.	Estevez, Lourdita	11-3603-RTJ	Feb. 8, 2011	Knowingly Rendering Unjust Order and Ignorance of the Law	Case Dismissed (Sept. 12, 2011)

[17] *Andrada v. Hon. Judge Banzo*, *supra* note 9.

[18] *Lai v. People*, 762 Phil. 434, 443 (2015).

6.	RCBC CAP Corp. rep. by Ramon Posadas	RTJ-15-2411	Feb. 6, 2012	Gross Ignorance of the Law	Pending
7.	Montenegro, Gregorio A.	13-4095-RTJ	July 5, 2013	Grave Abuse of Discretion, Incompetence, Gross Ignorance of the Law, Viol. of R.A. 3019, Conduct Prejudicial to the Best Interest of the Service	Case Dismissed (Sept. 9, 2015)
8.	Fabularum, Alberto DC	13-4140-RTJ	Sept. 24, 2013	Grave Abuse of Discretion and Bias	Case Dismissed (June 25, 2014)
9.	PDIC rep. by Atty. R. Mendoza, Jr.	13-4162-RTJ	Nov. 21, 2013	Gross Ignorance of the Law	Pending
10.	PCSO rep. by Atty. J. F. Rojas II	RTJ-16-2477	Nov. 27, 2013	Gross Ignorance of the Law, Grave Abuse of Authority, Gross Neglect of Duty	Pending
11.	Tanjutco, Carolina	14-4332-RTJ	Nov. 10, 2014	Knowingly Rendering Unjust Judgment	Pending
12.	Yuseco, Francis, Jr. R.	15-4381-RTJ	March 26, 2015	Gross Ignorance of the Law, Grave Abuse of Authority and Gross Incompetence	Pending
13.	Sarrosa, Michael, et al.	16-4534-RTJ	Feb. 22, 2016	Gross Ignorance of the Law, Bias, Partiality, and Viol. of Code of Judicial Conduct	Pending

That a significant number of litigants saw it fit to file administrative charges against Judge Dumayas, with most of these cases having the same grounds, *i.e.*, gross ignorance of

the law or procedure and knowingly rendering unjust judgment, only shows how poorly he has been performing as a member of the bench. The Court takes the aforementioned incidents as evidence of respondent's stubborn propensity to not follow the rule of law and procedure in rendering judgments and orders. This definitely has besmirched the integrity and seriously compromised the reputation, not only of his court, but more importantly, of the entire judicial system which he represents.

WHEREFORE, the Court finds Judge Winlove M. Dumayas of Branch 59, Regional Trial Court, Makati City, **GUILTY** of gross ignorance of the law or procedure and gross misconduct and hereby **DISMISSES** him from the service with **FORFEITURE** of retirement benefits, except leave credits, and with prejudice to re-employment in any branch or instrumentality of the government, including government-owned and controlled corporations.[19]

SO ORDERED.

Carpio (*Acting C.J.*), *Leonardo-de Castro, Peralta, Bersamin, del Castillo, Perlas-Bernabe, Leonen, Jardeleza, Caguioa, Martires, Tijam, Reyes, Jr.,* and *Gesmundo, JJ.,* concur.

Velasco, Jr., inhibits due to relation to a party.

Sereno, C.J., on leave.

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[19] Three (3) members of the Court considered the penalty too harsh.

EN BANC

[A.M. No. P-16-3530. March 6, 2018]
(Formerly A.M. No. 16-08-306-RTC)

HON. JOSEPHINE ZARATE-FERNANDEZ, EXECUTIVE JUDGE and PRESIDING JUDGE of the REGIONAL TRIAL COURT, BRANCH 76, SAN MATEO, RIZAL, *complainant, vs.* **RAINIER M. LOVENDINO, COURT AIDE of the REGIONAL TRIAL COURT, BRANCH 76, SAN MATEO, RIZAL,** *respondent.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; COURT PERSONNEL; MISCONDUCT, DEFINED; SIMPLE AND GRAVE MISCONDUCT, DISTINGUISHED; THEFT OF EXHIBITS IN THE COURT'S VAULT AND ILLEGAL SALE OF PILFERED FIREARM ARE CLEAR TRANSGRESSIONS OF THE LAW THAT IS CONSIDERED AS GRAVE MISCONDUCT.— Misconduct is a transgression of some established and definite rule of action, more particularly, unlawful behavior or gross negligence by the public officer. To warrant dismissal from the service, the misconduct must be grave, serious, important, weighty, momentous, and not trifling. The misconduct must imply wrongful intention and not a mere error of judgment. The misconduct is grave if it involves any of the additional elements of corruption, willful intent to violate the law, or to disregard established rules, which must be established by substantial evidence. As distinguished from simple misconduct, the elements of corruption, clear intent to violate the law, or flagrant disregard of established rule, must be manifest in a charge of grave misconduct. 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. x x x Respondent committed grave misconduct because theft of the exhibits in the court's vault and the illegal sale of the pilfered firearm are clear transgressions of the law. There is also an element of corruption because he

unlawfully and wrongfully used his position to procure some benefit for himself and to the detriment of the Judiciary.

2. ID.; ID.; ID.; DISHONESTY, DEFINITIONS OF; RESPONDENT'S ACT OF MISAPPROPRIATION OF THE COURT'S EVIDENCE AMOUNTS TO DISHONESTY BECAUSE IT DEMONSTRATES HIS DISPOSITION TO LIE, CHEAT, DEFRAUD, OR BETRAY.— Dishonesty x x x is the disposition to lie, cheat, deceive, defraud, or betray; unworthiness; lack of integrity; lack of honesty, probity, or integrity in principle; and lack of fairness and straightforwardness. It is a malevolent act that makes people unfit to serve the Judiciary. x x x Respondent is likewise guilty of dishonesty because his misappropriation of the court's evidence demonstrates his disposition to lie, cheat, deceive, defraud, or betray. Manifestly, the dishonest act caused serious damage and grave prejudice to the Government.

3. ID.; ID.; ID.; CONDUCT PREJUDICIAL TO THE BEST INTEREST OF THE SERVICE IS COMMITTED BY STEALING THE EVIDENCE OF THE COURT AND USING THE SAME FOR RESPONDENT'S OWN BENEFIT.— Conduct prejudicial to the best interest of the service pertains to any conduct that is detrimental or derogatory or naturally or probably bringing about a wrong result; it refers to acts or omissions that violate the norm of public accountability and diminish — or tend to diminish — the people's faith in the Judiciary. x x x By stealing the evidence of the court and using the same for his own benefit, respondent likewise committed conduct prejudicial to the best interest of the service because he violated the norm of public accountability which, subsequently diminished the people's faith in the Judiciary.

4. ID.; ID.; ID.; INSUBORDINATION, DEFINED; NONCOMPLIANCE WITH THE COURT'S DIRECTIVES IS TANTAMOUNT TO INSUBORDINATION.— Insubordination, meanwhile, is defined as a refusal to obey some order, which a superior officer is entitled to give and have obeyed. The term imports a willful or intentional disregard of the lawful and reasonable instructions of the employer. x x x As to the charge of insubordination, the Court finds it meritorious. In two (2) directives, the OCA required respondent to submit his comment to the complaint but these were unheeded. It must

be emphasized that noncompliance with the OCA's directives is tantamount to insubordination to the Court itself. Respondent was then required by the Court to show cause why he should not be administratively dealt with for failure to submit his comment but, again, this fell on deaf ears. In spite of the personal service of the notices to him, he did not comply with the OCA and the Court's directives. Evidently, respondent committed insubordination and the conduct he exhibited constitutes no less than a clear act of disrespect for the authority of the Court.

5. ID.; ID.; ID.; RESPONDENT'S INFRACTIONS TAKEN TOGETHER WARRANT DISMISSAL FROM THE SERVICE WITH FORFEITURE OF BENEFITS AND PREJUDICE TO RE-EMPLOYMENT.— [R]espondent's theft of the exhibits of the RTC is a grave misconduct in the performance of his official duties, consisting of dishonesty and conduct prejudicial to the best interest of the service, and insubordination against the directives of the OCA and the Court. Taken together, these are grounds for dismissal under the Civil Service Law. All his benefits, excluding his accrued leave credits, must be forfeited and with prejudice to re-employment in any branch or agency of the government.

D E C I S I O N

***PER CURIAM*:**

Before this Court is the Letter-Complaint[1] dated August 15, 2016, filed by Hon. Josephine Zarate-Fernandez (*complainant*), Executive Judge and Presiding Judge of the Regional Trial Court, Branch 76 of San Mateo, Rizal (*RTC*) against Rainier M. Lovendino (*respondent*), Court Aide of the same court, before the Office of the Court Administrator (*OCA*), for the unlawful taking of drug specimens stored in the court's vault.

The Antecedents

Complainant alleged that in the case of *People v. Jonathan Ursaga* docketed as Crim. Case No. 12817-12818, pending before the RTC, for violation of Sections 5 and 11 of Republic Act

[1] *Rollo*, pp. 7-9.

(R.A.) No. 9165, or the *Comprehensive Dangerous Drugs Act of 2002*, the presentation of the prosecution's evidence was re-opened upon a motion fi1ed by the prosecution to allow its witness PO2 Ruel Romanillos to testify and identify several drug specimens. During the hearing, the RTC ordered that the specimens be brought out for identification.

In spite of a diligent and prolonged search by Pamela Cantara (*Cantara*), Clerk-In-Charge for Criminal Cases and court appointed evidence custodian, she could not find the said specimens. Cantara was the custodian of the vault where the evidences of the criminal cases were stored. As such, she keeps the key to the padlock of the vault. Cantara then searched the box supposedly containing the envelope where the specimens of the case was placed and noticed that the envelopes were in disarray and were no longer filed in the previously arranged order.

Due to the unusual condition of the envelopes, Cantara began opening each one and she discovered that they no longer contain the specimens consisting of *shabu* and marijuana in numerous cases. Based on the Inventory List[2] prepared by Cantara, twenty (21) cases before the RTC had missing drug specimens and were apparently stolen. Complainant immediately sought the assistance of the Philippine National Police San Mateo (*PNP San Mateo*), as well as the Scene of the Crime Operatives (*SOCO*) stationed in Tikling, Taytay, Rizal.

Complainant alleged that she is convinced that respondent was responsible for the unlawful taking of the illegal drugs stored in the vault. She explained that respondent, as court aide, cleans the area of the RTC and was the only one who fixes the court records stored at the *bodega* located at the ground floor of the San Mateo Hall of Justice. During the court disposal month in July 2016, respondent became more familiar with the status of the cases as he was the one in-charge of arranging the records at the storage area. Notably, most of the cases with the missing specimens were already decided by the court.

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[2] *Id*. at 10.

Complainant added that respondent had a key to her chambers where he could access the courtroom and the vault of the court. She averred that respondent could have taken the missing specimens by rigging the padlock of the vault after office hours when there was no staff left in the courtroom. Complainant underscored that only respondent had access to the courtroom during the weekend because he was in-charge of cleaning the room.

Complainant also mentioned that respondent is included in the List[3] of the Barangay Anti-Drug Abuse Council (*BADAC*) as a pusher and user of illegal drugs; that he had been previously indicted for the crime of frustrated homicide[4] but eventually settled with the victim by payment of the civil aspect; that a certain Estellita Manec filed a case of robbery-extortion against respondent when the latter, while armed with a gun and misrepresenting himself as a police officer, barged inside her residence demanding the amount of ₱6,000.00; and that a certain Jong confessed to a police officer that respondent also stole .38 caliber revolvers from the court's vault, which the latter intended to sell.

Complainant emphasized that respondent is a highly dangerous man who even carried a gun while reporting for work. She added that after the discovery of the unlawful taking of the drugs, respondent had stopped reporting for duty. He also refused to make known his whereabouts as his family hurriedly left the house he was renting. Complainant concluded that respondent could have fled to avoid criminal prosecution. Attached in the letter-complaint are the Sworn Statements[5] of Joni Año and Meliber Belarmino, Court Stenographer and Clerk-In-Charge of Civil Cases, respectively, of the RTC.

In a Supplemental Letter[6] dated August 19, 2016, complainant informed the OCA that respondent was arrested in an entrapment

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[3] *Id*. at 11.

[4] *Id*. at 16-17.

[5] *Id*. at 19-23.

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

operation conducted by the PNP San Mateo. It was reported therein that on August 16, 2016, around 7:00 o'clock in the afternoon, respondent was caught selling a .38 caliber Smith and Wesson revolver without a serial number. Also confiscated from him were four (4) pieces of .38 caliber live ammunition and seven (7) pieces of small transparent plastic sachets containing white crystalline substance suspected to be *shabu*. It was later found that the revolver was one of the missing exhibits in Criminal Case No. 15108, entitled *People v. Dave Narag y Laor*, pending before the RTC.

Complainant further informed the OCA that she and her staff discovered that some cash and pieces of jewelry submitted before the court as evidence in other criminal cases were likewise missing. She stated they were still in the process of conducting an inventory of the evidence submitted in the other criminal cases. She prayed that respondent be immediately dropped from the service not only because of his act of stealing court exhibits but also because he received two (2) consecutive "Unsatisfactory" ratings for the period July to December 2015 and January to July 2016. According to complainant, respondent is currently detained at the San Mateo Police Station.

The OCA Report and Recommendation

In its Memorandum[7] dated August 22, 2016, the OCA found that there exists a strong *prima facie* case for Grave Misconduct, Serious Dishonesty and Conduct Prejudicial to the Best Interest of the Service against respondent. It held that the loss of the court exhibits consisting of *shabu* and marijuana had been properly documented through the inventory list of missing pieces of evidence and that the letter-complaint stated that respondent had access to these exhibits.

The OCA also highlighted that respondent had involvement in illegal drugs and was caught in possession of a firearm that was stolen from the RTC, along with live ammunition and white crystalline substance suspected to be *shabu*. It opined that

[7] *Id*. at 1-5.

respondent's failure to report for work after the discovery of the loss of exhibits and his sudden transfer of dwelling are indicia of his guilt. The OCA recommended that the letter-complaint be considered as a formal complaint against respondent; that the matter be re-docketed as a regular administrative matter; that respondent be investigated; and that he be preventively suspended, without pay and other benefits, until further order from the Court. The recommendation of the OCA was adopted by the Court in its Resolution[8] dated August 23, 2016.

In its Memorandum[9] dated May 8, 2017, the OCA found that despite receipt of the two (2) directives to file his comment, respondent still failed to comply. It emphasized that non-compliance with its directive tantamount to insubordination to the Court itself. The OCA recommended that respondent be required to show cause why he should not be administratively dealt with for failure to submit his comment despite its two (2) directives and to submit the required comment within ten (10) days from receipt of notice. In its Resolution[10] dated August 1, 2017, the Court adopted the recommendation of the OCA.

In its Memorandum[11] dated September 15, 2017, the OCA informed the Court regarding the status of the different cases filed against respondent. Criminal Case No. 13262, entitled *People v. Marlyn Pocabo and Rainier Lovendino*, for frustrated homicide was provisionally dismissed; in Criminal Case Nos. 18094-16 to 18096-16, entitled *People v. Rainier Lovendino*, for violation of R.A. No. 10591, Sec. 11 of R.A. No. 9165, and qualified theft, the pre-trial conference was reset to September 6, 2017 because respondent had no counsel; and in Criminal Case No. 10294-016, entitled *People v. Rainier Lovendino*, for resistance and disobedience upon an agent of a person in

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

[9] *Id*. at 77-79.

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

[11] *Id*. at 82-83.

authority, the Municipal Trial Court of Rodriguez, Rizal found that respondent had already served the maximum imposable penalty of the offense.

The OCA also stated that at present, respondent is detained at the San Mateo Municipal Jail due to the pending criminal cases relative to the stolen exhibits in the RTC.[12]

In its Memorandum[13] dated January 15, 2018, the Clerk of Court *En Banc* reported that the Court's resolution dated August 1, 2017 addressed to respondent was personally received on August 30, 2017 per attached proof of service. However, respondent has yet to file his comment as required by the said resolution.

In its Resolution[14] dated January 16, 2018, in view of respondent's failure to file comment, the Court resolved to consider as waived the right of respondent to file a comment on the complaint.

The Court's Ruling

The Court finds respondent administratively guilty of grave misconduct, serious dishonesty, conduct prejudicial to the best interest of the service and insubordination.

Misconduct is a transgression of some established and definite rule of action, more particularly, unlawful behavior or gross negligence by the public officer. To warrant dismissal from the service, the misconduct must be grave, serious, important, weighty, momentous, and not trifling. The misconduct must imply wrongful intention and not a mere error of judgment.[15]

The misconduct is grave if it involves any of the additional elements of corruption, willful intent to violate the law, or to disregard established rules, which must be established by

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[12] *Id*. at 84.

[13] *Id*. at 100.

[14] *Id*. at 101.

[15] *Office of the Court Administrator v. Musngi*, 691 Phil. 117, 122 (2012).

substantial evidence. As distinguished from simple misconduct, the elements of corruption, clear intent to violate the law, or flagrant disregard of established rule, must be manifest in a charge of grave misconduct.[16] 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.[17]

Dishonesty, on the other hand, is the disposition to lie, cheat, deceive, defraud, or betray; unworthiness; lack of integrity; lack of honesty, probity, or integrity in principle; and lack of fairness and straightforwardness.[18] It is a malevolent act that makes people unfit to serve the Judiciary.

Conduct prejudicial to the best interest of service pertains to any conduct that is detrimental or derogatory or naturally or probably bringing about a wrong result; it refers to acts or omissions that violate the norm of public accountability and diminish — or tend to diminish — the people's faith in the Judiciary.[19]

Insubordination, meanwhile, is defined as a refusal to obey some order, which a superior officer is entitled to give and have obeyed. The term imports a willful or intentional disregard of the lawful and reasonable instructions of the employer.[20]

In this case, complainant and her staff duly established in the inventory list that the drug specimens stored in the vault of the RTC were missing. An examination of the envelopes containing the evidence in the criminal cases showed that the drug exhibits of *shabu* and marijuana were gone. As properly

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[16] *Office of the Court Administrator v. Judge Indar*, 685 Phil. 272, 286-287 (2012).

[17] *Office of the Court Administrator v. Lopez*, 654 Phil. 602-608 (2011).

[18] *Office of the Court Administrator v. Acampado*, 721 Phil. 12, 30 (2013).

[19] *Contreras-Soriano v. Salamanca*, 726 Phil. 355, 361-362 (2014).

[20] *Dalmacio-Joaquin v. Dela Cruz*, 604 Phil. 256, 261 (2009).

alleged by complainant, the theft of the said pieces of evidence could only be perpetrated after office hours when all the staff have left the courtroom. Notably, it was only respondent as court aide, who had access to the courtroom, where the vault is located, after office hours and during the weekends. It is beyond cavil that respondent could easily enter the courtroom unsuspiciously in the guise of cleaning the room. Due to his position, he could access the court's vault, rig its padlock and steal its contents.

Respondent became aware of the status of the cases pending before the RTC because he was the one in charge of arranging the records at the storage area during the court's disposal month for July 2016. Evidently, most of the cases that had missing exhibits were already disposed by the RTC. Respondent deviously targeted these decided cases so that his nefarious deeds would go unnoticed. It was only when Criminal Case No. 12817-12818 was re-opened for presentation of evidence that the theft of the court's exhibits was exposed. Thereafter, respondent could not be contacted anymore as he hurriedly left his residential address.

Later, it was also discovered that other pieces of evidence, such as the .38 caliber revolver and some cash and pieces of jewelry, were also missing from the vault of the RTC. Then, on August 16, 2016, respondent was caught selling an unlicensed .38 caliber revolver. Likewise, four (4) pieces of .38 caliber live ammunition and seven (7) pieces of small transparent plastic sachets containing white crystalline substance suspected to be *shabu* were also confiscated from respondent. It was confirmed the seized firearm is a missing exhibit in Criminal Case No. 15108, also pending before the RTC. The arrest of respondent and seizure of the contrabands from his possession reinforced his administrative guilt in stealing the court's exhibits.

Respondent committed grave misconduct because theft of the exhibits in the court's vault and the illegal sale of the pilfered firearm are clear transgressions of the law. There is also an element of corruption because he unlawfully and wrongfully used his position to procure some benefit for himself and to the detriment of the Judiciary.

Respondent is likewise guilty of dishonesty because his misappropriation of the court's evidence demonstrates his disposition to lie, cheat, deceive, defraud, or betray.[21] Manifestly, the dishonest act caused serious damage and grave prejudice to the Government. By stealing the evidence of the court and using the same for his own benefit, respondent likewise committed conduct prejudicial to the best interest of the service because he violated the norm of public accountability which, subsequently diminished the people's faith in the Judiciary.

As to the charge of insubordination, the Court finds it meritorious. In two (2) directives, the OCA required respondent to submit his comment to the complaint but these were unheeded. It must be emphasized that noncompliance with the OCA's directives is tantamount to insubordination to the Court itself.[22] Respondent was then required by the Court to show cause why he should not be administratively dealt with for failure to submit his comment but, again, this fell on deaf ears. In spite of the personal service of the notices to him, he did not comply with the OCA and the Court's directives. Evidently, respondent committed insubordination and the conduct he exhibited constitutes no less than a clear act of disrespect for the authority of the Court.[23]

In *Report on the Theft of Court Exhibit by Roberto R. Castro*,[24] the court employee therein stole a 9mm caliber firearm, which was an exhibit in a criminal case. The Court found that he committed serious misconduct, dishonesty and conduct prejudicial to the best interest of the service.

Similarly, *In the Matter of the Loss of One (1) Tamaya Transit, An Exhibit in Criminal Case No. 193*,[25] another court employee

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[21] See *Re: Anonymous Letter Complaint v. Judge Samson*, A.M. No. MTJ-16-1870, June 6, 2017.

[22] *Judge Pamintuan v. Comuyog, Jr.*, 766 Phil. 566, 575 (2015).

[23] *Ibid.*

[24] 783 Phil. 734 (2016).

[25] 200 Phil. 82 (1982).

took out and pawned a wristwatch under his custody, which was a case exhibit. The Court found him guilty of dishonesty and grave misconduct and directed his dismissal from the service with forfeiture of his retirement benefits and with prejudice to reinstatement to any branch of the government.

In this case, respondent's theft of the exhibits of the RTC is a grave misconduct in the performance of his official duties, consisting of dishonesty and conduct prejudicial to the best interest of the service, and insubordination against the directives of the OCA and the Court. Taken together, these are grounds for dismissal under the Civil Service Law.[26] All his benefits, excluding his accrued leave credits, must be forfeited and with prejudice to re-employment in any branch or agency of the government.

There is no place in the Judiciary for those who cannot meet the exacting standards of judicial conduct and integrity. This is because the image of a court of justice is necessarily mirrored in the conduct, official or otherwise, of the men and women who work thereat, from the judge to the least and lowest of its personnel. Thus, it becomes the imperative sacred duty of each and every one in the court to maintain its good name and standing as a true temple of justice.[27]

As front liners in the administration of justice, court personnel should live up to the strictest standards of honesty and integrity in the public service, and in this light, are always expected to act in a manner free from reproach. Any conduct, act, or omission that may diminish the people's faith in the Judiciary should not be tolerated.[28] For tarnishing the image and integrity of the bench, respondent's name should be perpetually stripped from the rolls of the men and women of the Judiciary.

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[26] *Supra* note 22 at 579.

[27] *Judge Tolentino-Genilo v. Pineda*, A.M. No. P-17-3756, October 10, 2017.

[28] *Office of the Court Administrator v. Dequito*, A.M. No. P-15-3386, November 15, 2016.

WHEREFORE, Rainier M. Lovendino, Court aide of the Regional Trial Court, Branch 76, San Mateo, Rizal, is **GUILTY** of grave misconduct, serious dishonesty, conduct prejudicial to the best interest of the service and insubordination. He is hereby **DISMISSED** from the service with **FORFEITURE** of all benefits, except accrued leave benefits, and with prejudice to re-employment in any of instrumentality of the government including government-owned or controlled corporations.

SO ORDERED.

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

Sereno, C.J., on leave.

FIRST DIVISION

[G.R. No. 219863. March 6, 2018]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **RICHARD RAMIREZ *y* TULUNGHARI,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; REVISED PENAL CODE; STATUTORY RAPE; HOW COMMITTED; ELEMENTS THAT MUST BE PROVED TO CONVICT AN ACCUSED, SUCCESSFULLY ESTABLISHED IN CASE AT BAR.— "Statutory rape is committed by sexual intercourse with a woman below 12 years of age regardless of her consent, or the lack of it, to the sexual act." Notably, the absence of free consent in

[*] Acting Chief Justice per Special Order No. 2539, dated February 28, 2018.

cases of statutory rape is conclusively presumed and as such, proof of force, intimidation or consent is immaterial. To convict an accused of statutory rape, the prosecution must prove: *1)* the age of the complainant; *2)* the identity of the accused; and *3)* the sexual intercourse between the accused and the complainant. In this case, the prosecution successfully established that the first rape incident on February 24, 2007 indeed took place when "AAA" was only 6 years old, and that appellant was the perpetrator of the crime. x x x

2. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; FINDINGS OF THE REGIONAL TRIAL COURT AS AFFIRMED BY THE COURT OF APPEALS, ACCORDED RESPECT.— x x x [B]oth the RTC and the CA found "AAA's" testimony credible and convincing. We, too, see no reason to disbelieve "AAA's" testimony as regards the first rape incident, since it was not shown that the lower courts had *overlooked*, *misunderstood* or *misappreciated* facts or circumstances of weight and substance which, if properly considered, would have altered the result of the case.

3. CRIMINAL LAW; REVISED PENAL CODE; STATUTORY RAPE; PRESENCE OF OTHER PERSONS DURING THE COMMISSION OF RAPE AND ABSENCE OF HYMENAL LACERATION ON THE VICTIM'S HYMEN DO NOT NEGATE RAPE.— We reject appellant's contention that the presence of other persons during the commission of the first rape incident rendered "AAA's" testimony unbelievable. "It is not impossible or incredible for the members of the victim's family to be in deep slumber and not to be awakened while a sexual assault is being committed." After all, "[i]t is settled that lust is not a respecter of time or place and rape is known to happen [even] in the most unlikely places." We are likewise not persuaded by appellant's claim that the absence of lacerations on "AAA's" hymen negated sexual intercourse. "The rupture of the hymen is not an essential and material fact in rape cases; it only further confirms that the vagina has been penetrated and damaged in the process." Besides, as the CA correctly pointed out, the Initial Medico-Legal Report itself stated that although there was "no evident injury at the time of examination," the "medical evaluation cannot exclude sexual abuse."

4. ID.; ID.; ID.; QUALIFIED STATUTORY RAPE, COMMITTED; PENALTY.— x x x [S]exual intercourse with

a woman who is below 12 years of age constitutes statutory rape. Moreover, Article 266-B of the Revised Penal Code, as amended, provides that the death penalty shall be imposed "when the victim is a child below seven (7) years old." In this case, "AAA" was only six years old at the time of the incident, as evidenced by her Certificate of Live Birth showing that she was born on September 7, 2000. Consequently, the crime committed by appellant is **qualified statutory rape** under Article 266-B. Since the death penalty cannot be imposed in view of Republic Act No. 9346, or An Act Prohibiting the Imposition of Death Penalty in the Philippines, the proper penalty is *reclusion perpetua* without eligibility for parole.

5. **ID.; ID.; ID.; ID.; CIVIL LIABILITY.—** x x x [W]e increase the award of civil indemnity from ₱75,000.00 to ₱100,000.00; moral damages from ₱75,000.00 to ₱100,000.00; and exemplary damages from ₱50,000.00 to ₱100,000.00. Moreover, "a legal interest of 6% *per annum* will be imposed on the total amount of damages awarded to "AAA" counted from the date of the finality of this judgment until fully paid."

6. **ID.; ID.; ACTS OF LASCIVIOUSNESS, NOT ESTABLISHED BEYOND REASONABLE DOUBT.—** Unfortunately, "AAA's" testimony as regards the second rape incident is **not** sufficient to convict appellant of rape or even acts of lasciviousness *sans* the testimonies of "BBB" and "CCC" ("AAA's" uncle) who supposedly witnessed firsthand what happened on that fateful night. "AAA's" narrative thereto clearly consisted of **hearsay evidence** which, "whether objected to or not, *has no probative value* unless the proponent can show that the evidence falls within the exceptions to the hearsay evidence rule x x x." Clearly, the RTC committed a grave mistake when it relied on hearsay evidence to convict appellant of the crime of acts of lasciviousness. We also note the error in the *fallo* of the RTC Decision where the trial court convicted appellant of rape in Criminal Case No. 07-0284 (the second rape incident) and acts of lasciviousness in Criminal Case No. 07-0589 (the first rape incident), when it should have been the other way around, based on the discussion in the body of said Decision. The CA, too, is equally at fault for failing not only to recognize the glaring flaw in the prosecution's evidence, but also to correct the mistake in the *fallo* of the RTC Decision when the case was elevated on appeal.

APPEARANCES OF COUNSEL

The Solicitor General for plaintiff-appellee.
Public Attorney's Office for accused-appellant.

D E C I S I O N

DEL CASTILLO, *J.*:

Assailed in this appeal is the October 30, 2014 Decision[1] of the Court of Appeals (CA) in CA-G.R. CR-HC No. 05176 which affirmed the February 3, 2011 Decision[2] of the Regional Trial Court (RTC), Branch 254, Las Piñas City, finding appellant Richard Ramirez *y* Tulunghari guilty beyond reasonable doubt of the crimes of rape and acts of lasciviousness.

The Antecedent Facts

Appellant was charged with the crime of rape in two separate Informations which read:

Criminal Case No. 07-0589

That sometime on or about February 24, 2007, in the City of Las Piñas, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, did then and there willfully, unlawfully and feloniously have carnal knowledge [of] one ["AAA",[3] a six (6)

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[1] *Rollo*, pp. 2-10; penned by Associate Justice Eduardo B. Peralta, Jr. and concurred in by Associate Justices Magdangal M. De Leon and Stephen C. Cruz.

[2] CA *rollo*, pp. 82-89; penned by Presiding Judge Gloria Butay Aglugub.

[3] "The identity of the victim or any information which could establish or compromise her identity, as well as those of her immediate family or household members, shall be withheld pursuant to Republic Act No. 7610, An Act Providing for Stronger Deterrence And Special Protection Against Child Abuse, Exploitation And Discrimination, Providing Penalties for its Violation, And for Other Purposes; Republic Act No. 9262, An Act Defining Violence Against Women And Their Children, Providing For Protective Measures For Victims, Prescribing Penalties Therefor, And for Other Purposes; and Section 40 of A.M. No. 04-10-11-SC. known as the Rule on Violence against Women and Their Children, effective November 15, 2004." *People v. Dumadag*, 667 Phil. 664, 669 (2011).

year old minor, through force, or intimidation, and against her will and consent, thereby subjecting her to sexual abuse and that the act complained of is prejudicial to the physical and psychological development of the complainant-minor.[4]

Criminal Case No. 07-0284

That on or about the 18th day of March 2007, in the City of Las Piñas, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with lewd design, did then and there willfully, unlawfully and feloniously have carnal knowledge of one ["AAA"], six (6) year[s] old and below 7 years of age, minor, through force and intimidation against her will and consent by licking the vagina and thereafter inserting his penis into the vagina of said ["AAA"], thereby subjecting her to sexual abuse, and that the act complained of is prejudicial to the physical and psychological development of the complainant-minor.[5]

During his arraignment, appellant entered a plea of not guilty.[6] Trial thereafter ensued.

Version of the Prosecution

The prosecution's version of the incidents is as follows:

AAA, born on September 7, 2000, was then only six (6) years old when she was raped and molested by the accused.

The victim and the accused [were] neighbors in Las Piñas City. Accused, a stay-in construction worker in Baliwag, Bulacan, [was] also a friend of AAA's uncle who would usually sleep over at the victim's house.

On February 24, 2007, at or about 12:00 a.m, AAA was awakened by the accused when he removed her pajama and panty and placed himself on top of her. The accused licked her vagina before inserting his penis into it. She felt pain and cried. Since the accused threatened her with harm if she [told] the incident to anybody, she kept mum about it.

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[4] Information dated June 14, 2007, records, p. 1.

[5] Information dated March 20, 2007, *id.* at 64.

[6] *Id.* at 21 and 86.

[O]n March 18, 2007, during the wee hours of the morning, or about 2:00 a.m., AAA was awakened by the shout of her uncle, CCC. There, she saw accused standing at the corner of the house with her panty at the latter's feet. Realizing that she was naked, she instantly wore her short pants and ran and embraced her uncle. Thereafter, AAA, together with her grandparents and uncles, went to the police to report what happened. The medico legal examination of the private organ of AAA revealed no laceration in her hymen.[7]

Version of the Defense

Appellant raised the defenses of denial and alibi, *viz.*:

x x x On February 24, 2007, he was working as a construction worker at NFA, Baliwag, Bulacan. He worked there from Monday to Saturday. [On said date,] he was working until 5:00 o'clock in the afternoon in Bulacm1.

On March 18, 2007, he was at home resting. At around 8:00 o'clock in the evening of that day, he went out to join his friends, Jonas Rabosa, Aron Rabosa, Jomari Magondayao, Randy Ramirez, Erma Bergancia and Bongbong in a drinking spree in front of the house of AAA's aunt, BBB, where AAA also lived. The drinking spree lasted until 12:00 o'clock midnight when he started vomiting. They slept at BBB's house. He, together with his friends, slept, side by side with each other in the living room, but before he fell asleep he noticed that AAA was sleeping on the sofa.

At around 2:00 o'clock in the morning, [he] was awakened by the punches thrown at him by AAA's uncle, CCC, who claimed to have seen him molesting the girl. He was surprised. Another uncle, DDD, followed suit and both clobbered him. His cousin, Randy Ramirez, intervened to pacify, and brought him home. At home, he narrated to his mother what [had] happened, and she cried. Then, policemen arrived at their house to arrest him, although without showing any warrant of arrest.[8]

Ruling of the Regional Trial Court

In its Decision dated February 3, 2011, the RTC found appellant guilty beyond reasonable doubt of **rape** under Article

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[7] CA *rollo*, pp. 109-110.

[8] *Id.* at 68.

266 of the Revised Penal Code in Criminal Case No. 07-0284 and **acts of lasciviousness** under Article 336 in Criminal Case No. 07-0589.[9] It held that:

> On the first rape, AAA narrated that she was roused from sleep when accused was removing her pajama and panty. After removing he[r] pajama and panty, accused licked her vagina, [and] inserted something hard into [it]. [She later clarified that it was appellant's penis that was inserted into her vagina.] She did not disclose this to anybody because accused told her not to tell it to anybody.[10]
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> x x x x x x x x x
>
> On the alleged (second rape incident], AAA narrated that she was roused from sleep when her uncle[,] CCC[,] was shouting angry words at the accused when they saw the latter lying on top of AAA. x x x It is clear from AAA's testimony that when the accused carried out the lecherous intent on March 18, 2007, he did not commit rape, consummated nor attempt[ed]. There [was] no indication that accused successfully penetrated, at least the labia of AAA. Accused should only be held liable for acts of lasciviousness.[11]

Accordingly, the RTC sentenced appellant to suffer the penalty of *a*) *reclusion perpetua* and to pay "AAA" ₱75,000.00 as civil indemnity, ₱75.000.00 as moral damages and ₱50,000.00 as exemplary damages in Criminal Case No. 07-0284; and *b*) imprisonment of six (6) months of *arresto mayor*, as minimum, to four (4) years and two (2) months of *prision correccional*, as maximum, and to pay "AAA" ₱30,000.00 as civil indemnity, P30,000.00 as moral damages and ₱20,000.00 as exemplary damages in Criminal Case No. 07-0589.[12]

Appellant thereafter appealed the RTC Decision before the CA.

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[9] *Id*. at 89.

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

[11] *Id*. at 88.

[12] *Id*. at 89. In the dispositive portion of the RTC's Decision, Crim. Case No. 07-0589 was inadvertently stated as Crim. Case. 07-0585.

Ruling of the Court of Appeals

The CA affirmed the RTC Decision *in toto*. Like the RTC, the CA found "AAA's" testimony worthy of credence.[13] It also noted that "AAA" had "positively identified appellant as her abuser and her statements under oath were sufficient to convict appe1lant for [his misdeeds]."[14]

In addition, the CA held that appellant's defense of denial cannot prevail over "AAA's" testimony as it was not properly corroborated or substantiated by clear and convincing evidence. 1t likewise reiterated that the defense of denial could not prevail over "AAA's" positive identification of appellant as the perpetrator of the crimes charged.[15]

Aggrieved, appellant filed the present appeal.

The Issues

Appellant raises the following issues for the Court's resolution:

First, whether "AAA's" testimony was credible and straightforward, given that: (*a*) she simply answered "yes" to almost all of the trial prosecutor's leading questions;[16] and (*b*) the defense was able to prove that the alleged acts of rape could not have been perpetrated by appellant, as there were other persons present when said acts were supposedly committed;[17] and,

Second, whether the absence of hymenal lacerations on "AAA" casts doubt on appellant's guilt.[18]

The Court's Ruling

After due consideration, we resolve to (*a*) **affirm** appellant's conviction in Criminal Case No. 07-0589, but ***modify*** the

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[13] *Rollo*, p. 8.

[14] *Id*. at 9.

[15] *Id*.

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

[17] *Id*. at 74.

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

designation of the crime committed; and (*b*)**grant** his appeal in Criminal Case No. 07-0284.

Elements of Rape in Criminal Case No. 07-0589 Established

Article 266-A of the Revised Penal Code provides:

ART. 266-A. *Rape, When and How Committed.* — Rape is committed –

1. By a man who shall have carnal knowledge of a woman under any of the following circumstances:

a. Through force, threat or intimidation;
b. When the offended party is deprived of reason or is otherwise unconscious;
c. By means of fraudulent machination or grave abuse of authority;
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. (Emphasis supplied)

x x x x x x x x x

"Statutory rape is committed by sexual intercourse with a woman below 12 years of age regardless of her consent, or the lack of it, to the sexual act."[19] Notably, the absence of free consent in cases of statutory rape is conclusively presumed and as such, proof of force, intimidation or consent is immaterial.[20]

To convict an accused of statutory rape, the prosecution must prove: *1*) the age of the complainant; *2*) the identity of the accused; and *3*) the sexual intercourse between the accused and the complainant.[21]

In this case, the prosecution successfully established that the first rape incident on February 24, 2007 indeed took place

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[19] *People v. Gaa*, G.R. No. 212934, June 7, 2017.

[20] *Id*.

[21] *Id*.

when "AAA" was only 6 years old,[22] and that appellant was the perpetrator of the crime. The pertinent portion of "AAA's" testimony detailing said rape incident is quoted below:

[PROS. JACOB M. MONTESA II]

Q: You said you were raped by Kuya Richard, is this true or not?
A: That's true, Sir.

Q: How did he rape you?
A: He placed himself on top of me, Sir.

Q: And what else did he do?
A: He inserted his penis into my vagina, Sir.

Q: What else?
A: He licked my vagina, Sir.[23]

x x x x x x x x x

Q: This Kuya Richard who raped you, is he here today?
A: Yes, Sir.

Q: Can you point to him?
A: That one, Sir. (Witness pointing to a person who when asked, answered by the name of Richard Ramirez.)

Q: Can you tell us what you felt when Kuya Richard was doing this? What was your reaction?
A: I was hurt, Sir.

Q: Did you cry?
A: Yes, Sir.[24]

Notably, both the RTC and the CA found "AAA's" testimony credible and convincing. We, too, see no reason to disbelieve "AAA's" testimony as regards the first rape incident, since it was not shown that the lower courts had *overlooked*, *misunderstood* or *misappreciated* facts or circumstances of

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[22] See "AAA's" Certificate of Live Birth, records, p. 12.

[23] TSN, August 12, 2008, pp. 10-11.

[24] *Id*. at 14.

weight and substance which, if properly considered, would have altered the result of the case.[25]

We reject appellant's contention that the presence of other persons during the commission of the first rape incident rendered "AAA's" testimony unbelievable. "It is not impossible or incredible for the members of the victim's family to be in deep slumber and not to be awakened while a sexual assault is being committed."[26] After all, "[i]t is settled that lust is not a respecter of time or place and rape is known to happen [even] in the most unlikely places."[27]

We are likewise not persuaded by appellant's claim that the absence of lacerations on "AAA's" hymen negated sexual intercourse. "The rupture of the hymen is not an essential and material fact in rape cases; it only further confirms that the vagina has been penetrated and damaged in the process."[28] Besides, as the CA correctly pointed out, the Initial Medico-Legal Report[29] itself stated that although there was "no evident injury at the time of examination," the "medical evaluation cannot exclude sexual abuse."

Acts of lasciviousness not proven beyond reasonable doubt

At this juncture, we draw attention to the unique nature of an appeal in a criminal case – 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.[30] It is on the basis of such review that we find the present appeal *partially* meritorious.

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[25] *People v. Espino, Jr.*, 577 Phil. 546, 562 (2008).

[26] *People v. Bangsoy*, 778 Phil. 294, 303 (2016).

[27] *Id*.

[28] *Id*. at 304.

[29] Records, p. 11; prepared by PSI Marianne S. Ebdane, M.D.

[30] *People v. Kamad*, 624 Phil. 289, 310 (2010).

The Information in Criminal Case No. 07-0284 alleged that appellant had carnal knowledge of "AAA" "on or about the 18th day of March, 2007." For precision and clarity, we quote "AAA's" testimony on the incident that transpired on March 18, 2007 as follows:

[COURT:]

Q: **You mentioned that you did not see the person who took off your pants, you mean you are not sure who he is?**
A: **No, [y]our Honor.**

Q: You said you did not see him?
A: Because I was asleep at that time. I was awakened when my Uncle shouted.

Q: You did not wake up because somebody took off your shorts but because of the shouting of your Uncle?
A: Yes, [y]our Honor.

x x x x x x x x x

Q: When you heard your Uncle shouting, did you learn why he shouted?
A: Yes, [y]our Honor.

Q: Why?
A: **According to him, BBB [(AAA's aunt)] saw Richard on top of me, [y]our Honor.**

Q: So when he was on top of you, you were not awakened?
A: No, [y]our Honor.[31] (Emphasis supplied)

Unfortunately, "AAA's" testimony as regards the second rape incident is **not** sufficient to convict appellant of rape or even acts of lasciviousness *sans* the testimonies of "BBB" and "CCC" ("AAA's" uncle) who supposedly witnessed firsthand what happened on that fateful night. "AAA's" narrative thereto clearly consisted of **hearsay evidence** which, "whether objected to or not, *has no probative value* unless the proponent can show that the evidence falls within the exceptions to the hearsay evidence rule x x x."[32]

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[31] TSN, December 9, 2008, pp. 8-10.

[32] *Republic v. Galeno*, G.R. No. 215009, January 23, 2017. Italics supplied.

On this point, we deem it appropriate to reiterate our ruling in *People v. Mamalias*[33] where we emphasized that the admission of hearsay evidence in a criminal case would be tantamount to a violation of the rights of the accused, *viz.*:

> x x x We have held that in criminal cases, the admission of hearsay evidence would be a violation of the constitutional provision that the accused shall enjoy the right to confront the witnesses testifying against him and to cross-examine them. **A conviction based alone on proof that violates the constitutional right of an accused is a nullity and the court that rendered it acted without jurisdiction in its rendition.** Such a judgment cannot be given any effect whatsoever especially on the liberty of an individual.[34] (Emphasis supplied)

Clearly, the RTC committed a grave mistake when it relied on hearsay evidence to convict appellant of the crime of acts of lasciviousness. We also note the error in the *fallo*[35] of the RTC Decision where the trial court convicted appellant of rape in Criminal Case No. 07-0284 (the second rape incident) and acts of lasciviousness in Criminal Case No. 07-0589[36] (the first rape incident), when it should have been the other way around, based on the discussion in the body of said Decision.

The CA, too, is equally at fault for failing not only to recognize the glaring flaw in the prosecution's evidence, but also to correct the mistake in the *fallo* of the RTC Decision when the case was elevated on appeal.

The Crime Committed and the Proper Penalty in Criminal Case No. 07-0589

As earlier discussed, sexual intercourse with a woman who is below 12 years of age constitutes statutory rape.[37] Moreover,

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[33] 385 Phil. 499 (2000).

[34] *Id.* at 513.

[35] CA *rollo*, p. 89.

[36] Also erroneously stated as Crim. Case No. 07-0585.

[37] *People vs. Gaa, supra* note 19.

Article 266-B of the Revised Penal Code, as amended, provides that the death penalty shall be imposed "when the victim is a child below seven (7) years old."[38]

In this case, "AAA" was only six years old at the time of the incident, as evidenced by her Certificate of Live Birth[39] showing that she was born on September 7, 2000. Consequently, the crime committed by appellant is **qualified statutory rape** under Article 266-B. Since the death penalty cannot be imposed in view of Republic Act No. 9346, or An Act Prohibiting the Imposition of Death Penalty in the Philippines, the proper penalty is *reclusion perpetua* without eligibility for parole.[40]

We likewise modify the amounts awarded to "AAA" in view of our ruling in *People v. Gaa*[41] imposing a minimum amount of ₱100,000.00 as civil indemnity, ₱100,000.00 as moral damages, and ₱100,000.00 as exemplary damages "in cases where the proper penalty for the crime committed by accused is death but where it cannot be imposed because of the enactment of RA 9346," as in this case.

Thus, we increase the award of civil indemnity from ₱75,000.00 to ₱100,000.00; moral damages from ₱75,000.00 to ₱100,000.00; and exemplary damages from ₱50,000.00 to ₱100,000.00. Moreover, "a legal interest of 6% *per annum* will be imposed on the total amount of damages awarded to "AAA" counted from the date of the finality of this judgment until fully paid."[42]

WHEREFORE, the appeal is **DIMISSED**. The assailed Decision dated October 30, 2014 of the Court of Appeals in CA-G.R. CR-HC No. 05176 convicting appellant Richard Ramirez *y* Tulunghari is **AFFIRMED with the following MODIFICATIONS**:

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[38] REVISED PENAL CODE, Article 266-B, par 5.

[39] Records, p. 12.

[40] *People vs. Gaa, supra* note 19.

[41] *Id*.

[42] *Id*.

(a) appellant is found **GUILTY** of **QUALIFIED STATUTORY RAPE** in Criminal Case No. 07-0589, and is sentenced to suffer the penalty of *reclusion perpetua* without eligibility for parole;

(b) the amounts of the civil indemnity, moral damages, and exemplary damages in Criminal Case No. 07-0589 are **increased** to ₱100,000.00, respectively; and,

(c) appellant is **ACQUITTED** in Criminal Case No. 07-0284.

SO ORDERED.

Leonardo-de Castro[*] *(Acting Chairperson), Tijam*, and *Gesmundo*,[**] *JJ.*, concur.

Sereno, C.J., on leave.

FIRST DIVISION

[G.R. No. 225309. March 6, 2018]

ROSARIO ENRIQUEZ VDA. DE SANTIAGO, *petitioner, vs.* **ANTONIO T. VILAR,** *respondent.*

[G.R. No. 225546. March 6, 2018]

GOVERNMENT SERVICE INSURANCE SYSTEM (GSIS), *petitioner, vs.* **ANTONIO T. VILAR,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; INDISPENSABLE PARTY; DEFINED.— By definition, an indispensable party

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[*] Per Special Order No. 2540 dated February 28, 2018.

[**] Designated as additional member per October 18, 2017 raffle vice *J.* Jardeleza who recused due to prior action as Solicitor General.

is a party-in-interest without whom no final determination can be had of an action, and who shall be joined either as plaintiffs or defendants. It is a party whose interest will be affected by the court's action in the litigation.

2. **ID.; ID.; ID.; PETITIONER ROSARIO IS AN INDISPENSABLE PARTY IN THE PETITION BEFORE THE COURT OF APPEALS (CA) SINCE THE FINAL DETERMINATION OF THE CASE WOULD PRY INTO HER RIGHT AS PARTY-PLAINTIFF BEFORE THE LOWER COURT WHO IS ENTITLED TO THE PROCEEDS OF THE JUDGMENT AWARD; FAILURE TO IMPLEAD PETITIONER ROSARIO CONSTITUTES A DENIAL OF DUE PROCESS AND RENDERS THE PROCEEDINGS BEFORE THE CA NULL AND VOID.—** Rosario is an indispensable party in the petition before the CA as she is the widow of the original party-plaintiff Eduardo. The determination of the propriety of the action of the trial court in merely noting and not granting his motion would necessarily affect her interest in the subject matter of litigation as the party-plaintiff. Accordingly, the Court differs with the CA in ruling that the petition for *certiorari* filed before it merely delves into the issue of grave abuse of discretion committed by the lower court. Guilty of repetition, the final determination of the case would pry into the right of Rosario as party-plaintiff before the lower court who is entitled to the proceeds of the judgment award. As it is, the CA did not actually rule on the issue of grave abuse of discretion alone as its corollary ruling inquired into the right of Rosario. In ruling for Vilar's substitution, the right of Rosario as to the proceeds of the judgment award was thwarted as the CA effectively ordered that the proceeds pertaining to Rosario be awarded instead to Vilar. Likewise, the Court finds merit in Rosario's contention that her failure to participate in the proceedings before the CA constitutes a denial of her constitutional right to due process. Hence, failure to implead Rosario as an indispensable party rendered all the proceedings before the CA null and void for want of authority to act.

APPEARANCES OF COUNSEL

Ubano Sianghio Lozada & Cabantac for Rosario Enriquez *vda. de* Santiago.

GSIS Legal Services Group for Government Service Insurance System.

Pallugna Pallugna & Quimpo Law Offices for respondent Antonio T. Vilar.

D E C I S I O N

TIJAM, *J.*:

Before this Court are consolidated Petitions for Review on *Certiorari*[1] under Rule 45 of the Rules of Court, assailing the Decision[2] dated February 10, 2014 and Amended Decision[3] dated June 17, 2016 of the Court of Appeals (CA) in CA-G.R. SP No. 117439, filed by petitioner Rosario Enriquez Vda. de Santiago (Rosario) and petitioner Government Service Insurance System (GSIS).

Facts of the Case

Spouses Jose C. Zulueta and Soledad Ramos (Spouses Zulueta), registered owners of several parcels of land covered by Transfer Certificate of Title (TCT) Nos. 26105, 37177 and 50356 (mother titles), obtained various loans secured by the mother titles from the GSIS. The amount of loans, with the accumulated value of ₱3,117,000.00 were obtained from September 1956 to October 1957.[4]

From the records, the lot covered by Transfer Certificate of Title (TCT) No. 26105 was divided into 199 lots. Under the first mortgage contract, 78 of these lots were excluded from the mortgage.[5]

When Spouses Zulueta defaulted in their payment, GSIS extra-judicially foreclosed the mortgages in August 1974 wherein

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[1] *Rollo* (G.R. No. 225309), pp. 51-94; *rollo* (G.R. No. 225546), pp. 11-57.

[2] *Rollo* (G.R. No. 225309), pp. 15-37.

[3] *Id.* at 39-48.

[4] *Id.* at 16.

[5] *Id.*

the latter emerged as the highest bidder. A certificate of sale was then issued. GSIS, however, consolidated its title on all of the three mother titles, including the 78 lots which were expressly excluded from the mortgage contract.[6]

Later, GSIS sold the foreclosed properties to Yorkstown Development Corporation (YDC). The same, however, was disapproved by the Office of the President. Accordingly, the TCTs issued in favor of YDC were canceled.[7]

When GSIS reacquired the properties sold to YDC, it began to dispose the foreclosed lots, including those not covered by the foreclosure sale.[8]

Thereafter, Spouses Zulueta were succeeded by Antonio Zulueta (Antonio), who transferred all his rights and interests in the excluded lots to Eduardo Santiago (Eduardo). Claiming his rights and interests over the excluded lots, Eduardo, through his counsel, sent a letter to GSIS for the return of the same.[9]

In May 1990, Antonio, as represented by Eduardo, filed an Action for Reconveyance of the excluded lots against the GSIS. Subsequently, Antonio was substituted by Eduardo. Upon Eduardo's demise, however, he was substituted by his widow, herein petitioner Rosario.[10]

In a Decision[11] dated December 17, 1997, the Regional Trial Court (RTC) of Pasig City, Branch 71, ordered GSIS to reconvey to Rosario the excluded lots or to pay the market value of said lots in case reconveyance is not possible. The Registry of Deeds of Pasig City was likewise ordered to cancel the titles covering the excluded lots issued in the name of GSIS. The dispositive portion thereof reads:

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[6] *Id.*

[7] *Id.*

[8] *Id.*

[9] *Id.* at 151.

[10] *Id.* at 16.

[11] Rendered by Judge Celso D. Laviña; *id.* at 142-157.

WHEREFORE, judgment is hereby rendered in favor of [Rosario] and against [GSIS]:

1. Ordering defendant to reconvey to [Rosario] the seventy-eight (78) lots released and excluded from the foreclosure sale including the additional exclusion from the public sale, namely:

a. Lot Nos. 1, 6, 7, 8, 9, 10 and 13, Block I (Old Plan).
b. Lot Nos. 1, 3, 4, 5, 7, 8, 10, Block II (Old Plan).
c. Lot Nos. 3, 10, 12 and 13, Block I (New Plan), Block III (Old Plan).
d. Lot Nos. 7, 14 and 20, Block III (New Plan), Block V (Old Plan).
e. Lot Nos. 13 and 20, Block IV (New Plan), Block VI (Old Plan).
f. Lot Nos. 1, 2, 3 and 10, Block V (New Plan), Block VII (Old Plan).
g. Lot Nos. 1, 5, 8, 15, 26 and 27, Block VI (New Plan), Block VIII (Old Plan).
h. Lot Nos. 7 and 12, Block VII (New Plan), Block II (Old Plan).
i. Lot Nos. 1, 4 and 6, Block VIII (New Plan), Block X (Old Plan).
j. Lot 5, Block X (New Plan), Block XIII (Old Plan).
k. Lot 6, Block XI (New Plan), Block XII (Old Plan).
l. Lots 2, 5, 12 and 15, Block I.
m. Lots 6, 9 and 11, Block 2.
n. Lots 1, 5, 6, 7, 16 and 23, Block 3.
o. Lot 6, Block 4.
p. Lots 5, 12, 13 and 24, Block 5.
q. Lots 10 and 16, Block 6.
r. Lots 6 and 15, Block 7.
s. Lots 13, 24, 28 and 29, Block 8.
t. Lots 1, 11, 17 and 22, Block 9.
u. Lots 1, 2, 3 and 4, Block 10.
v. Lots 1, 2, 3 and 5 (New), Block 11.

2. Ordering [GSIS] to pay [Rosario], if the seventy-eight (78) excluded lots could not be reconveyed; the fair market value of each of said lots.

3. Ordering the Registry of Deeds of Pasig City, to cancel the land titles covering the excluded lots in the name of [GSIS] or any of its successors-in-interest including all derivative titles therefrom and to issue new titles in [Rosario's] name.

4. Ordering the Register of Deeds of Pasig City, to cancel the Notices of Lis Pendens inscribed in TCT No. PT-80342 under Entry No. PT-12267/T-23554; TCT No. 81812 under Entry No. PT-12267/T-23554; and TCT No. PT-84913 under Entry No. PT-12267/T-23554.

5. Costs of suit.

Counterclaims filed by [GSIS], intervenors Urbano and intervenors Gonzales are DISMISSED.

SO ORDERED.[12]

On appeal, the CA affirmed the trial court's rulings in a Decision dated February 22, 2002.[13] The same was affirmed by this Court in a Decision[14] dated October 28, 2003 in G.R. No. 155206. Accordingly, an Entry of Judgment[15] was issued. When the decision became final and executory, Rosario filed a motion for execution.[16]

In an Order[17] dated April 27, 2004, the RTC granted the motion for execution. The RTC fixed the current fair market value of the lots at ₱35,000 per square meter or a total of ₱1,166,165,000. Thereafter, in an Order[18] dated May 13, 2004, the RTC denied the motion filed by the GSIS for the quashal of the writ of execution.

On May 21, 2004, GSIS filed a Petition for *Certiorari* and Prohibition before the CA, docketed as CA-G.R. SP No. 84079, ascribing grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the RTC in denying GSIS' motion to quash.[19]

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[12] *Id*. at 156-157.

[13] *Id.* at 161.

[14] *Rollo* (G.R. No. 225546), pp. 116-128.

[15] *Rollo* (G.R. No. 225309), 162.

[16] *Id*. at 17.

[17] *Id*. at 158-164.

[18] *Id*. at 169-176.

[19] *Rollo* (G.R. No. 225546), pp. 135-136.

Meanwhile, to effect the implementation of the writ of execution, Rosario, through counsel, filed a Motion to Direct the Sheriff to Proceed with the Garnished Funds of GSIS with DBP and PNB with Motion for Immediate Execution of Undersigned Counsel's Attorney's Lien Against such Garnished Funds.[20]

In an Order[21] dated September 12, 2006, the RTC ordered the release of said deposits and the enforcement of the writ of execution earlier issued, up to extent allowed per the CA decision. The 90% of the proceeds of the execution was ordered to be turned over immediately to Rosario.

The CA, however, in CA-G.R. SP No. 84079, rendered a Decision[22] dated August 3, 2006, wherein it partially granted the petition of GSIS. The CA modified the ruling of the RTC in that the extent of the value of the excluded lots shall be ₱399,828,000 and that the execution of the same may immediately proceed while the writ of preliminary injunction against the execution of the judgment award is made permanent.[23]

In the meantime, while resolving several motions filed before the RTC following the CA decision dated August 3, 2006, the RTC, in an Order[24] dated November 20, 2006 limited the attorney's fees of Rosario's counsels to the 10% of the ₱399,828,000 based on *quantum meruit*, among others. Likewise, in the same order, the RTC denied GSIS' motion for reconsideration on the RTC's September 12, 2006 Order.[25]

Atty. Jose A. Suing (Atty. Suing), counsel in the reconveyance case for Rosario, questioned the said Order dated November 20, 2006 by the RTC as it allegedly reduced his attorney's fee

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[20] *Rollo* (G.R. No. 225309), p. 460.

[21] Rendered by Judge Franco T. Falcon; *id.* at 196-201.

[22] *Id*. at 177-195.

[23] *Id*. at 194-195.

[24] *Id*. at 202-216.

[25] *Id*. at 214-215.

to 6% of the judgment award instead of 35% as stated in the Memorandum of Understanding between him and Rosario.[26] The same, however, was already resolved by this Court in a Decision[27] dated October 21, 2015 in G.R. Nos. 194814 (*Rosario Enriquez Vda. De Santiago v. Atty. Jose A. Suing*) & 194825 (*Jaime C. Vistar v. Atty. Jose A. Suing*) wherein the Court affirmed the RTC's ruling that attorney's fees in the amount of 6% of the partially executed judgment is considered fair partial compensation for his legal services.

GSIS, for its part, filed a Petition for *Certiorari* and Prohibition before this Court to annul the Orders dated September 12, 2006 and November 20, 2006 of the RTC. Also, GSIS filed a Petition for Review on *Certiorari* under Rule 45 to reverse and set aside the CA Decision dated August 3, 2006. These two petitions were subsequently consolidated upon motion of GSIS.[28] The same, however, were later dismissed by this Court in a Decision[29] dated December 18, 2009 in G.R. Nos. 175393 (Government Service Insurance System v. Regional Trial Court of Pasig City, Branch 71) and 177731 (Government Service Insurance System *v.* Laviña).

In the interim, Rosario and a certain Jaime Vistar (Jaime) filed a Joint Manifestation for Judicial Confirmation and Approval of an Agreement dated January 2, 2009 before the RTC. In said Agreement, it was alleged that Rosario assigned to Jaime her share, right, participation and interest in the reconveyance case equivalent to 50% of whatever Rosario is entitled to receive from the same. Similarly, Eastern Petroleum Corporation (EPC) and Albert Espiritu (Albert) filed a Motion to Intervene, which was supported by the copies of Deed of Assignment entered into by Rosario and EPC, as well as copies of Memorandum of Agreement and Special Power of Attorney.

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[26] *Id*. at 18.

[27] 772 Phil. 107 (2015).

[28] *Rollo* (G.R. No. 225309), pp. 254-255.

[29] 623 Phil. 453 (2009).

In said Deed of Assignment, it was averred that Rosario transferred to EPC 40% of the proceeds of the judgment award in the reconveyance case while in said Memorandum of Agreement, EPC ceded to Albert half of the amount ceded by Rosario.[30]

On the other hand, herein respondent Antonio Vilar (Vilar) filed a Verified Omnibus Motion (for Substitution of Party-Plaintiff With Authority to Implement Writ of Execution Until Full Satisfaction of the Final Judgment of the Court) before the RTC. In his motion, Vilar alleged that after Antonio transferred his rights and interests to Eduardo, the latter assigned to Vilar 90% of his interest in the judgment proceeds of the reconveyance case. Further, Vilar averred that he and Eduardo agreed that the Deed of Assignment shall still take effect despite the fact of substitution.[31]

In resolving Vilar's motion, the RTC merely noted the same without action in its Order[32] dated December 8, 2010. The dispositive portion thereof reads:

> WHEREFORE, premises considered, the dispositive portion of the Order dated 17 September 2010 is hereby AMENDED to read as follows:
>
> "x x x x x x x x x
>
> 1. To issue an alias writ of execution on the partial execution of Php399,828,000.00;
> 2. Upon satisfaction/payment by [GSIS] of the aforesaid amount the Branch Sheriff of this Court is directed to immediately deposit 35% of the said amount to the account of [Rosario];
> 3. The other 35% shall remain in custodia legis subject to the final disposition of Atty. Suing's claim for attorney's fees now pending before the [CA] or any settlement he may enter into with [Rosario]; provided, however, that the sum of

[30] *Id*. at 18.

[31] *Id*. at 18-19.

[32] *Id*. at 316-319.

Php23,989,680.00 shall be immediately satisfied and released to Atty. Suing to be taken from said 35% attorney's fees;

4. The award of attorney's fees to Atty. Benjamin Santos (Php13,993,980.00), Atty. Sherwin S. Gatdula (Php1,599,312.00) and Atty. Wellington B. Lachica (Php399,828.00) shall be satisfied immediately from the remaining 30% of the partial executed amount; and

5. The balance on the remaining 30% shall also remain in custodia legis subject to any settlement or compromise the claimants may enter with [Rosario]."

Let an alias writ immediately issue.

SO ORDERED.[33]

Hence, Vilar filed a Petition for *Certiorari* before the CA, docketed as CA-G.R. SP No. 117439, ascribing grave abuse of discretion on the part of the RTC in merely noting and not granting Vilar's motion.[34] In a Decision[35] dated February 10, 2014, the CA granted Vilar's petition. The dispositive portion thereof reads:

WHEREFORE, the instant Petition is **GRANTED**. The Order dated December 8, 2010 of the [RTC], Branch 71, Pasig City is hereby **MODIFIED** as follows:

1. The Verified Omnibus Motion (for Substitution of Party Plaintiff with Authority to Implement Writ of Execution Until Full Satisfaction of the Final Judgment of the Court) filed by [Vilar] through counsel is **GRANTED**;

2. Accordingly, [Vilar] is **IMPLEADED** as party-plaintiff in substitution of [Rosario];

3. And upon satisfaction/payment by [GSIS] of the amount of ₱399,828,000.00, the Branch Sheriff of the trial court is directed to give 90% of the 35% of the share of [Rosario]

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[33] *Id*. at 318-319.

[34] *Id*. at 20.

[35] *Id*. at 15-37.

to [Vilar]. The remaining 10% of said 35% shall be deposited to the account of [Rosario].

The Order dated December 8, 2010 is **AFFIRMED** in all other respects.

SO ORDERED.[36]

On June 17, 2016, the CA issued its assailed Amended Decision,[37] which in essence, denied the motion for intervention filed by Atty. Gilberto Alfafara (Atty. Alfafara), former counsel of Vilar and denied GSIS' partial motion for reconsideration and Rosario's motion to intervene and to admit motion for reconsideration. The *fallo* thereof reads:

WHEREFORE, the Court resolves as follows:

1. [Atty. Alfafara's] *Motion for Intervention to Protect Attorney's Rights* is **DENIED**.

2. [Vilar's] *Manifestation and Motion dated October 27, 2014* is likewise **DENIED**.

3. [Vilar's] *Manifestation* dated March 14, 2014 is **NOTED with APPROVAL** only insofar as it seeks to correct the statement of Facts and Antecedent Proceedings as found on Page 7, paragraph 2 of the Court's Decision dated February 10, 2014. Accordingly, page 7, paragraph 2 of the Decision dated February 10, 2014 is **MODIFIED** as follows:

"Meanwhile, it appears that Vilar executed on February 15, 2011 a Deed of Confirmation of Assignment of Rights whereby he assigned in favor of Harold Cuevas (Harold) 1/2% participation in the reconveyance case. By virtue of said Deed of Confirmation of Assignment of Rights, Harold filed a complaint for breach of contract, specific performance, injunction and damages ("**breach of contract case"**) against Rosario and GSIS seeking that the 90% share of Vilar and his 1/2% share therein be recognized and paid."

4. GSIS's *Motion for Partial Reconsideration (of the Honorable Court's Decision dated February 10, 2014)* is **DENIED**.

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[36] *Id*. at 36-37.

[37] *Id*. at 39-48.

5. [Rosario's] *Ex Abudanti Motion to Intervene and to Admit the Attached Motion for Reconsideration (Re: Decision dated 10 February 2014)* are **DENIED**.

6. [Rosario's] *Motion to Expunge [Vilar's] Comment/Opposition with Motion to Admit Reply (To: [Vilar's] Comment/Opposition dated 16 June 2014)* are **EXPUNGED** from the records.

SO ORDERED.[38]

Hence, this petition.

Issue

In sum, the issue in this case is whether or not the CA erred in impleading Vilar as party-plaintiff in substitution of Rosario.

Ruling of the Court

Both Rosario and GSIS claim that Rosario is an indispensable party in the petition because the same seeks to assail the order of the RTC which involves its action on Vilar's motion to be substituted in Rosario's stead as regards the implementation of the writ of execution.

The Court finds the same to be with merit.

The case stemmed from the action for reconveyance filed by Eduardo, husband of Rosario. To recall, Eduardo was the successor-in-interest of Antonio, who is actually the successor-in-interest of Spouses Zulueta. Spouses Zulueta are the original owners of the subject parcels of land. Upon the death of the party-plaintiff Eduardo, Rosario was substituted in his stead. The case was subsequently decided on December 17, 1997 and affirmed by this Court in October 28, 2003. An Entry of Judgment was issued in 2004. In all these incidents, Rosario was considered as the party-plaintiff.

By definition, an indispensable party is a party-in-interest without whom no final determination can be had of an action, and who shall be joined either as plaintiffs or defendants.[39] It

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

[39] RULES OF COURT, Rule 3, Section 7.

is a party whose interest will be affected by the court's action in the litigation.[40]

In the Matter of the Heirship (Intestate Estates) of the Late Hermogenes Rodriguez, et al. v. Robles,[41] the Court held that:

> The joinder of indispensable parties is mandatory. The presence of indispensable parties is necessary to vest the court with jurisdiction, which is the authority to hear and determine a cause, the right to act in a case. Thus, without the presence of indispensable parties to a suit or proceeding, judgment of a court cannot attain real finality.[42]

Verily, Rosario is an indispensable party in the petition before the CA as she is the widow of the original party-plaintiff Eduardo. The determination of the propriety of the action of the trial court in merely noting and not granting his motion would necessarily affect her interest in the subject matter of litigation as the party-plaintiff.

Accordingly, the Court differs with the CA in ruling that the petition for *certiorari* filed before it merely delves into the issue of grave abuse of discretion committed by the lower court. Guilty of repetition, the final determination of the case would pry into the right of Rosario as party-plaintiff before the lower court who is entitled to the proceeds of the judgment award. As it is, the CA did not actually rule on the issue of grave abuse of discretion alone as its corollary ruling inquired into the right of Rosario. In ruling for Vilar's substitution, the right of Rosario as to the proceeds of the judgment award was thwarted as the CA effectively ordered that the proceeds pertaining to Rosario be awarded instead to Vilar.

Likewise, the Court finds merit in Rosario's contention that her failure to participate in the proceedings before the CA constitutes a denial of her constitutional right to due process.[43]

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[40] *Divinagracia v. Parilla, et al.*, 755 Phil. 783, 789 (2015).

[41] 653 Phil. 396 (2010).

[42] *Id*. at 404.

[43] *Lagunilla, et al. v. Velasco, et al.*, 607 Phil. 194, 207 (2009).

Hence, failure to implead Rosario as an indispensable party rendered all the proceedings before the CA null and void for want of authority to act.[44]

Moreover, even the basis for the substitution of Vilar as pronounced by the CA was unfounded. In ruling so, the CA merely relied on the purported Deeds of Assignment of Rights executed between Eduardo and Vilar in considering that the latter is a transferee *pendente lite,* who can rightfully and legally substitute Rosario as party-plaintiff in the implementation of a writ of execution.[45]

Yet, it is significant to note that the Court already brushed aside said Deeds of Assignment for being belatedly filed in its Decision dated October 21, 2015 in G.R. Nos. 194814 and 194825. The Court did not discuss any further the validity and due execution of said Deeds as the same were brought to the attention of the trial court more than 20 years after the same were allegedly executed.[46]

Considering the foregoing, the Court need not belabor on the other issues raised by petitioners.

As a final note, it must be considered that this case was extant since 1990. The decision of the trial court in 1997 which ruled that Spouses Zulueta, who were substituted by Rosario as party-plaintiff are entitled to the excluded lots or its amount equivalent, has become final and executory when this Court affirmed the same in 2003 in G.R. No. 155206. Subsequently, an Entry of Judgment was issued by this Court in 2004. However, despite the issuance of a writ of execution in 2004, the case had several pending incidents which prohibit Rosario, to recover what is rightfully hers. To warrant the unjustified delay of these proceedings would tantamount to denial of the fruits of the judgment in her favor.

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[44] *Quilatan, et al. v. Heirs of Lorenzo Quilatan, et al.*, 614 Phil. 162, 165 (2009).

[45] *Rollo* (G.R. No. 225309), p. 31.

[46] *Rollo* (G.R. No. 225546), p. 200.

WHEREFORE, the petitions are **GRANTED.** The Decision dated February 10, 2014 and Amended Decision dated June 17, 2016 in CA-G.R. S.P. No. 117439 are **REVERSED and SET ASIDE** in that the Verified Omnibus Motion (for Substitution of Party-Plaintiff With Authority to Implement Writ of Execution Until Full Satisfaction of the Final Judgment of the Court) filed by Antonio Vilar is **DENIED**. Accordingly, the impleading of Antonio Vilar as party-plaintiff in substitution of Rosario Enriquez Vda. De Santiago is **NULLIFIED**. The Order dated December 8, 2010 is hereby **REINSTATED** *in toto*.

SO ORDERED.

Leonardo-de Castro[*] (*Acting Chairperson*), *del Castillo,* and *Jardeleza, JJ.,* concur.

Sereno, C.J., on leave.

EN BANC

[G.R. No. 231737. March 6, 2018]

HEIRS OF TUNGED NAMELY: ROSITA YARIS-LIWAN, VIRGIE S. ATIN-AN, BELTRAN P. SAINGAN, MABEL P. DALING, MONICA Y. DOMINGO, and ELIZABETH Q. PINONO, *petitioners, vs.* **STA. LUCIA REALTY AND DEVELOPMENT, INC. and BAGUIO PROPERTIES, INC.,** *respondents.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; INDIGENOUS PEOPLES RIGHTS ACT (IPRA) OR REPUBLIC ACT NO.

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[*] Designated Acting Chairperson, First Division per Special Order No. 2540 dated February 28, 2018.

8371; THE NATIONAL COMMISSION ON INDIGENOUS PEOPLES (NCIP) HAS NO POWER AND AUTHORITY ON A CONTROVERSY INVOLVING RIGHTS OF NON-INDIGENOUS CULTURAL COMMUNITIES (ICCs)/ INDIGENOUS PEOPLES (IPs).— [I]n *Unduran*, this Court had already delimited the jurisdiction of the NCIP as provided under Section 66 of the IPRA, *viz.*: x x x **[P]ursuant to Section 66 of the IPRA, the NCIP shall have jurisdiction over claims and disputes involving rights of ICCs/IPs only when they arise between or among parties belonging to the same ICC/ IP. When such claims and disputes arise between or among parties who do not belong to the same ICC/IP, *i.e.*, parties belonging to different ICC/IPs or where one of the parties is a non--ICC/IP, the case shall fall under the jurisdiction of the proper Courts of Justice, instead of the NCIP.** x x x [N]on-ICCs/IPs cannot be subjected to the special and limited jurisdiction of the NCIP even if the dispute involves rights of ICCs/IPs since the NCIP has no power and authority to decide on a controversy involving rights of non-ICCs/IPs which should be brought before the courts of general jurisdiction within the legal bounds of rights and remedies. Plainly, contrary to the court *a quo*'s conclusion, this case cannot be subjected to the NCIP's jurisdiction as respondents are clearly non-ICCs/IPs.

2. ID.; ID.; ID.; VIOLATION OF PETITIONERS' ENVIRONMENTAL RIGHTS UNDER THE IPRA AND PD 1586 IS WITHIN THE JURISDICTION OF THE REGIONAL TRIAL COURT (RTC) SITTING AS A SPECIAL ENVIRONMENTAL COURT.— [P]etitioners' cause of action is grounded upon the alleged earthmoving activities and operations of the respondents within petitioners' ancestral land, which violated and continue to violate petitioners' environmental rights under the IPRA and PD 1586 as the said activities were averred to have grave and/or irreparable danger to the environment, life, and property. Clearly, such cause of action is within the jurisdiction of the RTC, sitting as a special environmental court, pursuant to AO No. 23-2008 in relation to BP 129 and A.M. No. 09-6-8-SC. Whether or not petitioners are entitled to their claim is irrelevant in the preliminary issue of jurisdiction. Again, once jurisdiction is vested by the allegations in the complaint, it remains vested regardless of whether or not the plaintiff is entitled to recover upon all or some of the claims asserted therein.

3. ID.; ID.; ID.; ID.; PETITIONERS HAVE *LOCUS STANDI* IN INSTITUTING THIS ACTION.— The court *a quo* erred in finding that the petitioners have no legal personality to file the complaint. It is noteworthy that petitioners supported their allegations with pertinent documents such as the report and recommendation of the NCIP on petitioners' Petition for the Identification, Delineation and Recognition of Ancestral Claim and Issuance of CALTs pending before the said Commission. In the said document, the NCIP concluded that, among others, the petitioners have established themselves as the heirs of Tunged and that the subject land was proven to be part of the vast tract of land that Tunged and his successors possessed and occupied. Hence, petitioners' averments in their Complaint taken together with such supporting documents are sufficient to establish petitioners' *locus standi* in instituting this action, as well as to bring petitioners' case within the purview of the court *a quo*'s jurisdiction as conferred by the law.

4. ID.; ID.; ID.; WHERE THE CASE IS NOT WITHIN THE JURISDICTION OF THE RTC AS AN ENVIRONMENTAL COURT, OUTRIGHT DISMISSAL OF THE CASE IS NOT PROPER SINCE THE PRESIDING JUDGE IS MANDATED TO REFER THE CASE TO THE EXECUTIVE JUDGE FOR RE-RAFFLE TO THE REGULAR COURT.— [A]ssuming *arguendo* that the case is not within the jurisdiction of the RTC, sitting as an environmental court, the outright dismissal of the case was still not proper, especially considering that We have already established that it is the regular courts and not the NCIP, which has jurisdiction over the same. Section 3, Rule 2 of A.M. No. 09-6-8-SC explicitly states that if the complaint is not an environmental complaint, the presiding judge shall refer it to the executive judge for re-raffle to the regular court.

APPEARANCES OF COUNSEL

Noel B. Magalgalit for petitioners.
Abelardo B. Albis, Jr. for respondents.

D E C I S I O N

TIJAM, *J.*:

In this Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Court, petitioners assail the Order[2] dated March 2, 2017 of the Regional Trial Court (RTC) of Baguio City, Branch V, which dismissed the case for lack of jurisdiction in Environmental Case No. 8548-R. Its Order[3] dated April 3, 2017, denying petitioners' motion for reconsideration[4] is likewise impugned herein.

The Antecedents

Petitioners are recognized Indigenous People (IP), being members of the *Ibaloi* tribe, who are the original settlers in Baguio City and Benguet Province. Respondent Sta. Lucia Realty is a real estate developer, while respondent Baguio Properties, Inc. claims to be the lot owner managing the properties of Manila Newtown Development Corporation, which covers portions of the subject land.[5]

Environmental Case No. 8548-R entitled "Enforcement/ Violations of the Provisions of the Indigenous Peoples Rights Act (IPRA) (Republic Act No. 8371);[6] Presidential Decree (PD) No. 1586;[7] and Other Pertinent Laws with Prayer for the Issuance

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[1] Rendered by RTC Presiding Judge Maria Ligaya V. Itliong-Rivera, *rollo*, pp. 3-29.

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

[3] *Id*. at 32-33.

[4] *Id*. at 34-40.

[5] *Id*. at 44-46.

[6] An Act to Recognize, Protect and Promote the Rights of Indigenous Cultural Communities/Indigenous People, Creating a National Commission of Indigenous People, Establishing Implementing Mechanisms, Appropriating Funds Therefor, and for other Purposes. Approved on October 29, 1997.

[7] Establishing an Environmental Impact Statement System, Including other Environmental Management Related Measures and for other Purposes. Approved on June 11, 1978.

of Environmental Protection Order and/or Writ of Preliminary Mandatory/Prohibitory Injunction, and Writ of Mandamus" was filed by the petitioners against respondents.[8]

In the Complaint, petitioners averred that the subject property is an ancestral land that they have been occupying in the concept of an owner since time immemorial through their ancestors; that such ownership was recognized under the IPRA, which includes the right to sustainable traditional resource, the right against unlawful or unauthorized intrusion, and the right against usurpation;[9] and that their applications for the issuance of Certificate of Ancestral Land Titles (CALTs) over their properties, including the subject land, are now pending before the National Commission on Indigenous Peoples (NCIP).[10]

Petitioners argued that respondents' acts of demolishing and bulldozing the subject land, which caused the destruction of small and full grown trees and sayote plants and other resources of the petitioners, violated their rights pursuant to the IPRA; violated environmental laws, specifically PD 1586, as respondents' project poses grave and/or irreparable danger to environment, life, and property, and also violated the Environmental Compliance Certificate (ECC) issued to them.[11]

For its part, Baguio Properties, Inc. invoked ownership over the subject land and as such, they argued that petitioners' complaint is a collateral attack to its Torrens Titles.[12]

On March 2, 2017, the RTC, sitting as an environmental court, dismissed the Complaint for lack of jurisdiction. The RTC held that the recognition of the petitioners' rights as IPs is not the proper subject of an environmental case, as such, it should be threshed out in an appropriate proceeding governed

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[8] *Rollo*, pp. 42-52.

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

[10] *Id*. at 12.

[11] *Id*. at 46-48.

[12] *Id*. at 6.

by the very law relied upon by the petitioners, *i.e.*, the IPRA. The RTC cited Section 11[13] of the IPRA stating that the rights of IPs to their ancestral domains by virtue of native title shall be recognized and respected. The said formal recognition, when solicited, shall be embodied in a Certificate of Ancestral Domain Title (CADT), and the power to issue the same is within the exclusive jurisdiction of the NCIP.[14]

The RTC also held that assuming *arguendo* that the case falls within the coverage of Administrative Matter (AM) No. 09-6-8-SC or the Rules of Procedure for Environmental Cases, Sec. 4,[15] Rule 2 thereof requires that an action under said Rules must be filed by a real party-in-interest for the enforcement or violation of any environmental law. The RTC found that as the main relief prayed for by the petitioners is the recognition of their right of ownership over the subject property, it is in effect an admission that their asserted right over the same, if any, is yet to be established. According to the RTC, without the confirmation of their rights as IP to the property, the filing of this case is premature. As such, the petitioners do not have the legal personality to initiate the same.[16] The RTC disposed, thus:

WHEREFORE, for lack of jurisdiction, the above-captioned case is hereby DISMISSED.

SO ORDERED.[17]

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[13] Section 11. *Recognition of Ancestral Domain Rights*. — The rights of ICCs/IPs to their ancestral domains by virtue of Native Title shall be recognized and respected. Formal recognition, when solicited by ICCs/IPs concerned, shall be embodied in a Certificate of Ancestral Domain Title (CADT), which shall recognize the title of the concerned ICCs/IPs over the territories identified and delineated.

[14] *Rollo*, pp. 30-31.

[15] Section 4. *Who may file*. — Any real party in interest, including the government and juridical entities authorized by law, may file a civil action involving the enforcement or violation of any environmental law.

[16] *Id*. at 31.

[17] *Id*.

In its motion for reconsideration, the petitioners argued that NCIP has no jurisdiction over their complaint as its jurisdiction covers only claims and disputes involving rights of Indigenous Cultural Communities (ICCs) and IPs only.[18] Respondents are not ICC/IP members, hence, the RTC, not the NCIP, has jurisdiction. Further, petitioners pointed out that they are not praying for the issuance of CALTs/CADTs in their favor but merely for the recognition of rights under the IPRA to their ancestral land by virtue of their native title.[19]

Their motion for reconsideration, however, suffered the same fate. The RTC ruled that the such arguments do not put the case within the operation of AM No. 09-6-8-SC. Also, petitioners' cause of action based on alleged violations of the ECC issued to the respondents in relation to the provisions of PD 1586 will not prosper as petitioners are not real parties-in-interest under the contemplation of the Rules as explained in its assailed Order. Thus:

WHEREFORE, the MOTION FOR RECONSIDERATION dated March 3, 2017 filed by the petitioners is DENIED.[20]

Hence, this petition.

The Issue

Was the court *a quo*'s outright dismissal of the case proper?

The Court's Ruling

We answer in the negative.

In precis, the RTC dismissed the case on the ground of lack of jurisdiction, finding that petitioners' case is grounded upon their claim of being members of the IPs and their assertion of ownership as such over their ancestral land. In ruling that it has no jurisdiction over the case, the RTC discussed the exclusive

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[18] *Id*. at 37.

[19] *Id*. at 36-37.

[20] *Id*. at 33.

jurisdiction of the NCIP to issue CALTs/CADTs to formally recognize the rights of indigenous peoples to their ancestral lands/domains by virtue of native title. Further, the RTC ruled that even if the case is covered by A.M. No. 09-6-8-SC, the same is still dismissible considering that petitioners' right over the subject property is yet to be established as can be gleaned from their prayer for the recognition of ownership rights as IPs over the subject land.

We do not agree.

In determining which body or court has jurisdiction in this case, Our pronouncement in the recent case of *Unduran, et al. v. Aberasturi, et al.*,[21] is instructive, *viz*:

> [J]urisdiction over the subject matter of a case is conferred by law and determined by the allegations in the complaint which comprise a concise statement of the ultimate facts constituting the plaintiffs cause of action. **The nature of an action, as well as which court or body has jurisdiction over it, is determined based on the allegations contained in the complaint of the plaintiff, irrespective of whether or not the plaintiff is entitled to recover upon all or some of the claims asserted therein.** The averments in the complaint and the character of the relief sought are the ones to be consulted. **Once vested by the allegations in the complaint, jurisdiction also remains vested irrespective of whether or not the plaintiff is entitled to recover upon all or some of the claims asserted therein.**[22] (emphasis supplied)

The jurisdiction of the NCIP is stated under Section 66 of the IPRA, to wit:

> Sec. 66. Jurisdiction of the NCIP.— The NCIP, through its regional offices, shall have jurisdiction over all claims and disputes involving rights of ICCs/IPs; Provided, however, That no such dispute shall be brought to the NCIP unless the parties have exhausted all remedies provided under their customary laws. For this purpose, a certification shall be issued by the Council of Elders/Leaders who participated in

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[21] 771 Phil. 536 (2015).

[22] *Id*. at 562.

the attempt to settle the dispute that the same has not been resolved, which certification shall be a condition precedent to the filing of a petition with the NCIP.

On the other hand, Administrative Order (AO) No. 23-2008,[23] in relation to *Batas Pambansa Blg.* (BP) 129,[24] designated the court *a quo* as a special court to hear, try, and decide violations of environmental laws committed within its territorial jurisdiction.

Having stated the jurisdiction of the NCIP and the RTC sitting as a special environmental court, We proceed to examine the pertinent allegations in the Complaint[25] constituting petitioners' cause of action.

To reiterate, petitioners alleged in their Complaint that they are members of the *Ibaloi* Tribesmen and that their rightful ownership and possession over the subject property had already been established by testimonial and documentary evidence as far back as 1924.[26] They averred that after their ancestor's death, they continued to possess and exercise ownership over their ancestral land. Respondents' intrusion and usurpation was also alleged, and that respondents' earthmoving activities therein caused destruction of small and full grown trees and sayote plants in their ancestral land. Further, a violation of the Environmental Compliance Certificate (ECC) issued in favor of the respondents was likewise alleged.

Petitioners, therefore, prayed for the following reliefs, to wit: (1) issuance of an *ex parte* 72-hour Environmental Protection Order to immediately stop respondents from their earthmoving activities not only because they violate petitioners' rights under

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[23] Re: Designation of Special Courts to Hear, Try and Decide Environmental Cases. Approved on January 28, 2008.

[24] An Act Reorganizing the Judiciary, Appropriating Funds Therefor, and for other Purposes. Approved on August 14, 1981.

[25] *Rollo*, pp. 41-52.

[26] *Id.* at 53-60.

the IPRA above-cited, but also because they failed to comply with the ECC and/or because they operate without such ECC, violative of PD 1586 for posing grave and/or irreparable danger to the environment, life and property; (2) after trial, make the Environmental Protection Order and/or writ of preliminary injunction permanent; (3) recognize the rights of the petitioners as IPs to their ancestral land subject of this case; and (4) compel respondents to restore the denuded areas within the subject land to maintain ecological balance and to compensate petitioners of their damaged resources, among others.[27]

Guided by the foregoing, We find that the outright dismissal of the case was not proper.

First. The court *a quo* patently erred in ruling that the NCIP has jurisdiction over the case.

Foremost, in *Unduran*,[28] this Court had already delimited the jurisdiction of the NCIP as provided under Section 66 of the IPRA, *viz.*:

> **A careful review of Section 66 shows that the NCIP shall have jurisdiction over claims and disputes involving rights of ICCs/IPs only when they arise between or among parties belonging to the same ICC/IP.** This can be gathered from the qualifying provision that "no such dispute shall be brought to the NCIP unless the parties have exhausted all remedies provided under their customary laws. For this purpose, a certification shall be issued by the Council of Elders/Leaders who participated in the attempt to settle the dispute that the same has not been resolved, which certification shall be a condition precedent to the filing of a petition with the NCIP.
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> The qualifying provision requires two conditions before such disputes may be brought before the NCIP, namely: (1) exhaustion of remedies under customary laws of the parties, and (2) compliance with condition precedent through the said certification by the Council of Elders/Leaders. This is in recognition of the rights of ICCs/IPs to use their own commonly accepted justice systems, conflict resolution

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[27] *Id*. at 50-51.

[28] *Unduran, et al. v. Aberasturi, et al., supra* note 21.

institutions, peace building processes or mechanisms and other customary laws and practices within their respective communities, as may be compatible with the national legal system and with internationally recognized human rights.

Section 3(f) of the IPRA defines customary laws as a body of written and/or unwritten rules, usages, customs and practices traditionally and continually recognized, accepted and observed by respective ICCs/IPs. From this restrictive definition, it can be gleaned that it is only when both parties to a case belong to the same ICC/IP that the above-said two conditions can be complied with. If the parties to a case belong to different ICCs/IPs which are recognized to have their own separate and distinct customary laws and Council of Elders/Leaders, they will fail to meet the above-said two conditions. **The same holds true if one of such parties was a non-ICC/IP member who is neither bound by customary laws as contemplated by the IPRA nor governed by such council.** Indeed, it would be violative of the principles of fair play and due process for those parties who do not belong to the same ICC/IP to be subjected to its customary laws and Council of Elders/Leaders.

Therefore, pursuant to Section 66 of the IPRA, the NCIP shall have jurisdiction over claims and disputes involving rights of ICCs/IPs only when they arise between or among parties belonging to the same ICC/IP. When such claims and disputes arise between or among parties who do not belong to the same ICC/IP, *i.e.*, parties belonging to different ICC/IPs or where one of the parties is a non- ICC/IP, the case shall fall under the jurisdiction of the proper Courts of Justice, instead of the NCIP. In this case, while most of the petitioners belong to Talaandig Tribe, respondents do not belong to the same ICC/IP. Thus, even if the real issue involves a dispute over land which appear to be located within the ancestral domain of the Talaandig Tribe, it is not the NCIP but the RTC which shall have the power to hear, try and decide this case.[29] (emphasis supplied)

Indeed, non-ICCs/IPs cannot be subjected to the special and limited jurisdiction of the NCIP even if the dispute involves rights of ICCs/IPs since the NCIP has no power and authority to decide on a controversy involving rights of non-ICCs/IPs

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[29] *Unduran, et al. v. Aberasturi, et al., supra* note 21, at 568-569.

which should be brought before the courts of general jurisdiction within the legal bounds of rights and remedies.[30] Plainly, contrary to the court *a quo*'s conclusion, this case cannot be subjected to the NCIP's jurisdiction as respondents are clearly non-ICCs/IPs.

Second. What determines the jurisdiction of the court is the nature of the action pleaded as appearing from the allegations in the complaint. The averments therein and the character of the relief sought are the ones to be consulted.[31]

As can be gleaned from the aforecited allegations in the Complaint, the case at bar is not an action for the claim of ownership, much less, an application for the issuance of CALTs/CADTs, contrary to the court *a quo*'s findings. In fact, petitioners categorically stated in the said Complaint that their Petition for the Identification, Delineation and Recognition of Ancestral Claim and Issuance of CALTs is already pending before the NCIP.[32]

Ultimately, petitioners' cause of action is grounded upon the alleged earthmoving activities and operations of the respondents within petitioners' ancestral land, which violated and continue to violate petitioners' environmental rights under the IPRA and PD 1586 as the said activities were averred to have grave and/or irreparable danger to the environment, life, and property. Clearly, such cause of action is within the jurisdiction of the RTC, sitting as a special environmental court, pursuant to AO No. 23-2008 in relation to BP 129 and A.M. No. 09-6-8-SC. Whether or not petitioners are entitled to their claim is irrelevant in the preliminary issue of jurisdiction. Again, once jurisdiction is vested by the allegations in the complaint, it remains vested regardless of whether or not the plaintiff is entitled to recover upon all or some of the claims asserted therein.[33]

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[30] *Engr. Lim, et al. v. Hon. Gamosa, et al.*, 774 Phil. 31, 31-62 (2015).

[31] *Padlan v. Sps. Dinglasan*, 707 Phil. 83, 91 (2013).

[32] *Rollo*, p. 44.

[33] *Unduran, et al. v. Aberasturi, et al., supra* note 21, at 562.

Third. The court *a quo* erred in finding that the petitioners have no legal personality to file the complaint. It is noteworthy that petitioners supported their allegations with pertinent documents such as the report and recommendation[34] of the NCIP on petitioners' Petition for the Identification, Delineation and Recognition of Ancestral Claim and Issuance of CALTs pending before the said Commission. In the said document, the NCIP concluded that, among others, the petitioners have established themselves as the heirs of Tunged and that the subject land was proven to be part of the vast tract of land that Tunged and his successors possessed and occupied.[35] Hence, petitioners' averments in their Complaint taken together with such supporting documents are sufficient to establish petitioners' *locus standi* in instituting this action, as well as to bring petitioners' case within the purview of the court *a quo*'s jurisdiction as conferred by the law.

Fourth. At any rate, assuming *arguendo* that the case is not within the jurisdiction of the RTC, sitting as an environmental court, the outright dismissal of the case was still not proper, especially considering that We have already established that it is the regular courts and not the NCIP, which has jurisdiction over the same. Section 3,[36] Rule 2 of A.M. No. 09-6-8-SC explicitly states that if the complaint is not an environmental

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[34] *Rollo*, pp. 53-60.

[35] *Id*. at 60.

[36] **Section 3.** ***Verified complaint.*** — The verified complaint shall contain the names of the parties, their addresses, the cause of action and the reliefs prayed for.

The plaintiff shall attach to the verified complaint all evidence proving or supporting the cause of action consisting of the affidavits of witnesses, documentary evidence and if possible, object evidence. The affidavits shall be in question and answer form and shall comply with the rules of admissibility of evidence.

The complaint shall state that it is an environmental case and the law involved. The complaint shall also include a certification against forum shopping. If the complaint is not an environmental complaint, the presiding judge shall refer it to the executive judge for re-raffle.

complaint, the presiding judge shall refer it to the executive judge for re-raffle to the regular court.

With this, it is not only proper but also necessary that the other issues obtaining in this case should be addressed in the proceedings before the trial court.

WHEREFORE, premises considered, the instant petition is **GRANTED**. The assailed Orders of the Regional Trial Court of Baguio City, Branch V, dated March 2, 2017 and April 3, 2017 are hereby **NULLIFIED and SET ASIDE**. Accordingly, Environmental Case No. 8548-R is **REINSTATED** for proper disposition.

SO ORDERED.

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

Sereno, C.J., on leave.

THIRD DIVISION

[A.M. No. P-13-3154. March 7, 2018]
(Formerly OCA IPI No. 10-3470-P)

RUBE K. GAMOLO, JR., CLERK OF COURT IV, MUNICIPAL TRIAL COURT IN CITIES, MALAYBALAY CITY, BUKIDNON, *complainant, vs.* **REBA A. BELIGOLO, COURT STENOGRAPHER II, MUNICIPAL TRIAL COURT IN CITIES, MALAYBALAY CITY, BUKIDNON,** *respondent.*

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[*] Acting Chief Justice per Special Order No. 2539, dated February 28, 2018.

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; PUBLIC OFFICERS AND EMPLOYEES; COURT PERSONNEL; ADMINISTRATIVE CIRCULAR NO. 24-90 REQUIRES ALL STENOGRAPHERS TO TRANSCRIBE ALL STENOGRAPHIC NOTES AND TO ATTACH THE TRANSCRIPTS TO THE RECORDS OF THE CASE NOT LATER THAN TWENTY (20) DAYS FROM THE TIME THE NOTES ARE TAKEN; VIOLATED IN CASE AT BAR.— The respondent is liable for simple neglect of duty. Administrative Circular No. 24-90 requires all stenographers "to transcribe all stenographic notes and to attach the transcripts to the record of the case not later than twenty (20) days from the time the notes are taken." The respondent showed that she was able to submit the TSNs and orders in question but she did not establish that her submission of the TSNs and orders was made within the prescribed period. x x x Nonetheless, although the respondent did not comply with her duty to submit her TSNs within the prescribed period, there is no showing that her failing to do so was habitual. Also, she ultimately submitted the TSNs and transcribed the orders. As such, she was liable for simple neglect of duty.

2. ID.; ID.; ID.; ID.; NEGLECT OF DUTY IS THE FAILURE TO GIVE ONE'S ATTENTION TO A TASK EXPECTED OF THE PUBLIC EMPLOYEE; SIMPLE NEGLECT OF DUTY DISTINGUISHED FROM GROSS NEGLECT OF DUTY; ABSENT BAD FAITH OF FRAUD IN THE COMMISSION OF DELAY, THE PENALTY OF THE FINE MAY BE IMPOSED ON RESPONDENT IN CASE AT BAR.— Neglect of duty is the failure to give one's attention to a task expected of the public employee. Simple neglect of duty is contrasted from gross neglect, the latter being such neglect that, from the gravity of the case or the frequency of instances, becomes so serious in its character as to endanger or threaten the public welfare. Gross neglect does not necessarily include wilful neglect or intentional official wrongdoing. Those responsible for such act or omission cannot escape the disciplinary power of this Court. The imposable penalty for gross neglect of duty is dismissal from the service. Under Rule IV, Section 52 of the *Uniform Rules on Administrative Cases in the Civil Service*, simple neglect of duty is considered a less

grave offense, and is punishable by suspension from office (for one month and one day to six months) on the first offense, and dismissal on the second offense. We hasten to point out, however, that the penalty can be mitigated. x x x The penalty of fine may be imposed on the respondent. There was no showing of her having committed the delay with bad faith or fraud. But the fine should be ₱5,000.00 considering the number of cases where she had failed to submit the TSNs and orders on time.

3. ID.; ID.; ID.; ID.; HABITUAL TARDINESS; PENALTY IN CASE AT BAR.— On her tardiness and absenteeism, the respondent is admonished to be more conscientious about her attendance. Under Civil Service Commission Memorandum Circular No. 23, series of 1998, any employee is considered habitually tardy if, regardless of the number of minutes, she incurs tardiness 10 times in a month for at least two months in a semester, or at least two consecutive months during the year. Although the respondent admitted being habitually tardy in November 2008 and January 2009, her tardiness took place in different semesters, and did not occur on two consecutive months. We note that the first semester was from January to June, and the second semester from July to December.

4. ID.; ID.; ID.; ID.; UNAUTHORIZED LEAVE OF ABSENCE; CHARGES THERON, DISMISSED IN CASE AT BAR.— On the unauthorized leave of absence incurred by the respondent on May 4, 5, 17, 19, 20, 21, 24, 26, and 27, 2010, and on June 7 and 8, 2010, the Acting Presiding Judge eventually approved the leave applications filed by the respondent. Hence, the charges thereon are dismissed.

D E C I S I O N

BERSAMIN, *J.*:

This relates to the sworn complaint dated August 16, 2010 filed by complainant Rube K. Gamolo, Jr., Clerk of Court IV of the Municipal Trial Court in Cities (MTCC) in Malaybalay City, Bukidnon charging respondent Reba A. Beligolo, Court Stenographer II of the same court, with gross neglect of duty and inefficiency in relation to her duty to transcribe stenographic notes, and absenteeism and tardiness based on her failure to

observe regular working hours.[1] The complainant accused the respondent of having repeatedly violated Administrative Circular No. 24-90 (*Revised Rules on Transcription of Stenographic Notes and their Transmission to Appellate Courts* dated 12 July 1990) and Administrative Circular No. 02-2007 (*Reiteration of Administrative Circular No. 2-99 dated January 15, 1999 on Strict Observance of Working Hours and Disciplinary Action for Absenteeism and Tardiness*).

According to the complainant, the respondent did not transcribe and submit on time pursuant to Administrative Circular No. 24-90 the transcript of stenographic notes (TSNs) and orders of the MTCC in the following cases, namely:[2]

CASE	TITLE	VIOLATIONS
Criminal Case No. 392-02	People v. Rito Rocamora (Robbery)	Failed to submit TSN on or before 19 July 2007
Criminal Case No. 08-04	People v. Joeffrey Sayson (Acts of Lasciviousness)	Failed to submit TSN on or before 10 April 2006
Criminal Case No. 191-00	People v. Antiquin, et al. (Estafa)	Failed to submit TSN on or before 10 April 2006
Criminal Case No. 99-200	People v. Geldore (Reckless Imprudence resulting to Homicide)	Failed to submit TSN on or before 26 November 2004
Criminal Cases Nos. 089-05 and 090-05	People v. Pulotan (Less Serious Physical Injuries/Unintentional Abortion)	Failure to submit TSN
Criminal Cases Nos. 765-08, 793-08	People v. Diaz (B.P. 22)	Failed to submit TSN on or before 18 June 2010
Criminal Cases Nos. 569-07, 570-07	People v. Pao (Illegal Possession of Deadly Weapon)	Failed to transcribe Orders for Provisional Dismissal of the Case as of 22 November 2007
Criminal Case No. 770-08	People v. Petallar (Illegal Possession of Firearm)	Failed to transcribe the Order dated 29 March 2010
Criminal Case No. 1204-09	People v. del Castillo (Illegal Possession of Ammunition)	Failed to transcribe the Order dated 22 June 2010
Criminal Case No. 1273-10	People v. Salatan, et al. (Theft)	Failed to transcribe the Decision/Sentence of the court dated 19 July 2010
Civil Case No. 1829	Belican v. Spouses Ebon (Forcible Entry)	Failed to submit TSN[3]

[1] *Rollo*, pp. 2-7.

[2] *Id*. at 111.

[3] *Id*. at 111-112.

Anent Administrative Circular No. 02-2007, the complainant claimed that the respondent incurred tardiness on the following dates:

DATES	ALLEGED INFRACTIONS
1, 2 March 2005	Reported late for work in the afternoon despite having logged in her bundy card at 1:00 p.m.
November 2008	Arrived late for work 14 times
January 2009	Arrived late for work 12 times
May, June 2010	Failed to submit her Daily Time Record for the said period.
4, 5, 17, 19, 20, 21, 24, 26, and 27, May 2010; 7 and 8 June 2010	Absent without Leave
March 2010 up to the date of filing of complaint	Failed to submit her Daily Time Record[4]

It appears that the respondent submitted a medical certificate dated July 28, 2010 to explain her incurred absences prior to July 28, 2010 and for August 2010. However, on August 1, 2010, her co-employees spotted the supposedly sick respondent just roaming around Malaybalay City, Bukidnon.

In her comment dated January 3, 2011,[5] the respondent denied being an incorrigible employee, claiming that she had been elected president of the Bukidnon Chapter of the Court Stenographic Reporters Association of the Philippines (COSTRAPHIL), and had received performance ratings ranging from "Satisfactory" to "Very Satisfactory" from December 1997 up to the filing of the complaint; and that she had submitted the TSNs and prepared the orders in the following cases:

CASE	ALLEGED COMPLIANCE
Criminal Case No. 392-02	TSN submitted; case decided 21 August 2007
Criminal Case No. 08-04	TSN submitted; case decided 17 April 2006
Criminal Case No. 191-00 to 196-00	TSN submitted; case decided 30 May 2006
Criminal Case No. 99-200	TSN submitted; case decided 2 November 2004

[4] *Id.* at 112.

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

Criminal Cases Nos. 089-05 and 090-05	TSN submitted; cases decided 12 March 2009
Criminal Cases Nos. 765-08 to 793-08	TSN dated 19 June 2010 is attached along with the consolidated decision of the court dated 5 July 2010
Criminal Cases Nos. 569-07, 570-07	Order dated 12 November 2007 duly transcribed
Criminal Case No. 770-08	Order dated 29 march 2010 duly transcribed
Criminal Case No. 1204-09	Order dated 22 June 2010 duly transcribed
Criminal Case No. 1273-10	Order dated 19 July 2010 duly transcribed
Civil Case No. 1829	TSN submitted; case decided 27 October 2008[6]

On her tardiness/absenteeism, the respondent implored the compassion of the Court, claiming that she had been raising their three children by herself ever since her husband had left them; and that it was only recently that she was able to hire a helper.[7]

The respondent admitted showing up late in court on March 1-2, 2005, and being habitually tardy on 12 occasions in January 2009 and 14 times in November 2008. She clarified that she submitted her daily time records (DTRs) for the period from May to June 2010, along with her leave applications, but the complainant refused to accept them; that the documents were later signed by the complainant as reflected in his transmittal letter dated October 8, 2010 addressed to Deputy Court Administrator Raul Bautista Villanueva; and that the claim that she was seen by her co-employees roaming around Malaybalay City, Bukidnon on August 1, 2010 was baseless.[8]

Ruling of the Court

The respondent is liable for simple neglect of duty.

Administrative Circular No. 24-90 requires all stenographers "to transcribe all stenographic notes and to attach the transcripts to the record of the case not later than twenty (20) days from the time the notes are taken."

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[6] *Id*. at 113.

[7] *Id*. at 113-114.

[8] *Id*. at 114.

The respondent showed that she was able to submit the TSNs and orders in question but she did not establish that her submission of the TSNs and orders was made within the prescribed period. Indeed, as noted by the Office of the Court Administrator (OCA), the issuance by the Acting Presiding Judge of the MTCC and by the complainant of their memoranda directing her to submit the TSNs and orders was proof that she did not comply with the circular. For instance, in Criminal Case No. 1204-09 entitled *People v. del Castillo*, the Acting Presiding Judge issued to her the memorandum dated July 27, 2010 directing her to explain why she should not be subjected to administrative sanctions for failing to transcribe the order dated June 22, 2010. Although she replied in her comment that she had complied with the directive, she did not state the date when she had actually transcribed the order. The fact that the Acting Presiding Judge was subsequently constrained to issue to her another memorandum on July 27, 2010 was sufficient proof showing that she had not yet transcribed the order in question as of said date.

The Court cannot but stress the importance of the timely submission of the TSNs by the respondent. As reminded in *Absin v. Montalla*,[9] a case where the respondent was a court stenographer of the RTC in San Miguel, Zamboanga, every court stenographer should realize that "the performance of his duty is essential to the prompt and proper administration of justice, and his (respondent's) inaction hampers the administration of justice and erodes public faith in the judiciary." The Court then dismissed the respondent from the service for failing again to submit the TSNs in several cases for the period from 2004 until 2006.

Nonetheless, although the respondent did not comply with her duty to submit her TSNs within the prescribed period, there is no showing that her failing to do so was habitual. Also, she ultimately submitted the TSNs and transcribed the orders. As such, she was liable for simple neglect of duty.

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[9] A.M. No. P-10-2829, June 21, 2011, 652 SCRA 427.

Neglect of duty is the failure to give one's attention to a task expected of the public employee. Simple neglect of duty is contrasted from gross neglect, the latter being such neglect that, from the gravity of the case or the frequency of instances, becomes so serious in its character as to endanger or threaten the public welfare. Gross neglect does not necessarily include wilful neglect or intentional official wrongdoing. Those responsible for such act or omission cannot escape the disciplinary power of this Court. The imposable penalty for gross neglect of duty is dismissal from the service.[10]

Under Rule IV, Section 52 of the *Uniform Rules on Administrative Cases in the Civil Service*,[11] simple neglect of duty is considered a less grave offense, and is punishable by suspension from office (for one month and one day to six months) on the first offense, and dismissal on the second offense. We hasten to point out, however, that the penalty can be mitigated. In *Seangio v. Parce*,[12] we imposed a fine of ₱2,000.00 upon finding the respondent guilty of simple neglect of duty, observing that although delay attended the transcription of the stenographic notes, no apparent ill or malicious motive on the part of respondent was established; hence, absent any attribution and substantial proof of fraud or bad faith on the part of respondent, her failure to transcribe the stenographic notes on time constituted simple neglect of duty.

The penalty of fine may be imposed on the respondent. There was no showing of her having committed the delay with bad faith or fraud. But the fine should be ₱5,000.00 considering the number of cases where she had failed to submit the TSNs and orders on time.

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[10] *Alleged Loss of Various Boxes of Copy Paper During Their Transfer From the Property Division, Office of Administrative Services (OAS), to the Various Rooms of the Philippine Judicial Academy*, A.M. Nos. 2008-23-SC, 2014-025-Ret., September 30, 2014, 737 SCRA 176, 191.

[11] CSC Resolution No. 991936, August 31, 1999.

[12] A.M. No. P-06-2252, July 9, 2007, 527 SCRA 24.

On her tardiness and absenteeism, the respondent is admonished to be more conscientious about her attendance. Under Civil Service Commission Memorandum Circular No. 23, series of 1998, any employee is considered habitually tardy if, regardless of the number of minutes, she incurs tardiness 10 times in a month for at least two months in a semester, or at least two consecutive months during the year. Although the respondent admitted being habitually tardy in November 2008 and January 2009, her tardiness took place in different semesters, and did not occur on two consecutive months. We note that the first semester was from January to June, and the second semester from July to December.

On the unauthorized leave of absence incurred by the respondent on May 4, 5, 17, 19, 20, 21, 24, 26, and 27, 2010, and on June 7 and 8, 2010, the Acting Presiding Judge eventually approved the leave applications filed by the respondent.[13] Hence, the charges thereon are dismissed.

WHEREFORE, the Court **FINDS** and **DECLARES** respondent **REBA A. BELIGOLO**, Court Stenographer II of the Municipal Trial Court in Cities in Malaybalay City, Bukidnon **GUILTY** of **SIMPLE NEGLECT OF DUTY** and **FINES** her in the amount of ₱5,000.00 with a **WARNING** that her commission of the same or similar acts shall be dealt with more severely.

The Court **ADMONISHES** respondent **REBA A. BELIGOLO** for her habitual tardiness, and **STERNLY REMINDS** her to strictly observe the regular working hours.

SO ORDERED.

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

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[13] *Rollo*, p. 91.

SECOND DIVISION

[A.M. No. MTJ-17-1899. March 7, 2018]
(Formerly OCA IPI No. 14-2646-MTJ)

ATTY. MELVIN M. MIRANDA, *complainant, vs.* **PRESIDING JUDGE WILFREDO G. OCA, MUNICIPAL TRIAL COURT, REAL, QUEZON (FORMER ACTING PRESIDING JUDGE, METROPOLITAN TRIAL COURT, BRANCH 71, PASIG CITY),** *respondent.*

SYLLABUS

LEGAL ETHICS; JUDGES; VIOLATION OF SUPREME COURT RULES AND DIRECTIVES, COMMITTED; FINE OF ₱20,000, IMPOSED.— [T]he Court hereby adopts and approves the findings of facts and conclusions of law in the above OCA report and recommendation. The OCA stated therein that since Judge Oca violated the Supreme Court rules and directives which is considered a less serious offense under Section 9(4), Rule 140 of the Rules of Court, the applicable penalties are those under Section 11(B) thereof, to wit: (a) suspension from office without salary and other benefits for not less than one (1) nor more than three (3) months; or (b) a fine of more than ₱10,000.00 but not exceeding ₱20,000.00. The OCA recommended the imposition of ₱20,000.00 since the Court had previously found Judge Oca liable for undue delay in rendering orders and for violation of Supreme Court rules, directives and circulars and imposed upon him a fine of ₱11,000.00 in a Minute Resolution dated September 2, 2015.

D E C I S I O N

CAGUIOA, *J.*:

Before the Court is the Complaint[1] dated January 4, 2014 filed before the Office of the Court Administrator (OCA) by Atty. Melvin M. Miranda (Atty. Miranda) against herein

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

respondent Presiding Judge Wilfredo G. Oca (Judge Oca), Municipal Trial Court (MTC), Real, Quezon, and former Acting Presiding Judge, Metropolitan Trial Court (MeTC), Branch (Br.) 71, Pasig City.

Antecedents

In his Complaint, Atty. Miranda alleged that on October 17, 2013, the case's initial trial hearing, he appeared as private prosecutor before Judge Oca when the latter was then acting presiding judge of MeTC, Br. 71, Pasig City, in the criminal case entitled "*People of the Philippines and Antonio L. Villaseñor, complainants vs. Wilfreda V. Villaseñor, accused*" (docketed as Crim. Case No. 120707).[2] Atty. Miranda presented private complainant, Antonio L. Villaseñor, together with his Judicial Affidavit, and began to state the purpose of the witness' testimony pursuant to Section 6[3] of the Judicial Affidavit Rule[4] (JAR).[5] However, Judge Oca told Atty. Miranda that there was "no need for that" and then directed the defense counsel, Atty. Ma. Antonieta B. Albano-Placides (Atty. Placides), to proceed to cross-examination.[6] Atty. Miranda asked that he be allowed to state the purpose of his witness' testimony.[7] Judge Oca asked Atty. Miranda if he included the offer or statement of the purpose

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[2] *Id.* at 1.

[3] Sec. 6. *Offer of and objections to testimony in judicial affidavit.* — The party presenting the judicial affidavit of his witness in place of direct testimony shall state the purpose of such testimony at the start of the presentation of the witness. The adverse party may move to disqualify the witness or to strike out his affidavit or any of the answers found in it on ground of inadmissibility. The court shall promptly rule on the motion and, if granted, shall cause the marking of any excluded answer by placing it in brackets under the initials of an authorized court personnel, without prejudice to a tender of excluded evidence under Section 40 of Rule 132 of the Rules of Court.

[4] A.M. No. 12-8-8-SC, September 4, 2012.

[5] *Rollo*, p. 2.

[6] *Id.*

[7] *Id.* at 3.

of the witness' testimony in the Judicial Affidavit.[8] After Atty. Miranda replied in the negative, Judge Oca asked Atty. Placides to say something about the matter.[9] Atty. Placides said that Atty. Miranda violated the JAR for filing the Judicial Affidavit only on October 14, 2013.[10] Judge Oca then ordered the termination of the proceedings, and told Atty. Miranda that he should have included the offer or statement of the purpose of the witness' testimony in the Judicial Affidavit.[11] Moreover, Judge Oca ordered Atty. Miranda to pay a fine of ₱1,000.00, and he set the next hearing on February 12, 2014, which is four (4) months thereafter.[12] Atty. Miranda made an oral motion for reconsideration, asserting that the JAR does not require the inclusion of the offer or statement of the purpose of the witness' testimony in the judicial affidavit and thus there is no basis for the termination of the proceedings and the imposition of the fine.[13] However, Judge Oca denied outright the said oral motion, excused the witness, and adjourned the proceedings.[14]

Moreover, Atty. Miranda averred in his Complaint that, on November 4, 2013, he received[15] the Order[16] dated October 17, 2013 which stated that since the offer or statement of the purpose of the witness' testimony was not included in the Judicial Affidavit, the same may be added thereto after payment of a fine of ₱1,000.00 and "a copy thereof served upon the defense counsel five (5) days before February 12, 2014 such that the cross-examination of Mr. Villaseñor shall proceed promptly on said date."[17] Thus, Atty. Miranda asserted that Judge Oca is

[8] *Id.*

[9] *Id.*

[10] *Id*.

[11] *Id*.

[12] *Id*.

[13] *Id*. at 4.

[14] *Id*.

[15] *Id*.

[16] *Id*. at 14.

[17] *Id*.

grossly ignorant of the law since the JAR neither requires the inclusion of the offer or statement of the purpose of the witness' testimony in the judicial affidavit nor does it impose a fine on the party for failure to do the same.[18]

In a 1st Indorsement[19] dated February 3, 2014, the OCA directed Judge Oca to comment on the complaint (docketed as OCA IPI No. 14-2646-MTJ) within ten (10) days from receipt thereof.

In a 1st Tracer[20] dated September 8, 2014, the OCA noted that Judge Oca failed to file his comment on the complaint, and thus directed the latter to comply with the earlier directive within five (5) days from receipt thereof, otherwise the matter would be submitted to the Court without his comment.

In a Report[21] dated February 23, 2016, the OCA recommended that Judge Oca should be required to show cause why he should not be held administratively liable for failing to comply with its directives for him to file his comment.[22] The OCA also recommended that Judge Oca should be directed to submit his comment within ten (10) days in view of the gravity of the allegations against him.[23]

In a Resolution[24] dated July 20, 2016, the Court noted Atty. Miranda's Complaint and the above OCA Report, and also adopted the recommendations therein.

In his Comment[25] dated September 15, 2016, Judge Oca pleaded for "mercy and compassion," stating that the filing of the present complaint "caused him anguish and anxiety such

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[18] *Id*. at 6.

[19] *Id*. at 15.

[20] *Id*. at 16.

[21] *Id*. at 17-19.

[22] *Id*. at 19.

[23] *Id*. at 18.

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

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

that even the preparation of his answer was felt as a torture."[26] Moreover, Judge Oca explained therein that due to the heavy case load of MeTC, Br. 71, Pasig City when he was then its acting presiding judge, he reminded the lawyers appearing before him, including Atty. Miranda, and they all agreed, to incorporate in their judicial affidavits all matters which they may cover in the direct examination, as well as the preliminary questions such as the purpose of the witness' testimony.[27] Judge Oca also stated in his Comment that the Judicial Affidavit filed by Atty. Miranda did not indicate the purpose of the witness' testimony, but he allowed the amendment thereof after the payment of the fine in accordance with the JAR.[28] In a Resolution[29] dated December 1, 2016, the Court noted Judge Oca's Comment.

OCA Report and Recommendation

In a Memorandum[30] dated May 5, 2017, the OCA recommended that the administrative complaint against Judge Oca be re-docketed as a regular administrative matter, and that he be found guilty of Violation of Supreme Court Rules and Directives and fined in the amount of Twenty Thousand Pesos (₱20,000.00).[31] In a Resolution[32] dated July 12, 2017, the Court re-docketed the present complaint as a regular administrative matter.

After considering the allegations in the Complaint and Judge Oca's Comment, the OCA agreed with Atty. Miranda's assertion that the JAR does not require the inclusion of the offer or statement of the purpose of the witness' testimony nor does it impose a fine on a party for failure to include the same.[33]

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[26] *Id*. at 23.

[27] *Id*. at 22.

[28] *Id*.

[29] *Id*. at 25.

[30] *Id*. at 26-30.

[31] *Id*. at 30.

[32] *Id*. at 32.

[33] *Id*. at 28.

The OCA noted that the contents of a judicial affidavit are those listed under Section 3[34] of the JAR, while Section 6 thereof provides that the party presenting the witness' judicial affidavit in place of direct testimony shall state the purpose of the same at the start of the presentation of the witness.[35] Moreover, the OCA stressed that the fine under Section 10[36] of the JAR is

[34] Sec. 3. *Contents of Judicial Affidavit*. — A judicial affidavit shall be prepared in the language known to the witness and, if not in English or Filipino, accompanied by a translation in English or Filipino, and shall contain the following:

(a) The name, age, residence or business address, and occupation of the witness;

(b) The name and address of the lawyer who conducts or supervises the examination of the witness and the place where the examination is being held;

(c) A statement that the witness is answering the questions asked of him, fully conscious that he does so under oath, and that he may face criminal liability for false testimony or perjury;

(d) Questions asked of the witness and his corresponding answers, consecutively numbered, that:

(1) Show the circumstances under which the witness acquired the facts upon which he testifies;

(2) Elicit from him those facts which are relevant to the issues that the case presents; and

(3) Identify the attached documentary and object evidence and establish their authenticity in accordance with the Rules of Court;

(e) The signature of the witness over his printed name; and

(f) A jurat with the signature of the notary public who administers the oath or an officer who is authorized by law to administer the same.

[35] *Rollo*, pp. 28-29.

[36] Sec. 10. *Effect of non-compliance with the Judicial Affidavit Rule*. — (a) A party who fails to submit the required judicial affidavits and exhibits on time shall be deemed to have waived their submission. The court may, however, allow only once the late submission of the same provided, the delay is for a valid reason, would not unduly prejudice the opposing party, and the defaulting party pays a fine of not less than ₱1,000.00 nor more than ₱5,000.00, at the discretion of the court.

x x x x x x x x x

(c) The court shall not admit as evidence judicial affidavits that do not conform to the content requirements of Section 3 and the attestation requirement of Section 4 above. The court may, however, allow only once the subsequent submission of the compliant replacement affidavits before the hearing or

only imposable in the following instances: (a) the court allows the late submission of a party's judicial affidavit; and (b) when the judicial affidavit fails to conform to the content requirements[37] under Section 3 and the attestation requirement under Section 4.[38] The OCA ratiocinated as follows:

> Basic is the rule that the imposition of a fine, being penal in nature, must strictly comply with the rule or law, calling for its imposition. Clearly, respondent Judge had no authority to add to the list provided in Section 3 of the Judicial Affidavit Rule. Neither did he have the authority to impose a fine for failure of complainant Atty. Miranda to include the additional requirement he unilaterally imposed. Even if we were to assume that respondent Judge reminded all lawyers to include an additional requirement in their judicial affidavits submitted in court, he still had no authority to impose the fine provided in the Rule for failure to comply with his own directive. In addition, the main purpose of the subject Rule is "*to reduce the time needed for completing the testimonies of witnesses in cases under litigation*." In arbitrarily prohibiting the verbal manifestation of the purpose of the witness' testimony, the proceedings were delayed for 120 more days. This delay could have been averted by simply allowing complainant Atty. Miranda to state the purpose of the testimony which would have taken just a few minutes at the most.
>
> It is also important to note that respondent Judge was quick to impose a fine for the supposed failure to comply with his own directive. And yet, he now asks for "*mercy and compassion*" for failing to

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trial provided the delay is for a valid reason and would not unduly prejudice the opposing party and provided further, that public or private counsel responsible for their preparation and submission pays a fine of not less than ₱1,000.00 nor more than ₱5,000.00, at the discretion of the court.

[37] *Rollo*, p. 29.

[38] Sec. 4. *Sworn attestation of the lawyer.* — (a) The judicial affidavit shall contain a sworn attestation at the end, executed by the lawyer who conducted or supervised the examination of the witness, to the effect that:

(1) He faithfully recorded or caused to be recorded the questions he asked and the corresponding answers that the witness gave; and

(2) Neither he nor any other person then present or assisting him coached the witness regarding the latter's answers.

(b) A false attestation shall subject the lawyer mentioned to disciplinary action, including disbarment.

comply with the directive of this Office to submit his comment, pursuant to the 1st Indorsement dated 3 February 2014 and 1st Tracer dated 8 September 2014. In fact, he only submitted his Comment dated 15 September 2016, after he was directed by the Court pursuant to its Resolution dated 20 July 2016. In his comment, respondent Judge claims that the filing of this case against him had caused him so much "*anguish and anxiety* x x x *that even the preparation of his answer was felt as a torture*."

This Office finds no merit in his explanation, and considers him remiss in implementing the Judicial Affidavit Rule and in complying with the OCA directives to submit his comment.[39] (Citations omitted)

The Court's Ruling

In view of the foregoing, the Court hereby adopts and approves the findings of facts and conclusions of law in the above OCA report and recommendation. The OCA stated therein that since Judge Oca violated the Supreme Court rules and directives which is considered a less serious offense under Section 9(4),[40] Rule 140 of the Rules of Court, the applicable penalties are those under Section 11(B)[41] thereof, to wit: (a) suspension from office without salary and other benefits for not less than one (1) nor more than three (3) months; or (b) a fine of more than ₱10,000.00 but not exceeding ₱20,000.00.[42] The OCA recommended the imposition of ₱20,000.00[43] since the Court had previously found

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[39] *Rollo*, pp. 29-30.

[40] SEC. 9. *Less Serious Charges*. — Less serious charges include:

x x x x x x x x x

4. Violation of Supreme Court rules, directives, and circulars[.]

[41] SEC. 11. Sanctions. — x x x

x x x x x x x x x

B. If the respondent is guilty of a less serious charge, any of the following sanctions shall be imposed:

1. Suspension from office without salary and other benefits for not less than one (1) nor more than three (3) months; or

2. A fine of more than ₱10,000.00 but not exceeding ₱20,000.00.

[42] *Rollo*, p. 30.

[43] *Id*.

Judge Oca liable for undue delay in rendering orders and for violation of Supreme Court rules, directives and circulars and imposed upon him a fine of ₱11,000.00 in a Minute Resolution[44] dated September 2, 2015.

WHEREFORE, the Court finds Presiding Judge Wilfredo G. Oca, Municipal Trial Court, Real, Quezon, **GUILTY** of Violation of Supreme Court Rules and Directives and imposes upon him a **FINE** in the amount of Twenty Thousand Pesos (₱20,000.00), with a **WARNING** that a repetition of the same infraction shall be dealt with more severely.

SO ORDERED.

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

SECOND DIVISION

[OCA IPI No.17-4663-RTJ. March 7, 2018]

ATTY. BERTENI C. CAUSING and PERCIVAL CARAG MABASA, *complainants, vs.* **PRESIDING JUDGE JOSE LORENZO R. DELA ROSA, Regional Trial Court, Branch 4, Manila,** *respondent.*

SYLLABUS

1. LEGAL ETHICS; JUDGES; GROSS IGNORANCE OF THE LAW, DEFINED; LIABILITY ATTACHES ONLY WHEN THE ACTUATION OR DECISION OF THE JUDGE IN

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[44] A.M. No. MTJ-15-1859 (Formerly OCA IPI No. 13-2588-MTJ), entitled *Basilio E. Paduga, Jr. v. Judge Wilfredo G. Oca, Municipal Trial Court, Real, Quezon; rollo*, pp. 35-36.

[*] Acting Chief Justice per Special Order No. 2539 dated February 28, 2018.

THE PERFORMANCE OF OFFICIAL DUTIES WAS NOT ONLY ERRONEOUS BUT ALSO MOVED BY BAD FAITH, DISHONESTY, OR HATRED.— Gross ignorance of the law is the disregard of basic rules and settled jurisprudence. A judge may also be administratively liable if shown to have been motivated by bad faith, fraud, dishonesty or corruption in ignoring, contradicting or failing to apply settled law and jurisprudence. The Court however has also ruled that "not every error or mistake of a judge in the performance of his official duties renders him liable." For liability to attach for ignorance of the law, the assailed order, decision or actuation of the judge in the performance of official duties must not only be found erroneous but, most importantly, it must also be established that he was moved by bad faith, dishonesty, hatred, or some other like motive. As a matter of policy, in the absence of fraud, dishonesty or corruption, the acts of a judge in his judicial capacity are not subject to disciplinary action even though such acts are erroneous.

2. **ID.; ID.; ID.; THE COURT CANNOT HOLD RESPONDENT LIABLE WHEN HE HAD ALREADY RECTIFIED HIS MISTAKE IN HIS SUBSEQUENT ORDER.—** The Court agrees with the OCA that it would be absurd to hold respondent Judge Dela Rosa liable for his November 23, 2015 Order when he had himself rectified this in his subsequent June 20, 2016 Order. To rule otherwise would be to render judicial office untenable, for no one called upon to try the facts or interpret the law in the process of administering justice can be infallible in his judgment. To hold otherwise "would be nothing short of harassing judges to take the fantastic and impossible oath of rendering infallible judgments."

3. **ID.; ID.; JUDGES' CONTEMPT POWER MUST BE EXERCISED JUDICIOUSLY AND SPARINGLY; REFERRING TO THE INTEGRATED BAR OF THE PHILIPPINES (IBP) THE LAWYER'S ACT OF POSTING MATTER PERTAINING TO A PENDING CRIMINAL CASE ON THE INTERNET IS THE PROPER ACTION TO TAKE FOR A TRIAL COURT JUDGE.—** The Court likewise finds no merit in Complainants' allegation that

> respondent Judge Dela Rosa should have first required Atty. Causing to show cause for his act of posting matters pertaining to the pending criminal case on the internet. The Court agrees with the OCA that respondent Judge Dela Rosa's act of referring the matter to the IBP, an independent tribunal who exercises disciplinary powers over lawyers, was a prudent and proper action to take for a trial court judge. The Court has explained, in the case of *Lorenzo Shipping Corporation v. Distribution Management Association of the Philippines*, that judges' power to punish contempt must be exercised judiciously and sparingly, not for retaliation or vindictiveness[.]

D E C I S I O N

CAGUIOA, *J.*:

Before the Court is the Complaint[1] dated January 6, 2017 filed before the Office of the Court Administrator (OCA) by Atty. Berteni C. Causing (Atty. Causing) and Percival Carag Mabasa a.k.a. Percy Lapid (Mabasa) against respondent Judge Jose Lorenzo R. Dela Rosa (respondent Judge Dela Rosa), Presiding Judge, Regional Trial Court (RTC), Branch (Br.) 4, Manila.

Antecedents

Atty. Causing and his client, Mabasa (Complainants), charged respondent Judge Dela Rosa with gross ignorance of the law, gross misconduct and gross incompetence for reversing[2] the dismissal of Criminal Case Nos. 09-268685-86 entitled *People v. Eleazar, et al.* (Libel Cases), wherein Mabasa was one of the accused.

Complainants alleged that the Libel Cases were dismissed by former Acting Presiding Judge Gamor B. Disalo (Judge Disalo) in an Order[3] dated April 13, 2015 on the ground that

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[1] *Rollo*, pp. 1-29.

[2] See Resolution dated November 23, 2015, *id.* at 141.

[3] *Rollo*, pp. 162-163.

the right of the accused to speedy trial had been violated. The prosecution filed a Motion for Reconsideration of the April 13, 2015 Order before the RTC Br. 4 Manila, now presided by respondent Judge Dela Rosa.

Respondent Judge Dela Rosa granted the prosecution's Motion for Reconsideration in the assailed Resolution[4] dated November 23, 2015 (November 23, 2015 Resolution), the pertinent portions of which read:

x x x x x x x x x

In opposition thereto, counsel for the accused cites double jeopardy. However, several settings of this Court showed that the resetting was on motion of counsel for the accused and hence with the consent of the accused. Further, the questioned Order dated April 13, 2015 has not yet attained finality, so double jeopardy is not yet attached.

Further, the records of this case would show that the accused is not entirely without blame as to why this case has been pending. Aside from that, the accused filed a Motion to Quash as well as accused's Motion for Reconsideration thereto resulting in the conduct of the arraignment only in the last year of September.

The prosecution should be given its day in court. To deny the Motion For Reconsideration is a (sic) deny to prosecute on the part of the prosecution.[5]

Complainants questioned respondent Judge Dela Rosa's November 23, 2015 Resolution granting the prosecution's Motion for Reconsideration because, according to them, it was elementary for respondent Judge Dela Rosa to know that the prior dismissal of a criminal case due to a violation of the accused's right to speedy trial is equivalent to a dismissal on the merits of the case and, as such, granting the prosecution's Motion for Reconsideration was tantamount to a violation of the constitutional right against double jeopardy.[6] Complainants averred further that it was

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[4] *Id.* at 141.

[5] *Id.*

[6] RULES OF COURT, Rule 117, SEC. 7. *Former conviction or acquittal; double jeopardy.*— When an accused has been convicted or acquitted, or

unacceptable, given respondent Judge Dela Rosa's position and the presumption of his knowledge of the law, for him to have disregarded a rule as elementary as the constitutional right of an accused against double jeopardy.[7]

Complainants also criticized respondent Judge Dela Rosa's act of referring to the Integrated Bar of the Philippines (IBP) Atty. Causing's two (2) separate posts on his Facebook and blogspot accounts about the subject criminal cases. They reasoned that respondent Judge Dela Rosa should have first required Atty. Causing to show cause why he should not be cited in contempt for publicizing and taking his posts to social media. Atty. Causing emphasized that the posts were presented using decent words and thus, it was incorrect for respondent Judge Dela Rosa to refer his actions to a disciplinary body such as the IBP. Atty. Causing further asserted that he did not violate the *sub judice*[8] rule because this rule cannot be used to preserve the unfairness and errors of respondent Judge Dela Rosa.[9]

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the case against him dismissed or otherwise terminated without his express consent by a court of competent jurisdiction, upon a valid complaint or information or other formal charge sufficient in form and substance to sustain a conviction and after the accused had pleaded to the charge, the conviction or acquittal of the accused or the dismissal of the case shall be a bar to another prosecution for the offense charged, or for any attempt to commit the same or frustration thereof, or for any offense which necessarily includes or is necessarily included in the offense charged in the former complaint or information.

[7] *Rollo*, pp. 3-6, 254.

[8] The *sub judice* rule restricts comments and disclosures pertaining to pending judicial proceedings. The restriction applies not only to participants in the pending case,*i.e.*, to members of the bar and bench, and to litigants and witnesses, but also to the public in general, which necessarily includes the media. Although the Rules of Court does not contain a specific provision imposing the *sub judice* rule, it supports the observance of the restriction by punishing its violation as indirect contempt under Section 3 (d) of Rule 71:

Section 3. Indirect contempt to be punished after charge and hearing. x x x 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. (*Rollo*, p. 255.)

[9] *Rollo*, pp. 6-7, 254-255.

In a 1st Indorsement[10] dated January 16, 2017, the OCA directed respondent Judge Dela Rosa to file his Comment within ten (10) days from receipt thereof.[11]

In his Comment[12] dated March 13, 2017 (Comment), respondent Judge Dela Rosa averred that he had already reversed the November 23, 2015 Resolution as early as June 20, 2016 — or way before the filing of the Complaint on January 6, 2017 — when he issued a Resolution[13] of even date, which states:

> x x x While the records of the cases will show delay also attributable to the defense and that this court was acting in the spirit of fairness, the April 13, 2015 Order of Hon. Disalo should be upheld to the prejudice of fairness. Being caught between a rock and a hard place, liberality is afforded to the accused. x x x
>
> x x x x x x x x x
>
> As the records would show that the Hon. Judge Disalo dismissed these cases on the right of speedy trial, double jeopardy attaches. Hence, this Court's Resolution dated November 23, 2015 is recalled and set aside. The dismissal dated April 13, 2015 as dictated in the Order of Hon. Judge Disalo is reinstated.
>
> While the right of due process of the State may have been circumvented, the interest of the private complainants with regard to the civil aspect of the cases is protected as the dismissal of the subject criminal cases is without prejudice to the pursuit of civil indemnity.[14]

Respondent Judge Dela Rosa explained in his Comment that he had issued the November 23, 2015 Resolution because, after studying the records, he discovered that Complainants caused much of the delay in the proceedings.[15]

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[10] *Id*. at 127.

[11] *Id*.

[12] *Id*. at 128-140.

[13] *Id*. at 204-205.

[14] *Id.*

[15] *Id*. at 129-133, 255.

Respondent Judge Dela Rosa then enumerated in his Comment the instances wherein Complainants caused the delay in the proceedings in the Libel Cases:

1. While the warrant of arrest for Mabasa was issued on May 28, 2009, it was only one (1) year and four (4) months after or on September 28, 2010 that Mabasa was detained;[16]
2. Mabasa filed a Motion to Dismiss on November 30, 2010;[17]
3. The arraignment and pre-trial of the cases were reset after then Presiding Judge Marcelino L. Sayo, Jr. (Judge Sayo) issued an Order dated April 6, 2011, which indicated that Mabasa, through counsel, moved that the scheduled arraignment and pre-trial be reset in order "for the parties to settle the civil aspect of these cases";[18]
4. The counsel of Mabasa filed an Urgent Motion for Deferment dated June 9, 2011 requesting again for the re-scheduling of the arraignment and pre-trial;[19]
5. The pre-trial of the case was again rescheduled in an Order dated August 24, 2011 by the lower court due to the absence of Mabasa's co-accused, Johnson L. Eleazar;[20]
6. Mabasa filed a Motion to Quash dated October 11, 2011, citing the court's lack of jurisdiction;[21]
7. The lower court, in an Order dated June 27, 2012, rescheduled again the arraignment and pre-trial, citing the absence of the private prosecutor, Mabasa and his counsel;[22]

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[16] *Id*. at 130, 165.

[17] *Id*. at 130, 166-169.

[18] *Id*. at 130, 170.

[19] *Id*. at 130, 171-172.

[20] *Id*. at 130, 173.

[21] *Id*. at 130, 174-184.

[22] *Id*. at 130-131, 185.

8. Judge Sayo thereafter issued an Order dated November 28, 2012, directing the issuance of warrants of arrest against Mabasa and co-accused Gloria Galuno due to their continued non-appearance in court;[23]

9. In an Order dated December 12, 2012, Judge Sayo lifted the warrants of arrest against Mabasa and his other co-accused in the Libel Cases after their counsel admitted that their non-appearance in the previous hearing was due to the fault of their counsel's law office;[24]

10. The hearing of the case on June 30, 2014 was rescheduled after Mabasa moved for the resetting of the case due to the absence of his counsel;[25]

11. In an Order by Judge Disalo dated August 11, 2014, counsel for Mabasa was absent again. Mabasa was finally arraigned after the court appointed one of the lawyers from the Public Attorney's Office as *counsel de oficio* for Mabasa;[26]

12. The Commissioner's Report dated September 23, 2014 stated that the preliminary conference failed to push through due to the absence of Mabasa and his counsel;[27] and

13. The initial date of the presentation of the prosecution evidence was set on April 13, 2015 by the branch clerk of court. Notably, the cases against Mabasa would be dismissed on the same day.[28]

Respondent Judge DelaRosa emphasized that the day the Libel Cases were dismissed, *i.e.*, on April 13, 2015, was actually the date set for the first actual trial of the cases. He stressed that

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[23] *Id*. at 131, 186.

[24] *Id*. at 131, 187.

[25] *Id*. at 131, 188-189.

[26] *Id*. at 131, 190-191.

[27] *Id*. at 132, 192.

[28] *Id*. at 132, 193.

the delay of almost five (5) years in the subject cases was attributable more to Mabasa than anyone else.[29]

Respondent Judge Dela Rosa claimed that the November 23, 2015 Resolution was issued in good faith and after evaluation of the evidence submitted by each party. He denied that the same was motivated by bad faith, ill will, fraud, dishonesty, corruption or caprice. In fact, Respondent Judge issued this as a matter of fairness — that is, to give the private complainants in the Libel Cases an opportunity to pursue against Mabasa and his co-accused the civil aspect of the Libel Cases.[30]

Finally, respondent Judge Dela Rosa stressed how the filing of this administrative complaint against him — on January 6, 2017, or after he had already reversed the November 23, 2015 Resolution through his June 20, 2016 Resolution — is pure harassment.[31]

OCA Report and Recommendation

In a Report and Recommendation[32] dated June 28, 2017, the OCA recommended that the administrative complaint against Judge Dela Rosa be dismissed for lack of merit.

After considering the allegations in the Complaint and respondent Judge Dela Rosa's Comment, the OCA found that in the absence of any proof that respondent Judge Dela Rosa was ill-motivated in issuing the November 23, 2015 Order and that he had, in fact, issued his June 20, 2016 Resolution reversing himself, the charge of gross ignorance of the law should be dismissed.

The OCA ratiocinated as follows:

The main issue in this administrative complaint is rooted in respondent Judge's issuance of the Order dated 23 November 201[5],

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[29] *Id*. at 132, 255.

[30] *Id*. at 132-135, 255.

[31] *Id*. at 133-139, 255.

[32] *Id*. at 254-257.

reversing the previous one dismissing the criminal cases on the ground of violation of the right of the accused to speedy trial. **Respondent Judge has already admitted that be made a mistake in issuing the said order as this would have constituted a violation of the right of the accused against double jeopardy. To rectify his error, he granted the motion for reconsideration filed by the accused.**

Although not without exceptions, it is settled that the function of a motion for reconsideration is to point out to the court the error that it may have committed and to give it a chance to correct itself. In "*Republic of the Philippines v. Abdulwahab A. Bayao, et al.*,"[33] the Court explains the general rule that the purpose of a motion for reconsideration is to grant an opportunity for the court to rectify any actual or perceived error attributed to it by re-examination of the legal and factual circumstances of the case. The wisdom of this rule is to expedite the resolution of the issues of the case at the level of the trial court so it can take a harder look at the records to come up with a more informed decision on the case.[34] (Emphasis supplied)

The OCA found that the records of the case show that respondent Judge Dela Rosa admitted that he had erred in issuing the November 23, 2015 Order, but that he had rectified such mistake.[35] The OCA held that this is precisely why our judicial system has remedies for both the party-litigants and the court to avail of if need be.[36] The OCA asserted that it would be absurd to still hold respondent Judge Dela Rosa liable despite his rectification through his June 20, 2016 Resolution.[37]

As to the referral by respondent Judge Dela Rosa to the IBP of Atty. Causing's act of posting matters pertaining to the pending criminal case on the internet, the OCA disagreed with Atty. Causing's argument that respondent Judge Dela Rosa should have first required him to show cause for having done so.[38]

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[33] 710 Phil. 279, 287 (2013).

[34] *Rollo*, p. 256.

[35] *Id*.

[36] *Id*.

[37] *Id*.

[38] *Id*. at 257.

The OCA explained that respondent Judge Dela Rosa cannot just exercise his contempt powers on a whim, if not haphazardly, if he believes that he has other remedies to resort to, just like in this case.[39]

The Court's Ruling

In view of the foregoing, the Court hereby adopts and approves the findings of facts and conclusions of law in the above-mentioned OCA Report and Recommendation.

Gross ignorance of the law is the disregard of basic rules and settled jurisprudence.[40] A judge may also be administratively liable if shown to have been motivated by bad faith, fraud, dishonesty or corruption in ignoring, contradicting or failing to apply settled law and jurisprudence.[41]

The Court however has also ruled that "not every error or mistake of a judge in the performance of his official duties renders him liable."[42]

For liability to attach for ignorance of the law, the assailed order, decision or actuation of the judge in the performance of official duties must not only be found erroneous but, most importantly, it must also be established that he was moved by bad faith, dishonesty, hatred, or some other like motive. As a matter of policy, in the absence of fraud, dishonesty or corruption, the acts of a judge in his judicial capacity are not subject to disciplinary action even though such acts are erroneous.[43]

The Court agrees with the OCA that it would be absurd to hold respondent Judge Dela Rosa liable for his November 23, 2015 Order when he had himself rectified this in his subsequent June 20, 2016 Order. To rule otherwise would be to render

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[39] *Id*.

[40] *Department of Justice v. Mislang*, A.M. No. RTJ-14-2369, July 26, 2016, 798 SCRA 225, 234.

[41] *Id*. at 234.

[42] *Dipatuan v. Mangotara*, 633 Phil. 67 (2012).

[43] *Salvador v. Limsiaco, Jr*., 519 Phil. 683, 687 (2006).

judicial office untenable, for no one called upon to try the facts or interpret the law in the process of administering justice can be infallible in his judgment.[44] To hold otherwise "would be nothing short of harassing judges to take the fantastic and impossible oath of rendering infallible judgments."[45]

Furthermore, nothing in the records of the case suggests that respondent Judge Dela Rosa was motivated by bad faith, fraud, corruption, dishonesty or egregious error in rendering his decision. Other than their bare assertions, Complainants failed to substantiate their allegations with competent proof. Bad faith cannot be presumed[46] and this Court cannot conclude bad faith intervened when none was actually proven.[47]

The Court likewise finds no merit in Complainants' allegation that respondent Judge Dela Rosa should have first required Atty. Causing to show cause for his act of posting matters pertaining to the pending criminal case on the internet. The Court agrees with the OCA that respondent Judge Dela Rosa's act of referring the matter to the IBP, an independent tribunal who exercises disciplinary powers over lawyers, was a prudent and proper action to take for a trial court judge. The Court has explained, in the case of *Lorenzo Shipping Corporation v. Distribution Management Association of the Philippines*,[48] that judges' power to punish contempt must be exercised judiciously and sparingly, not for retaliation or vindictiveness, *viz.*:

> x x x [T]he power to punish for contempt of court is exercised on the preservative and not on the vindictive principle, and only occasionally should a court invoke its inherent power in order to retain that respect without which the administration of justice must falter or fail. As judges[,] we ought to exercise our power to punish

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[44] *Lorenzana v. Austria*, 731 Phil. 82, 98 (2014), citing *Magdadaro v. Saniel, Jr.*, 700 Phil. 513, 520 (2012).

[45] *Office of the Court Administrator v. Floro, Jr.,* 520 Phil. 591, 624 (2006).

[46] *Gatmaitan v. Gonzales*, 525 Phil. 658, 671 (2006).

[47] *Lorenzana v. Austria*, *supra* note 44, at 99.

[48] 672 Phil. 1 (2011).

contempt judiciously and sparingly, with utmost restraint, and with the end in view of utilizing the power for the correction and preservation of the dignity of the Court, not for retaliation or vindictiveness.[49]

In fine, the administrative charge against respondent Judge Dela Rosa should be, as it is hereby, dismissed.

WHEREFORE, the instant administrative complaint against respondent Presiding Judge Jose Lorenzo R. Dela Rosa, Regional Trial Court, Branch 4, Manila is hereby **DISMISSED** for lack of merit.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 181710. March 7, 2018]

CITY OF PASIG and CRISPINA V. SALUMBRE, in her capacity as OIC-CITY Treasurer of Pasig City, *petitioners, vs.* **MANILA ELECTRIC COMPANY,** *respondent.*

SYLLABUS

1. POLITICAL LAW; LOCAL GOVERNMENT CODE (LGC) OF 1991; POWER OF THE LOCAL GOVERNMENT UNITS (LGUs) TO IMPOSE TAXES; LGUs CANNOT SOLELY RELY ON THE PROVISION OF THE LGC GRANTING SPECIFIC TAXING POWERS, THE ENACTMENT OF AN ORDINANCE IS INDISPENSABLE

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[49] *Id*. at 19-20.

[*] Acting Chief Justice per Special Order No. 2549 dated February 28, 2018.

FOR IT IS THE LEGAL BASIS OF THE IMPOSITION AND COLLECTION OF TAXES UPON COVERED TAXPAYERS.— The LGC further provides that the power to impose a tax, fee, or charge or to generate revenue shall be exercised by the Sanggunian of the local government unit concerned through an appropriate ordinance. This simply means that the local government unit cannot solely rely on the statutory provision (LGC) granting specific taxing powers, such as the authority to levy franchise tax. The enactment of an ordinance is indispensable for it is the legal basis of the imposition and collection of taxes upon covered taxpayers. Without the ordinance, there is nothing to enforce by way of assessment and collection. However, an ordinance must pass muster the test of constitutionality and the test of consistency with the prevailing laws. Otherwise, it shall be void.

2. **ID.; ID.; ID.; A MUNICIPALITY HAS NO AUTHORITY TO LEVY FRANCHISE TAXES, HENCE, THE SUBJECT MUNICIPAL ORDINANCE NO. 25 IS VOID FOR BEING IN DIRECT CONTRAVENTION OF THE LGC.—** It is not disputed that at the time the ordinance in question was enacted in 1992, the local government of Pasig, then a municipality, had no authority to levy franchise tax. Article 5 of the Civil Code explicitly provides, "acts executed against the provisions of mandatory or prohibitory laws shall be void, except when the law itself authorizes their validity." Section 32 of Municipal Ordinance No. 25 is, thus, void for being in direct contravention with Section 142 of the LGC. Being void, it cannot be given any legal effect. An assessment and collection pursuant to the said ordinance is, perforce, legally infirm. Consequently, the CA was correct when it declared that the demand of the City of Pasig upon MERALCO for the payment of the disputed tax was devoid of legal basis.

3. **ID.; ID.; ID.; ID.; THE SUBSEQUENT CONVERSION OF THE MUNICIPALITY OF PASIG INTO A CITY DOES NOT REMOVE THE ORIGINAL INFIRMITY OF THE SAID ORDINANCE; THAT PASIG CITY SOUGHT TO COLLECT ONLY AFTER ITS CONVERSION INTO A CITY IS OF LITTLE CONSEQUENCE CONSIDERING THAT A VOID ORDINANCE PRODUCES NO LEGAL EFFECTS.—** The doctrinal rule on the matter still rings true to this day — that the conversion of the municipality into a

city does not remove the original infirmity of the subject ordinance. Such doctrine, evoked in *Arabay* and *SMC,* is squarely relevant in the case at bar. In these two separate cases, the sales taxes were paid by the petitioners pursuant to ordinances enacted ***prior*** to the conversion of the respondents into cities, or at which time the latter were without authority to levy the said taxes. Finding the municipal ordinances to be void, the Court minced no words in declaring the payments of taxes under the ordinances to be without basis even if subsequently the respondents became cities. Fittingly, the Court ordered the refund of the said taxes to the petitioners. We find the instant case no different from *Arabay* and *SMC.* As in those cases, the cityhood law (R.A. No. 7829) of Pasig cannot breathe life into Section 32 of Municipal Ordinance No. 25, ostensibly by bringing it within the ambit of Section 151 of the LGC that authorizes cities to levy the franchise tax under Section 137 of the same law. It is beyond cavil that Section 32 of Municipal Ordinance No. 25 is an act that is null and void *ab initio.* It is even of little consequence that Pasig sought to collect only those taxes ***after*** its conversion into a city. A void ordinance, or provision thereof, is what it is – a nullity that produces no legal effect. It cannot be enforced; and no right could spring forth from it. The cityhood of Pasig notwithstanding, it has no right to collect franchise tax under the assailed ordinance.

4. ID.; ID.; ID.; THE CITYHOOD LAW OF PASIG (R.A. 7829) DID NOT CURE THE DEFECT OF THE QUESTIONED ORDINANCE SINCE WHAT IT CONTEMPLATES TO CONTINUE TO BE IN FORCE AFTER THE CONVERSION OF PASIG INTO A CITY ARE MUNICIPAL ORDINANCES THAT ARE VALID AND EXISTING AT THE TIME OF ITS APPROVAL.— [T]he cited law does not lend any help to the City of Pasig's cause. It is crystal clear from the said law that what shall ***continue*** to be ***in force*** after the conversion of Pasig into a city are the municipal ordinances ***existing*** as of the time of the approval of R.A. No. 7829. The provision contemplates ordinances that are valid and legal from their inception; that upon the approval of R.A. No. 7829, their effectivity and enforcement shall continue. To 'continue' means (1) to be steadfast or constant in a course or activity; (2) to keep going: maintain a course, direction, or progress; or (3) to remain in a place or condition. It presupposes something already existing. A void ordinance

cannot legally exist, it cannot have binding force and effect. Such is Section 32 of Municipal Ordinance No. 25 and, being so, is outside the comprehension of Section 45 of R.A. No. 7829.

5. ID.; ID.; ID.; ID.; THERE IS NO AMBIGUITY IN SECTION 42 OF R.A. 7829 AS IT IS CLEAR ENOUGH TO DISLODGE ANY NOTION THAT IT GIVES CURATIVE EFFECT TO THE INFIRMITY OF THE ASSAILED ORDINANCE; THUS, THE CARDINAL RULE IN STATUTORY CONSTRUCTION REQUIRING COURTS TO GIVE EFFECT TO THE LEGISLATIVE INTENT DOES NOT APPLY.— As a last-ditch effort to persuade this Court, the City of Pasig calls out a latent ambiguity in Section 42 of R.A. No. 7829 in order to pave the way for the operation of the cardinal rule in statutory construction requiring courts to give effect to the legislative intent. It pounces on the same ambiguity so that it may be resolved in favor of promoting local autonomy. We disagree. We have already established that the provision is clear enough to dislodge any notion that it gives curative effect to the legal infirmity of Section 32 of Municipal Ordinance No. 25. The legislative intent behind Section 42 of R.A. No. 7829, as previously discussed, did not comprehend the affirmance of void or inexistent ordinances.

6. ID.; ID.; ID.; ID.; PRINCIPLE OF LOCAL AUTONOMY CANNOT BE INVOKED TO SETTLE THE ALLEGED AMBIGUITY IF DOUBT AS TO ITS MEANING MAY EVEN BE SUPPOSED; DOUBT OR AMBIGUITY ARISING OUT OF THE TERM USED IN GRANTING THE POWER OF TAXATION MUST BE RESOLVED AGAINST THE LGU.— Neither can the bare invocation of the principle of local autonomy provide succor to settle any ambiguity in Section 42 of R.A. No. 7829, if doubt as to its meaning may even be supposed. While we can agree that an ambiguity in the law concerning local taxing powers must be resolved in favor of fiscal autonomy, we are hampered by the nullity of Section 32 of Municipal Ordinance No. 25. At the risk of being repetitive, the said ordinance cannot be given legal effect. It must be borne in mind that the constitutionally ordained policy of local fiscal autonomy was not intended by the framers to be absolute. It does not provide unfettered authority to tax objects of any kind. The very source of local governments' authority to tax also empowered Congress to provide limitations on the exercise of

such taxing powers. Precisely, Congress' act of withdrawing from municipalities the power to levy franchise tax by virtue of Section 142 of the LGC is a valid exercise of its constitutional authority. In this case, the validity of the municipal ordinance imposing a franchise tax cannot be made to rest upon the ambiguity of a provision of law (Section 42, R.A. No. 7829) operating supposedly, albeit mistakenly, under the context of promoting local autonomy. Regard, too, must be made for the equally important doctrine that a doubt or ambiguity arising out of the term used in granting the power of taxation must be resolved against the local government unit.

APPEARANCES OF COUNSEL

Pasig City Legal Office for petitioners.
Anthony V. Rosete for respondent.

D E C I S I O N

MARTIRES, *J.*:

Under the Local Government Code *(LGC)* of 1991, a municipality is bereft of authority to levy and impose franchise tax on franchise holders within its territorial jurisdiction. That authority belongs to provinces and cities only.[1] A franchise tax levied by a municipality is, thus, null and void. The nullity is not cured by the subsequent conversion of the municipality into a city.

At bar is a petition for review under Rule 45 of the Rules of Court which seeks a reversal of the Decision[2] dated 28 August 2007, and Resolution[3] dated 8 February 2008 of the Court of Appeals *(CA)* in CA-G.R. CV No. 81255 entitled "The Manila Electric Company v. The City of Pasig, et al."

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[1] Local Government Code of 1991, Sections 137 and 151.

[2] *Rollo,* pp. 28-35; penned by Associate Justice Apolinario D. Bruselas, Jr., and concurred in by Associate Justices Bievenido L. Reyes (former member of the Court) and Aurora Santiago-Lagman.

[3] *Id.* at 36-37.

THE FACTS

On 26 December 1992, the Sangguniang Bayan of the Municipality of Pasig enacted Ordinance No. 25 which, under its Article 3, Section 32, imposed a franchise tax on all business venture operations carried out through a franchise within the municipality, as follows:

ARTICLE 3 – FRANCHISE TAX

Section 32. *Imposition of Tax.* — Any provision of laws or grant of exemption to the contrary notwithstanding, any person, corporation, partnership or association enjoying a franchise and doing business in the Municipality of Pasig, shall pay a franchise tax at the rate of fifty percent (50%) of one percent (1%) of its gross receipts derived from the operation of the business in Pasig during the preceding calendar year.

By virtue of Republic Act *(R.A.)* No. 7829, which took effect on 25 January 1995, the Municipality of Pasig was converted into a highly urbanized city to be known as the City of Pasig.

On 24 August 2001, the Treasurer's Office of the City Government of Pasig informed the Manila Electric Company *(MERALCO),* a grantee of a legislative franchise,[4] that it is liable to pay taxes for the period 1996 to 1999, pursuant to Municipal Ordinance No. 25. The city, thereafter, on two separate occasions, demanded payment of the said tax in the amount of ₱435,332,196.00, exclusive of penalties.

On 8 February 2002, MERALCO protested[5] the validity of the demand claiming that the same be withdrawn and cancelled for the following reasons: (1) Ordinance No. 25 was declared void *ab initio* by the Department of Justice *(DOJ)* for being in contravention of law, which resolution was reiterated in another case that questioned the validity of the franchise tax, etc.; (2) The

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[4] Under Act No. 484, as implemented by Ordinance No. 44 and extended by Republic Act Nos. 150 and 4159, MERALCO is authorized to construct, maintain and operate an electric light, heat and power system in the City of Manila and its suburbs including the City of Pasig.

[5] Records, pp. 14-22.

Regional Trial Court of Pasig City *(RTC)* ordered the Municipality of Pasig, now City of Pasig, to refund MERALCO the amount the latter paid as franchise tax because the former lacked legal foundation in collecting the same, as municipalities are not empowered by law to impose and collect franchise tax pursuant to Section 142 of the LGC; (3) The CA affirmed the RTC decision; and (4) The petition for certiorari filed by the then Municipality of Pasig before the Supreme Court, assailing the decision of the CA that sustained the RTC, was likewise dismissed and the motion for reconsideration of the Municipality of Pasig was denied with finality.

In view of the inaction by the Treasurer's Office, MERALCO instituted an action before the RTC for the annulment of the said demand with prayer for a temporary restraining order and a writ of preliminary injunction.[6] The RTC ruled in favor of the City of Pasig, disposing as follows:

> **WHEREFORE,** premises considered, judgment is hereby rendered in favor of the defendant City of Pasig, declaring as valid its demand for payment of franchise tax upon [MERALCO] for the years 1996 to 1999, inclusive, subject to revision of the computation of the amount of such tax pursuant to the guidelines above-mentioned.[7]

MERALCO appealed before the CA.

The Ruling of the CA

On whether the City of Pasig can legally assess and collect franchise tax from MERALCO for the period 1996 to 1999, the court ruled in the negative.

The CA ratiocinated that the LGC authorizes cities to levy a franchise tax. However, the basis of the City of Pasig's demand for payment of franchise tax was Section 32, Article 3 of Ordinance No. 25 which was enacted at a time when Pasig was still a municipality and had no authority to levy a franchise tax. From the time of its conversion into a city, Pasig has not

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[6] Filed before Branch 70, RTC-Pasig City, docketed as Civil Case No. 68944.

[7] Records, p. 367.

enacted a new ordinance for the imposition of a franchise tax. The conversion of Pasig into a city, the CA explained, did not rectify the defect of the said ordinance. Citing *San Miguel Corporation v. Municipal Council (SMC)*[8] and *Arabay, Inc. v. Court of First Instance of Zamboanga del Norte (Arabay),*[9] the CA ruled that the conversion of a municipality into a city does not remove the original infirmity of the ordinance. The dispositive portion of the decision reads:

> **WHEREFORE,** the foregoing premises considered, we resolve to REVERSE and SET ASIDE the decision appealed from. In its stead, a new judgment is hereby entered declaring the demand for payment of franchise tax from [MERALCO] as invalid for being devoid of legal basis.[10]

The City of Pasig moved, but failed to obtain a reconsideration of the said decision. Thus, the instant appeal.

The Present Petition for Review

The City of Pasig relied on the following reasons to support its petition:

I.

THE COURT OF APPEALS COMMITTED GRAVE REVERSIBLE ERROR IN SETTING ASIDE THE DECISION OF THE TRIAL COURT AND IN DECLARING THAT THE CONVERSION OF THE MUNICIPALITY OF PASIG INTO A CITY DID NOT VEST THE LATTER WITH AUTHORITY TO LEVY FRANCHISE TAXES AS THE ORDINANCE GRANTING SUCH POWER WAS NULL AND VOID.

II.

THE COURT OF APPEALS COMMITTED GRAVE REVERSIBLE ERROR IN SETTING ASIDE THE DECISION OF THE TRIAL COURT AND DECLARING THAT THERE IS NOTHING IN REPUBLIC ACT NO. 7892 WHICH INVESTS A CURATIVE EFFECT UPON ORDINANCE NO. 32.

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[8] 152 Phil. 30 (1973).

[9] 160-A Phil. 132 (1975).

[10] *Rollo,* p. 35.

III.

THE COURT OF APPEALS COMMITTED GRAVE REVERSIBLE ERROR IN SETTING ASIDE THE DECISION OF THE TRIAL COURT CONTRARY TO THE RULE THAT IN CASE OF DOUBT IN THE APPLICATION OF A STATUTE, AN APPLICATION GIVING EFFECT TO THE LEGISLATIVE INTENT AND THE PRINCIPLE OF LOCAL AUTONOMY ENSHRINED IN THE CONSTITUTION SHOULD BE FOLLOWED.

For the Court's consideration is the following:

ISSUE

Whether the CA was correct in ruling that the City of Pasig had no valid basis for its imposition of franchise tax for the period 1996 to 1999.

OUR RULING

We answer in the affirmative.

I. Unlike a city, a municipality is bereft of authority to levy franchise tax, thus, the ordinance enacted for that purpose is void.

The conversion of the municipality into a city does not lend validity to the void ordinance.

Neither does it authorize the collection of the tax under said ordinance.

The power to impose franchise tax belongs to the province by virtue of Section 137 of the LGC which states:

CHAPTER II

Specific Provision on the Taxing and Other Revenue-Raising Power of Local Government Units

ARTICLE I

Provinces

Section 137. *Franchise Tax.* — Notwithstanding any exemption granted by any law or other special law, the province may impose a tax on businesses enjoying a franchise, at the rate not exceeding fifty percent (50%) of one percent (1%) of the gross annual receipts for the preceding calendar year based on the incoming receipt, or realized, within its territorial jurisdiction.

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On the other hand, the municipalities are prohibited from levying the taxes specifically allocated to provinces, *viz*:

ARTICLE II

Municipalities

Section 142. *Scope of Taxing Powers.* — Except as otherwise provided in this Code, municipalities may levy taxes, fees, and charges not otherwise levied by provinces.

Section 151 empowers the cities to levy taxes, fees and charges allowed to both provinces and municipalities, thus —

ARTICLE III

Cities

Section 151. *Scope of Taxing Powers.* — Except as otherwise provided in this Code, the city, may levy the taxes, fees, and charges which the province or municipality may impose: Provided, however, That the taxes, fees and charges levied and collected by highly urbanized and independent component cities shall accrue to them and distributed in accordance with the provisions of this Code.

x x x x x x x x x

The LGC further provides that the power to impose a tax, fee, or charge or to generate revenue shall be exercised by the Sanggunian of the local government unit concerned through an appropriate ordinance.[11] This simply means that

[11] See LGC, Section 132.

the local government unit cannot solely rely on the statutory provision (LGC) granting specific taxing powers, such as the authority to levy franchise tax. The enactment of an ordinance is indispensable for it is the legal basis of the imposition and collection of taxes upon covered taxpayers. Without the ordinance, there is nothing to enforce by way of assessment and collection.

However, an ordinance must pass muster the test of constitutionality and the test of consistency with the prevailing laws.[12] Otherwise, it shall be void.

It is not disputed that at the time the ordinance in question was enacted in 1992, the local government of Pasig, then a municipality, had no authority to levy franchise tax. Article 5 of the Civil Code explicitly provides, "acts executed against the provisions of mandatory or prohibitory laws shall be void, except when the law itself authorizes their validity." Section 32 of Municipal Ordinance No. 25 is, thus, void for being in direct contravention with Section 142 of the LGC. Being void, it cannot be given any legal effect. An assessment and collection pursuant to the said ordinance is, perforce, legally infirm.

Consequently, the CA was correct when it declared that the demand of the City of Pasig upon MERALCO for the payment of the disputed tax was devoid of legal basis. It bears emphasizing that the DOJ and the RTC of Pasig City[13] had previously declared Section 32 of Municipal Ordinance No. 25 as void *ab initio*.[14] Even the City of Pasig, it seems, does not contest the invalidity of said ordinance.[15]

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[12] *Ferrer, Jr. v. Bautista,* 762 Phil. 233, 263 (2015) citing *City of Manila v. Hon. Laguio, Jr.,* 495 Phil. 289, 308 (2005).

[13] Filed before Branch 266, RTC-Pasig City, docketed as Civil Case No. 64881. The decision of the RTC declaring Section 32 of Ordinance No. 25 was later affirmed by the CA in its Decision, dated 16 March 2001, in CA-GR CV No. 55611. See *Rollo,* p. 11 and records, p. 365.

[14] *Id.*

[15] *Id.* at 18-19.

It is submitted, however, that when Pasig was converted into a city in 1995 by virtue of R.A. No. 7829 (the cityhood law) it was authorized to collect and impose a franchise tax. Demurring from the rulings in *Arabay* and *SMC* cited in the assailed CA decision, the City of Pasig insists that the demand for payment of franchise tax was justified for the period 1996 up to 1999, or when Pasig was already a city. Unlike the present case, the City of Pasig continues, *Arabay* and *SMC* involved taxes paid *prior* to the respective municipalities' conversion into cities.

We are not persuaded.

The doctrinal rule on the matter still rings true to this day — that the conversion of the municipality into a city does not remove the original infirmity of the subject ordinance. Such doctrine, evoked in *Arabay* and *SMC,* is squarely relevant in the case at bar. In these two separate cases, the sales taxes were paid by the petitioners pursuant to ordinances enacted ***prior*** to the conversion of the respondents into cities, or at which time the latter were without authority to levy the said taxes. Finding the municipal ordinances to be void, the Court minced no words in declaring the payments of taxes under the ordinances to be without basis even if subsequently the respondents became cities. Fittingly, the Court ordered the refund of the said taxes to the petitioners.

We find the instant case no different from *Arabay* and *SMC.* As in those cases, the cityhood law (R.A. No. 7829) of Pasig cannot breathe life into Section 32 of Municipal Ordinance No. 25, ostensibly by bringing it within the ambit of Section 151 of the LGC that authorizes cities to levy the franchise tax under Section 137 of the same law. It is beyond cavil that Section 32 of Municipal Ordinance No. 25 is an act that is null and void *ab initio.* It is even of little consequence that Pasig sought to collect only those taxes ***after*** its conversion into a city. A void ordinance, or provision thereof, is what it is — a nullity that produces no legal effect. It cannot be enforced; and no right could spring forth from it. The cityhood of Pasig notwithstanding, it has no right to collect franchise tax under the assailed ordinance.

Besides, the City of Pasig had apparently misunderstood *Arabay.* In that case, the taxes subject of the refund claim included those paid ***after*** the conversion of Dipolog into a city. Thus, while the creation of the City of Dipolog was effective on 1 January 1970, the petitioner, Arabay, Inc., applied for the refund of taxes paid under the questioned ordinance for the period from December 1969 to July 1972.[16] As previously noted, the Court granted the refund.

II. The cityhood law of Pasig did not cure the defect of the questioned ordinance.

The petitioner cites —

> Section 45. *Municipal Ordinances Existing at the Time of the Approval of this Act.* — All municipal ordinances of the municipality of Pasig existing at the time of the approval of this Act shall continue to be in force within the City of Pasig until the Sangguniang Panlungsod shall, by ordinance, provide otherwise.

of R.A. No. 7829 as legal basis that gave curative effect upon Section 32 of Municipal Ordinance No. 25.

As we see it, the cited law does not lend any help to the City of Pasig's cause. It is crystal clear from the said law that what shall ***continue*** to be ***in force*** after the conversion of Pasig into a city are the municipal ordinances ***existing*** as of the time of the approval of R.A. No. 7829. The provision contemplates ordinances that are valid and legal from their inception; that upon the approval of R.A. No. 7829, their effectivity and enforcement shall continue. To 'continue' means (1) to be steadfast or constant in a course or activity; (2) to keep going: maintain a course, direction, or progress; or (3) to remain in a place or condition.[17] It presupposes something already existing.

A void ordinance cannot legally exist, it cannot have binding force and effect. Such is Section 32 of Municipal Ordinance

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[16] The City of Dipolog had, however, previously refunded to plaintiff Arabay, Inc. the payments from April to July 1972.

[17] *Webster's Third New International Dictionary,* page 493.

No. 25 and, being so, is outside the comprehension of Section 45 of R.A. No. 7829.

We are not in full accord with the explanation given by the City of Pasig — that Section 45 of R.A. No. 7829 intended to prevent the City of Pasig from becoming paralyzed in delivering basic services. We can concede that Section 45 of R.A. No. 7829 assures the City of Pasig continued collection of taxes under ordinances passed prior to its conversion. What the petitioner fails to realize is that Section 32, Municipal Ordinance No. 25 is not the singular source of its income or funds necessary for the performance of its essential functions. The argument of the City of Pasig is at best flimsy and insubstantial. The records, it should be noted, bear no evidence to demonstrate the resulting paralysis claimed by the City of Pasig. An unsupported allegation it is, no better than a mere conjecture and speculation.

II There is no ambiguity in Section 42 of R.A. 7829.

As a last-ditch effort to persuade this Court, the City of Pasig calls out a latent ambiguity in Section 42 of R.A. No. 7829 in order to pave the way for the operation of the cardinal rule in statutory construction requiring courts to give effect to the legislative intent. It pounces on the same ambiguity so that it may be resolved in favor of promoting local autonomy.

We disagree. We have already established that the provision is clear enough to dislodge any notion that it gives curative effect to the legal infirmity of Section 32 of Municipal Ordinance No. 25. The legislative intent behind Section 42 of R.A. No. 7829, as previously discussed, did not comprehend the affirmance of void or inexistent ordinances.

Neither can the bare invocation of the principle of local autonomy provide succor to settle any ambiguity in Section 42 of R.A. No. 7829, if doubt as to its meaning may even be supposed. While we can agree that an ambiguity in the law concerning local taxing powers must be resolved in favor of fiscal autonomy,[18] we are hampered by the nullity of Section 32

[18] See *Demaala v. Commission on Audit,* 754 Phil. 28, 42 (2015).

of Municipal Ordinance No. 25. At the risk of being repetitive, the said ordinance cannot be given legal effect. It must be borne in mind that the constitutionally ordained policy of local fiscal autonomy was not intended by the framers to be absolute. It does not provide unfettered authority to tax objects of any kind. The very source of local governments' authority to tax[19] also empowered Congress to provide limitations on the exercise of such taxing powers. Precisely, Congress' act of withdrawing from municipalities the power to levy franchise tax by virtue of Section 142 of the LGC is a valid exercise of its constitutional authority.

In this case, the validity of the municipal ordinance imposing a franchise tax cannot be made to rest upon the ambiguity of a provision of law (Section 42, R.A. No. 7829) operating supposedly, albeit mistakenly, under the context of promoting local autonomy. Regard, too, must be made for the equally important doctrine that a doubt or ambiguity arising out of the term used in granting the power of taxation must be resolved against the local government unit.[20]

In fine, the City of Pasig cannot legally make a demand for the payment of taxes under the challenged ordinance, which is void, even after its conversion into a city. The CA, thus, committed no reversible error.

WHEREFORE, the petition is **DENIED** for lack of merit. The 28 August 2007 Decision and the 8 February 2008 Resolution of the Court of Appeals in CA-G.R. CV No. 81255 are hereby **AFFIRMED.**

SO ORDERED.

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

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[19] Constitution, Article X, Section 5 which provides:

Section 5 — Each Local Government unit shall have the power to create its own sources of revenue and to levy taxes, fees and charges subject to such guidelines and limitations as the Congress may provide, consistent with the basic policy of local autonomy. Such taxes, fees and charges shall accrue exclusively to the Local Governments.

[20] See *Demaala v. Commission on Audit, supra* note 18 at 39 citing *Icard v. City Council of Baguio,* 83 Phil. 870, 873 (1949).

SECOND DIVISION

[G.R. No. 192530. March 7, 2018]

TEE LING KIAT, *petitioner, vs.* **AYALA CORPORATION (Substituted herein by its Assignee And Successor-in-Interest, BIENVENIDO B.M. AMORA, JR.),** *respondent.*

SYLLABUS

1. REMEDIAL LAW; APPEALS; RULE 45 PETITION; QUESTIONS OF LAW AND OF FACT, DISTINGUISHED; THE COURT IS PRECLUDED FROM REVIEWING QUESTIONS OF FACT.— [T]he Rules of Court categorically state that a Rule 45 petition shall only raise questions of law. On the one hand, a question of law arises when there is doubt as to what the law is on a certain state of facts. On the other hand, a question of fact arises when doubt arises as to the truth or falsity of alleged facts. Once it is clear that the resolution of an issue invites a review of the evidence presented by the parties, the question raised is one of fact which this Court is precluded from reviewing in a Rule 45 petition.

2. ID.; CIVIL PROCEDURE; THIRD-PARTY CLAIM; PETITIONER BEING THE THIRD-PARTY CLAIMANT MUST UNMISTAKENLY ESTABLISH HIS OWNERSHIP OVER THE LEVIED PROPERTY.— Tee Ling Kiat imputes error on the CA by the simple expedient of arguing that he did not personally need to prove that the sale of shares of stock between Dewey Dee and himself had in fact transpired, as the duty to record the sale in the corporate books lies with VIP. Such an argument, however, fails to recognize that the very right of Tee Ling Kiat, as a third-party claimant, to institute a *terceria* is founded on his claimed title over the levied property. Consequently, although courts can exercise their limited supervisory powers in determining whether the sheriff acted correctly in executing the judgment, they may only do so if the third-party claimant has *unmistakably* established his ownership or right of possession over the subject property. Accordingly, if the third-party claimant's evidence does not persuade the court of the validity of his title or right possession thereto, the third-party claim will, and should be, denied. Suffice it to state

that the only evidence adduced by Tee Ling Kiat to support his claim that Dewey Dee's shares in VIP have been sold to him are a cancelled check issued by Tee Ling Kiat in favor of Dewey Dee and a photocopy of the Deed of Sale of Shares of Stock dated December 29, 1980. A photocopy of a document has no probative value and is inadmissible in evidence. x x x [T]he Court observes that the judgment for a sum of money dated November 29, 1990 obtained by Ayala Corporation was against the Spouses Dewey and Lily Dee in their personal capacities as sureties in the money market line transaction. Yet, in the execution of said judgment, the properties levied upon were registered in the name of VIP, a juridical entity with personality separate and distinct from Dewey Dee. It is a basic principle of law that money judgments are enforceable only against property incontrovertibly belonging to the judgment debtor, and certainly, a person other than the judgment debtor who claims ownership over the levied properties is not precluded from challenging the levy through any of the remedies provided for under the Rules of Court. In the pursuit of such remedies, however, the third-party must, to reiterate, unmistakably establish ownership over the levied property, which Tee Ling Kiat failed to do.

3. **ID.; ID.; ID.; ID.; WHERE THE ALLEGED SALE OF SHARES OF STOCK WAS NOT RECORDED IN THE CORPORATE BOOKS, SUCH TRANSFER IS NOT VALID AND BINDING AS TO THE CORPORATION OR AS TO THE THIRD PERSONS.—** [E]ven if it could be assumed that the sale of shares of stock contained in the photocopies had indeed transpired, such transfer is only valid as to the parties thereto, but is not binding on the corporation if the same is not recorded in the books of the corporation. Section 63 of the Corporation Code of the Philippines provides that: "**No transfer, x x x shall be valid, except as between the parties, until the transfer is recorded in the books of the corporation showing the names of the parties to the transaction, the date of the transfer, the number of the certificate or certificates and the number of shares transferred.**" Here, the records show that the purported transaction between Tee Ling Kiat and Dewey Dee has never been recorded in VIP's corporate books. Thus, the transfer, not having been recorded in the corporate books in accordance with law, is not valid or binding as to the corporation or as to third persons.

APPEARANCES OF COUNSEL

Suarez & Narvasa Law Firm for petitioner.

D E C I S I O N

CAGUIOA, *J.*:

Before this Court is a Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Court (*Petition*) filed by Petitioner Tee Ling Kiat against Respondent Ayala Corporation, substituted by its assignee and successor-in-interest, Bienvenido B.M. Amora, Jr., (Amora), assailing the Court of Appeals' (CA): (1) *Decision*[2] dated September 24, 2009; and (2) *Resolution*[3] dated May 26, 2010 in CA-G.R. SP No. 105081.

In the assailed *Decision* and *Resolution*, the CA affirmed the *Order*[4] of the Regional Trial Court — Makati City, Branch 59 (RTC Branch 59) dated February 20, 2008 and *Order*[5] dated June 26, 2008, which dismissed Tee Ling Kiat's *Third-Party Claim*[6] in Civil Case No. 40074.[7]

The Antecedent Facts

The present petition arose from a judgment for a sum of money obtained by Ayala Corporation against Continental

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[1] *Rollo*, pp. 3-26.

[2] *Id*. at 28-37. Penned by Associate Justice Ramon M. Bato, Jr. and concurred in by Associate Justices Noel G. Tijam (now a Member of this Court) and Marlene Gonzales-Sison.

[3] *Id*. at 65-68. Penned by Associate Justice Ramon M. Bato, Jr. and concurred in by Associate Justices Marlene Gonzales-Sison and Florito S. Macalino.

[4] Through Judge Winlove M. Dumayas, see *id*. at 54-58.

[5] *Rollo*, p. 97.

[6] Letter dated March 26, 2007, *id*. at 206-208.

[7] *Rollo*, pp. 54-58, 97.

Manufacturing Corporation (CMC) and Spouses Dewey and Lily Dee (Spouses Dee)[8] in 1990.

On January 28, 1981, Ayala Corporation instituted a *Complaint*[9] *for Sum of Money* with an *application for a writ of attachment* against the Spouses Dee. The complaint was initially raffled to Branch 15 of the Court of First Instance of Rizal.[10] It appears that on May 21, 1980, Ayala Investment and Development Corporation (AIDC) granted in favor of CMC a money market line in the maximum amount of ₱2,000,000.00.[11] With Dewey Dee as the President of CMC then, the Spouses Dee executed a Surety Agreement on the same date, as guarantee for the money market line. One of CMC's availments under the money market line was evinced by a Promissory Note[12] dated November 20, 1980 for ₱800,000.00 due on January 16, 1981. AIDC subsequently endorsed the Promissory Note to Ayala Corporation.[13] CMC defaulted on its obligation under the promissory note, leading Ayala Corporation to institute a claim for sum of money against CMC and the Spouses Dee.[14]

Ruling on the *Complaint for Sum of Money*, the RTC – Makati City, Branch 149 (RTC Branch 149) ruled in favor of Ayala Corporation in a *Decision*[15] dated November 29, 1990, the dispositive portion of which reads:

WHEREFORE, in view of the foregoing, judgment is hereby rendered ordering [CMC and Spouses Dee] to pay [Ayala Corporation]:

1. The sum of Eight Hundred Thousand (₱800,000.00) Pesos representing the amount of the subject promissory note plus Twelve

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[8] *Id*. at 5.

[9] *Id*. at 98-102.

[10] Presided by Hon. Assisting Judge Ildefonso E. Gascon; see *id*. at 5, 29.

[11] *Rollo*, p. 113.

[12] *Id*. at 111.

[13] *Id*. at 114.

[14] *Id*. at 115.

[15] *Id*. at 113-115. Penned by Assisting Judge Ildefonso E. Gascon.

(12%) Percent per annum interest from date of maturity until fully paid;

2. The sum of Twenty Thousand (₱20,000.00) Pesos as attorney's fees; and

3. The costs of suit.

SO ORDERED.[16]

With the above *Decision* having attained finality, the RTC Branch 149 forthwith issued a Writ of Execution[17] against the Spouses Dee, commanding the sheriff[18] to "*cause the execution of the aforesaid judgment against Sps. Dewey and Lily Dee, including payment in full of your lawful fees for the service of this writ*."[19] (Italics supplied)

Thereafter, on November 21, 2006, a *Notice of Levy on Execution*[20] was issued and addressed to the Register of Deeds of Antipolo City, to levy upon "the rights, claims, shares, interest, title and participation"[21] that the Spouses Dee may have in parcels of land covered by Transfer Certificates of Title (TCT) Nos. R-24038,[22]R-24039,[23] and R-24040[24] and any improvements thereon.[25] The parcels of land were registered in the name of Vonnel Industrial Park, Inc. (VIP).[26] According to the Sheriffs

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[16] *Id*. at 115.

[17] In an Order dated November 2, 2006, issued by Presiding Judge Cesar O. Untalan, see *id*. at 116-117.

[18] Sheriff Melvin M. Alindon.

[19] *Rollo*, p. 117.

[20] *Id*. at 120-121.

[21] *Id*. at 120.

[22] *Id*. at 59-60.

[23] *Id*. at 61.

[24] *Id*. at 62.

[25] *Id*. at 120.

[26] *Id*. at 59-60, 61, 62, 122.

Return[27] filed on January 04, 2007, the titles over the subject properties are registered in the name of VIP, in which Dewey Dee was an incorporator.[28]

Tee Ling Kiat's Third-Party Claim

On March 26, 2007, before the scheduled sale on execution,[29] Tee Ling Kiat filed a *Third-Party Claim*, alleging that:

> x x x the aforesaid levy was made based on the information that Mr. Dewey Dee was one of the incorporators of VIP. Apparently, the Sheriff who caused the levy made the assumption that since Mr. Dewey is one of the incorporators of VIP, then it follows that he is a stockholder thereof. Consequently, as such stockholder, he would have rights, claims, shares, interest, title and participation in the real properties belonging to VIP.
>
> However, while Mr. Dewey Dee was indeed one of the incorporators of VIP, he is no longer a stockholder thereof. He no longer has any rights, claims, shares, interest, title and participation in VIP or any of its properties. As early as December 1980, Mr. Dewey Dee has already sold to Mr. Tee Ling Kiat all his stocks in VIP, as evidenced by a cancelled check which he issued in Mr. Tee Ling Kiat's favor. x x x
>
> x x x x x x x x x
>
> Moreover, we would like to point out that even assuming that Mr. Dewey Dee is still a stockholder of VIP, at most he merely has rights, claims, shares, interest, title and participation to its shares of stocks, but not as to the real properties registered under its name, x x x It is well to note that this property is the sole and exclusive property of VIP and that there is no showing that Mr. Dewey Dee has any right, claim, share, interest, title and participation therein. It must be likewise be emphasized that VIP is a corporate entity which has a legal personality separate and distinct from Mr. Dewey Dee and/or Ms. Lily L. Dee.[30]

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[27] *Id*. at 122.

[28] *Id*.

[29] April 3, 2007, *id*. at 207.

[30] *Rollo*, pp. 207-208.

Attached to the *Third-Party Claim* was a copy of an *Affidavit*[31] executed by Tee Ling Kiat, attesting to the fact that he is a stockholder of VIP and that he acquired knowledge of the levy on the subject properties only through newspaper,[32] as well as a photocopy of cancelled checks[33] issued by Tee Ling Kiat in Dewey Dee's favor, allegedly as payment for the purchase of the latter's shares in VIP.

Acting on the *Third-Party Claim*, the Office of the Clerk of Court of the RTC issued a *Notice of Third-Party Claim*[34] on March 28, 2007. Amora, who by then had substituted Ayala Corporation, posted a bond in the amount of ₱2,658,700.00.[35] VIP and Tee Ling Kiat opposed the posting of the bond in an *Ex-Parte Motion,*[36] claiming that the bond was less than the value of the property levied upon.

Nevertheless, the court approved the bond, leading VIP and Tee Ling Kiat to file an *Omnibus Motion*[37] to declare null and void the *Notice of Levy on Execution* and all proceedings and issuances arising out of the same.[38] In the *Omnibus Motion*, VIP and Tee Ling Kiat reiterated that Dewey Dee no longer had any interest in the levied property and that the bond was far less than the value of the property levied.[39]

In his *Opposition to Third Party Claimants' Omnibus Motion*,[40] Amora claimed that from the date of VIP's incorporation until

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[31] *Id*. at 209.

[32] *Id*.

[33] *Id*. at 166, 170-175.

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

[35] *Id*. at 30.

[36] Dated April 2, 2007, *id*. at 138-143.

[37] Dated April 17, 2007, *id*. at 151-159.

[38] *Rollo*, pp. 30-31, 155.

[39] *Id*. at 31, 156-157.

[40] *Id*. at 50-53.

present, no general information sheets and audited financial statements have been submitted by VIP to the Securities and Exchange Commission (SEC).[41] Further, nowhere in the SEC records does Tee Ling Kiat's name appear as a stockholder.[42] Meanwhile, the case was re-raffled to the RTC Branch 59 due to the inhibition of the judge formerly hearing the case.[43]

Ruling of the RTC Branch 59

The RTC, in an *Order* dated February 20, 2008, denied VIP and Tee Ling Kiat's *Omnibus Motion* and disallowed the third-party claim because the alleged sale of shares of stock from Dewey Dee to Tee Ling Kiat was not proven. Specifically, the RTC ruled that:

First, Tee Ling Kiat failed to adduce evidence to prove that the sale of shares of stock from Dewey Dee to Tee Ling Kiat had taken place in accordance with the law. The purported Deed of Sale of Shares of Stock[44] was not recorded in the stock and transfer books of VIP, as required by Section 63 of the Corporation Code.[45] Thus, there was no valid transfer of shares as against third persons. The RTC observed that in support of

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[41] *Id*. at 39, 51.

[42] *Id*.

[43] *Id*. at 31.

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

[45] Batas Pambansa Blg. 68, or the Corporation Code of the Philippines, Sec. 63 provides:

The capital stock of stock corporations shall be divided into shares for which certificates signed by the president or vice president, countersigned by the secretary or assistant secretary, and sealed with the seal of the corporation shall be issued in accordance with the by-laws. Shares of stock so issued are personal property and may be transferred by delivery of the certificate or certificates indorsed by the owner or his attorney-in-fact or other person legally authorized to make the transfer. **No transfer, however, shall be valid, except as between the parties, until the transfer is recorded in the books of the corporation showing the names of the parties to the transaction, the date of the transfer, the number of the certificate or certificates and the number of shares transferred.** (Emphasis supplied)

the purported sale of shares of stock, Tee Ling Kiat merely submitted a cancelled check[46] issued by Tee Ling Kiat in favor of Dewey Dee and a photocopy[47] of the Deed of Sale of Shares of Stock dated December 29, 1980.

Second, the SEC had revoked[48] VIP's Certificate of Registration as early as August 11, 2003[49] for failure to comply with reportorial requirements. Consequently, in accordance with Section 122 of the Corporation Code[50] which provides for the three-year period for the winding down of corporate affairs, VIP no longer had any capacity to sue when the third-party claim was instituted on March 26, 2007.[51]

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[46] *Rollo*, pp. 166, 170-175.

[47] *Id*. at 167-169, 248.

[48] See *id*. at 56, 261.

[49] *Id.*

[50] SEC. 122. *Corporate liquidation*.— Every corporation whose charter expires by its own limitation or is annulled by forfeiture or otherwise, or whose corporate existence for other purposes is terminated in any other manner, shall nevertheless be continued as a body corporate for three (3) years after the time when it would have been so dissolved, for the purpose of prosecuting and defending suits by or against it and enabling it to settle and close its affairs, to dispose of and convey its property and to distribute its assets, but not for the purpose of continuing the business for which it was established.

At any time during said three (3) years, the corporation is authorized and empowered to convey all of its property to trustees for the benefit of stockholders, members, creditors, and other persons in interest. From and after any such conveyance by the corporation of its property in trust for the benefit of its stockholders, members, creditors and others in interest, all interest which the corporation had in the property terminates, the legal interest vests in the trustees, and the beneficial interest in the stockholders, members, creditors or other persons in interest.

Upon the winding up of the corporate affairs, any asset distributable to any creditor or stockholder or member who is unknown or cannot be found shall be escheated to the city or municipality where such assets are located.

Except by decrease of capital stock and as otherwise allowed by this Code, no corporation shall distribute any of its assets or property except upon lawful dissolution and after payment of all its debts and liabilities.

[51] *Rollo*, p. 56.

Finally, the indemnity bond posted by Amora was sufficient because Tee Ling Kiat was merely claiming "rights, claims, shares, interest, title and participation"[52] of Dewey Dee in the subject property, and not the entire property.

Tee Ling Kiat's *Motion for Reconsideration*[53] of the above *Order* having been denied in an RTC *Order* dated June 26, 2008, Tee Ling Kiat filed a petition for *certiorari* under Rule 65 of the Rules of Court before the CA. This time, however, the petition for *certiorari* was instituted solely in Tee Ling Kiat's name.[54]

Ruling of the CA

The CA, in the assailed *Decision* dated September 24, 2009, denied Tee Ling Kiat's petition for *certiorari*, on the ground that Tee Ling Kiat is not a real party-in-interest, especially considering that the alleged sale of Dewey Dee's shares of stock to Tee Ling Kiat has not been proven.

In particular, the CA observed that Tee Ling Kiat failed to prove to the Court the existence or veracity of the claimed Deed of Sale of Shares of Stock. The CA held that "[i]t is not sufficient to attach photocopies of the deed or payment of checks to the motion, [Tee Ling Kiat] needed to submit evidence to prove that the transaction took place."[55] Before the CA, Tee Ling Kiat also raised, for the first time, that he can be properly considered a trustee of VIP, entitled to hold properties on the latter's behalf. The CA observed, however, that there was no evidence produced to show that Tee Ling Kiat is a trustee of the corporation.[56]

Thus, the CA held that Tee Ling Kiat utterly failed: (i) to prove that he is a stockholder of VIP; and assuming he is, (ii) to show that he was authorized by the corporation for the purpose of prosecuting the claim on behalf of the corporation.[57]

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[52] *Id*. at 120.

[53] *Id*. at 191-202.

[54] *Id*. at 28.

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

[56] *Id*. at 36.

[57] *Id*. at 66.

In a *Resolution* dated May 26, 2010, the CA denied Tee Ling Kiat's motion for reconsideration for lack of merit.[58] In denying Tee Ling Kiat's motion for reconsideration, the CA maintained its finding that Tee Ling Kiat lacked any legal personality to file the third-party claim, and consequently, the petition for *certiorari* before the CA.

Hence, this petition.

In asking the Court to set aside the assailed CA *Decision* and *Resolution*, Tee Ling Kiat submits that: *first*, as regards the recording of the alleged sale of stocks, the burden was on Ayala Corporation to overcome the disputable presumption that VIP followed its ordinary course of business as provided for in Section 3(q), Rule 131 of the Rules of Court. Considering that the duty to record the sale of shares of stock in the books lies with VIP, Tee Ling Kiat claims that such recording "need not be proved" by him.[59] *Second*, that assuming Dewey Dee was still a stockholder of VIP, that what would have been the proper subjects of levy were the precise and actual shares of Dewey Dee and not the subject properties.[60]

Tee Ling Kiat further prays for the Court's issuance of a Temporary Restraining Order (TRO) directing Amora and the sheriffs of RTC Branch 149 to immediately desist from executing the RTC *Orders*[61] and to issue a Writ of Preliminary Injunction (WPI) after due notice and hearing.[62]

In a *Resolution*[63] dated July 7, 2010, the Court required Amora to comment on the *petition* which he did on October 15, 2010.[64]

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[58] *Id*. at 68.

[59] *Id*. at 13.

[60] *Id*. at 19.

[61] *Id*. at 21.

[62] *Id*.

[63] *Id*. at 221-222.

[64] *Id*. at 238-259.

In a *Resolution*[65] dated June 13, 2011, the Court noted Tee Ling Kiat's reply.[66]

Issue

The sole issue for the Court's resolution is whether the CA committed any reversible error in issuing its *Decision* dated September 24, 2009 and *Resolution* dated May 26, 2010.

Our Ruling

The petition lacks merit.

At the crux of determining whether the CA committed any reversible error in issuing the assailed *Decision* and *Resolution* is the question of whether it has been sufficiently proven by Tee Ling Kiat that Dewey Dee had in fact sold his shares of stock to Tee Ling Kiat in 1980, such that, as a result, Tee Ling Kiat can be considered a real party-in-interest in the *Third-Party Claim*, and consequently, in the petition for *certiorari* before the CA.

Such determination, however, inevitably necessitates a review of the probative value of the evidence adduced by Tee Ling Kiat. In this regard, the Rules of Court[67]categorically state that a Rule 45 petition shall only raise questions of law. On the one hand, a question of law arises when there is doubt as to what the law is on a certain state of facts.[68] On the other hand, a question of fact arises when doubt arises as to the truth or falsity of alleged facts.[69] Once it is clear that the resolution of an issue invites a review of the evidence presented by the parties, the question raised is one of fact[70] which this Court is precluded from reviewing in a Rule 45 petition.

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[65] *Id*. at 289.

[66] *Id*. at 271-282.

[67] Rule 45, Section 1.

[68] *Sps. Pascual v. Sps. Ballesteros*, 682 Phil. 280, 285 (2012).

[69] *Id.*

[70] *Id*. at 285-286.

Here, Tee Ling Kiat imputes error on the CA by the simple expedient of arguing that he did not personally need to prove that the sale of shares of stock between Dewey Dee and himself had in fact transpired, as the duty to record the sale in the corporate books lies with VIP. Such an argument, however, fails to recognize that the very right of Tee Ling Kiat, as a third-party claimant, to institute a *terceria* is founded on his claimed title over the levied property.[71]

Consequently, although courts can exercise their limited supervisory powers in determining whether the sheriff acted correctly in executing the judgment, they may only do so if the third-party claimant has *unmistakably* established his ownership or right of possession over the subject property.[72] Accordingly, if the third-party claimant's evidence does not persuade the court of the validity of his title or right possession thereto, the third-party claim will, and should be, denied.[73]

Suffice it to state that the only evidence adduced by Tee Ling Kiat to support his claim that Dewey Dee's shares in VIP have been sold to him are a cancelled check[74] issued by Tee Ling Kiat in favor of Dewey Dee and a photocopy[75] of the Deed of Sale of Shares of Stock dated December 29, 1980. A photocopy of a document has no probative value and is inadmissible in evidence.[76] The records likewise do not show that Tee Ling

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[71] *Villasi v. Garcia*, 724 Phil. 519, 528 (2014).

[72] *Id.*; *Power Sector Assets and Liabilities Management Corp. v. Maunlad Homes, Inc.*, G.R. No. 215933, February 8, 2017, p. 8, citing *Spouses Sy v. Hon. Discaya*, 260 Phil. 401 (1990).

[73] *Villasi v. Garcia*, *supra* note 71, at 529, citing *Spouses Sy v. Hon. Discaya*, *supra* note 72, at 407.

[74] *Rollo*, pp. 166, 170-175.

[75] *Id.* at 167-169, 248.

[76] *Imani v. Metropolitan Bank & Trust Company*, 649 Phil. 647, 661 (2010), citing *Concepcion v. Atty. Fandiño, Jr.*, 389 Phil. 474, 481 (2000) and *Intestate Estate of the Late Don San Pedro v. CA*, 333 Phil. 597, 625 (1996).

Kiat offered any explanation as to why the original Deed of Sale of Shares of Stock could not be produced, instead alleging that because of the disputable presumption "*[t]hat the ordinary course of business has been followed*"[77] provided in Section 3(q) of Rule 131 of the Rules of Court, then the burden is not on him to prove that he is a stockholder, but on Amora, to prove that he is *not* a stockholder.[78]

This argument is off tangent. Meaning, even if it could be assumed that the sale of shares of stock contained in the photocopies had indeed transpired, such transfer is only valid as to the parties thereto, but is not binding on the corporation if the same is not recorded in the books of the corporation. Section 63 of the Corporation Code of the Philippines provides that: "**No transfer, x x x shall be valid, except as between the parties, until the transfer is recorded in the books of the corporation showing the names of the parties to the transaction, the date of the transfer, the number of the certificate or certificates and the number of shares transferred.**"[79] Here, the records show that the purported transaction between Tee Ling Kiat and Dewey Dee has never been recorded in VIP's corporate books. Thus, the transfer, not having been recorded in the corporate books in accordance with law, is not valid or binding as to the corporation or as to third persons.

On a final note, the Court observes that the judgment for a sum of money dated November 29, 1990 obtained by Ayala Corporation was against the Spouses Dewey and Lily Dee in their personal capacities as sureties in the money market line transaction. Yet, in the execution of said judgment, the properties levied upon were registered in the name of VIP, a juridical entity with personality separate and distinct from Dewey Dee. It is a basic principle of law that money judgments are enforceable

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[77] Italics supplied.

[78] *Rollo*, p. 14.

[79] Emphasis supplied.

only against property incontrovertibly belonging to the judgment debtor,[80] and certainly, a person other than the judgment debtor who claims ownership over the levied properties is not precluded from challenging the levy through any of the remedies provided for under the Rules of Court.[81] In the pursuit of such remedies, however, the third-party must, to reiterate, unmistakably establish ownership over the levied property,[82] which Tee Ling Kiat failed to do.

Inasmuch as the validity of the third-party claim would only be relevant if the person instituting the same has established that he has a real interest in the levied property, the Court will not belabor the merits of the third-party claim in view of the conclusive determination that Tee Ling Kiat has not adduced evidence to prove that the shares of stock of Dewey Dee were indeed sold to him.

Given the foregoing, the Court finds no reversible error on the part of the CA in affirming the RTC *Orders* dated February 20, 2008 and June 26, 2008, which dismissed Tee Ling Kiat's third-party claim in Civil Case No. 40074.[83]

For the reasons foregoing, the Court **DENIES** the *petition*.

WHEREFORE, premises considered, the instant petition for review is **DENIED**. The Decision dated September 24, 2009 and Resolution dated May 26, 2010 of the Court of Appeals in CA-G.R. SP No. 105081 are hereby **AFFIRMED**.

SO ORDERED.

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

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[80] *Gagoomal v. Sps. Villacorta*, 679 Phil. 441, 451 (2012); *Power Sector Assets and Liabilities Management Corp. v. Maunlad Homes, Inc.*, *supra* note 72, at 5, citing *Villasi v. Garcia*, *supra* note 71, at 526-527.

[81] *Id.*

[82] *Supra* note 72.

[83] *Rollo*, pp. 54-58, 97.

[*] Acting Chief Justice per Special Order No. 2539 dated February 28, 2018.

THIRD DIVISION

[G.R. No. 196795. March 7, 2018]

INTRAMUROS ADMINISTRATION, *petitioner, vs.* **OFFSHORE CONSTRUCTION DEVELOPMENT COMPANY,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; APPEALS; RULE 42 PETITION FOR REVIEW; PROPER REMEDY IN CASE AT BAR; QUESTIONS OF LAW AND OF FACT, DISTINGUISHED; THE FINDINGS OF THE REGIONAL TRIAL COURT UPHOLDING THE METROPOLITAN TRIAL COURT THAT IT HAS NO JURISDICTION OVER THE EJECTMENT COMPLAINT AND THAT PETITIONER COMMITTED FORUM SHOPPING ARE QUESTIONS OF LAW PROPERLY COGNIZABLE BY THE COURT OF APPEALS UNDER RULE 42.— [P]etitioner should have filed a petition for review under Rule 42 of the Rules of Court to assail the Regional Trial Court's ruling upholding the Metropolitan Trial Court October 19, 2010 Order instead of filing a petition for review on certiorari under Rule 45 with this Court. Under Rule 42, Section 1 of the Rules of Court, the remedy from an adverse decision rendered by a Regional Trial Court exercising its appellate jurisdiction is to file a verified petition for review with the Court of Appeals[.] x x x Petitioner puts in issue before this Court the findings of the Metropolitan Trial Court that it has no jurisdiction over the ejectment complaint and that petitioner committed forum shopping when it failed to disclose two (2) pending cases, one filed by respondent Offshore Construction and the other filed by respondent's group of tenants, 4H Intramuros. Both of these cases raise questions of law, which are cognizable by the Court of Appeals in a petition for review under Rule 42. "A question of law exists when the law applicable to a particular set of facts is not settled, whereas a question of fact arises when the truth or falsehood of alleged facts is in doubt." This Court has ruled that the jurisdiction of a court over the subject matter of a complaint and the existence of forum shopping are questions of law. A petition for review

under Rule 42 may include questions of fact, of law, or mixed questions of fact and law. This Court has recognized that the power to hear cases on appeal in which only questions of law are raised is not vested exclusively in this Court. As provided in Rule 42, Section 2, errors of fact or law, or both, allegedly committed by the Regional Trial Court in its decision must be specified in the petition for review[.]

2. ID.; ID.; ID.; PETITIONER'S DIRECT RESORT TO THE SUPREME COURT VIOLATES THE PRINCIPLE OF HIERARCHY OF COURTS; EXCEPTIONS, APPLIED.— Petitioner's direct resort to this Court, instead of to the Court of Appeals for intermediate review as sanctioned by the rules, violates the principle of hierarchy of courts. x x x Nonetheless, the doctrine of hierarchy of courts is not inviolable, and this Court has provided several exceptions to the doctrine. One of these exceptions is the exigency of the situation being litigated. Here, the controversy between the parties has been dragging on since 2010, which should not be the case when the initial dispute—an ejectment case—is, by nature and design, a summary procedure and should have been resolved with expediency. Moreover, this Court's rules of procedure permit the direct resort to this Court from a decision of the Regional Trial Court upon questions of law, such as those which petitioner raises in this case.

3. ID.; SPECIAL CIVIL ACTIONS; EJECTMENT; NATURE; JURISDICTIONAL FACTS THAT MUST BE ALLEGED IN THE COMPLAINT FOR EJECTMENT, PRESENT.— It is settled that the only issue that must be settled in an ejectment proceeding is physical possession of the property involved. Specifically, action for unlawful detainer is brought against a possessor who unlawfully withholds possession after the termination and expiration of the right to hold possession. To determine the nature of the action and the jurisdiction of the court, the allegations in the complaint must be examined. The jurisdictional facts must be evident on the face of the complaint. There is a case for unlawful detainer if the complaint states the following: (1) initially, possession of property by the defendant was by contract with or by tolerance of the plaintiff; (2) eventually, such possession became illegal upon notice by plaintiff to defendant of the termination of the latter's right of possession; (3) thereafter, the defendant remained in possession of the

property and deprived the plaintiff of the enjoyment thereof; and (4) within one year from the last demand on defendant to vacate the property, the plaintiff instituted the complaint for ejectment. A review of petitioner's Complaint for Ejectment shows that all of these allegations were made.

4. ID.; ID.; ID.; NEITHER RESPONDENT'S DEFENSE THAT ITS RELATIONSHIP WITH PETITIONER IS ONE OF CONCESSION RATHER THAN LEASE NOR ITS CLAIM THAT THERE IS AN IMPLIED NEW LEASE WILL REMOVE THE METROPOLITAN TRIAL COURT'S JURISDICTION OVER THE COMPLAINT.— The Metropolitan Trial Court seriously erred in finding that it did not have jurisdiction over petitioner's complaint because the parties' situation has allegedly become "more complicated" than one of lease. Respondent's defense that its relationship with petitioner is one of concession rather than lease does not determine whether or not the Metropolitan Trial Court has jurisdiction over petitioner's complaint. The pleas or theories set up by a defendant in its answer or motion to dismiss do not affect the court's jurisdiction. x x x Not even the claim that there is an implied new lease or *tacita reconduccion* will remove the Metropolitan Trial Court's jurisdiction over the complaint. To emphasize, physical possession, or *de facto* possession, is the sole issue to be resolved in ejectment proceedings. Regardless of the claims or defenses raised by a defendant, a Metropolitan Trial Court has jurisdiction over an ejectment complaint once it has been shown that the requisite jurisdictional facts have been alleged, such as in this case. Courts are reminded not to abdicate their jurisdiction to resolve the issue of physical possession, as there is a public need to prevent a breach of the peace by requiring parties to resort to legal means to recover possession of real property.

5. ID.; CIVIL PROCEDURE; FORUM SHOPPING, CONCEPT OF; TEST TO DETERMINE VIOLATION OF THE RULE AGAINST FORUM SHOPPING; ELEMENTS OF *LITIS PENDENTIA* AND *RES JUDICATA*, ENUMERATED.— Forum shopping is the practice of resorting to multiple *fora* for the same relief, to increase the chances of obtaining a favorable judgment. In *Spouses Reyes v. Spouses Chung:* It has been jurisprudentially established that forum shopping exists when a party avails himself of several judicial remedies in

different courts, simultaneously or successively, all substantially founded on the same transactions and the same essential facts and circumstances, and all raising substantially the same issues either pending in or already resolved adversely by some other courts. The test to determine whether a party violated the rule against forum shopping is whether the elements of *litis pendentia* are present, or whether a final judgment in one case will amount to *res judicata* in another. Simply put, when *litis pendentia* or *res judicata* does not exist, neither can forum shopping exist. The requisites of *litis pendentia* are: (a) the identity of parties, or at least such as representing the same interests in both actions; (b) the identity of rights asserted and relief prayed for, the relief being founded on the same facts; and (c) the identity of the two cases such that judgment in one, regardless of which party is successful, would amount to *res judicata* in the other. On the other hand, the elements of *res judicata,* also known as bar by prior judgment, are: (a) the former judgment must be final; (b) the court which rendered it had jurisdiction over the subject matter and the parties; (c) it must be a judgment on the merits; and (d) there must be, between the first and second actions, identity of parties, subject matter, and causes of action.

6. ID.; ID.; ID.; SINCE THERE IS NO IDENTITY OF RIGHTS ASSERTED OR RELIEF PRAYED FOR, AND A JUDGMENT IN ANY OF THE THREE (3) CASES INVOLVED IN THIS CASE WILL NOT AMOUNT TO *RES JUDICATA* IN THE TWO OTHERS, THE METROPOLITAN TRIAL COURT ERRED IN DISMISSING THE COMPLAINT FOR EJECTMENT .— As observed by the Metropolitan Trial Court, there is an identity of parties in the specific performance and interpleader cases, and the Complaint for Ejectment. However, there is no identity of asserted rights or reliefs prayed for, and a judgment in any of the three (3) cases will not amount to *res judicata* in the two others. x x x A final judgment in the specific performance case will not affect the outcome of the ejectment case. x x x In its Amended Answer in the specific performance case, petitioner sets up the counterclaim that "[respondent] be ordered to pay its arrears of (₱13,448,867.45) as of December 31, 2009 plus such rent and surcharges as may be incurred until [respondent] has completely vacated the [leased] premises." x x x Clearly, petitioner's counterclaim is compulsory, arising as it did out of, and being necessarily connected with, the parties' respective

obligations under the July 27, 2004 Memorandum of Agreement. Petitioner cannot be faulted for raising the issue of unpaid rentals in the specific performance case or for raising the same issue in the present ejectment case, since it appears that respondent's alleged failure to pay the rent led to the non-renewal of the Contracts of Lease. However, it must be emphasized that any recovery made by petitioner of unpaid rentals in either its ejectment case or in the specific performance case must bar recovery in the other, pursuant to the principle of unjust enrichment. A judgment in the Complaint for Interpleader will likewise not be *res judicata* against the ejectment complaint. The plaintiff in the interpleader case, 4H Intramuros, allegedly representing the tenants occupying Puerta de Isabel II, does not expressly disclose in its Complaint for Interpleader the source of its right to occupy those premises. However, it can be determined from petitioner's Answer and from respondent's Memorandum that the members of 4H Intramuros are respondent's sublessees. x x x A complaint for interpleader by sublessees cannot bar the recovery by the rightful possessor of physical possession of the leased premises. Since neither the specific performance case nor the interpleader case constituted forum shopping by petitioner, the Metropolitan Trial Court erred in dismissing its Complaint for Ejectment.

7. ID.; SPECIAL CIVIL ACTIONS; EJECTMENT; WHEN THERE IS SUFFICIENT EVIDENCE ON RECORD TO MAKE A DETERMINATION, JUDICIAL ECONOMY DICTATES THAT THE COURT RESOLVE THE ISSUE OF POSSESSION INSTEAD OF REMANDING THE CASE TO THE TRIAL COURT; BUT THE COURT CANNOT AWARD UNPAID RENTALS SINCE THE RESOLUTION OF THE SAID ISSUE IS BETTER LEFT TO THE TRIAL COURT.— [T]his case would now be remanded to the Metropolitan Trial Court for the determination of the rightful possessor of the leased premises. However, this would cause needless delay inconsistent with the summary nature of ejectment proceedings. Given that there appears sufficient evidence on record to make this determination, judicial economy dictates that this Court now resolve the issue of possession. x x x However, this Court cannot award unpaid rentals to petitioner pursuant to the ejectment proceeding, since the issue of rentals in Civil Case No. 08-119138 is currently pending with Branch 37, Regional Trial Court, Manila, by virtue of petitioner's

counterclaim. As the parties dispute the amounts to be offset under the July 27, 2004 Memorandum of Agreement and respondent's actual back and current rentals due, the resolution of that case is better left to the Regional Trial Court for trial on the merits.

APPEARANCES OF COUNSEL

Office of the Solicitor General for petitioner.
Obligar Law Firm for respondent.

D E C I S I O N

LEONEN, *J.*:

The sole issue in ejectment proceedings is determining which of the parties has the better right to physical possession of a piece of property. The defendant's claims and allegations in its answer or motion to dismiss do not oust a trial court's jurisdiction to resolve this issue.

This is a Petition for Review on Certiorari[1] under Rule 45 of the Rules of Court, assailing the April 14, 2011 Decision[2] of Branch 173, Regional Trial Court, Manila in Civil Case No. 10-124740. The Regional Trial Court affirmed *in toto* the October 19, 2010 Order[3] of Branch 24, Metropolitan Trial Court, Manila in Civil Case No. 186955-CV, dismissing Intramuros Administration's (Intramuros) Complaint for Ejectment against Offshore Construction and Development Company (Offshore Construction) on the grounds of forum shopping and lack of jurisdiction.

In 1998, Intramuros leased certain real properties of the national government, which it administered to Offshore

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[1] *Rollo*, pp. 15-69.

[2] *Id*. at 70-73. The Decision was penned by Judge Armando A. Yanga.

[3] *Id*. at 74-80. The Order was penned by Presiding Judge Jesusa S. Prado-Maningas.

Construction. Three (3) properties were subjects of Contracts of Lease: Baluarte De San Andres, with an area of 2,793 sq. m.;[4] Baluarte De San Francisco De Dilao, with an area of 1,880 sq. m.;[5] and Revellin De Recoletos, with an area of 1,036 sq. m.[6] All three (3) properties were leased for five (5) years, from September 1, 1998 to August 31, 2003. All their lease contracts also made reference to an August 20, 1998 memorandum of stipulations, which included a provision for lease renewals every five (5) years upon the parties' mutual agreement.[7]

Offshore Construction occupied and introduced improvements in the leased premises. However, Intramuros and the Department of Tourism halted the projects due to Offshore Construction's non-conformity with Presidential Decree No. 1616, which required 16th to 19th centuries' Philippine-Spanish architecture in the area.[8] Consequently, Offshore Construction filed a complaint with prayer for preliminary injunction and temporary restraining order against Intramuros and the Department of Tourism before the Manila Regional Trial Court,[9] which was docketed as Civil Case No. 98-91587.[10]

Eventually, the parties executed a Compromise Agreement on July 26, 1999,[11] which the Manila Regional Trial Court approved on February 8, 2000.[12] In the Compromise Agreement, the parties affirmed the validity of the two (2) lease contracts but terminated the one over Revellin de Recoletos.[13] The

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[4] *Id*. at 96-106.

[5] *Id*. at 107-116.

[6] *Id*. at 117-126.

[7] *Id*. at 128, 132, and 136.

[8] *Id*. at 22.

[9] *Id.*

[10] *Id*. at 147.

[11] *Id*. at 139-146.

[12] *Id*. at 147-152.

[13] *Id*. at 142.

Compromise Agreement retained the five (5)-year period of the existing lease contracts and stated the areas that may be occupied by Offshore Construction:

FROM:

(1) Baluarte de San Andres

TO:

(1) Only the stable house, the gun powder room and two (2) Chambers with comfort rooms, will be utilized for restaurants. All other structures built and introduced including trellises shall be transferred/relocated to:

(a) Two (2) restaurants as Asean Garden. Each will have an aggregate area of two hundred square meters (200 sq. mtrs.);

(b) One (1) kiosk at Puerta Isabel Garden fronting Terraza de la Reyna with an aggregate area of twenty (20) square meters;

(c) Three (3) restaurants at the chambers of Puerta Isabel II with an aggregate area of 1,180.5 sq.m.;

(d) One (1) restaurant at Fort Santiago American Barracks. Subject to IA Guidelines, the maximum floor area will be the perimeter walls of the old existing building;

FROM:

(2) Baluarte De San Francisco Dilao

TO:

(2) All seven (7) structures including the [Offshore Construction] Administration Building and Trellises shall be transferred [t]o Cuartel de Sta. Lucia, [O]therwise known as the PC Barracks[.][14]

During the lease period, Offshore Construction failed to pay its utility bills and rental fees, despite several demand letters.[15] Intramuros tolerated the continuing occupation, hoping that

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[14] *Id.* at 141.

[15] *Id.* at 24.

Offshore Construction would pay its arrears. As of July 31, 2004, these arrears allegedly totaled ₱6,762,153.70.[16]

To settle its arrears, Offshore Construction proposed to pay the Department of Tourism's monthly operational expenses for lights and sound equipment, electricity, and performers at the Baluarte Plano Luneta de Sta. Isabel. Intramuros and the Department of Tourism accepted the offer, and the parties executed a Memorandum of Agreement covering the period of August 15, 2004 to August 25, 2005.[17]

However, Offshore Construction continued to fail to pay its arrears, which amounted to ₱13,448,867.45 as of December 31, 2009. On March 26, 2010, Offshore Construction received Intramuros' latest demand letter.[18]

Intramuros filed a Complaint for Ejectment before the Manila Metropolitan Trial Court on April 28, 2010.[19] Offshore Construction filed its Answer with Special and Affirmative Defenses and Compulsory Counterclaim.[20]

On July 12, 2010, Offshore Construction filed a Very Urgent Motion,[21] praying that Intramuros' complaint be dismissed on the grounds of violation of the rule on non-forum shopping, lack of jurisdiction over the case, and *litis pendentia*. First, it claimed that Intramuros failed to inform the Metropolitan Trial Court that there were two (2) pending cases with the Manila Regional Trial Court over Puerta de Isabel II.[22] Second, it argued that the Metropolitan Trial Court did not acquire jurisdiction over the case since the relationship between the parties was

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[16] *Id*. at 25.

[17] *Id*. at 161-167.

[18] *Id*. at 178.

[19] *Id*. at 81-95.

[20] *Id*. at 27.

[21] *Id.* at 180-183.

[22] *Id*. at 180.

not one of lessor-lessee but governed by a concession agreement.[23] Finally, it contended that Intramuros' cause of action was barred by *litis pendentia*, since the pending Regional Trial Court cases were over the same rights, claims, and interests of the parties.[24]

In its October 19, 2010 Order,[25] the Metropolitan Trial Court granted the motion and dismissed the case. Preliminarily, it found that while a motion to dismiss is a prohibited pleading under the Rule on Summary Procedure, Offshore Construction's motion was grounded on the lack of jurisdiction over the subject matter.[26]

The Metropolitan Trial Court found that Intramuros committed forum shopping and that it had no jurisdiction over the case.[27]

First, it pointed out that there were two (2) pending cases at the time Intramuros filed its complaint: Civil Case No. 08-119138 for specific performance filed by Offshore Construction against Intramuros, and SP CA No. 10-123257 for interpleader against Offshore Construction and Intramuros filed by 4H Intramuros, Inc. (4H Intramuros),[28] which claimed to be a group of respondent's tenants.[29]

The Metropolitan Trial Court found that the specific performance case was anchored on Offshore Construction's rights under the Compromise Agreement. In that case, Offshore Construction claimed that it complied with its undertakings, but Intramuros failed to perform its obligations when it refused to offset Offshore Construction's expenses with the alleged unpaid rentals. The interpleader case, on the other hand, dealt

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[23] *Id.* at 181.

[24] *Id.*

[25] *Id.* at 74-80.

[26] *Id.* at 76.

[27] *Id.* at 78-79.

[28] *Id.* at 76.

[29] *Id.* at 285-286.

with Offshore Construction's threats to evict the tenants of Puerta de Isabel II. 4H Intramuros prayed that the Regional Trial Court determine which between Offshore Construction and Intramuros was the rightful lessor of Puerta de Isabel II.[30]

The Metropolitan Trial Court found that the cause of action in Intramuros' complaint was similar with those in the specific performance and interpleader cases. Any judgment in any of those cases would affect the resolution or outcome in the ejectment case, since they would involve Offshore Construction's right to have its expenses offset from the rentals it owed Intramuros, and the determination of the rightful lessor of Puerta de Isabel II. The Metropolitan Trial Court pointed to the arrears in rentals that Intramuros prayed for as part of its complaint. Further, Intramuros failed to disclose the specific performance and interpleader cases in its certification against forum shopping.[31]

Second, the Metropolitan Trial Court held that it had no jurisdiction over the complaint. While there were lease contracts between the parties, the existence of the other contracts between them made Intramuros and Offshore Construction's relationship as one of concession. Under this concession agreement, Offshore Construction undertook to develop several areas of the Intramuros District, for which it incurred expenses. The trial court found that the issues could not be mere possession and rentals only.[32]

Intramuros appealed the October 19, 2010 Order with the Regional Trial Court. On April 14, 2011, the Regional Trial Court affirmed the Municipal Trial Court October 19, 2010 Order *in toto*.[33]

On May 25, 2011, Intramuros, through the Office of the Solicitor General, filed a Motion for Extension of Time to File

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[30] *Id*. at 76-77.

[31] *Id*. at 77-78.

[32] *Id*. at 79.

[33] *Id*. at 70-73.

Petition for Review on Certiorari (Motion for Extension) before this Court. It prayed for an additional 30 days, or until June 16, 2011, within which to file its petition for review on solely on questions of law.[34]

On June 16, 2011, Intramuros filed its Petition for Review on Certiorari,[35] assailing the April 14, 2011 Decision of the Regional Trial Court.

In its Petition for Review, Intramuros argues that the Regional Trial Court erred in upholding the Metropolitan Trial Court findings that it had no jurisdiction over Intramuros' ejectment complaint[36] and that it committed forum shopping.[37]

First, Intramuros argues that Offshore Construction's Very Urgent Motion should not have been entertained by the Metropolitan Trial Court as it was a motion to dismiss, which was prohibited under the Rule on Summary Procedure.[38] It claims that the Metropolitan Trial Court could have determined the issue of jurisdiction based on the allegations in its complaint. It points out that "jurisdiction over the subject matter is determined by the allegations [in] the complaint" and that the trial court's jurisdiction is not lost "just because the defendant makes a contrary allegation" in its defense.[39] In ejectment cases, courts do not lose jurisdiction by a defendant's mere allegation that it has ownership over the litigated property. It holds that the Metropolitan Trial Court did not lose jurisdiction when Offshore Construction alleged that its relationship with Intramuros is one of concession, that the cause of action accrued in 2003, and that there was *litis pendentia* and forum shopping. It contends that the sole issue in an ejectment suit is the summary restoration of possession of a piece of land or building to the

[34] *Id*. at 2-7.

[35] *Id*. at 15-69.

[36] *Id*. at 32-37.

[37] *Id*. at 37-52.

[38] *Id*. at 33.

[39] *Id*. at 34.

party that was deprived of it.[40] Thus, the Metropolitan Trial Court gravely erred in granting Offshore Construction's motion to dismiss despite having jurisdiction over the subject matter of Intramuros' complaint.[41]

Second, Intramuros avers that it did not commit forum shopping as to warrant the dismissal of its complaint. It claims that while there were pending specific performance and interpleader cases related to the ejectment case, Intramuros was not guilty of forum shopping since it instituted neither action and did not seek a favorable ruling as a result of an earlier adverse opinion in these cases.[42] Intramuros points out that it was Offshore Construction and 4H Intramuros which filed the specific performance and interpleader cases, respectively.[43] In both cases, Intramuros was the defendant and did not seek possession of Puerta de Isabel II as a relief in its answers to the complaints.[44] Moreover, the issues raised in these earlier cases were different from the issue of possession in the ejectment case. The issue in the specific performance case was whether or not Intramuros should offset the rentals in arrears from Offshore Construction's expenses in continuing the WOW Philippines Project.[45] Meanwhile, the issue in the interpleader case was to determine which between Intramuros and Offshore Construction was the rightful lessor of Puerta de Isabel II.[46]

Finally, Intramuros maintains that there is no concession agreement between the parties, only lease contracts that have already expired and are not renewed. It argues that there is no basis for alleging the existence of a concession agreement. It points out that in the Contracts of Lease and Memorandum of

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[40] *Id*. at 35.

[41] *Id*. at 37.

[42] *Id.* at 39-40.

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

[44] *Id*. at 45.

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

[46] *Id*. at 45.

Agreement entered into by Intramuros and Offshore Construction, the expiry of the leases would be on August 31, 2003. Afterwards, Intramuros tolerated Offshore Construction's continued occupation of its properties in hopes that it would pay its arrears in due course.[47]

On July 20, 2011, this Court issued its Resolution[48] granting the Motion for Extension and requiring Offshore Construction to comment on the Petition for Review.

On October 10, 2011, Offshore Construction filed its Comment[49] to the Petition for Review. In its Comment, Offshore Construction argues that the Petition for Review should be dismissed because it violates the principle of hierarchy of courts and raises questions of fact.[50] It points out that Intramuros did not move for the reconsideration of the Regional Trial Court April 14, 2011 Decision. Instead of directly filing with this Court, Intramuros should have filed a Petition for Review with the Court of Appeals, in accordance with Rule 42 of the Rules of Court.[51] It claims that Intramuros raises questions of fact in its Petition for Review, namely, the expiration of the Contracts of Lease and the business concession in favor of Offshore Construction.[52]

In its November 21, 2011 Resolution, this Court noted the Comment and required Intramuros to file its Reply.[53]

On March 12, 2012, Intramuros filed its Reply[54] to the Comment. It argues that direct resort to this Court is proper

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[47] *Id.* at 52-54.

[48] *Id.* at 569.

[49] *Id.* at 577-586.

[50] *Id.* at 577.

[51] *Id.* at 578.

[52] *Id.* at 581-582 and 584.

[53] *Id.* at 587-588.

[54] *Id.* at 599-610.

because the issues it raises in its Petition for Review do not require review of evidence to resolve, and the facts of the case are undisputed.[55] It claims that the nature of Intramuros and Offshore Construction's relationship is never an issue because all the documents referenced and relied upon by the parties were lease agreements.[56]

On August 23, 2012, this Court gave due course to the Petition for Review and ordered both parties to submit their memoranda.[57]

On January 7, 2013, Intramuros filed its Memorandum,[58] while Offshore Construction filed its Memorandum[59] on August 16, 2013.

In its Memorandum, Offshore Construction claims that it occupies Puerta de Isabel II by virtue of a legal concession based not only on the parties' contracts but also on the contemporaneous and subsequent acts of Intramuros and Offshore Construction. It argues that under the Contracts of Lease, Offshore Construction was required to invest around ₱20,000,000.00 worth of investments in the leased properties and that it lost its initial investments, which were demolished due to adverse criticism by then-Intramuros Administrator Anna Maria L. Harper. Under the Compromise Agreement, Offshore Construction was again required to make new developments, again worth millions of pesos. Offshore Construction claims that these conditions make their relationship not one of mere lessor and lessee.[60]

Further, it attests that Intramuros committed illegal and inhuman acts, and injustice against it and its sublessees, allegedly because the Contracts of Lease had expired.[61] Moreover, it points

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[55] *Id.* at 604.

[56] *Id.* at 605.

[57] *Id.* at 612-613.

[58] *Id.* at 619-662.

[59] *Id.* at 677-696.

[60] *Id.* at 685-686.

[61] *Id.* at 686-688.

out that Intramuros only filed the ejectment complaint in 2010, even though the Contracts of Lease expired on August 31, 2003. It argues that Intramuros was guilty of estoppel *in pais*, since it continued to accept rental payments as late as July 10, 2009.[62] Assuming that the lease contracts had expired, these contracts were impliedly renewed by the mutual and voluntary acts of the parties, in accordance with Article 1670 of the Civil Code.[63] Offshore Construction claims that there is now novation of the Contracts of Lease, and the courts may fix a period for them,[64] pursuant to Article 1687 of the Civil Code.[65] It reiterates its prayer that the Petition for Review be dismissed, due to questions of fact more properly cognizable by the Court of Appeals.[66]

The issues to be resolved by this Court are:

First, whether or not direct resort to this Court is proper;

Second, whether or not the Metropolitan Trial Court had jurisdiction over the ejectment complaint filed by Intramuros Administration;

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[62] *Id.* at 688.

[63] CIVIL CODE, Art. 1670 states:

Article 1670. If at the end of the contract the lessee should continue enjoying the thing leased for fifteen days with the acquiescence of the lessor, and unless a notice to the contrary by either party has previously been given, it is understood that there is an implied new lease, not for the period of the original contract, but for the time established in Articles 1682 and 1687. The other terms of the original contract shall be revived.

[64] *Rollo*, p. 691.

[65] CIVIL CODE, Art. 1687 states:

Article 1687. If the period for the lease has not been fixed, it is understood to be from year to year, if the rent agreed upon is annual; from month to month, if it is monthly; from week to week, if the rent is weekly; and from day to day, if the rent is to be paid daily. However, even though a monthly rent is paid, and no period for the lease has been set, the courts may fix a longer term for the lease after the lessee has occupied the premises for over one year. If the rent is weekly, the courts may likewise determine a longer period after the lessee has been in possession for over six months. In case of daily rent, the courts may also fix a longer period after the lessee has stayed in the place for over one month.

[66] *Rollo*, p. 693.

Third, whether or not Intramuros Administration committed forum shopping when it filed its ejectment complaint despite the pending cases for specific performance and interpleader; and

Finally, whether or not Intramuros Administration is entitled to possess the leased premises and to collect unpaid rentals.

I

At the outset, petitioner should have filed a petition for review under Rule 42 of the Rules of Court to assail the Regional Trial Court's ruling upholding the Metropolitan Trial Court October 19, 2010 Order instead of filing a petition for review on certiorari under Rule 45 with this Court.

Under Rule 42, Section 1 of the Rules of Court, the remedy from an adverse decision rendered by a Regional Trial Court exercising its appellate jurisdiction is to file a verified petition for review with the Court of Appeals:

> Section 1. *How appeal taken; time for filing*. — A party desiring to appeal from a decision of the Regional Trial Court rendered in the exercise of its appellate jurisdiction may file a verified petition for review with the Court of Appeals, paying at the same time to the clerk of said court the corresponding docket and other lawful fees, depositing the amount of ₱500.00 for costs, and furnishing the Regional Trial Court and the adverse party with a copy of the petition. The petition shall be filed and served within fifteen (15) days from notice of the decision sought to be reviewed or of the denial of petitioner's motion for new trial or reconsideration filed in due time after judgment. Upon proper motion and the payment of the full amount of the docket and other lawful fees and the deposit for costs before the expiration of the reglementary period, the Court of Appeals may grant an additional period of fifteen (15) days only within which to file the petition for review. No further extension shall be granted except for the most compelling reason and in no case to exceed fifteen (15) days.

Petitioner puts in issue before this Court the findings of the Metropolitan Trial Court that it has no jurisdiction over the ejectment complaint and that petitioner committed forum shopping when it failed to disclose two (2) pending cases, one filed by respondent Offshore Construction and the other filed

by respondent's group of tenants, 4H Intramuros. Both of these cases raise questions of law, which are cognizable by the Court of Appeals in a petition for review under Rule 42.

"A question of law exists when the law applicable to a particular set of facts is not settled, whereas a question of fact arises when the truth or falsehood of alleged facts is in doubt."[67] This Court has ruled that the jurisdiction of a court over the subject matter of a complaint[68] and the existence of forum shopping[69] are questions of law.

A petition for review under Rule 42 may include questions of fact, of law, or mixed questions of fact and law.[70] This Court has recognized that the power to hear cases on appeal in which only questions of law are raised is not vested exclusively in this Court.[71] As provided in Rule 42, Section 2, errors of fact or law, or both, allegedly committed by the Regional Trial Court in its decision must be specified in the petition for review:

> Section 2. Form and Contents. — The petition shall be filed in seven (7) legible copies, with the original copy intended for the court being indicated as such by the petitioner, and shall (a) state the full names of the parties to the case, without impleading the lower courts or judges thereof either as petitioners or respondents; (b) indicate the specific material dates showing that it was filed on time; (c) set forth concisely a statement of the matters involved, the issues raised, *the specification of errors of fact or law, or both, allegedly committed*

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[67] *Ronquillo, Jr. v. National Electrification Administration,* G.R. No. 172593, April 20, 2016 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2016/april2016/172593.pdf> 10 [Per *J.* Leonen, Second Division].

[68] *Philippine Migrants Watch, Inc. v. Overseas Workers Welfare Administration*, 748 Phil. 349, 356 (2014) [Per *J.* Peralta, Third Division].

[69] *Daswani v. Banco De Oro Universal Bank*, 765 Phil. 88, 97 (2015) [Per *J.* Brion, Second Division].

[70] *Republic v. Malabanan*, 646 Phil. 631, 637 (2010) [Per *J.* Villarama, Jr., Third Division].

[71] *Tan v. People*, 430 Phil. 685, 693 (2002) [Per *J.* Vitug, *En Banc*].

by the Regional Trial Court, and the reasons or arguments relied upon for the allowance of the appeal; (d) be accompanied by clearly legible duplicate originals or true copies of the judgments or final orders of both lower courts, certified correct by the clerk of court of the Regional Trial Court, the requisite number of plain copies thereof and of the pleadings and other material portions of the record as would support the allegations of the petition.

The petitioner shall also submit together with the petition a certification under oath that he has not theretofore commenced any other action involving the same issues in the Supreme Court, the Court of Appeals or different divisions thereof, or any other tribunal or agency; if there is such other action or proceeding, he must state the status of the same; and if he should thereafter learn that a similar action or proceeding has been filed or is pending before the Supreme Court, the Court of Appeals, or different divisions thereof, or any other tribunal or agency, he undertakes to promptly inform the aforesaid courts and other tribunal or agency thereof within five (5) days therefrom. (Emphasis supplied)

Petitioner's direct resort to this Court, instead of to the Court of Appeals for intermediate review as sanctioned by the rules, violates the principle of hierarchy of courts.[72] In *Diocese of Bacolod v. Commission on Elections*:[73]

The doctrine that requires respect for the hierarchy of courts was created by this court to ensure that every level of the judiciary performs its designated roles in an effective and efficient manner. Trial courts do not only determine the facts from the evaluation of the evidence presented before them. They are likewise competent to determine issues of law which may include the validity of an ordinance, statute, or even an executive issuance in relation to the Constitution. To effectively perform these functions, they are territorially organized into regions and then into branches. Their writs generally reach within those territorial boundaries. Necessarily, they mostly perform the all-important task of inferring the facts from the evidence as these are physically presented before them. In many instances, the facts

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[72] *Barcenas v. Spouses Tomas and Caliboso*, 494 Phil. 565 (2005) [Per *J.* Panganiban, Third Division].

[73] 751 Phil. 301 (2015) [Per *J.* Leonen, *En Banc*].

occur within their territorial jurisdiction, which properly present the 'actual case' that makes ripe a determination of the constitutionality of such action. The consequences, of course, would be national in scope. There are, however, some cases where resort to courts at their level would not be practical considering their decisions could still be appealed before the higher courts, such as the Court of Appeals.[74] (Citation omitted)

Nonetheless, the doctrine of hierarchy of courts is not inviolable, and this Court has provided several exceptions to the doctrine.[75] One of these exceptions is the exigency of the situation being litigated.[76] Here, the controversy between the parties has been dragging on since 2010, which should not be the case when the initial dispute—an ejectment case—is, by nature and design, a summary procedure and should have been resolved with expediency.

Moreover, this Court's rules of procedure permit the direct resort to this Court from a decision of the Regional Trial Court upon questions of law, such as those which petitioner raises in this case. In *Barcenas v. Spouses Tomas and Caliboso*:[77]

Nonetheless, a direct recourse to this Court can be taken for a review of the decisions, final orders or resolutions of the RTC, but only on questions of law. Under Section 5 of Article VIII of the Constitution, the Supreme Court has the power to

> (2) Review, revise, reverse, modify, or affirm on appeal or certiorari as the law or the Rules of Court may provide, final judgments and orders of lower courts in:
>
> x x x x x x x x x
>
> (e) All cases in which only an error or question of law is involved.

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[74] *Id.* at 329-330.

[75] *Id.*

[76] *Id.* at 331; *See* also *Dy v. Hon. Bibat-Palamos*, 717 Phil. 776 (2013) [Per *J.* Mendoza, Third Division].

[77] 494 Phil. 565 (2005) [Per *J.* Panganiban, Third Division].

This kind of direct appeal to this Court of RTC judgments, final orders or resolutions is provided for in Section 2(c) of Rule 41, which reads:

> SEC. 2. Modes of appeal. —
>
> x x x x x x x x x
>
> (c) Appeal by certiorari. — In all cases where only questions of law are raised or involved, the appeal shall be to the Supreme Court by petition for review on certiorari in accordance with Rule 45.

Procedurally then, petitioners could have appealed the RTC Decision affirming the MTC (1) to this Court on questions of law only; or (2) if there are factual questions involved, to the CA — as they in fact did.[78]

Thus, petitioner's resort to this Court is proper and warranted under the circumstances.

II

In dismissing the complaint, the Metropolitan Trial Court found that "[t]he issues . . . between the parties cannot be limited to a simple determination of who has the better right of possession of the subject premises or whether or not [petitioner] is entitled [to] rentals in arrears."[79] It held that the relationship between the parties was a "more complicated situation where jurisdiction is better lodged with the regional trial court,"[80] upon a finding that there was a concession, rather than a lease relationship between the parties.[81]

It is settled that the only issue that must be settled in an ejectment proceeding is physical possession of the property involved.[82] Specifically, action for unlawful detainer is brought

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[78] *Id.* at 577.

[79] *Rollo*, p. 79.

[80] *Id.*

[81] *Id.*

[82] See *Barrientos v. Rapal*, 669 Phil. 438 (2011) [Per J. Peralta, Third Division].

against a possessor who unlawfully withholds possession after the termination and expiration of the right to hold possession.[83]

To determine the nature of the action and the jurisdiction of the court, the allegations in the complaint must be examined. The jurisdictional facts must be evident on the face of the complaint.[84] There is a case for unlawful detainer if the complaint states the following:

(1) initially, possession of property by the defendant was by contract with or by tolerance of the plaintiff;

(2) eventually, such possession became illegal upon notice by plaintiff to defendant of the termination of the latter's right of possession;

(3) thereafter, the defendant remained in possession of the property and deprived the plaintiff of the enjoyment thereof; and

(4) within one year from the last demand on defendant to vacate the property, the plaintiff instituted the complaint for ejectment.[85] (Citation omitted)

A review of petitioner's Complaint for Ejectment shows that all of these allegations were made.

First, petitioner alleges that respondent is its lessee by virtue of three (3) Contracts of Lease. The validity of these contracts was later affirmed in a Compromise Agreement, which modified certain provisions of the previous leases but retained the original lease period. Respondent does not dispute these contracts' existence or their validity.

Second, following respondent's failure to pay rentals, petitioner alleges that it has demanded that respondent vacate the leased premises.

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[83] See *Cruz v. Spouses Christensen*, G.R. No. 205539, October 4, 2017 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2017/october2017/205539.pdf> [Per *J.* Leonen, Third Division].

[84] *Spouses Valdez v. Court of Appeals*, 523 Phil. 39, 48 (2006) [Per *J.* Chico-Nazario, First Division].

[85] *Cabrera v. Getaruela*, 604 Phil. 59, 66 (2009) [Per *J.* Carpio, First Division].

Third, respondent continues to occupy and possess the leased premises despite petitioner's demand. This is admitted by respondent, which seeks to retain possession and use of the properties to "recoup its multi-million pesos worth of investment."[86]

Fourth, petitioner filed its Complaint for Ejectment on April 28, 2010,[87] within one (1) year of its last written demand to respondent, made on March 18, 2010 and received by respondent on March 26, 2010.[88] Contrary to respondent's claim, the one (1)-year period to file the complaint must be reckoned from the date of last demand, in instances when there has been more than one (1) demand to vacate.[89]

The Metropolitan Trial Court seriously erred in finding that it did not have jurisdiction over petitioner's complaint because the parties' situation has allegedly become "more complicated"[90] than one of lease. Respondent's defense that its relationship with petitioner is one of concession rather than lease does not determine whether or not the Metropolitan Trial Court has jurisdiction over petitioner's complaint. The pleas or theories set up by a defendant in its answer or motion to dismiss do not affect the court's jurisdiction.[91] In *Morta v. Occidental*:[92]

> It is axiomatic that what determines the nature of an action as well as which court has jurisdiction over it, are the allegations in the complaint and the character of the relief sought. "Jurisdiction over the subject matter is determined upon the allegations made in the

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[86] *Rollo*, p. 686.

[87] *Id.* at 81.

[88] *Id.* at 178.

[89] *Cañiza v. Court of Appeals*, 335 Phil. 1107, 1117 (1997) [Per *C.J.* Narvasa, Third Division].

[90] *Rollo*, p. 79.

[91] *Mendoza v. Germino*, 650 Phil. 74, 84 (2010) [Per *J.* Brion, Third Division].

[92] 367 Phil. 438 (1999) [Per *J.* Pardo, First Division].

complaint, irrespective of whether the plaintiff is entitled to recover upon a claim asserted therein — a matter resolved only after and as a result of the trial. Neither can the jurisdiction of the court be made to depend upon the defenses made by the defendant in his answer or motion to dismiss. If such were the rule, the question of jurisdiction would depend almost entirely upon the defendant."[93] (Citations omitted)

Not even the claim that there is an implied new lease or *tacita reconduccion* will remove the Metropolitan Trial Court's jurisdiction over the complaint.[94] To emphasize, physical possession, or *de facto* possession, is the sole issue to be resolved in ejectment proceedings. Regardless of the claims or defenses raised by a defendant, a Metropolitan Trial Court has jurisdiction over an ejectment complaint once it has been shown that the requisite jurisdictional facts have been alleged, such as in this case. Courts are reminded not to abdicate their jurisdiction to resolve the issue of physical possession, as there is a public need to prevent a breach of the peace by requiring parties to resort to legal means to recover possession of real property.[95]

III

In its October 19, 2010 Order, the Metropolitan Trial Court found that petitioner committed forum shopping when it failed to disclose that there were two (2) pending cases in other trial courts concerning the same parties and similar causes of action. These two (2) cases were Civil Case No. 08-119138 for specific performance filed by respondent against petitioner; and SP CA Case No. 10-123257 for interpleader filed by 4H Intramuros. Both cases were pending with the Manila Regional Trial Court. The Metropolitan Trial Court found that if it decides petitioner's Complaint for Ejectment, its ruling would conflict with any

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[93] *Id.* at 445.

[94] *Yuki, Jr. v. Co*, 621 Phil. 194, 205 (2009) [Per *J.* Del Castillo, Second Division].

[95] *Pajuyo v. Court of Appeals*, 474 Phil. 557, 578 (2004) [Per *J.* Carpio, First Division].

resolution in the specific performance and interpleader cases, since the same contracts were involved in all three (3) cases. It found that the parties were the same and the reliefs prayed for were the same.

Forum shopping is the practice of resorting to multiple *fora* for the same relief, to increase the chances of obtaining a favorable judgment.[96] In *Spouses Reyes v. Spouses Chung*:[97]

> It has been jurisprudentially established that forum shopping exists when a party avails himself of several judicial remedies in different courts, simultaneously or successively, all substantially founded on the same transactions and the same essential facts and circumstances, and all raising substantially the same issues either pending in or already resolved adversely by some other courts.
>
> The test to determine whether a party violated the rule against forum shopping is whether the elements of *litis pendentia* are present, or whether a final judgment in one case will amount to *res judicata* in another. Simply put, when *litis pendentia* or *res judicata* does not exist, neither can forum shopping exist.
>
> The requisites of *litis pendentia* are: (a) the identity of parties, or at least such as representing the same interests in both actions; (b) the identity of rights asserted and relief prayed for, the relief being founded on the same facts; and (c) the identity of the two cases such that judgment in one, regardless of which party is successful, would amount to *res judicata* in the other. On the other hand, the elements of *res judicata*, also known as bar by prior judgment, are: (a) the former judgment must be final; (b) the court which rendered it had jurisdiction over the subject matter and the parties; (c) it must be a judgment on the merits; and (d) there must be, between the first and second actions, identity of parties, subject matter, and causes of action.[98] (Citation omitted)

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[96] *Dy v. Mandy Commodities, Inc.*, 611 Phil. 74, 84 (2009) [Per *J*. Chico-Nazario, Third Division].

[97] G.R. No. 228112, September 13, 2017, <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2017/september2017/228112.pdf> [Per *J*. Velasco, Jr., Third Division].

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

As observed by the Metropolitan Trial Court, there is an identity of parties in the specific performance and interpleader cases, and the Complaint for Ejectment. However, there is no identity of asserted rights or reliefs prayed for, and a judgment in any of the three (3) cases will not amount to *res judicata* in the two others.

In respondent's amended complaint for specific performance, it prays that petitioner be compelled to offset respondent's unpaid rentals, with the expenses that respondent supposedly incurred due to the Department of Tourism's WOW Philippines project,[99] pursuant to a July 27, 2004 Memorandum of Agreement. Concededly, one of respondent's reliefs prayed for is for petitioner to respect respondent's lease over Puerta de Isabel II, Asean Garden and Revellin de Recoletos:

> 2. Order [Department of Tourism], [Intramuros Administration] and [Anna Maria L. Harper] to perform their obligation under the "Memorandum of Agreement" dated 27 July 2004 by OFFSETTING the rentals in arrears from the expenses incurred by Offshore in the continuance of the Department of Tourism's WOW Philippines Project and to allow Offshore to recover their investment at Intramuros by respecting their lease over Puerta Isabel II, Asean Garden and Revellin de Recoletos[.][100]

Nevertheless, the Memorandum of Agreement expressly stated that its purpose was for respondent to pay petitioner and the Department of Tourism rentals in arrears as of July 31, 2004:

> WHEREAS, [respondent] has been indebted to [petitioner] in the form of rental and utility consumption arrears for the occupancy of Puerta Isabel Chambers, Asean Gardens and Baluarte de San Andres (Stable House) in the amount of Six Million Seven Hundred Sixty[-]Two Thousand One Hundred Fifty[-]Three and 70/100 (₱6,762,153.70) as of July 31, 2004 and as a way of settling said arrears, [respondent] had proposed to pay its obligations with [petitioner] as shown in the breakdown in "Annex A" hereof through [respondent's] assumption of [Department of Tourism's] monthly

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[99] *Rollo*, p. 225.

[100] *Id.* at 227.

operational expenses for lights and sound equipment, electricity, and performers at the Baluarte Plano Luneta de Sta. Isabel in Intramuros, Manila[.][101]

This was affirmed in petitioner's May 29, 2005 letter to respondent, in which petitioner stated:

> During our meeting last May 5, 2005 with Mr. Rico Cordova, it was reiterated that the subject of the [Memorandum of Agreement] for the lights and sound at Plano Luneta de Sta. Isabel was your accumulated account as of July 2004. Subsequent rentals have to be remitted to [Intramuros] as they become due and demandable. We have emphasized this concern in our letter of November 12, 2004.[102]

A final judgment in the specific performance case will not affect the outcome of the ejectment case. As pointed out by petitioner, respondent's right to possess the leased premises is founded initially on the Contracts of Lease and, upon their expiration, on petitioner's tolerance in hopes of payment of outstanding arrears. The July 27, 2004 Memorandum of Agreement subject of the specific performance case cannot be the source of respondent's continuing right of possession, as it expressly stated there that the offsetting was only for respondent's outstanding arrears as of July 31, 2004. Any favorable judgment compelling petitioner to comply with its obligation under this agreement will not give new life to the expired Contracts of Lease, such as would repel petitioner's unlawful detainer complaint.

In its Amended Answer in the specific performance case, petitioner sets up the counterclaim that "[respondent] be ordered to pay its arrears of (₱13,448,867.45) as of December 31, 2009 plus such rent and surcharges as may be incurred until [respondent] has completely vacated the [leased] premises."[103] This counterclaim is exactly the same as one of petitioner's prayers in its ejectment complaint:

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[101] *Id.* at 161.

[102] *Id.* at 168.

[103] *Id.* at 532.

WHEREFORE, premises considered, it is most respectfully prayed that JUDGMENT be rendered ORDERING:

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(2) DEFENDANT [OFFSHORE CONSTRUCTION] TO PAY ITS ARREARS OF THIRTEEN MILLION FOUR HUNDRED FORTY-EIGHT THOUSAND, EIGHT HUNDRED SIXTY-SEVEN PESOS AND FORTY-FIVE CENTAVOS (₱13,448,867.45), PLUS INTEREST OF 1% PER MONTH AS STIPULATED IN THE LEASE CONTRACTS[.][104]

A compulsory counterclaim is a defendant's claim for money or other relief which arises out of, or is necessarily connected with, the subject matter of the complaint. In *Spouses Ponciano v. Hon. Parentela, Jr.*:[105]

A compulsory counterclaim is any claim for money or other relief which a defending party may have against an opposing party, which at the time of suit arises out of, or is necessarily connected with, the same transaction or occurrence that is the subject matter of plaintiff's complaint. It is compulsory in the sense that if it is within the jurisdiction of the court, and does not require for its adjudication the presence of third parties over whom the court cannot acquire jurisdiction, it must be set up therein, and will be barred in the future if not set up.[106] (Citation omitted)

In its complaint for specific performance, respondent claimed that petitioner should offset its outstanding rentals and that it was petitioner which had an outstanding debt to respondent:

16. In compliance with the Memorandum of Agreement, Offshore incurred expenses amounting to Seven Million Eight Hundred Twenty[-]Five Thousand Pesos (₱7,825,000.00) by way of Expenses for Rentals of Lights & Sound System, Electrical Bill and Performers Fees. This amount is excluding the expenses incurred during the period Offshore supplied the Light & Sound System, as well as Performers, aforementioned started in October 2004. A copy of the Statement of Account is hereto appended as ANNEX "H" to "H-4";

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[104] *Id.* at 342-343.

[105] 387 Phil. 621 (2000) [Per *J.* Gonzaga-Reyes, Third Division].

[106] *Id.* at 627.

17. Based on Offshore's records, upon re-computation of Actual Area used during all these period[s] from July 2001 to March 30, 2008, copy of Statement of Accounts has been sent to Intramuros Administration for reconciliation, Offshore's total obligation by way of back and current rentals up to March 30, 2008 is only in the amount of Six Million Four Hundred Three Thousand Three Hundred Sixty[-]Four Pesos (₱6,403,364.00);

18. Obviously, when both accounts are offset, it will clearly show that [Intramuros] still owes Offshore the amount of One Million Four Hundred Twenty[-]One Thousand Six Hundred Thirty[-]Six Pesos (₱1,421,636.00) as of March 2008;

19. Unfortunately, despite this glaring fact that [Intramuros] owes Offshore, Defendant [Anna Maria L.] Harper (who has already showed sour and adverse treatment of Offshore in the past), being the new Administrator of Intramuros Administration, sent a Letter dated 09 April 2008 demanding from Offshore to pay [Intramuros] alleged rentals in arrears in the amount of ₱12,478[,]461.74, within seven (7) days from receipt. A copy of the Letter is hereto attached and marked as Annex "I" to "I-1";

20. It can be deduced from the attachment to the aforementioned letter that [Intramuros] did not honor the obligations imposed in the Memorandum of Agreement because the monthly expenses incurred by Offshore for the payment of the Lights and Sound System, Electricity and Performers Fees for the continuance of the Department of Tourism WOW Project at Baluarte Plano, Luneta de Sta. Isabel which were duly furnished [Intramuros] in the amount of Seven Million Eight Hundred Twenty[-]Five Thousand Pesos (₱7,825,000.00) as expressly agreed by [Department of Tourism], [Intramuros] and Offshore in the Memorandum of Agreement were NOT deducted from the rentals due[.][107]

Petitioner's counterclaim in its Amended Answer was set up to defend itself against such a claim:

26. [Offshore Construction] has not established its right, or the reality is, [Offshore Constructioin] has been delinquent in the payment of its financial obligations which are specifically provided in its contract with defendant [Intramuros], such as rental fees.

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[107] *Rollo*, pp. 224-225.

27. [Offshore Construction] has to pay rent for being still in possession of Puerta Isabel II and Asean Garden. Moreover, plaintiff has enjoyed the fruits of subleasing these premises for years and yet it has continuously failed to remit all rental fees and surcharges despite repeated demands from defendants. It bears stressing that as of December 31, 2009, [Offshore Construction's] arrears has already ballooned to thirteen million four hundred and forty[-]eight thousand eight hundred and sixty[-]seven pesos and forty[-]five centavos (₱13,448,867.45).

28. Glaringly, [Offshore Construction] has been remiss in performing its obligations stated in the Lease Contracts (Annexes A to A-15; B to B-14 and C to C-14 of the Complaint), Compromise Agreement (Annexes E to E-17 of the Complaint) and Memorandum of Agreement (Annexes F to F-16 of the Complaint). [Intramuros and Anna Maria L. Harper] are therefore constrained to demand payment from [Offshore Construction] for the latter's failure or refusal to honor its just and valid obligations. Necessarily, [Intramuros and Anna Maria L. Harper] will not hesitate to seek legal remedies if [Offshore Construction] continues to be delinquent.

29. Essentially, [Offshore Construction] is protesting the computation of its arrears (₱12,478,461.74) in the demand letter sent by Administrator [Anna Maria L.] Harper on April 9, 2008. [Offshore Construction] also asserts that it only owes defendant [Intramuros] six million four hundred three thousand and three hundred sixty[-]four pesos (₱6,403,364.00).

30. [Offshore Construction] is misguided. The [Memorandum of Agreement] dated July 27, 2004 was executed because [Offshore Construction], at that time, had been indebted to defendant [Intramuros] in the form of rental and utility consumption arrears for the occupancy of Puerta Isabel Chambers, Asean Gardens and Baluarte de San Andres in the amount of six million seven hundred sixty[-]two thousand one hundred fifty[-]three and seventy centavos (₱6,762,153.70). . .

x x x x x x x x x

32. Even after July 27, 2004, and up to this time, [Offshore Construction] remained in possession of, used and/or subleased the subject premises. As such, [Offshore Construction] still has to pay rental fees, aside from the aforesaid arrears. The rental fees continued to pile up and triggered the imposition of surcharges as [Offshore Construction] again failed to remit payments thereon. This explains

the demandable amount of ₱13,448,867.45 (Annex I to I1 of Complaint). [Offshore Construction] is therefore mistaken in believing that it only owes defendant [Intramuros] the arrears subject of the [Memorandum of Agreement] of July 27, 2004 and nothing more.[108]

Clearly, petitioner's counterclaim is compulsory, arising as it did out of, and being necessarily connected with, the parties' respective obligations under the July 27, 2004 Memorandum of Agreement. Petitioner cannot be faulted for raising the issue of unpaid rentals in the specific performance case or for raising the same issue in the present ejectment case, since it appears that respondent's alleged failure to pay the rent led to the non-renewal of the Contracts of Lease. However, it must be emphasized that any recovery made by petitioner of unpaid rentals in either its ejectment case or in the specific performance case must bar recovery in the other, pursuant to the principle of unjust enrichment.[109]

A judgment in the Complaint for Interpleader will likewise not be *res judicata* against the ejectment complaint. The plaintiff in the interpleader case, 4H Intramuros, allegedly representing the tenants occupying Puerta de Isabel II, does not expressly disclose in its Complaint[110] for Interpleader the source of its right to occupy those premises. However, it can be determined from petitioner's Answer[111] and from respondent's Memorandum[112] that the members of 4H Intramuros are respondent's sublessees.

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[108] *Id.* at 519-522.

[109] See CIVIL CODE, Art. 22 which states:

Article 22. Every person who through an act of performance by another, or any other means, acquires or comes into possession of something at the expense of the latter without just or legal ground, shall return the same to him.

[110] *Rollo*, pp. 285-291.

[111] *Id.* at 304-318. See p. 305, which states in part:

During the consultation meetings, *plaintiff's alleged members acknowledged and realized that as sublessees of [Offshore Construction]*, they cannot have any superior right over their sublessor. (Emphasis supplied)

[112] *Id.* at 677-696. See p. 683, which states in part:

A sublessee cannot invoke a superior right over that of the sublessor.[113] A judgment of eviction against respondent will affect its sublessees since the latter's right of possession depends entirely on that of the former.[114] A complaint for interpleader by sublessees cannot bar the recovery by the rightful possessor of physical possession of the leased premises.

Since neither the specific performance case nor the interpleader case constituted forum shopping by petitioner, the Metropolitan Trial Court erred in dismissing its Complaint for Ejectment.

IV

Ordinarily, this case would now be remanded to the Metropolitan Trial Court for the determination of the rightful possessor of the leased premises. However, this would cause needless delay inconsistent with the summary nature of ejectment proceedings.[115] Given that there appears sufficient evidence on record to make this determination, judicial economy dictates that this Court now resolve the issue of possession.[116]

It is undisputed that respondent's occupation and use of Baluarte de San Andres, Baluarte de San Francisco de Dilao, and Revellin de Recoletos started on September 1, 1998 by virtue of Contracts of Lease all dated August 20, 1998.[117] The

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This case involves the same parties as Defendants ([Intramuros] and [Offshore Construction], the *Plaintiff 4H being the Sub-Lessees of [Offshore Construction])* . . . (Emphasis supplied)

[113] *The Heirs of Eugenio Sevilla, Inc. v. Court of Appeals*, 283 Phil. 490, 499 (1992) [Per *J*. Davide, Jr., Third Division].

[114] *Guevara Realty, Inc. v. Court of Appeals*, 243 Phil. 620, 624-625 (1988) [Per *J*. Gutierrez, Jr., Third Division].

[115] *Spouses Morales v. Court of Appeals*, 349 Phil. 262, 272 (1998) [Per *J*. Panganiban, Third Division].

[116] See *Cathay Metal Corp. v. Laguna West Multi-Purpose Cooperative, Inc*., 738 Phil. 37 (2014) [Per *J*. Leonen, Third Division].

[117] *Rollo*, pp. 96-126.

Contracts of Lease were modified through Addendums to the Contracts likewise dated August 20, 1998.[118]

Then, to amicably settle Civil Case No. 98-91587 entitled *Offshore Construction and Development Company v. Hon. Gemma Cruz-Araneta and Hon. Dominador Ferrer, Jr.*, then pending before Branch 47, Regional Trial Court, Manila,[119] the parties and the Department of Tourism entered into a July 26, 1999 Compromise Agreement. In the Compromise Agreement, the parties affirmed the validity of the lease contracts, but agreed to transfer the areas to be occupied and used by respondent in Baluarte de San Andres and Baluarte de San Francisco de Dilao due to improvements that it had introduced to the leased premises.[120] The lease over Revellin de Recoletos was terminated.[121] It appears that under this Compromise Agreement, the original five (5)-year period of the Contracts of Lease were retained,[122] such that the leases would expire on August 31, 2003, and renewable for another five (5) years upon the parties' mutual agreement.[123]

Thereafter, the Contracts of Lease expired. Respondent does not concede this, but there is no proof that there has been any contract mutually agreed upon by the parties for any extensions of the leases. Respondent can only argue that petitioner's continuing tolerance of respondent's possession and acceptance of respondent's rental payments impliedly renewed the Contracts of Lease.[124]

But petitioner's tolerance of respondent's occupation and use of the leased premises after the end of the lease contracts

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[118] *Id.* at 127-138.

[119] *Id.* at 139.

[120] *Id.* at 139 and 141.

[121] *Id.* at 142.

[122] *Id.* at 142.

[123] *Id.* at 128, 132, and 136.

[124] *Id.* at 688-689.

does not give the latter a permanent and indefeasible right of possession in its favor. When a demand to vacate has been made, as what petitioner had done, respondent's possession became illegal and it should have left the leased premises. In *Cañiza v. Court of Appeals*:[125]

> The Estradas' first proffered defense derives from a literal construction of Section 1, Rule 70 of the Rules of Court which inter alia authorizes the institution of an unlawful detainer suit when "the possession of any land or building is unlawfully withheld after the expiration or termination of the right to hold possession, by virtue of any contract, express or implied." They contend that since they did not acquire possession of the property in question "by virtue of any contract, express or implied" — they having been, to repeat, "allowed to live temporarily . . . (therein) for free, out of . . . (Cañiza's) kindness" — in no sense could there be an "expiration or termination of . . . (their) right to hold possession, by virtue of any contract, express or implied." Nor would an action for forcible entry lie against them, since there is no claim that they had "deprived (Cañiza) of the possession of . . . (her property) by force, intimidation, threat, strategy, or stealth."
>
> The argument is arrant sophistry. Cañiza's act of allowing the Estradas to occupy her house, rent-free, did not create a permanent and indefeasible right of possession in the latter's favor. Common sense, and the most rudimentary sense of fairness clearly require that act of liberality be implicitly, but no less certainly, accompanied by the necessary burden on the Estradas of returning the house to Cañiza upon her demand. More than once has this Court adjudged that a person who occupies the land of another at the latter's tolerance or permission without any contract between them is necessarily bound by an implied promise that he will vacate upon demand, failing which a summary action for ejectment is the proper remedy against him. *The situation is not much different from that of a tenant whose lease expires but who continues in occupancy by tolerance of the owner, in which case there is deemed to be an unlawful deprivation or withholding of possession as of the date of the demand to vacate. In other words, one whose stay is merely tolerated becomes a deforciant illegally occupying the land or property the moment he is required to leave.* Thus, in *Asset Privatization Trust vs. Court of Appeals*,

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[125] 335 Phil. 1107 (1997) [Per *C.J.* Narvasa, Third Division].

where a company, having lawfully obtained possession of a plant upon its undertaking to buy the same, refused to return it after failing to fulfill its promise of payment despite demands, this Court held that "(a)fter demand and its repudiation, . . . (its) continuing possession . . . became illegal and the complaint for unlawful detainer filed by the . . . (plant's owner) was its proper remedy."[126] (Emphasis supplied, citations omitted)

The existence of an alleged concession agreement between petitioner and respondent is unsupported by the evidence on record. The Metropolitan Trial Court found that a concession agreement existed due to the agreements entered into by the parties:

This Court agrees with the defendant. The various contracts of lease between the parties notwithstanding, the existence of the other agreements involved herein cannot escape the scrutiny of this Court. Although couched in such words as "contracts of lease", the relationship between the parties has evolved into another kind — that of a concession agreement whereby defendant [Offshore Construction] undertook to develop several areas of the Intramuros District, defendant [Offshore Construction] actually commenced the development of the subject premises and incurred expenses for the said development, effectively making the relationship more than an ordinary lessor-lessee but one governed by concession whereby both parties undertook other obligations in addition to their basic obligations under the contracts of lease. *Consensus facit legem* (The parties make their own law by their agreement). It behooves this Court to respect the parties' contracts, including the memoranda of agreement that ensued after it. . . .[127]

Respondent claims that the parties' agreement was for it to operate the leased premises to recover its investments and to make profits. However, a review of the Contracts of Lease show that they are lease contracts, as defined in Article 1643 of the Civil Code:

Article 1643. In the lease of things, one of the parties binds himself to give to another the enjoyment or use of a thing for a price certain,

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[126] *Id.* at 1115-1117.

[127] *Rollo*, p. 79.

and for a period which may be definite or indefinite. However, no lease for more than ninety-nine years shall be valid.

The restrictions and limitations on respondent's use of the leased premises are consistent with petitioner's right as lessor to stipulate the use of the properties being leased.[128] Neither the Contracts of Lease nor their respective Addendums to the Contract contain any stipulation that respondent may occupy and use the leased premises until it recovers the expenses it incurred for improvements it introduced there. Instead, the lease period was fixed at five (5) years, renewable for another five (5) years upon mutual agreement:

> 3. CONTRACT TERM. (Leased Period) This lease shall be for a period of FIVE YEARS (5 YRS) commencing from September 1, 1998 to August 31, 2003, renewable for another period of FIVE YEARS (5 YRS) under such terms and condition that may be mutually agreed upon in writing by the parties[.][129]

The subsequent contracts, namely, the July 26, 1999 Compromise Agreement and the July 27, 2004 Memorandum of Agreement, also do not point to any creation of a "concession" in favor of respondent. The Compromise Agreement affirms the validity of the lease contracts, while the Memorandum of Agreement was for the payment of respondent's arrears until July 2004.

However, this Court cannot award unpaid rentals to petitioner pursuant to the ejectment proceeding, since the issue of rentals in Civil Case No. 08-119138 is currently pending with Branch 37, Regional Trial Court, Manila, by virtue of petitioner's counterclaim.

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[128] CIVIL CODE, Art. 1657(2) states:

> Article 1657. The lessee is obliged:
>
> x x x x x x x x x
>
> (2) To use the thing leased as a diligent father of a family, devoting it to the use stipulated; and in the absence of stipulation, to that which may be inferred from the nature of the thing leased, according to the custom of the place[.]

[129] *Rollo*, pp. 128, 132, and 136.

As the parties dispute the amounts to be offset under the July 27, 2004 Memorandum of Agreement and respondent's actual back and current rentals due,[130] the resolution of that case is better left to the Regional Trial Court for trial on the merits.

WHEREFORE, the Petition for Review on Certiorari is **GRANTED**. The April 14, 2011 Decision of Branch 173, Regional Trial Court, Manila in Civil Case No. 10-124740 is **REVERSED AND SET ASIDE**, and a new decision is hereby rendered ordering respondent Offshore Construction and Development Company and any and all its sublessees and successors-in-interest to vacate the leased premises immediately.

Branch 37, Regional Trial Court, Manila is **DIRECTED** to resolve Civil Case No. 08-119138 with dispatch.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 202052. March 7, 2018]

SECURITIES AND EXCHANGE COMMISSION (SEC) and INSURANCE COMMISSION (IC), *petitioners, vs.* **COLLEGE ASSURANCE PLAN PHILIPPINES, INC.,** *respondent.*

SYLLABUS

1. COMMERCIAL LAW; PRE-NEED CODE OF THE PHILIPPINES (RA 9829) *VIS-À-VIS* SECURITIES AND

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[130] *Id.* at 224 and 252.

REGULATION CODE AND NEW RULES ON THE REGISTRATION AND SALE OF PRE-NEED PLANS; TRUST FUND, CONCEPT OF.— In respect of pre-need companies, the trust fund is set up from the planholders' payments to pay for the cost of benefits and services, termination values payable to the planholders and other costs necessary to ensure the delivery of benefits or services to the planholders as provided for in the contracts. The trust fund is to be treated as separate and distinct from the paid-up capital of the company, and is established with a trustee under a trust agreement approved by the Securities and Exchange Commission to pay the benefits as provided in the pre-need plans.

2. ID.; ID.; ID.; TRUST FUND IS ESTABLISHED TO ENSURE THE DELIVERY OF THE GUARANTEED BENEFITS AND SERVICES PROVIDED UNDER THE PRE-NEED PLAN CONTRACT; "BENEFITS," EXPLAINED; THE OBLIGATION TO PAY SMART AND FEMI DID NOT CONSTITUTE THE "BENEFITS" OR "COST OF SERVICES RENDERED" OR "PROPERTY DELIVERED" UNDER RA 9829 AND THE NEW RULES.— The term "benefits" used in Section 16.4 is defined as "the money or services which the Pre-Need Company undertakes to deliver in the future to the planholder or his beneficiary." Accordingly, benefits refer to the payments made to the planholders as stipulated in their pre-need plans. Worthy of emphasis herein is that the trust fund is established "to ensure the delivery of the guaranteed benefits and services provided under a pre-need plan contract." Hence, benefits can only mean payments or services rendered to the planholders by virtue of the pre-need contracts. Moreover, Section 30 of R.A. No. 9829 expressly stipulates that the trust fund is to be used *at all times* for the *sole benefit* of the planholders, and cannot ever be applied to satisfy the claims of the creditors of the company[.] x x x Section 30 prohibits the utilization of the trust fund for purposes other than for the benefit of the planholders. The allowed withdrawals (specifically, the cost of benefits or services, the termination values payable to the planholders, the insurance premium payments for insurance-funded benefits of memorial life plans and other costs) refer to payments that the pre-need company had undertaken to be made based on the contracts. Accordingly, the CA gravely erred in authorizing the payment out of the trust fund of the obligations due to Smart and FEMI. Even

assuming that the obligations were incurred by the respondent in order to infuse sufficient money in the trust fund to correct its deficiencies, such obligations should be paid for by its assets, not by the trust fund. Indeed, Section 30 definitely provided that the trust fund could not be used to satisfy the claims of the respondent's creditors.

3. ID.; ID.; ID.; PAYMENT TO SMART AND FEMI WAS NOT AN ADMINISTRATIVE EXPENSE TO BE WITHDRAWN FROM THE TRUST FUND; PAYMENT OF ADMINISTRATIVE EXPENSE WAS THE LIABILITY OF RESPONDENT'S ASSETS, NOT OF THE TRUST FUND.— Section 16.4, Rule 6 of the New Rules made an exclusive enumeration of the administrative expenses that may be withdrawn from the trust fund, as follows: trust fees, bank charges and investment expenses in the operation of the trust fund, taxes on trust funds, as well as reasonable withdrawals for minor repairs and costs of ordinary maintenance of trust fund assets. Evidently, the purchase price of the bonds for the capital infusion to the trust fund was not included as an administrative expense that could be validly taken from the trust fund. Yet, assuming that the unpaid obligation to Smart and FEMI constituted an administrative expense, its payment was the liability of the respondent's assets, not of the trust fund. It is already clear and definite enough that the trust fund was separate and distinct from the corporate assets of the respondent. In other words, only the planholders as the beneficiaries of the trust fund could claim against the trust fund, to the exclusion of Smart and FEMI as the respondent's creditors.

APPEARANCES OF COUNSEL

Office of the Solicitor General for petitioners.
Poblador Bautista & Reyes for respondent.

D E C I S I O N

BERSAMIN, *J.*:

The dispute concerns the use of the assets of the trust fund of the respondent as a pre-need company. We reiterate that the law clearly establishes the trust fund for the sole benefit of the

planholders, and its assets cannot be used to satisfy the claims of the creditors of the company.

The Case

This appeal assails the decision promulgated on June 14, 2011,[1] whereby the Court of Appeals (CA) nullified the orders issued by the Regional Trial Court (RTC), Branch 149, in Makati City on April 29, 2009,[2] September 18, 2009[3] and January 18, 2010[4] in SP. No. M-6144 entitled *In the Matter of Petition for Corporate Rehabilitation*; *College Assurance Plan Philippines, Inc.*, *Petitioner*, and disposed thusly:

> **WHEREFORE, premises considered,** finding grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the public respondent, the instant petition is **GRANTED**. The assailed Orders dated April 29, 2009, September 18, 2009 and January 18, 2010 of the Regional Trial Court of Makati City, Branch 149, is hereby **NULLIFIED**. Petitioner College Assurance Plan Philippines, Inc., through its Receiver, is directed to pay its outstanding obligation to Smart Share Investment, Ltd., and Fil-Estate Management, Inc. in the amount of $6 million as set aside by the Trustee, Philippine Veterans Bank.
>
> **SO ORDERED**.[5]

Antecedents

The CA narrated the following factual and procedural antecedents:

> Petitioner College Assurance Plan Philippines, Inc. (CAP) is a duly registered domestic corporation with the primary purpose of

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[1] *Rollo*, pp. 135-159; penned by Associate Justice Rosmari D. Carandang, with Associate Justice Ramon R. Garcia and Associate Justice Samuel H. Gaerlan, concurring.

[2] *Id.* at 373.

[3] *Id.* at 430-431.

[4] *Id.* at 488-490.

[5] *Supra* note 1, at 159.

selling pre-need educational plans. To guarantee the payment of benefits under its educational plans, CAP set up a Trust Fund contributing therein a certain percentage of the amount actually collected from each planholder. The Trust Fund, with the aid of trustee banks, is invested in assets and securities with yields higher than the projected increase in tuition fees. With the adoption of the policy of deregulation of private educational institutions by the Department of Education in 1993 and the economic crisis and peso devaluation which started in 1997, CAP and its Trust Fund were adversely affected.

In 2000, Republic Act No. 8799 (Securities Regulation Code) was passed. Pursuant thereto, the Securities and Exchange Commission (SEC) promulgated on August 16, 2001 the New Rules on the Registration and Sale of Pre-Need Plans under Section 16 of the Securities Regulation Code. With the adoption of the Pre-Need Uniform Chart of Accounts for the accounting and reporting of the operations of the pre-need companies in the Philippines and the new rules on the valuation of trust funds invested in real property, CAP incurred a trust fund deficiency of ₱3.179 billion as of December 31, 2001. In compliance with the directive of SEC to submit a funding scheme to correct the deficiency, CAP, among others, proposed to purchase MRT III Bonds and assign the same to the Trust Fund. Hence, on August 6, 2002, CAP purchased MRT III Bonds with a present value then of $14 million from Smart[6] and FEMI,[7] and assigned the same to the Trust Fund. The purchase price was to be paid by CAP in sixty (60) monthly installments payable over five (5) years. This obligation was secured by a Deed of Chattel Mortgage over 9,762,982 common shares of Comprehensive Annuity Plans & Pension Corporation owned by CAP. In 2003, after having paid US$6,536,405.01 of the total purchase price, CAP was ordered by the SEC Oversight Board to stop paying SMART/FEMI due to its perceived inadequacy of CAP's funds.

On August 23, 2005, CAP filed a *Petition for Rehabilitation*. After finding the petition to be sufficient in form and substance, a Stay Order was issued by the court effectively staying and suspending the enforcement of all claims against CAP. Mr. Mamerto Marcelo, Jr. was appointed as Interim Rehabilitation Receiver.

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[6] Referring to Smart Share Investment, Ltd.

[7] Referring to Fil-Estate Management, Inc.

In its Order dated December 16, 2005, the trial court gave due course to CAP's Petition for Rehabilitation and directed the Receiver to submit a report on the rehabilitation plan. The 2006 Revised Business Plan was approved by the court on November 8, 2006. Under the Rehabilitation Plan, CAP intended to sell in 2009 the MRT Bonds at 60% of their face value of US$ 81.2 million.

While negotiations to effect the sale were ongoing, Smart demanded that CAP settle its outstanding balance of US$ 10,680,045.25 as February 28, 2009 and warned that, should CAP insist on holding on to the MRT III Bonds instead of selling them, Smart would demand the immediate return of the MRT III Bonds as full and final settlement of CAP's outstanding obligation. The Receiver denied that CAP has agreed to pay its liabilities to FEMI and Smart from the proceeds of the prospective sale of the MRT III Bonds. On April 13, 2009, the Receiver filed a Manifestation seeking the public respondent's approval of the sale of MRT III Bonds, with a face value of US$ 81,2000,000.00, "at the best possible price" to the Development Bank of the Philippines (DBP) and the Land Bank of the Philippines.

In the Order of April 15, 2009, the public respondent approved the ale of MRT III Bonds "at the best possible price." Two days later, the Receiver received a letter from FEMI that Smart intended to annotate a notice of unpaid seller's lien on the MRT III Bonds with Deutsche Bank, the custodian bank. However, Smart opted not to do so and would instead assist in finding a buyer provided that the seller's lien of US$ 9.5 million will be settled through the arrangement it presented, subject to the approval of the rehabilitation court. The Receiver then filed a Manifestation with Motion dated April 22, 2009 where he sought the public respondent's approval of CAP's payment of its obligations to Smart and FEMI, partly from the proceeds of the sale of the MRT III Bonds.

The MRT III Bonds were in fact sold at US$ 21,501,760 to DBP and Land Bank. The Buyers agreed to purchase the MRT III Bonds at a premium of 3.30% made possible by: (1) Smart's desistance from enforcing its unpaid seller's lien, (2) FEMI's relinquishing its four (4) board seats with Metro Rail Transit Corporation, (3) swap arrangement of FEMI shares held by CAP to liquidate $3.5 million of the outstanding obligation; and (4) substantial discount of $1.2 million from CAP's outstanding liabilities. The contract of sale was perfected and partly consummated — FEMI gave up its four (4) board seats in MRTC, the MRT III Bonds were delivered to the buyers, and the buyers paid $21,501,760 to CAP, which amount was credited

to its trust accounts with Philippine Veterans Bank (PVB). However, CAP's payment to Smart and FEMI remained to be executed.[8]

Based on the foregoing antecedents, the receiver moved for the payment of the respondent's obligations to Smart and FEMI. The RTC approved the motion in open court on April 24, 2009.[9] However, on April 29, 2009, the RTC withdrew the approval and instead ordered the receiver and the respondent to file their reply to the opposition.[10] After the exchange of pleadings, the RTC issued a joint order dated September 18, 2009 denying the motion to approve payment to Smart as well as the motion to approve the respondent's additional equity infusion in CAP General Insurance.[11]

Subsequently, the respondent received summons from the High Court of Hong Kong Special Administrative Region, Court of First Instance, directing it to either satisfy the claim of Smart and FEMI, or to return the Acknowledgment of Service, stating whether it intended to contest the proceedings or to make an admission. In view of this, the respondent filed its motion dated December 21, 2009 in the RTC seeking authorization to pay the claims of Smart and FEMI and explaining that the institution of the action in Hong Kong presented a real threat that the buyers would rescind their contact with the respondent and demand the return of the purchase price of $21,501,760.00.[12]

On January 18, 2010, the RTC issued the assailed order denying the respondent's motion for payment to Smart and FEMI, and holding that in keeping with the principle of "equality is equity" in rehabilitation proceedings, the respondent's assets should be held in trust for the equal benefit of all the creditors, both secured and unsecured, who stood on equal footing during the rehabilitation.[13] The RTC disposed as follows:

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[8] *Rollo*, pp. 136-139.

[9] *Id.* at 140.

[10] *Id.* at 373.

[11] *Id.* at 430-431.

[12] *Id.* at 432-435.

[13] *Id.* at 438-490.

WHEREFORE, premises considered, the motion dated December 21, 2009 for authority to settle CAP's obligations to Smart Share Investments Ltd. and Fil Estate Management, Inc. is hereby **denied** for utter lack of merit.

SO ORDERED.[14]

Decision of the CA

The foregoing developments impelled the respondent to bring a petition for *certiorari* to the CA, insisting therein that:[15]

I

RESPONDENT COURT ACTED WITHOUT OR IN EXCESS OF JURISDICTION, OR WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF EXCESS OF JURISDICTION, WHEN IT UNILATERALLY MODIFIED THE TERMS AND CONDITIONS OF THE SALE OF THE MRT III BONDS AS AGREED UPON BY THE PARTIES

II

RESPONDENT COURT ACTED WITHOUT OR IN EXCESS OF JURISDICTION, OR WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION, WHEN IT DENIED THE RECEIVER'S MOTION, KNOWING FULLY WELL THAT SUCH ACTION WILL BE DETRIMENTAL TO THE INTERESTS OF CAP AND ITS STAKEHOLDERS

On August 17, 2010, upon the application of the respondent, the CA directed Philippine Veterans Bank and the receiver to set aside US$6 million from the proceeds of the sale of the MRT III Bonds pending the determination of the suit.[16]

On June 14, 2011, the CA promulgated the assailed decision,[17] whereby it found and declared that the RTC had committed grave abuse of discretion in disapproving the payment of the

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[14] *Id*. at 490.

[15] *Id*. at 503.

[16] *Id*. at 537-544.

[17] *Id*. at 135-159.

respondent's obligation to Smart and FEMI from the proceeds of the sale of the MRT III Bonds.

The CA opined that payment to Smart and FEMI constituted "benefits" that could be validly withdrawn from the trust fund pursuant to Rule 16.4 of the *New Rules on the Registration and Sale of Pre-Need Plans under Section 16 of the Securities and Regulation Code* (New Rules) in relation to Section 30 of Republic Act No. 9829 (*Pre-Need Code of the Philippines*);[18] that because the MRT III Bonds had not been fully paid, the unpaid portion of the purchase price thereof could not be considered as part of the trust fund; that considering that there was an unpaid seller's lien, the payment to Smart and FEMI from the proceeds of the sale could not be considered as payment to an ordinary creditor, but as payment to the contributors of the source of the assets of the trust fund;[19] that at any rate the respondent's outstanding obligation to Smart and FEMI could be considered as an administrative expense not covered by the stay order, and was an expense to preserve the assets of the trust fund;[20] and that the "equality is equity" principle did not apply because Smart and FEMI had played a significant role in the sale of the MRT III Bonds that had worked for the benefit of the planholders.[21]

The petitioners sought reconsideration, but the CA denied their motion for that purpose on May 21, 2012.[22]

Hence, this appeal.

Issues

The petitioners hereby submit the following for consideration:

I

WHETHER OR NOT THE PAYMENT OF RESPONDENT'S OUTSTANDING OBLIGATION TO SMART AND FEMI,

[18] *Id*. at 147.

[19] *Id*. at 149-150.

[20] *Id*. at 151-153.

[21] *Id.* at 156-157.

[22] *Id*. at 162-171.

REPRESENTING THE BALANCE OF THE PURCHASE PRICE OF THE MRT III BONDS CAN BE VALIDLY WITHDRAWN FROM THE RESPONDENT'S TRUST FUND.

II

WHETHER OR NOT PAYMENT OF RESPONDENT'S OUTSTANDING OBLIGATION TO SMART AND FEMI CAN BE CONSIDERED AN ADMINISTRATIVE EXPENSE AND, THUS, AN ALLOWABLE WITHDRAWAL FROM THE RESPONDENT'S TRUST FUND.

III

WHETHER OR NOT THE TRIAL COURT ACTED WITHOUT OR IN EXCESS OF JURISDICTION OR WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR IN EXCESS OF JURISDICTION IN DENYING PAYMENT OF RESPONDENT'S OBLIGATION TO SMART AND FEMI FROM THE PROCEEDS OF THE SALE OF THE MRT III BONDS, WHICH FORM PART OF THE RESPONDENT'S TRUST FUND.[23]

The petitioners maintain that the trust fund, being essentially and primarily constituted for the sole and exclusive benefit of the planholders, should be treated separately and distinctly from the paid-up capital and assets of the respondent; that Section 30 of R.A. No. 9829 provided that the trust fund should in no case be used to satisfy the claims of the creditors of the pre-need company;[24] that because the proceeds of the sale of the MRT III Bonds formed part of the assets of the trust fund, they were not owned by the respondent, but by the trustee insofar as the legal title was concerned and by the planholders as beneficial owners;[25] that contrary to the view of the CA, the infusion to the trust fund made by the respondent to cover its deficiency could not have diluted the nature and purpose of the trust fund because the respondent was legally required to make the necessary deposit in case of fund insufficiency;[26] that

[23] *Id*. at 51-52.

[24] *Id.* at 52-66.

[25] *Id*. at 72.

[26] *Id*. at 73.

the "benefits" mentioned in Section 16.4, Rule 16 of the New Rules referred to those that the pre-need company undertook to deliver to planholders; that consequently the "cost of services rendered or property delivered" should refer to the cost of any service or property that the pre-need company undertook to deliver to the planholders in the future as specified in their respective pre-need plans; that the cost of property infused by the pre-need company in order to cover the deficiency in the trust fund was excluded; and that the CA erred in ruling that the payment to Smart and FEMI constituted "benefits" or "cost of services or property delivered" that could be withdrawn from the trust fund.[27]

Lastly, the petitioners posit that administrative expenses included whatever was incurred in the operation of the trust fund, like trust fees, bank charges and investment expenses used in the operation of the trust fund, taxes on the fund, and reasonable withdrawals for minor repairs and cost of ordinary maintenance of the fund, but did not include the cost of the capital asset infused in the trust fund.[28]

In its comment,[29] the respondent counters that the settlement of its obligation to Smart and FEMI was a necessary condition of the sale of the MRT III Bonds; that the RTC had already approved the payment of said obligations on April 24, 2009, but withdrew the approval on April 29, 2009 despite its knowledge that the sale had been partly consummated;[30] that the RTC as the rehabilitation court had no power to modify the terms of the contract of sale as negotiated and agreed upon by the parties;[31] that the "cost of services" that could be validly withdrawn from the trust fund included payments of obligations, aside from those made to the planholders, trustees, banks, and the Government, among others; that the payment of its obligation

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[27] *Id*. at 86-93.

[28] *Id*. at 106-107.

[29] *Id*. at 720-754.

[30] *Id*. at 737-741.

[31] *Id*. at 744-746.

to Smart and FEMI constituted a "cost" of converting the MRT III Bonds to much-needed cash that redounded to the benefit of the planholders;[32] that the sale of the MRT III Bonds, having been realized through the concessions made by Smart and FEMI, was made for the benefit of the planholders;[33] and that disapproving the payment to Smart and FEMI would result to a protracted litigation that might be ultimately detrimental to its rehabilitation, among other consequences.[34]

Did the CA correctly rule that the obligation to pay to Smart and FEMI constituted "benefits" or "cost of services rendered or property delivered" or "administrative expense" that could be validly withdrawn from the trust fund pursuant to Section 16.4, Rule 16 of the New Rules and Section 30 of R.A. No. 9829?

Ruling of the Court

The appeal is meritorious.

I

The obligation to pay Smart and FEMI did not constitute the "benefits" or "cost of services rendered" or "property delivered" under Section 16.4, Rule 16 of the New Rules and Section 30 of R.A. No. 9829

The petitioners submit that the trust fund should be treated separately and distinctly from the corporate assets and obligations of the respondent. On the other hand, the respondent insists that the CA correctly ruled that the payment to Smart and FEMI constituted a valid withdrawal from the trust fund because it was upon a "benefit" in the nature of "cost for services rendered or property delivered."

We uphold the submission of the petitioners.

In respect of pre-need companies, the trust fund is set up from the planholders' payments to pay for the cost of benefits

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[32] *Id.* at 747-749.

[33] *Id.* at 751-752.

[34] *Id.* at 753-757.

and services, termination values payable to the planholders and other costs necessary to ensure the delivery of benefits or services to the planholders as provided for in the contracts.[35] The trust fund is to be treated as separate and distinct from the paid-up capital of the company, and is established with a trustee under a trust agreement approved by the Securities and Exchange Commission to pay the benefits as provided in the pre-need plans.[36]

Section 16.4, Rule 16 of the New Rules, which governs the utilization of the trust fund, states as follows:

> 16.4. No withdrawal shall be made from the Trust Fund except for paying the **Benefits** such as the **monetary consideration, the cost of services rendered or property delivered**, trust fees, bank charges and investment expenses in the operation of the Trust Fund, termination values payable to the Planholders, annuities, contributions of cancelled plans to the fund and taxes on Trust Funds. Furthermore, only reasonable withdrawals for minor repairs and costs of ordinary maintenance of trust fund assets shall be allowed. (Bold scoring supplied for emphasis)

The term "benefits" used in Section 16.4 is defined as "the money or services which the Pre-Need Company undertakes to deliver in the future to the planholder or his beneficiary."[37] Accordingly, benefits refer to the payments made to the planholders as stipulated in their pre-need plans. Worthy of emphasis herein is that the trust fund is established "to ensure the delivery of the guaranteed benefits and services provided under a pre-need plan contract."[38] Hence, benefits can only mean payments or services rendered to the planholders by virtue of the pre-need contracts.

Moreover, Section 30 of R.A. No. 9829 expressly stipulates that the trust fund is to be used *at all times* for the *sole benefit*

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[35] Section 4(j), R.A. No. 9829.

[36] Section 1.9, Rule 1, New Rules.

[37] Section 1.6, Rule 1, New Rules.

[38] Section 30, R.A. No. 9829.

of the planholders, and cannot ever be applied to satisfy the claims of the creditors of the company, *viz.*:

> Section 30. *Trust Fund.* — To ensure the delivery of the guaranteed benefits and services provided under a pre-need plan contract, a trust fund per pre-need plan category shall be established. A portion of the installment payment collected shall be deposited by the pre-need company in the trust fund, the amount of which will be as determined by the actuary based on the viability study of the pre-need plan approved by the Commission. **Assets in the trust fund shall at all times remain for the sole benefit of the planholders. At no time shall any part of the trust fund be used for or diverted to any purpose other than for the exclusive benefit of the planholders. In no case shall the trust fund assets be used to satisfy claims of other creditors of the pre-need company. The provision of any law to the contrary notwithstanding, in case of insolvency of the pre-need company, the general creditors shall not be entitled to the trust fund.**
>
> **Except for the payment of the cost of benefits or services, the termination values payable to the planholders, the insurance premium payments for insurance-funded benefits of memorial life plans and other costs necessary to ensure the delivery of benefits or services to planholders, no withdrawal shall be made from the trust fund unless approved by the Commission**. The benefits received by the planholders shall be exempt from all taxes and the trust fund shall not be held liable for attachment, garnishment, levy or seizure by or under any legal or equitable processes except to pay for the debt of the planholder to the benefit plan or that arising from criminal liability imposed in a criminal action.
>
> The trust fund shall at all times be sufficient to cover the required pre-need reserve. (Bold underscoring supplied)

Section 30 prohibits the utilization of the trust fund for purposes other than for the benefit of the planholders. The allowed withdrawals (specifically, the cost of benefits or services, the termination values payable to the planholders, the insurance premium payments for insurance-funded benefits of memorial life plans and other costs) refer to payments that the pre-need company had undertaken to be made based on the contracts.

Accordingly, the CA gravely erred in authorizing the payment out of the trust fund of the obligations due to Smart and FEMI.

Even assuming that the obligations were incurred by the respondent in order to infuse sufficient money in the trust fund to correct its deficiencies, such obligations should be paid for by its assets, not by the trust fund. Indeed, Section 30 definitely provided that the trust fund could not be used to satisfy the claims of the respondent's creditors. Worthy to reiterate is our pronouncement in *Securities and Exchange Commission v. Laigo*,[39] as follows:

> In the course of delving into the complex relationships created by the agreement and the existing regulatory framework, this Court finds that Legacy's claimed interest in the enforcement of the trust and in the trust properties is mere apparent than real. Legacy is not a beneficiary.
>
> *First*, it must be stressed that a person is considered as a beneficiary of a trust if there is a manifest intention to give such a person the beneficial interest over the trust properties. This is the considered opinion expressed in the Restatement of the Law of Trust *(Restatement)* which Justice Vicente Abad Santos has described in his contribution to the Philippine Law Journal as containing the more salient principles, doctrines and rules on the subject. Here, the terms of the trust agreement plainly confer the status of beneficiary to the planholders, not to Legacy. In the recital clauses of the said agreement, Legacy bound itself to provide for the sound, prudent and efficient management and administration of such portion of the collection **"for the benefit and account of the planholders,"** through LBP (as the trustee).
>
> This categorical declaration doubtless indicates that the intention of the trustor is to make the planholders the beneficiaries of the trust properties, and not Legacy. It is clear that because the beneficial ownership is vested in the planholders and the legal ownership in the trustee, LBP, Legacy, as trustor, is left without any iota of interest in the trust fund. This is consistent with the nature of a trust arrangement, whereby there is a separation of interests in the subject matter of the trust, the beneficiary having an equitable interest, and the trustee having an interest which is normally legal interest.
>
> *Second*, considering the fact that a mandated pre-need trust is one imbued with public interest, the issue on who the beneficiary is must be determined on the basis of the entire regulatory framework. Under

[39] G.R. No. 188639, September 2, 2015, 768 SCRA 633.

the New Rules, it is unmistakable that the beneficial interest over the trust properties is with the planholders. Rule 16.3 of the New Rules provides that: *[n]o withdrawal shall be made from the trust fund except for paying the benefits such as monetary consideration, the cost of services rendered or property delivered, trust fees, bank charges and investment expenses in the operation of the trust fund, termination values payable to the planholders, annuities, contributions of cancelled plans to the fund and taxes on trust funds*.

Rule 17.1 also states that to ensure the liquidity of the trust fund to guarantee the delivery of the benefits provided for under the plan contract and to obtain sufficient capital growth to meet the growing actuarial reserve liabilities, all investments of the trust fund shall be limited to Fixed Income Instruments, Mutual Funds, Equities, and Real Estate, subject to certain limitations.

Further, Rule 20.1 directs the trustee to exercise due diligence for the protection of the planholders guided by sound investment principles in the exclusive management and control over the funds and its right, at any time, to sell, convert, invest, change, transfer, or otherwise change or dispose of the assets comprising the funds. All these certainly underscore the importance of the planholders being recognized as the ultimate beneficiaries of the SEC-mandated trust.

This consistently runs in accord with the legislative intent laid down in Chapter IV of R.A. No. 8799, or the SRC, which provides for the **establishment of trust funds for the payment of benefits under such plans.** Section 16 of the SRC provides:

> *SEC. 16. Pre-Need Plans.* — No person shall sell or offer for sale to the public any pre-need plan except in accordance with rules and regulations which **the Commission shall prescribe. Such rules shall regulate the sale of pre-need plans** by, among other things, requiring the registration of pre-need plans, licensing persons involved in the sale of pre-need plans, requiring disclosures to prospective plan holders, prescribing advertising guidelines, providing for uniform accounting system, reports and record keeping with respect to such plans, imposing capital, bonding and other financial responsibility, and establishing trust funds for the payment of benefits under such plans. [Emphasis supplied]

It is clear from Section 16 that the underlying congressional intent is to make the planholders the exclusive beneficiaries. It has been

said that what is within the spirit is within the law even if it is not within the letter of the law because the spirit prevails over the letter.

This will by the legislature was fortified with the enactment of R.A. No. 9829 or the Pre-Need Code in 2009. The Congress, because of the chaos confounding the industry at the time, considered it necessary to provide a stronger legal framework so that no entity could claim that the mandate and delegated authority of the SEC under the SRC was nebulous. The Pre-Need Code cemented the regulatory framework governing the pre-need industry with precise specifics to ensure that the rights of the pre-need planholders would be categorically defined and protected. x x x[40]

The CA observed that only the paid value of the MRT III Bonds should be made part of the trust fund; that with the MRT III Bonds being subject to the unpaid seller's lien, Smart and FEMI were considered as contributors to the source of the assets of the trust fund, and for that reason were not to be treated as ordinary creditors of the respondent.[41]

We cannot sustain the observations of the CA.

There had been no indication by the respondent to the trustee bank that only the paid value of the MRT III Bonds should accrue to the trust fund. Even in its comment, the respondent intimated that the bonds were assigned to the trust fund without any reservations or conditions imposed thereon, to wit:

4. x x x With the adoption and immediate retroactive implementation of the Pre-Need Uniform Chart of Accounts for the accounting and reporting of the operations of pre-need companies in the Philippines and the new rules on the valuation of trust funds invested in real property, CAP incurred a trust fund deficiency of ₱3.179 billion as of 31 December 2001. It must be stressed at this point theretofore, CAP has strictly complied with the Trust Fund reserve and build-up requirement of the SEC. The SEC, however, required CAP to immediately submit a funding scheme to correct the deficiency, under pain of summary suspension of its permit to sell and the imposition of other sanctions.

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

[41] *Rollo*, pp. 149-150.

5. In compliance with the above directive of the SEC, CAP proposed the infusion to the Trust Fund of cash, several post-dated checks, land and buildings in Digos, Davao del Sur and Kidapawan, North Cotabato, and MRT III Bonds valued at $4,728,000.00. To cover the remaining balance of the Trust Fund, CAP proposed to, among other, purchase more MRT III Bonds and assign the same to the Trust Fund. Hence, on 6 August 2002, CAP purchased MRT III Bonds on installment, with a present value then of $14 million, from Smart and FEMI, and assigned the same to the Trust Fund.[42]

Thus, we uphold the petitioners' following stance that the MRT III Bonds already formed part of the assets of the trust fund upon infusion, *viz.*:

[I[n so far as the Trust Fund is concerned, the MRT III bonds, upon their infusion thereto, and consequently, the proceeds of the sale thereof, were considered as the Trust Fund assets themselves.

The Agreement dated August 6, 2002 x x x indicates, thus:

AGREEMENT

KNOW ALL MEN BY THESE PRESENTS:

This AGREEMENT was made and entered into on 6 August 2002 at Hong Kong SAR, by and between:

COLLEGE ASSURANCE PLAN PHILIPPINES, INC., a corporation duly organized and existing under Philippine laws with principal place of business at the 6th [F]loor, CAP I Building, Amorsolo Street, Legaspi Village, Makati City, represented in this act by its Senior Vice President, ALFREDO R. COLLADO, and hereinafter referred to as "CAP";

-and-

BANK OF COMMERCE TRUST SERVICES GROUP AS TRUSTEE FOR COLLEGE ASSURANCE PLAN PHILIPPINES, INC. TRUST FUND, a corporation duly organized and existing under Philippine laws, duly authorized/licensed to perform trust functions, with principal place of

[42] *Id.* at 722-723.

business at Banker's Centre, 6764 Ayala Avenue, Makati City, represented in this act by its Assistant Vice President of the Trust Services Group, LYDIA E. VIRTUSIO, and hereinafter referred to as "TRUSTEE";

WITNESSETH: That

x x x *x x x* *x x x*

WHEREAS, ***upon the sale and delivery by Vendors to CAP of said Bonds, CAP shall assign the Bonds with a present value of approximately US$14,000,000.00 to the Trust Fund administered by and in the possession of the TRUSTEE.***

x x x *x x x* *x x x*

NOW, THEREFORE, for and in consideration of the foregoing premises, the parties agree as follows:

x x x x x x x x x

5. ***CAP represents and warrants that:***

a. It has the legal right to transfer ownership of and interest in the Bonds in favor of TRUSTEE in accordance with the provisions of the contracts, agreements and instruments relating to the issuance and/or transfer thereof. ***It further warrants that the Bonds are not mortgaged nor in any way encumbered in favor of any person or corporation.***

x x x x x x x x x

That the unpaid purchase price of the MRT III bonds in favor of Smart and FEMI was not the liability of the respondent's Trust Fund is clearly shown in the Trust Fund Statements of respondent's Trust Fund with the Bank of Commerce (BOC). Specifically, the Balance Sheet as of December 31, 2002 for CAP's Trust Fund Account No. TG-91-07-00001-C x x x did not include among the respondent's Trust Fund liabilities the subject outstanding obligation of respondent to Smart and FEMI.

Likewise, the Balance Sheet as of February 28, 2009 of the Trust Account of respondent with Philippine Veteran's Bank (PVB) with Trust Account Nos. TA 4450-58-000124 (Old TA No. 81), TA 4450-

58-000126 (Old TA No. 85) and TA 4450-58-000123 (Old TA No. 91), x x x did not report any liability relating to the MRT III bonds.

It should likewise be emphasized that the MRT III bonds substituted the liquid assets available in the restricted PVB Trust Funds under Account Nos. 85 and 91, which were all free from any liens and encumbrances under the management of BOC as trustee.

On the other hand, respondent CAP's unaudited financial statements for the year ended December 31, 2008 submitted to petitioner SEC xxx disclosed that respondent has an outstanding loan obligation to Smart and FEMI. Note 8 of the said corporate financial statements reported the details of the acquired MRT III bonds and the terms of respondent's liability thereto. x x x

x x x x x x x x x

It also bears emphasis that in a Certification dated April 18, 2009 x xx issued by respondent, the same "*unpaid principal balance on the MRT Bonds was declared by CAP as one of their(sic) obligations in its court-approved rehabilitation program" x x x.*

The foregoing financial reports submitted by respondent to the SEC as well as its April 18, 2009 Certification only show that indeed the MRT III bonds were infused to respondent's Trust Fund free from any liens and encumbrances, and that the purchase price thereof is and remains to be respondent's loan obligation to Smart and FEMI, or its corporate liability, and not of the Trust Fund.[43]

II

Payment to Smart and FEMI was not an administrative expense to be withdrawn from the trust fund

The CA ruled that the respondent's outstanding obligation to Smart and FEMI could be considered an administrative expense that was not covered by the stay order.

The ruling of the CA was not warranted.

Section 16.4, Rule 6 of the New Rules made an exclusive enumeration of the administrative expenses that may be withdrawn from the trust fund, as follows: trust fees, bank charges

[43] *Id.* at 74-79.

and investment expenses in the operation of the trust fund, taxes on trust funds, as well as reasonable withdrawals for minor repairs and costs of ordinary maintenance of trust fund assets. Evidently, the purchase price of the bonds for the capital infusion to the trust fund was not included as an administrative expense that could be validly taken from the trust fund.

Yet, assuming that the unpaid obligation to Smart and FEMI constituted an administrative expense, its payment was the liability of the respondent's assets, not of the trust fund. It is already clear and definite enough that the trust fund was separate and distinct from the corporate assets of the respondent. In other words, only the planholders as the beneficiaries of the trust fund could claim against the trust fund, to the exclusion of Smart and FEMI as the respondent's creditors.

ACCORDINGLY, the Court **GRANTS** the petition for review on *certiorari*; **SETS ASIDE** and **REVERSES** the decision promulgated on June 14, 2011 and the resolution promulgated on May 21, 2012 of the Court of Appeals in CA-G.R. SP No. 113576; and **REINSTATES** the orders dated April 29, 2009, September 18, 2009 and January 18, 2010 issued by the Regional Trial Court, Branch 149, in Makati City in SP. No. M-6144.

No pronouncement on costs of suit.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 202069. March 7, 2018]

REPUBLIC OF THE PHILIPPINES, *petitioner, vs.* **ALVIN C. DIMARUCOT and NAILYN TAÑEDO-DIMARUCOT,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; SPECIAL CIVIL ACTIONS; *CERTIORARI*; WARRANTED EVEN WITHOUT PREVIOUSLY FILING A MOTION FOR RECONSIDERATION IF SEEKING RECONSIDERATION IS A USELESS EXERCISE UNDER THE CIRCUMSTANCES.—** It is true that this Court has ruled that "*certiorari*, as a special civil action will not lie unless a motion for reconsideration is first filed before the respondent tribunal, to allow it an opportunity to correct its assigned errors." However, this general rule is subject to well-defined exceptions x x x. The Republic x x x argues that the filing of a motion for reconsideration of the September 2010 RTC Order would have been useless as it was based on the earlier August 2010 RTC Order. The Court agrees. To recall, the denial of the Republic's Notice of Appeal through the September 2010 RTC Order was premised on the RTC's earlier finding that the MR was a *pro-forma* motion due to non-compliance with Rule 15. As well, it is necessary to emphasize that the September 2010 RTC Order explicitly states that the RTC Decision had "attained finality" because the Republic's MR did not toll the Republic's period to appeal. Clearly, the Republic's direct resort to the CA *via certiorari* was warranted under the circumstances, as it was led to believe that seeking reconsideration of the September 2010 RTC Order would have been a useless exercise. **The CA thus erred when it caused the outright dismissal of the CA Petition solely on the basis of the Republic's failure to file a prior motion for reconsideration.**

2. **ID.; ID.; MOTIONS; HEARING OF MOTION; REQUIREMENTS.—** Reference to Sections 4, 5 and 6 of Rule 15 is in order x x x. The requirements outlined in the cited provisions can be summarized as follows: i. Every written motion

which cannot be acted upon without prejudicing the rights of the adverse party must be set for hearing; ii. The adverse party must be given: (a) a copy of such written motion, and (b) notice of the corresponding hearing date; iii. The copy of the written motion and the notice of hearing described in (ii) must be furnished to the adverse party at least three (3) days before the hearing date, unless otherwise ordered by the RTC (3-day notice rule); and iv. No written motion that is required to be heard shall be acted upon by the receiving court without proof of service done in the manner prescribed in (iii). Perusal of the foregoing shows that the Republic failed to comply with the first **and** third requirements.

3. **ID.; PROCEDURAL RULES; MAY BE RELAXED IN THE INTEREST OF SUBSTANTIAL JUSTICE.—** [T]he 3-day notice rule was established *not* for the benefit of movant but for the adverse party, in order to avoid surprises and grant the latter sufficient time to study the motion and enable it to meet the arguments interposed therein. The duty to ensure receipt by the adverse party at least three days before the proposed hearing date necessarily falls on the movant. **Nevertheless, considering the nature of the case and the issues involved therein, the Court finds that relaxation of the Rules was called for.** It is well settled that procedural rules may be relaxed in the interest of substantial justice. Accordingly, the "strict and rigid application, [of procedural rules] which would result in technicalities that tend to frustrate rather than promote substantial justice, must always be eschewed." Here, the State's policy of upholding the sanctity of marriage takes precedence over strict adherence to Rule 15, for the finality of the RTC Decision necessarily entails the permanent severance of Alvin and Nailyn's marital ties.

4. **ID.; RULES OF COURT; DISQUALIFICATION OF JUDICIAL OFFICERS; OBJECTIONS MUST BE MADE IN WRITING AND FILED BEFORE THE JUDICIAL OFFICER CONCERNED.—** Section 2, Rule 137 is clear and leaves no room for interpretation. An objection on the basis of Section 1, Rule 137 must be made in writing and filed before the judicial officer concerned. Thus, the Republic should have raised its objection concerning Atty. Amy's disqualification before the RTC. **Consequently, the CA was not bound to pass upon such objection, and thus, did not err in refusing to do**

so. In any case, the duty of clerks of court to disqualify themselves in accordance with the parameters set by Section 1, Rule 137 pertains to such clerks, not the courts and presiding judges they serve. Supreme Court Administrative Circular No. 58-2008 (SC AC No. 58-08) lends guidance. x x x In the absence of any showing of collusion between Judge Casabar and Atty. Amy, the latter's failure to report the circumstances requiring her disqualification cannot serve as basis to ascribe grave abuse of discretion to the former. Nevertheless, Atty. Amy's alleged failure to observe SC AC No. 58-08, if true, cannot be countenanced.

APPEARANCES OF COUNSEL

Office of the Solicitor General for petitioner.
Homer Elford M. Garong for respondent Alvin Dimarucot.
Christopher A. Basilio for respondent Nailyn Tañedo-Dimarucot.

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 (Rules) against the Decision[2] dated July 29, 2011 (Assailed Decision) and Resolution[3] dated May 24, 2012 (Assailed Resolution) in CA-G.R. SP No. 116572 rendered by the Court of Appeals (CA) Sixteenth Division and Former Sixteenth Division, respectively.

The Assailed Decision and Resolution stem from the following orders[4] rendered by the Regional Trial Court of Guimba, Nueva

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[1] *Rollo*, pp. 21-92.

[2] *Id.* at 95-107. Penned by Associate Justice Vicente S.E. Veloso, with Associate Justices Francisco P. Acosta and Angelita A. Gacutan concurring.

[3] *Id.* at 119-123.

[4] *Id.* at 151, 154. Penned by Judge Ismael P. Casabar.

Ecija, Branch 33 (RTC) against petitioner Republic of the Philippines (Republic) in Civil Case No. 1527-G, to wit:

1. The Order[5] dated August 13, 2010 (August 2010 RTC Order) denying the Motion for Reconsideration of the Decision[6] dated July 2, 2010 rendered by the RTC (RTC Decision) which, in turn, declared the marriage between respondents Alvin C. Dimarucot (Alvin) and Nailyn Tanedo-Dimarucot (Nailyn) (collectively, Respondents) null and void; and
2. The Order[7] dated September 13, 2010 (September 2010 RTC Order) denying due course to the Republic's Notice of Appeal[8] dated September 1, 2010.

The Facts

Respondents met sometime in 2002 and became friends.[9] This friendship immediately progressed and turned into an intimate romantic relationship,[10] leading to Nailyn's pregnancy in March 2003. Two months later, the Respondents wed in civil rights on May 18, 2003.[11]

Nailyn gave birth to the Respondents' first child, Ayla Nicole, on November 11, 2003.[12] Years later, on December 13, 2007, Nailyn gave birth to Respondents' second child, Anyelle.[13]

It appears, however, that Respondents' whirlwind romance resulted in a problematic marriage, as Alvin filed a Petition

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[5] *Id.* at 151.

[6] *Id.* at 136-139.

[7] *Id.* at 154.

[8] *Id.* at 152-153.

[9] *Id.* at 185-186.

[10] *Id.* at 186.

[11] *Id.* at 136.

[12] *Id.*

[13] *Id.*

for Declaration of Absolute Nullity of Marriage (RTC Petition) before the RTC on September 22, 2009.[14]

In the RTC Petition, Alvin alleged that Nailyn suffers from psychological incapacity which renders her incapable of complying with the essential obligations of marriage.[15] Hence, Alvin prayed that his marriage with Nailyn be declared null and void pursuant to Article 36 of the Family Code.[16]

The Provincial Prosecutor was deputized by the Office of the Solicitor General (OSG) to assist in the case.[17]

On July 2, 2010, the RTC, through Presiding Judge Ismael P. Casabar (Judge Casabar), rendered a Decision declaring Respondents' marriage null and void. The pertinent portions of the RTC Decision read:

> From the evidence adduced by [Alvin], this court is convinced that [Nailyn] is psychologically incapacitated to perform her basic marital obligations. Her being a loose-spender, overly materialistic and her complete disregard of the basic foundation of their marriage [—] to live together, observe mutual love, respect and fidelity and render mutual help and support are manifestations of her psychological incapacity to comply with the basic marital duties and responsibilities. Her incapacity is grave, permanent and incurable. It existed from her childhood and became so manifest after the celebration of their marriage.
>
> WHEREFORE, judgment is rendered declaring the marriage between [Alvin] and [Nailyn] void on the ground of psychological incapacity on the part of [Nailyn] to fulfill the basic marital obligations.[18]

On **July 27, 2010**, the Republic, through the OSG, filed a Motion for Reconsideration[19] (MR) of even date, alleging that

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[14] *Id*. at 124-131.

[15] *Id*. at 127-128.

[16] *Id*. at 129.

[17] *Id*. at 161.

[18] *Id*. at 199.

[19] *Id*. at 200-208.

"[Alvin] failed to prove the **juridical antecedence, gravity** and **incurability** of his wife's alleged psychological incapacity."[20] However, the Notice of Hearing annexed to the MR erroneously set the same for hearing on **July 6, 2010** (instead of **August 6, 2010** as the OSG later explained[21]).[22]

The RTC denied the Republic's MR through the August 2010 RTC Order, which reads in part:

> Acting on the [MR] filed by the [OSG] through State Solicitor Josephine D. Arias and it appearing that the motion was set for hearing on July 6, 2010 yet the motion itself was filed only on July 27, 2010.
>
> This Court is at loss as to when the instant motion should be heard.
>
> Under these circumstances, the instant motion is considered one which is not set for hearing and therefore, a mere scrap of paper, and as such it presents no question which merits the attention and consideration of the court. It is not even a motion for it does not comply with the rules and hence, the clerk has no right to receive it.
>
> Failure to comply with the requirements of Rule 15, sections 4, 5 and 6 is a fatal flaw.
>
> WHEREFORE, for lack of merit, the motion is denied.[23] (Citations omitted)

Thus, on September 1, 2010, the Republic filed a Notice of Appeal of even date, which was denied in the September 2010 RTC Order. Said order reads, in part:

> Record shows that the [MR] did not comply with the requirements set forth under Rule 15, sections 4, 5 and 6 of the [Rules], in that it was not set for hearing. Said [MR] did not interrupt the running of the period of appeal. Hence, the [RTC Decision] rendered in this case attained finality.

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[20] *Id*. at 201; emphasis and underscoring in the original.

[21] *Id*. at 57-58.

[22] *Id*. at 151.

[23] *Id.*

WHEREFORE, the [Notice of Appeal] being taken out of time is hereby DISMISSED.[24] (Citation omitted)

Subsequently, on October 22, 2010, the Republic filed a Petition for *Certiorari*[25] (CA Petition) before the CA, ascribing grave abuse of discretion on the part of the RTC for issuing the August and September 2010 RTC orders.[26]

The Republic claimed that its MR substantially complied with the requirements of Sections 4, 5 and 6 of Rule 15 governing motions.[27] Hence, the RTC should not have treated said MR as a mere scrap of paper solely because of the misstatement of the proposed hearing date in the Notice of Hearing appended thereto, considering that the RTC is "not without any discretion" to set the MR for hearing on a different date.[28]

The Republic also raised, albeit in passing, that with the exception of the copy of the RTC Petition, the OSG was not furnished with other orders, legal processes and pleadings after it had deputized the Provincial Prosecutor to assist in the RTC case.[29]

On July 29, 2011, the CA rendered the Assailed Decision denying the CA Petition.

The CA held that the CA Petition warrants outright dismissal because it was filed without the benefit of a motion for reconsideration[30] — an indispensable requirement for the filing of a petition for *certiorari* under Rule 65.[31] The CA further held that in any case, the Republic's allegation that its MR

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[24] *Id.* at 154.

[25] *Id.* at 155-182.

[26] *Id.* at 156.

[27] *Id.* at 166, 170-171.

[28] *Id.* at 167.

[29] *Id.* at 161.

[30] As clarified in the Assailed Resolution dated May 24, 2012, *id.* at 120.

[31] *Rollo*, p. 100.

substantially complied with all the requirements under Rule 15 lacks merit. Pertinent portions of the Assailed Decision read:

> In a litany of cases, the [Court] already held that a motion for reconsideration, as a general rule, must have first been filed before the tribunal, board or officer against whom the writ of certiorari is sought. This is intended to afford the latter an opportunity to correct any factual or fancied error attributed to it. And while there are **exceptions** to said rule, x x x
>
> x x x x x x x x x
>
> none of the x x x exceptions attends this case since a motion for reconsideration is a **plain, speedy and adequate remedy** in the ordinary course of law, the OSG should have filed first a motion for reconsideration of the [August 2010 RTC Order] rather than merely presume that the trial court would *motu proprio* take cognizance of its (the OSG's) alleged "typographical error". It should not have prematurely filed the present petition before [the CA]. Its failure to explain or justify as to why it did not first move for reconsideration of the herein assailed [August 2010 RTC Order] deprives [the CA] of any 'concrete, compelling and valid reason' to except (sic) the Republic from the aforementioned general rule of procedure.
>
> Even the OSG's allegation that its motion for reconsideration complied with all the requirements of Sections 4, 5 and 6, Rule 15 of the [Rules], fails to convince [the CA].
>
> x x x x x x x x x
>
> The x x x requirements — that the notice shall be directed to the parties concerned and shall state the time and date for the hearing of the motion — are **mandatory**, so much so that **if not religiously complied with, the motion becomes *pro forma***. Indeed, as held by the RTC, a motion that does not comply with the requirements of Sections 4 and 5 of Rule 15 of the [Rules] is a **worthless piece of paper** which the clerk of court has no right to receive and which the court has no authority to act upon.
>
> x x x x x x x x x
>
> **WHEREFORE**, the petition is **DISMISSED** for lack of merit.[32]

(Emphasis and italics in the original)

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[32] *Id*. at 100-106.

The Republic filed a Motion for Reconsideration[33] (CA MR), arguing that the CA failed to consider that Atty. Amy Linda C. Dimarucot (Atty. Amy), the Clerk of Court of the RTC, is respondent Alvin's sibling, and that her participation in her brother's case constitutes a violation of Section 1, Rule 137 of the Rules.[34] The Republic further argued that the RTC should not have denied its Notice of Appeal, since appeal is precisely the proper remedy to assail the August 2010 RTC Order pursuant to Section 9, Rule 37 of the Rules and Section 20 (2) of the Rules on Declaration of Absolute Nullity of Void Marriages and Annulment of Voidable Marriages.[35]

The CA denied the CA MR in the Assailed Resolution. Therein, the CA clarified that the RTC Order adverted to in the Assailed Decision is the **September 2010 RTC Order** (denying the Republic's Notice of Appeal) and *not* the **August 2010 RTC Order** (denying the Republic's MR of the RTC Decision), as erroneously stated therein.[36] The Assailed Resolution did not pass upon the Republic's allegation anent Atty. Amy's alleged violation of Rule 137.

The Republic received a copy of the Assailed Resolution on May 31, 2012.[37]

On June 15, 2012, the Republic filed a Motion for Extension of Time to File Petition,[38] praying for an additional period of thirty (30) days, or until July 15, 2012, within which to file its petition for review.[39]

The Republic filed the present Petition on July 16, 2012, as July 15, 2012 fell on a Sunday.[40]

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[33] *Id.* at 211-218.

[34] *Id.* at 212.

[35] *Id.*

[36] *Id.* at 122.

[37] *Id.* at 24.

[38] *Id.* at 2-4.

[39] *Id.* at 3.

[40] As confirmed by the Republic's Manifestation dated July 17, 2012, *id.* at 13.

On August 15, 2012, the Court issued a Resolution directing Alvin and Nailyn to file their respective comments to the Petition.[41] Alvin and Nailyn filed their comments[42] dated January 7, 2013 and December 2, 2013, respectively.

The Republic filed its Consolidated Reply[43] to the respondents' comments on May 7, 2014.

The Issues

The Petition calls on the Court to resolve the following issues:

1. Whether the CA erred when it caused the outright dismissal of the CA Petition because it was filed without the benefit of a prior motion for reconsideration of the September 2010 RTC Order;
2. Whether the CA erred when it affirmed the August and September 2010 RTC orders which denied the Republic's MR and subsequent Notice of Appeal on procedural grounds; and
3. Whether the CA erred when it did not pass upon Atty. Amy's alleged violation of Rule 137.

The Court's Ruling

In this Petition, the Republic claims that the RTC employed a "double standard" in the application of the Rules, for while it strictly applied Rule 15 (governing motions) against the Republic, it did not apply Rule 137 (governing disqualification of judicial officers) against its Clerk of Court Atty. Amy, who participated in the RTC proceedings despite being the sister of party-respondent Alvin.[44]

Proceeding therefrom, the Republic argues that in affirming the RTC orders, the CA erroneously deprived it of the opportunity

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[41] *Rollo*, p. 224.

[42] *Id.* at 249-270, 292-293.

[43] *Id.* at 301-311.

[44] *Id.* at 36.

to fully ventilate its objections against the RTC Decision which declared Alvin and Nailyn's marriage null and void.[45]

The Court grants the Petition.

A prior motion for reconsideration is not necessary for a petition for certiorari to prosper in cases where such motion would be useless.

It is true that this Court has ruled that "*certiorari*, as a special civil action will not lie unless a motion for reconsideration is first filed before the respondent tribunal, to allow it an opportunity to correct its assigned errors."[46] However, this general rule is subject to well-defined exceptions, thus:

> Moreover, while it is a settled rule that a special civil action for certiorari under Rule 65 will not lie unless a motion for reconsideration is filed before the respondent court; there are well-defined exceptions established by jurisprudence, such as [i] **where the order is a patent nullity, as where the court *a quo* has no jurisdiction**; [ii] where the questions raised in the certiorari proceedings have been duly raised and passed upon by the lower court, or are the same as those raised and passed upon in the lower court; [iii] 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; [iv] where, under the circumstances, a motion for reconsideration would be useless; [v] where petitioner was deprived of due process and there is extreme urgency for relief; [vi] 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; [vii] where the proceedings in the lower court are a nullity for lack of due process; [viii] where the proceedings were *ex parte* or in which the petitioner had no opportunity to object; and [ix] where the issue raised is one purely of law or where public interest is involved.[47] (Citations omitted; emphasis and italics in the original)

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[45] *Id*. at 77-78.

[46] *Ermita v. Aledecoa-Delorino*, 666 Phil. 122, 132 (2011).

[47] *Philippine Bank of Communications v. Court of Appeals*, G.R. No. 218901, February 15, 2017, p. 7.

The Republic invokes the fourth exception above, and argues that the filing of a motion for reconsideration of the September 2010 RTC Order would have been useless as it was based on the earlier August 2010 RTC Order.[48] The Court agrees.

To recall, the denial of the Republic's Notice of Appeal through the September 2010 RTC Order was premised on the RTC's earlier finding that the MR was a *pro-forma* motion due to non-compliance with Rule 15. As well, it is necessary to emphasize that the September 2010 RTC Order explicitly states that the RTC Decision had "attained finality" because the Republic's MR did not toll the Republic's period to appeal.[49]

Clearly, the Republic's direct resort to the CA *via certiorari* was warranted under the circumstances, as it was led to believe that seeking reconsideration of the September 2010 RTC Order would have been a useless exercise. **The CA thus erred when it caused the outright dismissal of the CA Petition solely on the basis of the Republic's failure to file a prior motion for reconsideration.**

Strict compliance with Rule 15 should have been waived in the interest of substantial justice.

The Republic concedes that it misstated the proposed hearing date in the Notice of Hearing attached to its MR. It argues, however, that this misstatement does not serve as sufficient basis to treat its MR as a mere scrap of paper, considering that said Notice of Hearing fulfilled the purpose of Rule 15, that is, "**to afford the adverse parties a chance to be heard before [the MR] is resolved by the [RTC]**."[50]

The Republic's argument proceeds from the assumption that the only defect in its Notice of Hearing was the typographical error in its proposed hearing date. This is error. Reference to Sections 4, 5 and 6 of Rule 15 is in order:

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[48] *Rollo*, p. 53.

[49] *Id.* at 184.

[50] *Id.* at 168; emphasis in the original.

SEC. 4. *Hearing of motion*. — Except for motions which the court may act upon without prejudicing the rights of the adverse party, every written motion shall be set for hearing by the applicant.

Every written motion required to be heard and the notice of the hearing thereof shall be served in such a manner as to ensure its receipt by the other party at least three (3) days before the date of hearing, unless the court for good cause sets the hearing on shorter notice.

SEC. 5. *Notice of hearing*. — The notice of hearing shall be addressed to all parties concerned, and shall specify the time and date of the hearing which must not be later than ten (10) days after the filing of the motion.

SEC. 6. *Proof of service necessary*. — **No written motion set for hearing shall be acted upon by the court without proof of service thereof.** (Emphasis supplied; italics in the original)

The requirements outlined in the cited provisions can be summarized as follows:

i. Every written motion which cannot be acted upon without prejudicing the rights of the adverse party must be set for hearing;

ii. The adverse party must be given: (a) a copy of such written motion, and (b) notice of the corresponding hearing date;

iii. The copy of the written motion and the notice of hearing described in (ii) must be furnished to the adverse party at least three (3) days before the hearing date, unless otherwise ordered by the RTC (3-day notice rule); and

iv. No written motion that is required to be heard shall be acted upon by the receiving court without proof of service done in the manner prescribed in (iii).

Perusal of the foregoing shows that the Republic failed to comply with the first **and** third requirements.

Notably, while the Republic furnished Alvin and Nailyn's respective counsels with copies of the MR and Notice of Hearing,

the Republic did so only by registered mail.[51] As a result, Alvin received notice of the Republic's MR only on *August* 11, 2010.[52] Hence, even if the RTC construed the Republic's typographical error to read August 6, 2010 instead of July 6, 2010, the Republic would have still failed to comply with the 3-day notice rule.

To be sure, the 3-day notice rule was established *not* for the benefit of movant but for the adverse party, in order to avoid surprises and grant the latter sufficient time to study the motion and enable it to meet the arguments interposed therein.[53] The duty to ensure receipt by the adverse party at least three days before the proposed hearing date necessarily falls on the movant.

Nevertheless, considering the nature of the case and the issues involved therein, the Court finds that relaxation of the Rules was called for. It is well settled that procedural rules may be relaxed in the interest of substantial justice. Accordingly, the "strict and rigid application, [of procedural rules] which would result in technicalities that tend to frustrate rather than promote substantial justice, must always be eschewed."[54]

Here, the State's policy of upholding the sanctity of marriage takes precedence over strict adherence to Rule 15, for the finality of the RTC Decision necessarily entails the permanent severance of Alvin and Nailyn's marital ties. Hence, the RTC should have exercised its discretion, as it did have such discretion, and set the MR for hearing on a later date with due notice to the parties to allow them to fully thresh out the Republic's assigned errors. **The CA thus erred when it affirmed the RTC in this respect.**

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[51] CA *rollo*, pp. 122-123.

[52] *Rollo*, p. 251.

[53] See generally *Cabrera v. Ng*, 729 Phil. 544, 550 and 551 (2014).

[54] *Heirs of Spouses Arcilla v. Teodoro*, 583 Phil. 540, 553 (2008).

The Republic's objection against Atty. Amy's participation in the annulment case should have been raised at the first instance before the RTC.

Sections 1 and 2 of Rule 137 provide:

SECTION 1. *Disqualification of judges*. — No judge or judicial officer shall sit in any case in which he, or his wife or child, is pecuniarily interested as heir, legatee, creditor or otherwise, or in which he is related to either party within the sixth degree of consangunity (sic) or affinity, or to counsel within the fourth degree, computed according to the rules of the civil law, or in which he has been executor, administrator, guardian, trustee or counsel, or in which he has presided in any inferior court when his ruling or decision is the subject of review, without the written consent of all parties in interest, signed by them and entered upon the record.

A judge may, in the exercise of his sound discretion, disqualify himself from sitting in a case, for just or valid reasons other than those mentioned above.

SEC. 2. *Objection that judge disqualified, how made and effect*. — If it be claimed that an official is disqualified from sitting as above provided, **the party objecting to his competency may, in writing, file with the official his objection, stating the grounds therefor, and the official shall thereupon proceed with the trial, or withdraw, therefrom in accordance with his determination of the question of his disqualification**. His decision shall be forthwith made in writing and filed with the other papers in the case, but no appeal or stay shall be allowed from, or by means of, his decision in favor of his own competency, until after final judgment in the case. (Emphasis supplied; italics in the original)

Section 2, Rule 137 is clear and leaves no room for interpretation. An objection on the basis of Section 1, Rule 137 must be made in writing and filed before the judicial officer concerned. Thus, the Republic should have raised its objection concerning Atty. Amy's disqualification before the RTC. **Consequently, the CA was not bound to pass upon such objection, and thus, did not err in refusing to do so.**

In any case, the duty of clerks of court to disqualify themselves in accordance with the parameters set by Section 1, Rule 137

pertains to such clerks, not the courts and presiding judges they serve. Supreme Court Administrative Circular No. 58-2008[55] (SC AC No. 58-08) lends guidance:

> 1. Clerks of court, assistant clerks of court, deputy clerks of court and branch clerks of court in all levels shall **conduct a screening of cases now pending before their respective courts or divisions to verify and report in writing to their respective presiding judges**, Chairpersons of Divisions, or in *en banc* cases, to the Presiding Justice and Chief Justice, as the case may be, **if there are grounds for their disqualification in regard to the performance of their functions and duties**, under the first paragraph of Section 1, Rule 137 of the Rules of Court.[56] (Emphasis supplied)

In the absence of any showing of collusion between Judge Casabar and Atty. Amy, the latter's failure to report the circumstances requiring her disqualification cannot serve as basis to ascribe grave abuse of discretion to the former.

Nevertheless, Atty. Amy's alleged failure to observe SC AC No. 58-08, if true, cannot be countenanced. Thus, pursuant to its power of administrative supervision over all court personnel, the Court deems it appropriate to refer the Republic's allegations to the Office of the Court Administrator for appropriate action.

WHEREFORE, premises considered, the Petition for Review on *Certiorari* is **GRANTED**. The Assailed Decision of the Court of Appeals Sixteenth Division dated July 29, 2011 and Assailed Resolution of the Court of Appeals Former Sixteenth Division dated May 24, 2012 in CA-G.R. SP No. 116572 are hereby **REVERSED AND SET ASIDE**. The Regional Trial Court, Branch 33 in Guimba, Nueva Ecija is **DIRECTED** to give due course to the Republic's Notice of Appeal dated September 1, 2010 and to elevate the case records to the Court of Appeals for review.

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[55] *Implementation of Section 1, Rule 137 of the Rules of Court, as amended by the En Banc Resolution dated June 3, 2008, in A.M. No. 08-4-1-SC, re: disqualification of all clerks of court, assistant clerks of court, deputy clerks of court and branch clerks of court, in all levels in the performance of their respective functions and duties*, June 3, 2008.

[56] *Id.*

Let a copy of this Decision be furnished to the Office of the Court Administrator for its information and appropriate action.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 205955. March 7, 2018]

UNIVERSITY PHYSICIANS SERVICES INC.-MANAGEMENT, INC., *petitioner, vs.* **COMMISSIONER OF INTERNAL REVENUE,** *respondent.*

SYLLABUS

1. TAXATION; NATIONAL INTERNAL REVENUE CODE; CORPORATE INCOME TAX; FINAL ADJUSTMENT RETURN; CARRY-OVER OPTION; THE IRREVOCABILITY RULE IS LIMITED ONLY TO THE OPTION TO CARRY OVER SUCH THAT THE TAXPAYER IS STILL FREE TO CHANGE ITS CHOICE AFTER ELECTING A REFUND OF ITS EXCESS TAX CREDIT.— We cannot subscribe to the suggestion that the irrevocability rule enshrined in Section 76 of the National Internal Revenue Code (NIRC) applies to either of the options of refund or carry-over. Our reading of the law assumes the interpretation that the irrevocability is limited only to the option of carry-over such that a taxpayer is still free to change its choice after electing a refund of its excess tax credit. But once it opts to carry over such excess creditable tax, after electing refund or issuance of tax credit certificate, the carry-over option becomes

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[*] Acting Chief Justice per Special Order No. 2539 dated February 28, 2018.

irrevocable. Accordingly, the previous choice of a claim for refund, even if subsequently pursued, may no longer be granted. x x x The irrevocability rule is provided in the last sentence of Section 76. A perfunctory reading of the law unmistakably discloses that the irrevocable option referred to is the carry-over option only. There appears nothing therein from which to infer that the other choice, i.e., cash refund or tax credit certificate, is also irrevocable. If the intention of the lawmakers was to make such option of cash refund or tax credit certificate also irrevocable, then they would have clearly provided so. In other words, the law does not prevent a taxpayer who originally opted for a refund or tax credit certificate from shifting to the carry-over of the excess creditable taxes to the taxable quarters of the succeeding taxable years. However, in case the taxpayer decides to shift its option to carry-over, it may no longer revert to its original choice due to the irrevocability rule. As Section 76 unequivocally provides, once the option to carry-over has been made, it shall be irrevocable. Furthermore, the provision seems to suggest that there are no qualifications or conditions attached to the rule on irrevocability.

2. **ID.; ID.; ID.; ID.; OVERPAYMENT OF INCOME TAX; OPTIONS.—** Under x x x [Section 76 of the NIRC], there are two options available to the corporation whenever it overpays its income tax for the taxable year: (1) to **carry over** and apply the overpayment as tax credit against the estimated quarterly income tax liabilities of the succeeding taxable years (also known as automatic tax credit) until fully utilized (meaning, there is no prescriptive period); and (2) to apply for a **cash refund** or issuance of a **tax credit certificate** within the prescribed period. Such overpayment of income tax is usually occasioned by the over-withholding of taxes on the income payments to the corporate taxpayer.

3. **ID.; ID.; PROTESTING AN ASSESSMENT; PRELIMINARY ASSESSMENT; MAY BE DISPENSED WITH WHEN THE DISCREPANCY OR DEFICIENCY IS SO GLARING OR REASONABLY WITHIN THE TAXPAYER'S KNOWLEDGE.—** The provision [of Section 228 of the NIRC] contemplates three scenarios: (1) Deficiency in the payment or remittance of tax to the government (paragraphs [a], [b] and [d]); (2) Overclaim of refund or tax credit (paragraph [c]); and (3) Unwarranted claim of tax exemption (paragraph [e]). In

each case, the government is deprived of the rightful amount of tax due it. The law assures recovery of the amount through the issuance of an assessment against the erring taxpayer. However, the usual two-stage process in making an assessment is not strictly followed. Accordingly, the government may immediately proceed to the issuance of a final assessment notice (FAN), thus dispensing with the preliminary assessment (PAN), for the reason that the discrepancy or deficiency is so glaring or reasonably within the taxpayer's knowledge such that a preliminary notice to the taxpayer, through the issuance of a PAN, would be a superfluity.

4. ID.; ID.; ID.; DOUBLE RECOVERY OF OVERPAID INCOME TAX UNDER SECTION 228 (C); MEANS THAT THE TAXPAYER HAD PREVIOUSLY ASKED FOR AND SUCCESSFULLY RECOVERED FROM THE BUREAU OF INTERNAL REVENUE ITS EXCESS CREDITABLE WITHHOLDING TAX THROUGH REFUND OR TAX CREDIT CERTIFICATE.— [P]aragraph (c) [of Section 228 of the NIRC] contemplates a double recovery by the taxpayer of an overpaid income tax that arose from an over-withholding of creditable taxes. The refundable amount is the excess and unutilized creditable withholding tax. This paragraph envisages that the taxpayer had **previously asked for** and **successfully recovered** from the BIR its **excess creditable withholding tax through refund or tax credit certificate**; it could not be viewed any other way. If the government had already granted the refund, but the taxpayer is determined to have automatically applied the excess creditable withholding tax against its estimated quarterly tax liabilities in the succeeding taxable year(s), the taxpayer would undeservedly recover twice the same amount of excess creditable withholding tax. There appears, therefore, no other viable remedial recourse on the part of the government except to assess the taxpayer for the double recovery. In this instance, x x x the government can right away issue a FAN. If, on the other hand, an administrative claim for refund or issuance of TCC is still ***pending*** but the taxpayer had in the meantime automatically carried over the excess creditable tax, it would appear not only wholly unjustified but also tantamount to adopting an unsound policy if the government should resort to the remedy of assessment. x x x Thus, in order to place a sensible meaning to paragraph (c) of Section 228, it should be interpreted as contemplating only that situation when an

application for refund or tax credit certificate had already been previously granted. Issuing an assessment against the taxpayer who benefited twice because of the application of automatic tax credit is a wholly acceptable remedy for the government.

APPEARANCES OF COUNSEL

Office of the Solicitor General for respondent.
Kalaw Sy Selva & Campos for petitioner.

D E C I S I O N

MARTIRES, *J.*:

When a corporation overpays its income tax liability as adjusted at the close of the taxable year, it has two options: (*1*) to be refunded or issued a tax credit certificate, or (*2*) to carry over such overpayment to the succeeding taxable quarters to be applied as tax credit against income tax due.[1] Once the carry-over option is taken, it becomes irrevocable such that the taxpayer cannot later on change its mind in order to claim a cash refund or the issuance of a tax credit certificate of the very same amount of overpayment or excess income tax credit.[2]

Does the irrevocability rule apply exclusively to the carry-over option? Such is the novel issue presented in this case.

THE FACTS

Before the Court is a petition for review under Rule 45 of the Rules of Court filed by petitioner University Physicians Services Inc.-Management, Inc. (UPSI-MI) which seeks the reversal and setting aside of the 8 February 2013 Decision[3] of

[1] See Section 76, National Internal Revenue Code.

[2] *Id.*

[3] *Rollo*, pp. 9-24; penned by Associate Justice Erlinda P. Uy with Associate Justices Juanito C. Castañeda, Jr., Lovell R. Bautista, Caesar A. Casanova and Amelia R. Cotangco-Manalastas, concurring. Associate Justice Esperanza R. Fabon-Victorino, joined in by Associate Justice Cielito N. Mindaro-Grulla, wrote a dissenting opinion.

the Court of Tax Appeals (CTA) En Banc in CTA-EB Case No. 828. Said decision of the CTA En Banc affirmed the 5 July 2011 Decision and 8 September 2011 Resolution of the CTA Second Division (CTA Division) in CTA Case No. 7908. The CTA Division denied the application of UPSI-MI for tax refund or issuance of Tax Credit Certificate (TCC) of its excess unutilized creditable income tax for the taxable year 2006.

The Antecedents

As narrated by the CTA, the facts are uncomplicated, *viz*:

> UPSI-MI is a corporation incorporated and existing under and by virtue of laws of the Republic of the Philippines, with business address at 1122 General Luna Street, Paco. Manila. Respondent on the other hand, is the duly appointed Commissioner of Internal Revenue, with power, among others, to act upon claims for refund or tax credit of overpaid internal revenue taxes, with office address at the Fifth Floor, BIR National Office Building, BIR Road, Diliman, Quezon City.
>
> On April 16, 2007, petitioner filed its Annual Income Tax Return (ITR) for the year ended December 31, 2006 with the Revenue District No. 34 of the Revenue Region No. 6 of the Bureau of Internal Revenue (BIR), reflecting an income tax overpayment of ₱5,159,341.00, computed as follows:[4]

Sales/Revenues/Receipts/Fees	₱ 28,808,960.00
Less: Cost of Sales/Services	23,834,605.00
Gross Income from Operation	₱ 4,974,355.00
Add: Non-Operating & Other Income	5,375.00
Total Gross Income	₱ 4,979,730.00
Less: Deductions	₱ 4,979,730.00
Taxable Income	**-**
Tax Rate (except MCIT Rate)	35%

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

Income Tax	-
Minimum Corporate Income Tax (MCIT)	₱ 99,595.00
Aggregate Income Tax Due	**₱ 99,595.00**
Less: Tax Credits/Payments	
Prior Year's Excess Credits	₱ 2,331,102.00
Creditable Tax Withheld for the First Three Quarters	-
Creditable Tax Withheld for the Fourth Quarter	2,972,834.00
Total Tax Credits/Payments	**₱ 5,258,936.00**
Tax Payable/(Overpayment)	**₱ (5,159,341.00)**

Subsequently, on November 14, 2007, petitioner filed an Annual ITR for the short period fiscal year ended March 31, 2007, reflecting the income tax overpayment of ₱5,159.341 from the previous period as "*Prior Year's Excess Credit*", as follows:[5]

Sales/Revenues/Receipts/Fees	₱ 7,489,259
Less: Cost of Sales/Services	6,461,650
Gross Income from Operation	₱ 1,027,609
Add: Non-Operating & Other Income	479
Total Gross Income	₱ 1,028,088
Less: Deductions	1,206,543
Taxable Income	(178,455)
Tax Rate (except MCIT Rate)35%	
Income Tax	-
Minimum Corporate Income Tax (MCIT)	₱ 20,562

[5] *Id.* at 11.

Aggregate Income Tax Due	₱ 20,562
Less:Tax Credits/Payments	
Prior Year's Excess Credits	**₱ 5,159,341**
Creditable Tax Withheld for the First Three Quarters	1,107,228
Creditable Tax Withheld for the Fourth Quarter	6,266,569
Total Tax Credits/Payments	**₱ 6,266,569**
Tax Payable/(Overpayment)	**₱ (6,246,007)**

On the same date, petitioner filed an amended Annual ITR for the short period fiscal year ended March 31, 2007, reflecting the removal of the amount of the instant claim in the "*Prior Year's Excess Credit*". Thus, the amount thereof was changed from ₱ 5,159,341 to ₱ 2,231,507.

On October 10, 2008, petitioner filed with the respondent's office, a claim for refund and/or issuance of a Tax Credit Certificate (TCC) in the amount of ₱ 2,927,834.00, representing the alleged excess and unutilized creditable withholding taxes for 2006.

In view of the fact that respondent has not acted upon the foregoing claim for refund/tax credit, petitioner filed with a Petition for Review on April 14, 2009 before the Court in Division.

The Ruling of the CTA Division

After trial, the CTA Division denied the petition for review for lack of merit. It reasoned that UPSI-MI effectively exercised the carry-over option under Section 76 of the National Internal Revenue Code (NIRC) of 1997. On motion for reconsideration, UPSI-MI argued that the irrevocability rule under Section 76 of the NIRC is not applicable for the reason that it did not carry over to the succeeding taxable period the 2006 excess income tax credit. UPSI-MI added that the subject excess tax credits were inadvertently included in its original 2007 ITR, and such mistake was rectified in the amended 2007 ITR. Thus,

UPSI-MI insisted that what should control is its election of the option "*To be issued a Tax Credit Certificate*" in its 2006 ITR.

The CTA Division ruled that UPSI-MI's alleged inadvertent inclusion of the 2006 excess tax credit in the 2007 original ITR belies its own allegation that it did not carry over the said amount to the succeeding taxable period. The amendment of the 2007 ITR cannot undo UPSI-MI's actual exercise of the carry-over option in the original 2007 ITR, for to do so would be against the irrevocability rule. The dispositive portion of the CTA Division's decision reads:

WHEREFORE, the instant Petition for Review is hereby **DENIED** for lack of merit.[6]

Aggrieved, UPSI-MI appealed before the CTA En Banc.

The Ruling of the CTA En Banc

The CTA En Banc ruled that UPSI-MI is barred by Section 76 of the NIRC from claiming a refund of its excess tax credits for the taxable year 2006. The barring effect applies after UPSI-MI carried over its excess tax credits to the succeeding quarters of 2007, even if such carry-over was allegedly done inadvertently. The court emphasized that the prevailing law and jurisprudence admit of no exception or qualification to the irrevocability rule. Thus, the CTA En Banc affirmed the assailed decision and resolution of the CTA Division, disposing as follows:

WHEREFORE, all the foregoing considered, the instant Petition for Review is hereby **DENIED**. The assailed Decision dated July 5, 2011 and Resolution dated September 8, 2011 both rendered by the Court in Division in CTA Case No. 7908 are hereby **AFFIRMED**.

SO ORDERED.[7]

Notably, the said decision was met by a dissent from Justice Esperanza R. Fabon-Victorino. Invoking *Philam Asset Management,*

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

[7] *Id*. at 23-24.

Inc. v. Commissioner (Philam)[8] Justice Fabon-Victorino took the view that the irrevocability rule applies as much to the option of refund or tax credit certificate. She wrote:

> A contextual appreciation of the ruling [*Philam*] would tell us that any of the two alternatives once chosen is irrevocable — be it for refund or carry over. **The controlling factor for the operation of the irrevocability rule is that the taxpayer chose an option; and once it had already done so, it could no longer make another one**.

Unsatisfied with the decision of the CTA En Banc, UPSI-MI appealed before this Court.

The Present Petition for Review

UPSI-MI interposed the following reasons for its petition:

THE HONORABLE COURT OF TAX APPEALS (En Banc) SERIOUSLY ERRED AND DECIDED IN A MANNER NOT IN ACCORDANCE WITH THE LAW, PREVAILING JURISPRUDENCE, AND FACTUAL MILIEU SURROUNDING THE CASE, WHEN IT ADOPTED THE DECISION OF THE COURT OF TAX APPEALS IN DIVISION AND RULED THAT:

a. Petitioner is not entitled to the refund or issuance of a Tax Credit Certificate in the amount of ₱2,927,834.00 representing its 2006 excess tax credits because of the application of the "irrevocability rule" under Section 76 of the NIRC of 1997.

b. The amendment of the original ITR for fiscal year ended 31 March 2007 does not take back, cancel or rescind the original option to refund through tax credit certificate based on the argument that the Petitioner allegedly made an option to carry-over the excess credits.

THE HONORABLE COURT OF TAX APPEALS (En Banc) SERIOUSLY ERRED WHEN IT IGNORED THAT ON JOINT STIPULATIONS, THE RESPONDENT ADMITTED THE FACT THAT PETITIONER INDICATED IN THE CORRESPONDING BOX ITS INTENTION TO BE ISSUED A TAX CREDIT CERTIFICATE REPRESENTING ITS UNUTILIZED CREDITABLE WITHHOLDING TAX WITHHELD FOR THE

[8] 514 Phil. 147 (2005).

TAXABLE YEAR 2006 BY MARKING THE APPROPRIATE BOX.

THE HONORABLE COURT OF TAX APPEALS (En Banc) SERIOUSLY ERRED WHEN IT DECIDED ON THE ISSUE OF WHETHER OR NOT PETITIONER CARRIED OVER ITS 2006 EXCESS TAX CREDITS TO THE SUCCEEDING SHORT TAXABLE PERIOD OF 2007 WHEN THE SAME WAS NEVER RAISED IN THE JOINT STIPULATION OF FACTS.

UPSI-MI faults the CTA En Banc for banking too much on the irrevocability of the option to carry over. It contends that even the option to be refunded through the issuance of a TCC is likewise irrevocable. Taking cue from the dissent of Justice Pabon-Victorino, UPSI-MI cites *Philam* in restating this Court's pronouncement that "the options of a corporate taxpayer, whose total quarterly income tax payments exceed its tax liability, are alternative in nature and the choice of one precludes the other." It also cites C*ommissioner v. PL Management International Philippines, Inc. (PL Management)*[9] that reiterated the rule that the choice of one precludes the other. Thus, when it indicated in its 2006 Annual ITR the option "To be issued a Tax Credit Certificate," such choice precluded the other option to carry over.[10]

In other words, UPSI-MI proposes that the options of refund on one hand and carry-over on the other hand are both irrevocable by nature. Relying again on the dissent of Justice Fabon-Victorino, UPSI-MI also points to BIR Form 1702 (Annual Income Tax Return) itself which expressly states under line 31 thereof:

"If overpayment, mark one box only:
(once the choice is made, the same is irrevocable)"

Resumé of relevant facts

To recapitulate, UPSI-MI had, as of 31 December 2005, an outstanding amount of ₱2,331,102.00 in excess and unutilized creditable withholding taxes.

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[9] 662 Phil. 431 (2011), per *J.* Bersamin.

[10] *Id*. at 436.

For the subsequent taxable year ending 31 December 2006, the total sum of creditable taxes withheld on the management fees of UPSI-MI was ₱2,927,834.00. Per its 2006 Annual Income Tax Return (ITR), UPSI-MI's income tax due amounted to ₱99,105.00. UPSI-MI applied its "Prior Year's Excess Credits" of ₱2,331,102.00 as tax credit against such 2006 Income Tax due, leaving a balance of ₱2,231,507.00 of still unutilized excess creditable tax. Meanwhile, the creditable taxes withheld for the year 2006 (₱2,927,834.00) remained intact and unutilized. In said 2006 Annual ITR, UPSI-MI chose the option "To be issued a tax credit certificate" with respect to the amount ₱2,927,834.00, representing unutilized excess creditable taxes for the taxable year ending 31 December 2006. The figures are summarized in the table below:

Taxable Year	Excess Creditable Withholding Tax (CWT)	Income Tax Due	Less Tax Credit	Tax Payable	Balance of Excess CWT
2005	₱ 2,331,102.00	- - -	- - -	- - -	₱ 2,231,507.00
2006	₱ 2,927,834.00	₱ 99,105.00 (MCIT)	₱ 99,105.00 (A portion of the excess credit of Php2,331,102.00 in 2015)	₱ 0.00	₱ 2,927,834.00

In the following year, UPSI-MI changed its taxable period from calendar year to fiscal year ending on the last day of March. Thus, it filed on 14 November 2007 an Annual ITR covering the short period from January 1 to March 31 of 2007. In the original 2007 Annual ITR, UPSI-MI opted to carry over as "Prior Year's Excess Credits" the total amount of ₱5,159,341.00 which included the 2006 unutilized creditable withholding tax of ₱2,927,834.00. UPSI-MI amended the return by excluding the sum of ₱2,927,834.00 under the line "Prior Year's Excess Credits" which amount is the subject of the refund claim.

In sum, the question to be resolved is whether UPSI-MI may still be entitled to the refund of its 2006 excess tax credits in the amount of ₱2,927,834.00 when it thereafter filed its income

tax return (for the short period ending 31 March 2007) indicating the option of carry-over.

OUR RULING

We affirm the CTA.

We cannot subscribe to the suggestion that the irrevocability rule enshrined in Section 76 of the National Internal Revenue Code (NIRC) applies to either of the options of refund or carry-over. Our reading of the law assumes the interpretation that the irrevocability is limited only to the option of carry-over such that a taxpayer is still free to change its choice after electing a refund of its excess tax credit. But once it opts to carry over such excess creditable tax, after electing refund or issuance of tax credit certificate, the carry-over option becomes irrevocable. Accordingly, the previous choice of a claim for refund, even if subsequently pursued, may no longer be granted.

The aforementioned Section 76 of the NIRC provides:

SECTION 76. Final Adjustment Return. — Every corporation liable to tax under Section 27 shall file a final adjustment return covering the total taxable income for the preceding calendar or fiscal year. If the sum of the quarterly tax payments made during the said taxable year is not equal to the total tax due on the entire taxable income of that year, the corporation shall either:

(A) Pay the balance of tax still due; or

(B) Carry over the excess credit; or

(C) Be credited or refunded with the excess amount paid, as the case may be.

In case the corporation is entitled to a tax credit or refund of the excess estimated quarterly income taxes paid, the excess amount shown on its final adjustment return may be carried over and credited against the estimated quarterly income tax liabilities for the taxable quarters of the succeeding taxable years. **Once the option to carry-over** and apply the excess quarterly income tax against income tax due for the taxable quarters of the succeeding taxable years **has been made, such option shall be considered irrevocable** for that taxable period and no application for cash refund or issuance of a tax credit certificate shall be allowed therefor. (emphasis supplied)

Under the cited law, there are two options available to the corporation whenever it overpays its income tax for the taxable year: (*1*) to **carry over** and apply the overpayment as tax credit against the estimated quarterly income tax liabilities of the succeeding taxable years (also known as automatic tax credit) until fully utilized (meaning, there is no prescriptive period); and (*2*) to apply for a **cash refund** or issuance of a **tax credit certificate** within the prescribed period.[11] Such overpayment of income tax is usually occasioned by the over-withholding of taxes on the income payments to the corporate taxpayer.

The irrevocability rule is provided in the last sentence of Section 76. A perfunctory reading of the law unmistakably discloses that the irrevocable option referred to is the carry-over option only. There appears nothing therein from which to infer that the other choice, i.e., cash refund or tax credit certificate, is also irrevocable. If the intention of the lawmakers was to make such option of cash refund or tax credit certificate also irrevocable, then they would have clearly provided so.

In other words, the law does not prevent a taxpayer who originally opted for a refund or tax credit certificate from shifting

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[11] The prescriptive period for the application for refund or issuance of tax credit certificate is two (2) years from the date of payment. The rule is provided in Section 229 of the NIRC, to wit:

SECTION 229. *Recovery of Tax Erroneously or Illegally Collected.* — No suit or proceeding shall be maintained in any court for the recovery of any national internal revenue tax hereafter alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessively or in any manner wrongfully collected, until a claim for refund or credit has been duly filed with the Commissioner; but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress.

In any case, no such suit or proceeding shall be filed after the expiration of two (2) years from the date of payment of the tax or penalty regardless of any supervening cause that may arise after payment: Provided, however, That the Commissioner may, even without a written claim therefor, refund or credit any tax, where on the face of the return upon which payment was made, such payment appears clearly to have been erroneously paid.

to the carry-over of the excess creditable taxes to the taxable quarters of the succeeding taxable years. However, in case the taxpayer decides to shift its option to carry-over, it may no longer revert to its original choice due to the irrevocability rule. As Section 76 unequivocally provides, once the option to carry-over has been made, it shall be irrevocable. Furthermore, the provision seems to suggest that there are no qualifications or conditions attached to the rule on irrevocability.

Law and jurisprudence unequivocally support the view that only the option of carry-over is irrevocable.

Aside from the uncompromising last sentence of Section 76, Section 228 of the NIRC recognizes such freedom of a taxpayer to change its option from refund to carry-over. This law affords the government a remedy in case a taxpayer, who had previously claimed a refund or tax credit certificate (TCC) of excess creditable withholding tax, subsequently applies such amount as automatic tax credit. The pertinent text of Section 228 reads:

SEC. 228. Protesting of Assessment. — When the Commissioner or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings: Provided, however, That a pre-assessment notice shall not be required in the following cases:

(a) When the finding for any deficiency tax is the result of mathematical error in the computation of the tax as appearing on the face of the return; or

(b) When a discrepancy has been determined between the tax withheld and the amount actually remitted by the withholding agent; or

(c) When a taxpayer who **opted to claim a refund or tax credit of excess creditable withholding tax** for a taxable period was determined to have **carried over and automatically applied** the same amount claimed **against the estimated tax liabilities** for the taxable quarter or quarters of the succeeding taxable year; or

(d) When the excise tax due on exciseable articles has not been paid; or

(e) When the article locally purchased or imported by an exempt person, such as, but not limited to, vehicles, capital equipment, machineries and spare parts, has been sold, traded or transferred to non-exempt persons.

The taxpayers shall be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void. x x x (emphasis supplied)

The provision contemplates three scenarios:

(1) Deficiency in the payment or remittance of tax to the government (paragraphs [a], [b] and [d]);

(2) Overclaim of refund or tax credit (paragraph [c]); and

(3) Unwarranted claim of tax exemption (paragraph [e]).

In each case, the government is deprived of the rightful amount of tax due it. The law assures recovery of the amount through the issuance of an assessment against the erring taxpayer. However, the usual two-stage process in making an assessment is not strictly followed. Accordingly, the government may immediately proceed to the issuance of a final assessment notice (FAN), thus dispensing with the preliminary assessment (PAN), for the reason that the discrepancy or deficiency is so glaring or reasonably within the taxpayer's knowledge such that a preliminary notice to the taxpayer, through the issuance of a PAN, would be a superfluity.

Pertinently, paragraph (c) contemplates a double recovery by the taxpayer of an overpaid income tax that arose from an over-withholding of creditable taxes. The refundable amount is the excess and unutilized creditable withholding tax.

This paragraph envisages that the taxpayer had **previously asked for** and **successfully recovered** from the BIR its **excess creditable withholding tax through refund or tax credit certificate**; it could not be viewed any other way. If the government had already granted the refund, but the taxpayer is determined to have automatically applied the excess creditable withholding tax against its estimated quarterly tax liabilities in the succeeding taxable year(s), the taxpayer would undeservedly

recover twice the same amount of excess creditable withholding tax. There appears, therefore, no other viable remedial recourse on the part of the government except to assess the taxpayer for the double recovery. In this instance, and in accordance with the above rule, the government can right away issue a FAN.

If, on the other hand, an administrative claim for refund or issuance of TCC is still ***pending*** but the taxpayer had in the meantime automatically carried over the excess creditable tax, it would appear not only wholly unjustified but also tantamount to adopting an unsound policy if the government should resort to the remedy of assessment.

First, on the premise that the carry-over is to be sustained, there should be no more reason for the government to make an assessment for the sum (equivalent to the excess creditable withholding tax) that has been justifiably returned already to the taxpayer (through automatic tax credit) and for which the government has no right to retain in the first place. In this instance, all that the government needs to do is to deny the refund claim.

Second, on the premise that the carry-over is to be disallowed due to the pending application for refund, it would be more complicated and circuitous if the government were to grant first the refund claim and then later assess the taxpayer for the claim of automatic tax credit that was previously disallowed. Such procedure is highly inefficient and expensive on the part of the government due to the costs entailed by an assessment. It unduly hampers, instead of eases, tax administration and unnecessarily exhausts the government's time and resources. It defeats, rather than promotes, administrative feasibility.[12] Such could not have been intended by our lawmakers. Congress is deemed to have enacted a valid, sensible, and just law.[13]

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[12] Administrative feasibility is one of the canons of a sound tax system. It simply means that the tax system should be capable of being effectively administered and enforced with the least inconvenience to the taxpayer. (*Diaz v. Secretary of Finance*, 669 Phil. 371, 393 (2011)).

[13] *Lawyers Against Monopoly and Poverty (LAMP), et al. v. The Secretary of Budget and Management, et al.*, 686 Phil. 357, 372-373 (2012), citing *Fariñas v. The Executive Secretary*, 463 Phil. 179, 197 (2003).

Thus, in order to place a sensible meaning to paragraph (c) of Section 228, it should be interpreted as contemplating only that situation when an application for refund or tax credit certificate had already been previously granted. Issuing an assessment against the taxpayer who benefited twice because of the application of automatic tax credit is a wholly acceptable remedy for the government.

Going back to the case wherein the application for refund or tax credit is still pending before the BIR, but the taxpayer had in the meantime automatically carried over its excess creditable tax in the taxable quarters of the succeeding taxable year(s), the only judicious course of action that the BIR may take is to deny the pending claim for refund. To insist on giving due course to the refund claim only because it was the first option taken, and consequently disallowing the automatic tax credit, is to encourage inefficiency or to suppress administrative feasibility, as previously explained. Otherwise put, imbuing upon the choice of refund or tax credit certificate the character of irrevocability would bring about an irrational situation that Congress did not intend to remedy by means of an assessment through the issuance of a FAN without a prior PAN, as provided in paragraph (c) of Section 228. It should be remembered that Congress' declared national policy in passing the NIRC of 1997 is to rationalize the internal revenue tax system of the Philippines, including tax administration.[14]

The foregoing simply shows that the lawmakers never intended to make the choice of refund or tax credit certificate irrevocable. Sections 76 and 228, paragraph (c), unmistakably evince such intention.

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[14] Section 2 of R.A. No. 8424 provides:

SECTION 2. *State Policy.* — It is hereby declared the policy of the State to promote sustainable economic growth through the rationalization of the Philippine internal revenue tax system, including tax administration; to provide, as much as possible, an equitable relief to a greater number of taxpayers in order to improve levels of disposable income and increase economic activity; and to create a robust environment for business to enable firms to compete better in the regional as well as the global market, at the same time that the State ensures that Government is able to provide for the needs of those under its jurisdiction and care.

Philam and PL Management cases did not categorically declare the option of refund or TCC irrevocable.

The petitioner hinges its claim of irrevocability of the option of refund on the statement of this Court in *Philam* and *PL Management* that "the options *x x x* are alternative and the choice of one precludes the other." This also appears as the basis of Justice Fabon-Victorino's stance in her dissent to the majority opinion in the assailed decision.

We do not agree.

The cases cited in the petition did not make an express declaration that the option of cash refund or TCC, once made, is irrevocable. Neither should this be inferred from the statement of the Court that the options are alternative and that the choice of one precludes the other. Such statement must be understood in the light of the factual milieu obtaining in the cases.

Philam involved two cases wherein the taxpayer failed to signify its option in the Final Adjustment Return (FAR).

In the first case (*G.R. No. 156637*), the Court ruled that such failure did not mean the outright barring of the request for a refund should one still choose this option later on. The taxpayer did in fact file on 11 September 1998 an administrative claim for refund of its 1997 excess creditable taxes. We sustained the refund claim in this case.

It was different in the second case (*G.R. No. 162004*) because the taxpayer filled out the portion "Prior Year's Excess Credits" in its subsequent FAR. The court considered the taxpayer to have constructively chosen the carry-over option. It was in this context that the court determined the taxpayer to be bound by its initial choice (of automatic tax credit), so that it is precluded from asking for a refund of the excess CWT. It must be so because the carry-over option is irrevocable, and it cannot be allowed to recover twice for its overpayment of tax.

Unlike the second case, there was no flip-flopping of choices in the first one. The taxpayer did not indicate in its 1997 FAR

the choice of carry-over. Neither did it apply automatic tax credit in subsequent income tax returns so as to be considered as having constructively chosen the carry-over option. When it later on asked for a refund of its 1997 excess CWT, the taxpayer was expressing its option for the first time. It must be emphasized that the Court sustained the application for refund but without expressly declaring that such choice was irrevocable.

In either case, it is clear that the taxpayer cannot avail of both refund and automatic tax credit at the same time. Thus, as *Philam* declared: "One cannot get a tax refund and a tax credit at the same time for the same excess income taxes paid." This is the import of the Court's pronouncement that the options under Section 76 are alternative in nature.

In declaring that "the choice of one (option) precludes the other," the Court in *Philam* cited *Philippine Bank of Communications v. Commissioner of Internal Revenue (PBCom)*,[15] a case decided under the aegis of the old NIRC of 1977 under which the irrevocability rule had not yet been established. It was in *PBCom* that the Court stated for the first time that "the choice of one precludes the other."[16] However, a closer perusal of *PBCom* reveals that the taxpayer had opted for an automatic tax credit. Thus, it was precluded from availing of the other remedy of refund; otherwise, it would recover twice the same excess creditable tax. Again, nowhere is it even suggested that the choice of refund is irrevocable. For one thing, it was not the choice taken by the taxpayer. For another, the irrevocability rule had not yet been provided.

As in *PBCom*, the Court also said in *PL Management* that the choice of one (option) precludes the other. Similarly, the taxpayer in *PL Management* initially signified in the FAR its choice of automatic tax credit. But unlike in *PBCom, PL Management* was decided under the NIRC of 1997 when the irrevocability rule was already applicable. Thus, although *PL Management* was unable to actually apply its excess creditable

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[15] 361 Phil. 916 (1999).

[16] *Id*. at 932.

tax in the next succeeding taxable quarters due to lack of income tax liability, its subsequent application for TCC was rightfully denied by the Court. The reason is the irrevocability of its choice of carry-over.

In other words, previous incarnations of the words "the options are alternative... the choice of one precludes the other" did not lay down a doctrinal rule that the option of refund or tax credit certificate is irrevocable.

Again, we need not belabor the point that insisting upon the irrevocability of the option for refund, even though the taxpayer subsequently changed its mind by resorting to automatic tax credit, is not only contrary to the apparent intention of the lawmakers but is also clearly violative of the principle of administrative feasibility.

Prior to the NIRC of 1997, the alternative options of refund and carry-over of excess creditable tax had already been firmly established. However, the irrevocability rule was not yet in place.[17] As we explained in *PL Management*, Congress added the last sentence of Section 76 in order to lay down the irrevocability rule. More recently, in *Republic v. Team (Phils.) Energy Corp.*,[18] we said that the rationale of the rule is to avoid confusion and complication that could be brought about by the flip-flopping on the options, viz:

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[17] The predecessor provision of Section 76 of the 1997 NIRC was Section 79 of the 1985 NIRC which then provided:

Section 76. Final Adjustment Return. — Every corporation liable to tax under Section 24 shall file a final adjustment return covering the total net income for the preceding calendar or fiscal year. If the sum of the quarterly tax payments made during the said taxable year is not equal to the total tax due on the entire taxable net income of that year the corporation shall either:

(a) Pay the excess tax still due; or

(b) Be refunded the excess amount paid, as the case may be.

In case the corporation is entitled to a refund of the excess estimated quarterly income taxes-paid, the refundable amount shown on its final adjustment return may be credited against the estimated quarterly income tax liabilities for the taxable quarters of the succeeding taxable year.

[18] 750 Phil. 700 (2015).

The evident intent of the legislature, in adding the last sentence to Section 76 of the NIRC of 1997, is to keep the taxpayer from flip-flopping on its options, and avoid confusion and complication as regards said taxpayer's excess tax credit.[19]

The current rule specifically addresses the problematic situation when a taxpayer, after claiming cash refund or applying for the issuance of tax credit, and during the pendency of such claim or application, automatically carries over the same excess creditable tax and applies it against the estimated quarterly income tax liabilities of the succeeding year. Thus, the rule not only eases tax administration but also obviates double recovery of the excess creditable tax.

Further, nothing in the contents of BIR 1702 expressly declares that the option of refund or TCC is irrevocable. Even on the assumption that the irrevocability also applies to the option of refund, such would be an interpretation of the BIR that, as already demonstrated in the foregoing discussion, is contrary to the intent of the law. It must be stressed that such erroneous interpretation is not binding on the court. *Philippine Bank of Communications v. CIR*[20] is apropos:

It is widely accepted that the interpretation placed upon a statute by the executive officers, whose duty is to enforce it, is entitled to great respect by the courts. Nevertheless, such interpretation is not conclusive and will be ignored if judicially found to be erroneous. Thus, courts will not countenance administrative issuances that override, instead of remaining consistent and in harmony with, the law they seek to apply and implement.[21]

Applying the foregoing precepts to the given case, UPSI-MI is barred from recovering its excess creditable tax through refund or TCC. It is undisputed that despite its initial option to refund its 2006 excess creditable tax, UPSI-MI subsequently

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[19] *Id*. at 715, citing *Commissioner of Internal Revenue v. Bank of the Philippine Islands*, 609 Phil. 678, 690.

[20] *Supra* note 15.

[21] *Id*. at 929.

indicated in its 2007 short-period FAR that it carried over the 2006 excess creditable tax and applied the same against its 2007 income tax due. The CTA was correct in considering UPSI-MI to have constructively chosen the option of carry-over, for which reason, the irrevocability rule forbade it to revert to its initial choice. It does not matter that UPSI-MI had not actually benefited from the carry-over on the ground that it did not have a tax due in its 2007 short period. Neither may it insist that the insertion of the carry-over in the 2007 FAR was by mere mistake or inadvertence. As we previously laid down, the irrevocability rule admits of no qualifications or conditions.

In sum, the petitioner is clearly mistaken in its view that the irrevocability rule also applies to the option of refund or tax credit certificate. In view of the court's finding that it constructively chose the option of carry-over, it is already barred from recovering its 2006 excess creditable tax through refund or TCC even if it was its initial choice.

However, the petitioner remains entitled to the benefit of carry-over and thus may apply the 2006 overpaid income tax as tax credit in succeeding taxable years until fully exhausted. This is because, unlike the remedy of refund or tax credit certificate, the option of carry-over under Section 76 is not subject to any prescriptive period.

WHEREFORE, the petition is **DENIED** for lack of merit. The 8 February 2013 Decision of the Court of Tax Appeals in CTA-EB Case No. 828 is hereby **AFFIRMED**.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 210538. March 7, 2018]

DR. GIL J. RICH, *petitioner, vs.* **GUILLERMO PALOMA III, ATTY. EVARISTA TARCE and ESTER L. SERVACIO,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; APPELLANT'S BRIEF; REQUISITE CONTENTS; SUBSTANTIAL COMPLIANCE THEREWITH MAY BE ALLOWED; CASE AT BAR.— Section 13, Rule 44 of the Rules of Court provides the requisite contents of an appellant's brief that is to be submitted before the courts. x x x Any deviation from the required contents x x x is dealt with by Rule 50 of the Rules of Court. For the purpose of this case, the petitioner, while he did not so specify in his petition, actually anchors his plea on Section 1(f) of Rule 50, which particularly mentions the absence of page references in the subject index and statement of facts in the appellant's brief. x x x [T]he Court, in *De Leon vs. Court of Appeals*, has already ruled that the grounds for dismissal of an appeal under Section 1 of Rule 50 of the Rules of Court are discretionary upon the CA. x x x Indeed, consistent with the ruling in *De Leon*, the guiding principle in the resolution of the x x x issues is that if the citations found in the appellant's brief could sufficiently enable the CA to locate expeditiously the portions of the records referred to, then there is substantial compliance with the requirements of Section 13, Rule 44 of the Rules of Court. In this case, the CA did not exercise the discretion to dismiss the appeal based on the absence of "a subject index with page of reference and compliant statement of facts" in the appellant's brief. Clearly, the CA did not find that the tenets of justice and fair play were disregarded by this omission. Rather, the CA chose to decide the case on the merits, which impliedly found the appellant's brief to be substantially sufficient insofar as the guiding principle mentioned above is concerned.

2. MERCANTILE LAW; CORPORATION LAW; PRIVATE CORPORATIONS; CORPORATE LIQUIDATIONS;

EVERY CORPORATION WHOSE CORPORATE EXISTENCE HAS BEEN LEGALLY TERMINATED IS EMPOWERED TO CONTINUE AS A BODY CORPORATE FOR THREE YEARS AFTER THE TIME WHEN IT WOULD HAVE BEEN DISSOLVED.— According to the case of *Yu vs. Yukayguan*, once a corporation is dissolved, be it voluntarily or involuntarily, liquidation, which is the process of settling the affairs of the corporation, will ensue. This consists of (1) collection of all that is due the corporation, (2) the settlement and adjustment of claims against it, and (3) the payment of its debts. x x x These pronouncements draw their basis from Section 122 of the Corporation Code, which empowers every corporation whose corporate existence has been legally terminated to continue as a body corporate for three (3) years after the time when it would have been dissolved. This continued existence would only be for the purposes of "prosecuting and defending suits by or against it and enabling it to settle and close its affairs, to dispose of and convey its property and to distribute its assets." x x x In addition, and as expressly mentioned by the Corporation Code, this extended authority necessarily excludes the purpose of continuing the business for which it was established. The reason for this is simple: the dissolution of the corporation carries with it the termination of the corporation's juridical personality. Any new business in which the dissolved corporation would engage in, other than those for the purpose of liquidation, "will be a void transaction because of the non-existence of the corporate party."

APPEARANCES OF COUNSEL

Jose Vicente M. Arnado for petitioner.

Latras Heyrosa Alcazaren Reusorra for respondent Ester Servacio.

D E C I S I O N

REYES, JR., *J.*:

A corporation which has already been dissolved, be it voluntarily or involuntarily, retains no juridical personality to conduct its business save for those directed towards corporate liquidation.

The Case

Challenged before the Court *via* this Petition for Review on *Certiorari* under Rule 45 of the Rules of Court are the Decision[1] and Resolution[2] of the Court of Appeals (CA) in CA-G.R. CV No. 02948 dated February 28, 2013 and November 19, 2013, respectively. The CA Decision and Resolution reversed and set aside the Decision of the Regional Trial Court (RTC), Branch 25 of Maasin City, Southern Leyte, dated November 10, 2008.

The Antecedent Facts

Sometime in 1997, Dr. Gil Rich (petitioner) lent ₱1,000,000.00 to his brother, Estanislao Rich (Estanislao).[3] The agreement was secured by a real estate mortgage over a 1000-square-meter parcel of land with improvements, more particularly described as follows:

> A parcel of residential land, located at Brgy. Agbao, Maasin City, Southern Leyte, covered by Tax Declaration ARP No. 07001-00584, in the name of Estanislao Rich, containing an area of 1,000 square meters, and bounded on the North by Donato Demetrio – remaining portion; on the East by Felimon Saavedra; on the South by Kangleon St.; and on the West by Tuburan River.[4]

When Estanislao failed to make good on his obligations under the loan agreement, the petitioner foreclosed on the subject property *via* a public auction sale conducted on March 14, 2005 by respondent Guillermo Paloma III, Sheriff IV of the RTC. The petitioner was declared the highest bidder, and subsequently, was issued a Certificate of Sale as purchaser/mortgagee.[5]

Without the petitioner's knowledge, however, and prior to the foreclosure, it appeared from the records that on January

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[1] Penned by then Associate, now Executive, Justice Gabriel T. Ingles, and concurred in by Associate Justices Pampio A. Abarintos and Pedro B. Corales; *rollo*, pp. 234-250.

[2] *Id.* at 262-263.

[3] *Id.* at 235.

[4] *Id.* at 52-53.

[5] *Id.*

24, 2005,[6] Estanislao entered into an agreement with Maasin Traders Lending Corporation (MTLC), where loans and advances amounting to ₱2.6 million were secured by a real estate mortgage over the same property.[7]

On the strength of this document, respondent Ester L. Servacio (Servacio), as president of MTLC, exercised equitable redemption after the foreclosure proceedings. She tendered the amount of ₱2,090,000.00 as the redemption money in the extra-judicial foreclosure sale.[8] On March 15, 2006, respondent Paloma III, again as sheriff of the RTC, issued a Deed of Redemption in favor of MTLC.

The deed then became the subject of the complaint for "Annulment of Deed of Redemption, Damages, Attorney's Fees, Litigation Expenses, Application for Issuance of T.R.O. &/or Writ of Preliminary Prohibitory Injunction" filed before the RTC by the petitioner against respondent Servacio.

According to the petitioner, MTLC no longer has juridical personality to effect the equitable redemption as it has already been dissolved by the Securities and Exchange Commission as early as September 2003.[9] He also asserted that there was a pending case against respondent Servacio for allegedly forging Estanislao's signature on the same real estate mortgage that respondent Servacio used as basis for her equitable redemption of the subject property.[10]

On January 8, 2007, the case was called for pre-trial. Unfortunately, neither defendant Servacio nor her lawyer appeared, and as a result of which, defendant Servacio was "declared as in default."[11] The petitioner thus presented his evidence *ex parte.*

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[6] *Id.* at 42, 70-71.

[7] *Id.* at 42, 70-71, 235.

[8] *Id.* at 73, 235.

[9] *Id.* at 33.

[10] *Id.*

[11] *Id.* at 188.

On the basis of the evidence presented by the petitioner, the RTC rendered a Decision in the petitioner's favor dated November 10, 2008, the dispositive portion of which states that:

> WHEREFORE, premises considered, this Court orders the following:
>
> 1. Declaring the Real Estate Mortgage between Estanislao Rich and MLTC, Annex :B: (sic) to the Complaint, as null and void;
> 2. Ordering the City Assessor of the City of Maasin, Southern Leyte to cancel the Deed of Redemption in favor of MTLC appearing on the Tax Declaration covering the property.
>
> SO ORDERED.[12]

Aggrieved, Servacio appealed the case to the CA, arguing that: (1) the allegations of forgery were not substantiated, nor were they duly proven in the proceedings before the RTC;[13] and (2) the RTC erred in declaring the petitioner as in default despite a valid and meritorious excuse.[14]

Eventually, the CA granted the appeal, finding that forgery cannot be presumed and must be proved by clear, positive, and convincing evidence, which the petitioner was unable to fulfill.[15] The CA likewise emphasized that the assailed real estate mortgage between Estanislao and MTLC was duly notarized and thus enjoyed the presumption of authenticity and due execution, which again, the petitioner was unable to disprove.[16]

The CA, however, affirmed the RTC finding that respondent Servacio's reasons for her non-appearance as well as her counsel's absence during the pre-trial were unjustified[17] to warrant a liberal application of Section 4, Rule 18 of the Rules of Court.[18]

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[12] *Id.* at 191.

[13] *Id.* at 241.

[14] *Id.* at 239-241.

[15] *Id.* at 243.

[16] *Id.* at 245-246.

[17] *Id.* at 247.

[18] SECTION 4. Appearance of parties. — It shall be the duty of the parties and their counsel to appear at the pre-trial. The non-appearance of

Thus, the *fallo* of the CA decision reads:

WHEREFORE, the appeal is **GRANTED.** The Decision dated November 10, 2008, 8th Judicial Region, Branch 25, Maasin City, Southern Leyte, in Civil Case No. R-3477 is **REVERSED** and **SET ASIDE.** The complaint for annulment of Deed of redemption, damages, attorney's fees, litigation expenses, with application for issuanceof TRO and/or writ of preliminary prohibitory injunction is ordered DISMISSED. No costs.

SO ORDERED.

Hence, this petition.

The Issues

The petitioner anchors his prayer for the reversal of the CA decision and resolution based on the following questions of law:

I. MAY AN APPEAL BE DISMISSED ON ACCOUNT OF THE FAILURE OF THE APPELLANT'S BRIEF TO COMPLY WITH THE RULES?

II. MAY A CORPORATION NOT INVESTED WITH CORPORATE PERSONALITY AT THE TIME OF REDEMPTION REDEEM A PROPERTY?[20]

The Court's Ruling

After a careful perusal of the arguments presented and the evidence submitted, the Court finds partial merit in the petition.

On the first issue, the petitioner contends that respondent Servacio violated Section 13, Rule 44 of the Rules of Court when the latter's Appellant's Brief, which was submitted to the CA, "failed to contain a subject index with page of reference

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a party may be excused only if a valid cause is shown therefor or if a representative shall appear in his behalf fully authorized in writing to enter into an amicable settlement, to submit to alternative modes of dispute resolution, and to enter into stipulations or admissions of facts and of documents. (n)

[19] *Rollo*, p. 249.

[20] *Id*. at 24.

and compliant statement of facts."[21] This omission, according to the petitioner, should be enough to warrant a reversal of the CA decision.

The Court does not agree.

Section 13, Rule 44 of the Rules of Court provides the requisite contents of an appellant's brief that is to be submitted before the courts. It states that:

> SECTION 13. Contents of appellant's brief. — The appellant's brief shall contain, in the order herein indicated, the following:
>
> (a) A subject index of the matter in the brief with a digest of the arguments and page references, and a table of cases alphabetically arranged, textbooks and statutes cited with references to the pages where they are cited;
>
> (b) An assignment of errors intended to be urged, which errors shall be separately, distinctly and concisely stated without repetition and numbered consecutively;
>
> (c) Under the heading "Statement of the Case," a clear and concise statement of the nature of the action, a summary of the proceedings, the appealed rulings and orders of the court, the nature of the judgment and any other matters necessary to an understanding of the nature of the controversy, with page references to the record;
>
> (d) Under the heading "Statement of Facts," a clear and concise statement in a narrative form of the facts admitted by both parties and of those in controversy, together with the substance of the proof relating thereto in sufficient detail to make it clearly intelligible, with page references to the record;
>
> (e) A clear and concise statement of the issues of fact or law to be submitted to the court for its judgments;
>
> (f) Under the heading "Argument," the appellant's arguments on each assignment of error with page references to the record. The authorities relied upon shall be cited by the page of the report at which the case begins and the page of the report on which the citation is found;
>
> (g) Under the heading "Relief," a specification of the order or judgment which the appellant seeks; and
>
> (h) In cases not brought up by record on appeal, the appellant's brief shall contain, as an appendix, a copy of the judgment or final order appealed from. (16a, R46)

[21] *Id.* at 27.

Any deviation from the required contents as provided thereunder is dealt with by Rule 50 of the Rules of Court. For the purpose of this case, the petitioner, while he did not so specify in his petition, actually anchors his plea on Section 1(f) of Rule 50, which particularly mentions the absence of page references in the subject index and statement of facts in the appellant's brief. It provides that:

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

(f) Absence of specific assignment of errors in the appellant's brief, or of page references to the record as required in Section 13, paragraphs (a), (c), (d) and (f) of Rule 44; .

x x x (Emphasis and underscoring supplied)

To buttress his arguments, the petitioner pointed out that Section 13, Rule 44 of the Rules of Court uses the word "shall" which is thus "mandatory and compulsory."[22] The petitioner further mentions that "an appealing party must strictly comply with the requisites laid down in the Rules of Court."[23]

Contrary to this argument, however, the Court, in *De Leon vs. Court of Appeals*,[24] has already ruled that the grounds for dismissal of an appeal under Section 1 of Rule 50 of the Rules of Court are discretionary upon the CA. It said that:

x x x Rule 50, Section 1 which provides specific grounds for dismissal of appeal manifestly "confers a power and does not impose a duty." "What is more, it is directory, not mandatory." With the exception of Sec. 1(b), the grounds for the dismissal of an appeal are directory and not mandatory, and it is not the ministerial duty of

[22] *Id.* at 27.

[23] *Id.*

[24] 432 Phil. 775 (2002).

the court to dismiss the appeal. The discretion, however, 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.[25] (Citations omitted)

Indeed, consistent with the ruling in *De Leon*, the guiding principle in the resolution of the foregoing issues is that if the citations found in the appellant's brief could sufficiently enable the CA to locate expeditiously the portions of the records referred to, then there is substantial compliance with the requirements of Section 13, Rule 44 of the Rules of Court.

In this case, the CA did not exercise the discretion to dismiss the appeal based on the absence of "a subject index with page of reference and compliant statement of facts" in the appellant's brief. Clearly, the CA did not find that the tenets of justice and fair play were disregarded by this omission. Rather, the CA chose to decide the case on the merits, which impliedly found the appellant's brief to be substantially sufficient insofar as the guiding principle mentioned above is concerned.

More, it is proper to emphasize that this discretion is particularly vested unto the CA and not unto this Court. Thus, absent any grave abuse of discretion in the application of the rules, the Court could not, and would not, interfere with the CA findings. Considering too that the petitioner merely (1) quoted the provisions of the rules that the appellant's brief "violated" and (2) showed the insufficiencies in the appellant's brief, but did not present any proof of any grave abuse of discretion on the part of the CA, the Court would not now dismantle a ruling that was reached based on a discretion which was not improperly exercised.

On the second issue, the petitioner argues that respondent Servacio failed to contest the RTC finding that MTLC has already lost its juridical personality upon the redemption of the subject property, which makes the legal action void.

To answer this averment, the Court must qualify.

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[25] *Id.* at 789-790.

According to the case of *Yu vs. Yukayguan*,[26] once a corporation is dissolved, be it voluntarily or involuntarily, liquidation, which is the process of settling the affairs of the corporation, will ensue. This consists of (1) collection of all that is due the corporation, (2) the settlement and adjustment of claims against it, and (3) the payment of its debts. *Yu* more particularly described this process as that which entails the following:

"Winding up the affairs of the corporation means the collection of all assets, the payment of all its creditors, and the distribution of the remaining assets, if any among the stockholders thereof in accordance with their contracts, or if there be no special contract, on the basis of their respective interests. The manner of liquidation or winding up may be provided for in the corporate by-laws and this would prevail unless it is inconsistent with law."[27] (Citations omitted)

These pronouncements draw their basis from Section 122 of the Corporation Code,[28] which empowers every corporation whose corporate existence has been legally terminated to continue as a body corporate for three (3) years after the time when it would have been dissolved. This continued existence would only be for the purposes of "prosecuting and defending suits by or against it and enabling it to settle and close its affairs, to dispose of and convey its property and to distribute its assets."[29]

The rationale for this has already been averred by the Court in the case of *Rebollido vs. Court of Appeals*,[30] citing *Castle's Administrator v. Acrogen Coal, Co.*,[31] *viz:*

This continuance of its legal existence for the purpose of enabling it to close up its business is necessary to enable the corporation to collect the demands due it as well as to allow its creditors to assert the demands against it. If this were not so, then a corporation

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[26] 607 Phil. 581, 607 (2009).

[27] *Id.* at 608.

[28] Batas Pambansa Blg. 68 (1980).

[29] *Id.*

[30] 252 Phil. 831, 840 (1989).

[31] 145 Ky 591,140 SW 1034 (1911).

that became involved in liabilities might escape the payment of its just obligations by merely surrendering its charter, and thus defeat its creditors or greatly hinder and delay them in the collection of their demand. This course of conduct on the part of corporations the law in justice to persons dealing with them does not permit. The person who has a valid claim against a corporation, whether it arises in contract or tort should not be deprived of the right to prosecute an action for the enforcement of his demands by the action of the stockholders of the corporation in agreeing to its dissolution. The dissolution of a corporation does not extinguish obligations or liabilities due by or to it.[32] (Emphasis and underscoring supplied)

In addition, and as expressly mentioned by the Corporation Code, this extended authority necessarily excludes the purpose of continuing the business for which it was established.[33] The reason for this is simple: the dissolution of the corporation carries with it the termination of the corporation's juridical personality. Any new business in which the dissolved corporation would engage in, other than those for the purpose of liquidation, "will be a void transaction because of the non-existence of the corporate party."[34]

Two things must be said of the foregoing in relation to the facts of this case. First, if MTLC entered into the real estate mortgage agreement with Estanislao ***after*** its dissolution, then resultantly, such real estate mortgage agreement would be void *ab initio* because of the non-existence of MTLC's juridical personality.

Second, if, however, MTLC entered into the real estate mortgage agreement ***prior*** to its dissolution, then MTLC's redemption of the subject property, even if already after its dissolution (as long as it would not exceed three years thereafter), would still be valid because of the liquidation/winding up powers accorded by Section 122 of the Corporation Code to MTLC.

The discourse of this case then turns to one of proven facts. The Court scoured the records, and after a perusal of all the submissions herein and the rulings of the lower and appellate

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[32] *Id*.

[33] *Supra* note 28.

[34] Villanueva, Cesar L., *Philippine Corporate Law*, pp. 697-698.

courts, the Court finds that: (1) MTLC has already been dissolved by the Securities and Exchange Commission as early as September 2003;[35] (2) Estanislao and MTLC entered into the real estate mortgage agreement only on January 24, 2005;[36] and (3) MTLC, through respondent Servacio, redeemed the property on December 15, 2005, for which a Deed of Redemption was issued by respondent Paloma III on March 15, 2006.[37]

From the foregoing, it is clear that, by the time MTLC executed the real estate mortgage agreement, its juridical personality has already ceased to exist. The agreement is void as MTLC could not have been a corporate party to the same. To be sure, a real estate mortgage is not part of the liquidation powers that could have been extended to MTLC. It could not have been for the purposes of "prosecuting and defending suits by or against it and enabling it to settle and close its affairs, to dispose of and convey its property and to distribute its assets." It is, in fact, a new business in which MTLC no longer has any business pursuing.

Consequently, and contrary to the CA Decision, any redemption exercised by MTLC pursuant to this void real estate mortgage is likewise void, and could not be given any effect.

WHEREFORE, premises considered, the Decision and Resolution of the Court of Appeals in CA-G.R. CV No. 02948 dated February 28, 2013 and November 19, 2013, respectively, are hereby **REVERSED and SET ASIDE,** and a new one is entered **DECLARING** the Real Estate Mortgage executed by Estanislao Rich and MTLC as **NULL and VOID,** and **ORDERING** the City Assessor of Maasin, Southern Leyte to cancel the Deed of Redemption in favor of MTLC appearing on the Tax Declaration covering the property.

SO ORDERED.

Carpio[*] (*Chairperson*), *Peralta, Perlas-Bernabe,* and *Caguioa, JJ.,* concur.

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[35] *Rollo*, p. 34.

[36] *Id.* at 42, 70-71.

[37] *Id.* at 73-74.

[*] Acting Chief Justice per Special Order No. 2539, dated February 28, 2018.

SECOND DIVISION

[G.R. No. 226394. March 7, 2018]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **RAUL MARTINEZ and LITO GRANADA,** *accused-appellants.*

SYLLABUS

1. CRIMINAL LAW; REVISED PENAL CODE; RAPE THROUGH SEXUAL INTERCOURSE; ELEMENTS.— Article 266-A of the RPC, as amended, by Republic Act No. 8353, defines the crime of rape x x x. [T]o sustain a conviction for rape through sexual intercourse, the prosecution must prove the following elements beyond reasonable doubt, namely: (i) that the accused had carnal knowledge of the victim; and (ii) that said act was accomplished (a) through the use of force or intimidation, or (b) when the victim is deprived of reason or otherwise unconscious, or (c) by means of fraudulent machination or grave abuse of authority, or (d) when the victim is under 12 years of age or is demented.

2. ID.; ID.; ID.; SEXUAL INTERCOURSE WITH ONE WHO IS INTELLECTUALLY WEAK TO THE EXTENT THAT SHE IS INCAPABLE OF GIVING CONSENT TO THE CARNAL ACT CONSTITUTES RAPE.— [J]urisprudence holds that "[c]arnal knowledge with a woman who is a mental retardate is rape." This stems from the fact that "a mental condition of retardation deprives the complainant of that natural instinct to resist a bestial assault on her chastity and womanhood." Consequently, sexual intercourse with one who is intellectually weak to the extent that she is incapable of giving consent to the carnal act already constitutes rape. This is true regardless of the presence or absence of resistance. Only the fact of sexual congress between the accused and the victim, as well as the latter's mental retardation must be proven.

3. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; THE VICTIM'S INTELLECTUAL DISABILITY DOES NOT MAKE HER TESTIMONY UNBELIEVABLE, ESPECIALLY WHEN CORROBORATED

BY OTHER EVIDENCE.— [I]n *People v. Quintos*, the Court, citing *People v. Monticalvo*, explained that the victim's mental condition does not by itself make her testimony incredible, as long as she can recount her experience in a straightforward, spontaneous, and believable manner x x x. [I]t is settled that the victim's intellectual disability does not make her testimony unbelievable, especially when corroborated by other evidence. In this regard, AAA's testimony that she was suddenly dragged out of her home by Martinez was corroborated by her son BBB. Furthermore, AAA became pregnant as a result of the rape, and Martinez acknowledged that he was the father of the child, and even offered to support the child. This is clearly an admission that he engaged in sexual intercourse with AAA.

4. **ID.; ID.; ID.; IN MATTERS PERTAINING TO THE VICTIM'S CREDIBILITY, THE APPELLATE COURT GIVES GREAT WEIGHT TO THE TRIAL COURT'S FINDINGS, CONSIDERING THAT IT HAD THE FULL OPPORTUNITY TO OBSERVE DIRECTLY THE WITNESSES' DEMEANOR, CONDUCT AND MANNER OF TESTIFYING.—** [B]oth the trial court and the CA found that AAA's testimony was clear and unequivocal. It is well-settled that in matters pertaining to the victim's credibility, the appellate court gives great weight to the trial court's findings, considering that it had the full opportunity to observe directly the witnesses' demeanor, conduct and manner of testifying. Indeed, the emphasis, gesture, and inflection of the voice are potent aids in ascertaining the witness' credibility, which no longer appear on the records. These are important in unearthing the truth and determining the witnesses' candor. As such, the Court accords great respect to the findings of the trial court.

5. **ID.; ID.; DEFENSES; "SWEETHEART DEFENSE"; MUST BE PROVEN BY COMPELLING EVIDENCE THAT THE ACCUSED AND THE VICTIM WERE IN FACT LOVERS AND THAT THE VICTIM CONSENTED TO THE ALLEGED SEXUAL RELATIONS.—** [I]n cases where the accused raises the "sweetheart defense," there must be proof by compelling evidence, that the accused and the victim were in fact lovers and that the victim consented to the alleged sexual relations. The second is as important as the first, because love is not a license for lust. Similarly, evidence of the relationship is required, such as tokens, love letters, mementos, photographs,

and the like. In the case at bar, aside from Martinez's bare allegation that he and AAA were lovers, he failed to present any iota of evidence to establish his purported romantic relationship with AAA. This renders his claim self-serving and of no probative value.

6. CRIMINAL LAW; REVISED PENAL CODE; RAPE; THE ACCUSED'S KNOWLEDGE OF THE VICTIM'S MENTAL RETARDATION IS NOT AN ELEMENT FOR THE CHARGE OF RAPE.— Neither can Martinez escape culpability by asserting that he had no knowledge of AAA's mental condition. The accused's knowledge of the victim's mental retardation is not an element for the charge of rape. "The RPC, as amended, punishes the rape of a mentally disabled person regardless of the perpetrator's awareness of his victim's mental condition." Notably, proof that the accused knew of the victim's mental disability is important only for purposes of qualifying the charge of rape, under Article 266-B (paragraph 10) which imposes the death penalty if the offender knew of the victim's mental disability at the time of the commission of the rape. This being said, ignorance of the victim's mental condition will not in any way exonerate the offender from the crime.

7. ID.; ID.; SIMPLE RAPE; COMMITTED WHEN THE INFORMATION FAILED TO STATE THAT THE ACCUSED KNEW OF THE MENTAL CONDITION OF THE VICTIM; PENALTY.— [T]he proper charge against the accused-appellants should be rape under Article 266-A, paragraph 1(b). Guided by the Court's pronouncement in *People v. Caoile*, and *Rodriguez*, the accused-appellants' conviction stands, since the Information alleged that the accused-appellants had carnal knowledge of AAA, a "mentally defective" woman. This is sufficient compliance with the constitutional mandate that an accused be informed of the nature of the charge against him. x x x [T]he prosecution sufficiently established the accused-appellants' guilt beyond reasonable doubt. AAA's testimony was credible, natural and convincing. She positively identified the accused-appellants as her perpetrators and candidly and truthfully narrated the details of the harrowing ordeal she suffered, in their hands. x x x Considering that the Information failed to state that the accused-appellants knew of the mental condition of AAA, the accused-appellants should be held guilty

of simple rape, and must suffer the penalty of *reclusion perpetua*, without eligibility for parole.

8. **ID.; ID.; CIVIL LIABILITY; CIVIL INDEMNITY; AWARDED TO THE OFFENDED PARTY AS A KIND OF MONETARY RESTITUTION OR COMPENSATION TO THE VICTIM FOR THE DAMAGE OR INFRACTION INFLICTED BY THE ACCUSED.—** [T]he award of civil indemnity for the commission of an offense stems from Article 100 of the RPC which states that "[e]very person criminally liable for a felony is also civilly liable." Civil indemnity is awarded to the offended party as a kind of monetary restitution or compensation to the victim for the damage or infraction inflicted by the accused. Guided by the foregoing, an award of civil indemnity in the amount of Php 75,000.00 should be granted in favor of AAA.

9. **CIVIL LAW; CIVIL CODE; DAMAGES; EXEMPLARY DAMAGES; AWARDED TO PUNISH THE OFFENDER FOR HIS OUTRAGEOUS CONDUCT, AND TO DETER THE COMMISSION OF SIMILAR DASTARDLY AND REPREHENSIBLE ACTS IN THE FUTURE.—** [T]he amount of exemplary damages should be increased from Php 25,000.00 to Php 75,000.00 to conform to current jurisprudence. The importance of awarding the proper amount of exemplary damages cannot be overemphasized, as this species of damages is awarded to punish the offender for his outrageous conduct, and to deter the commission of similar dastardly and reprehensible acts in the future.

10. **ID.; ID.; ID.; MORAL DAMAGES; AWARDED IN RAPE CASES WITHOUT NEED OF PROOF, ONCE THE FACT OF RAPE IS DULY ESTABLISHED.—** [T]he Court affirms the award of moral damages in the amount of Php 75,000.00. Notably, in rape cases, once the fact of rape is duly established, moral damages are awarded to the victim without need of proof, in recognition that the victim necessarily suffered moral injuries from her ordeal. This serves as a means of compensating the victim for the manifold injuries such as "physical suffering, mental anguish, serious anxiety, besmirched reputation, wounded feelings, and social humiliation" that she suffered in the hands of her defiler.

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

REYES, JR., *J.*:

Carnal knowledge with a woman who suffers from mental retardation is a deplorable act that deserves the strictest condemnation under the law. Notably, sexual congress with a mental retardate is rape. In this regard, purported romantic relations between the accused and the victim, as well as the accused's lack of awareness of the victim's mental condition, shall not exonerate the accused from the charge.

This treats of the appeal[1] filed by Raul Martinez (Martinez) and Lito Granada (Granada) (collectively, the accused-appellants), seeking the reversal of the Decision[2] dated April 26, 2016 rendered by the Court of Appeals (CA) in CA-G.R. CEB-CR-H.C. No. 01664, which affirmed the trial court's ruling convicting the accused-appellants of the crime of Rape under Article 266-A, paragraph 1(d) of the Revised Penal Code (RPC), as amended.

The Antecedents

On September 26, 2001, an Information for Rape was filed against the accused-appellants, the accusatory portion of which reads:

That on or about the 13th day of September 2000 at the x x x Province of Cebu, Philippines, and within the jurisdiction of this Honorable court, the above-named accused, with deliberate intent,

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[1] CA *rollo*, pp. 126-127.

[2] Penned by Associate Justice Geraldine C. Fiel-Macaraig, with Associate Justices Edgardo L. Delos Santos and Edward B. Contreras, concurring; *id*. at 111-124.

by means of violence and intimidation, conspiring, confederating, and mutually helping with one another, did then and there willfully, unlawfully, and feloniously took turns one after the other in having carnal knowledge and intercourse with [AAA],[3] a mentally defective lady, against her will and consent.

CONTRARY TO LAW.[4]

Upon arraignment, the accused-appellants pleaded not guilty. Trial ensued thereafter.

Evidence for the Prosecution

The victim AAA narrated that on September 13, 2000, while she was cooking at her home, accused-appellant Martinez barged in and dragged her outside of her house. Martinez instructed AAA's son, BBB, not to follow, and threatened to hurt him should he defy him. Thereafter, Martinez dragged AAA to a bushy area, where co-accused-appellant Granada was waiting. Both men forced AAA to lie down, undressed her, and thereafter, took turns in having sexual intercourse with her. The accused-appellants ordered AAA to keep quiet, and threatened to kill her, if she made any noise. After which, the accused-appellants left AAA.[5]

AAA's son, BBB, who was 7 years old at the time of the incident, confirmed that on September 13, 2000, he saw Martinez grab AAA's hand and drag her outside their house. BBB likewise related that Martinez threatened to hurt him, if he followed them outside.[6]

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[3] The real name of the victim, her personal circumstances and other information which tend to establish or compromise her identity, as well as those of her immediate family, or household members, shall not be disclosed to protect her privacy, and fictitious initial shall, instead, be used, in accordance with *People v. Cabalquinto* (533 Phil. 703 [2006]) and the Amended Administrative Circular No. 83-2015 dated September 5, 2017.

[4] *Id.* at 51; 112.

[5] *Id.* at 113-114.

[6] *Id.* at 114.

As a result of the rape, AAA became pregnant. She reported the incident to her mother, CCC. She related that Granada was the father of her child.[7]

Thereafter, sometime in February 2001, Martinez's mother, Linda Martinez (Linda), went to CCC's house to make arrangements regarding AAA's pregnancy. Linda admitted that it was Martinez who fathered the child, and stated that he was willing to offer support. However, the discussion turned into a quarrel.[8]

During the trial, Yolita Gallo (Gallo), a social worker, and Anna Clara Alvez (Alvez), a psychologist at the Don Vicente Sotto Memorial Medical Center in Cebu City both testified on the mental condition of AAA. Gallo related that the test results of her study on AAA revealed that the latter did not act in accordance with her age. Gallo also observed that AAA needed assistance in taking care of her son BBB. Similarly, Alvez, noted that although AAA was 35 years old at the time of the rape incident, she possessed a mental ability of a 7 year old child. In fact, AAA obtained an IQ GDC score of 60, which revealed that she suffers from a Mild Mental Retardation.[9]

Evidence for the Defense

On the other hand, the accused-appellants vehemently denied the charge of rape. The accused-appellants claimed that the charge was concocted out of anger and was a scheme to extort money from them.

Martinez narrated that at around 12:00 midnight on September 13, 2000, AAA arrived at his home in Cebu. While at his house, he and AAA engaged in sexual intercourse, as they were sweethearts. As a result thereof, AAA became pregnant.[10]

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[7] *Id.* at 114.

[8] *Id.* at 76.

[9] *Id.* at 51-52.

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

Martinez further related that on November 13, 2000, CCC summoned him and asked him to marry AAA. He did not agree to the marriage, but undertook to support the child. Apparently, this angered CCC, who pulled out a bladed weapon and started chasing him.[11]

Co-accused-appellant Granada likewise denied having raped AAA. He related that AAA and Martinez were lovers. He saw AAA and Martinez being intimate on the night of September 13, 2000. He claimed that CCC merely implicated him in the charge, because she was angry that he restrained her (CCC) when she pointed a bladed weapon at Martinez.[12]

Ruling of the Trial Court

On May 28, 2012, the Regional Trial Court (RTC) rendered a Decision[13] holding that the prosecution established the guilt of the accused-appellants for the crime of rape beyond reasonable doubt. Likewise, the RTC refused to give credence to the sweetheart defense raised by Martinez. According to the RTC, such a defense failed against AAA's testimony that the accused-appellants defiled her. Also, the RTC interpreted Martinez's offer to support AAA's child, as a compromise which may be viewed as an implied admission of guilt.[14] The dispositive portion of the RTC decision reads:

> WHEREFORE, for all the foregoing considerations, this Court finds [accused-appellant] GUILTY beyond reasonable doubt of the crime of rape and hereby sentences each of them to suffer the penalty of reclusion perpetua.
>
> Each of the accused is hereby ordered to indemnify the victim in the amount of Php 75,000.00 as moral damages and Php 25,000.00 as exemplary damages.
>
> No costs.

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[11] *Id.* at 45.

[12] *Id.*

[13] *Id.* at 51-57.

[14] *Id.* at 55.

SO ORDERED.[15]

Aggrieved, the accused-appellants filed an appeal before the CA.

Ruling of the CA

On April 26, 2016, the CA rendered the assailed Decision[16] finding the accused-appellants guilty beyond reasonable doubt of rape. The CA refused to give credence to the sweetheart defense offered by the accused-appellants. According to the CA, Martinez failed to corroborate his claim that he and AAA were sweethearts. Likewise, echoing the finding of the RTC, the CA deemed Martinez's offer to support the child as an implied admission of guilt. Finally, the CA held that carnal knowledge of a mental retardate amounts to rape, considering that a mental retardate is unable to give her consent to the sexual act. Thus, the CA held the accused-appellants guilty of rape under Article 266-A, paragraph 1(d) of the RPC.

The dispositive portion of the assailed CA decision reads:

WHEREFORE, this Appeal is hereby **DENIED.** The Decision of the [RTC], Branch 25, Danao City in Criminal Case No. DNO-2618 is hereby **AFFIRMED.**

SO ORDERED.[17]

Dissatisfied with the ruling, the accused-appellants filed with this Court a Notice of Appeal[18] under Section 13 of Rule 124 of the 2000 Rules of Criminal Procedure.

The Issue

The essential issue for the Court's resolution is whether or not the accused-appellants' conviction should be upheld.

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[15] *Id*. at 57.

[16] *Id*. at 111.

[17] *Id*. at 124.

[18] *Id*. at 126-127.

In seeking the reversal of the assailed CA decision, Martinez points out that he and AAA were sweethearts. As lovers, their sexual congress was consensual and was an expression of their love for each other.[19] Likewise, Martinez claims that he was not aware of AAA's mental condition. In fact, he relates that AAA's condition was unknown to the community, since it appeared that AAA was able to take care of herself and raise her child. Martinez thus argues that the sexual intercourse with AAA, being consensual, coupled with his ignorance of her mental retardation, negate any criminal intent to rape her.[20]

Moreover, both the accused-appellants insist that the lone testimony of AAA was not sufficient to prove the charge of rape. They claim that her testimony was not credible, and was riddled with inconsistencies. They point out that in AAA's direct testimony she claimed that she was raped four times, while on cross-examination, she said it was 10 times. Further, they allege that since AAA was a mental retardate, her testimony was susceptible of coercion, and she could have been persuaded into accusing them of rape.[21]

On the other hand, the People, through the Office of the Solicitor General (OSG) maintains that the evidence presented by the prosecution proved beyond reasonable doubt that the accused-appellants had successive sexual intercourse with AAA, a mental retardate, with a mental age of 7. As such, AAA was incapable of giving intelligent consent to the sexual act. Anent the accused-appellants' allegation that AAA's testimony was inconsistent, the OSG counters that such minor variance may be expected taking into account AAA's mental capacity. What matters is that AAA clearly narrated the circumstances of how she was raped, and positively identified the accused-appellants as the assailants who had carnal knowledge with her.

Ruling of the Court

The instant petition is bereft of merit.

[19] *Id.* at 45.

[20] *Id.* at 46.

[21] *Id.* at 46-48.

The prosecution established beyond reasonable doubt that the accused-appellants are guilty of rape

Article 266-A of the RPC, as amended by Republic Act No. 8353,[22] defines the crime of rape as follows:

> **Art. 266-A.** *Rape, When and How Committed.* — Rape is committed —
>
> 1) By a man who shall have carnal knowledge of a woman under any of the following circumstances:
>
> a. Through force, threat or intimidation;
> b. When the offended party is deprived of reason or is otherwise unconscious;
> c. By means of fraudulent machination or grave abuse of authority;
> 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;

Accordingly, to sustain a conviction for rape through sexual intercourse, the prosecution must prove the following elements beyond reasonable doubt, namely: (i) that the accused had carnal knowledge of the victim; and (ii) that said act was accomplished (a) through the use of force or intimidation, or (b) when the victim is deprived of reason or otherwise unconscious, or (c) by means of fraudulent machination or grave abuse of authority, or (d) when the victim is under 12 years of age or is demented.[23]

Parenthetically, jurisprudence holds that "[c]arnal knowledge with a woman who is a mental retardate is rape."[24] This stems from the fact that "a mental condition of retardation deprives the complainant of that natural instinct to resist a bestial assault on her chastity and womanhood."[25] Consequently, sexual intercourse with one who is intellectually weak to the extent

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[22] The Anti-Rape Law of 1997.

[23] *People v. Esteban,* 735 Phil. 663, 670 (2014).

[24] *People v. Suansing,* 717 Phil. 100, 109 (2013).

[25] *Id.* at 109.

that she is incapable of giving consent to the carnal act already constitutes rape.[26] This is true regardless of the presence or absence of resistance.[27] Only the fact of sexual congress between the accused and the victim, as well as the latter's mental retardation must be proven.[28]

In the case at bar, the prosecution sufficiently established beyond reasonable doubt that the accused-appellants successively had carnal knowledge with AAA on September 13, 2000, by taking turns in inserting their penis into her vagina, against her will and without her consent. In fact, AAA narrated the harrowing details of her defilement, as follows:

PROS. MACIAS:

Q: Can you still remember where you were on September 13, 2000?
A: I was at home.

Q: Do you remember if you saw the accused in this case on September 13, 2000?
A: Yes, ma'am.

Q: Can you tell the Honorable Court what happened on this date?
A: They help each other in having sexual intercourse with me.

Q: Can you remember who was the first one who had sexual intercourse with you?
A: Lito.

Q: You said that Lito had sexual intercourse with you. What exactly did he do to you?
A: They took turns on me.

Q: They took turns on you on what?
A: They dragged me.

Q: Where did they dragged [sic] you?
A: In the bushes.

Q: Did anyone of the accused undress you?

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[26] *Id.*

[27] *People v. Quintos,* 746 Phil. 809, 831(2014).

[28] *Supra* note, at 109.

Atty. Serbise: Leading your Honor.

Court: There was already a medical finding that witness is mentally demented. Leading questions will be allowed since she has a mental capacity of a minor person. Let the witness answer.

A: Yes ma'am.

Prosecutor Macias:
Q: What was it that was remove [sic] from you?
A: My panty.

Q: If they remove [sic] your panty, what happened next?
A: They left me.

Q: Madam witness, did they not remove also their pants?
A: They also removed their pants.

x x x x x x x x x

Q: Ms. Witness, is it true that the accused in this case took turns in having sex with you?
A: Yes, Ma'am.

Q: Madam witness, on that date, September 13, 2000, how many times did the accused have sex with you?
A: Four (4) times.

Q: How did they have sex with you?
A: They push and pull me.

Q: How did you feel when they had sex with you?
A: I felt pain.

Q: Was there something inserted in your vagina?
A: Yes sir.

Q: Can you tell the Honorable Court what was that thing inserted in your vagina?
A: He said don't tell anybody or we will kill you.

Q: Ms. Witness, what was that thing inserted in your vagina? Was it the sex organ of the accused?
A: Yes Ma'am.

x x x x x x x x x

Prosecutor Macias:
Q: Whose sex organ was inserted in your vagina?
A: The two of them.

Q: After they took turns in having sex with you, what happened next?
A: They left.[29]

The linchpin of AAA's testimony was that the accused-appellants took turns in having sexual intercourse with her. On this matter, she did not waver. The Court, on numerous occasions, held that by the peculiar nature of rape cases, conviction thereon most often rests solely on the basis of the offended party's testimony, if credible, natural, convincing, and consistent with human nature and the normal course of things.[30] This ruling exactly mirrors AAA's testimony.

In addition to being threatened by the accused-appellants, it must be noted that AAA was rendered powerless against the accused-appellants' defilement, as she was incapable of giving consent to the sexual congress due to her mental retardation. AAA's mental disability was established through the testimonies of Gallo and Alvarez, social worker and psychologist, respectively, who examined AAA. Based on the studies and tests they conducted on AAA, they concluded that AAA suffered from mental retardation, and had a mental capacity of a 7-year-old child.

Consequently, considering that AAA was suffering from mental retardation, she lacked the awareness and presence of mind to resist the sexual intercourse. It bears stressing that "the unconscious, the manipulated, the reason-deprived, the demented, and the young cannot be expected to offer resistance to sexual abuse for the simple reason that their mental statuses render them incapable of doing so. They are incapable of rational consent."[31] Accordingly, sexual intercourse with them is rape.[32]

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[29] CA *rollo*, pp. 79-81.

[30] *People v. Baraoil,* 690 Phil. 368, 375 (2012); *People v. Magayon,* 640 Phil. 121, 136 (210); *People v. Corpuz,* 517 Phil. 622, 632-633 (2006).

[31] *People v. Quintos, supra* note 27, at 830.

[32] *Id*. at 831.

AAA's mental retardation does not render her testimony incredible and unworthy of belief

The accused-appellants discredit AAA's testimony as incredible and inconsistent. Further, they allege that since AAA was a mental retardate, she could be easily coerced or influenced into creating a trumped up charge against them.[33]

The Court is not persuaded.

Suffice it to say, in *People v. Quintos,*[34] the Court, citing *People v. Monticalvo,*[35] explained that the victim's mental condition does not by itself make her testimony incredible, as long as she can recount her experience in a straightforward, spontaneous, and believable manner, to wit:

> Competence and credibility of mentally deficient rape victims as witnesses have been upheld by this Court where it is shown that they can communicate their ordeal capably and consistently. Rather than undermine the gravity of the complainant's accusations, it even lends greater credence to her testimony, that, someone as feeble-minded and guileless could speak so tenaciously and explicitly on the details of the rape if she has not in fact suffered such crime at the hands of the accused.[36]

Moreover, it is settled that the victim's intellectual disability does not make her testimony unbelievable, especially when corroborated by other evidence.[37] In this regard, AAA's testimony that she was suddenly dragged out of her home by Martinez was corroborated by her son BBB. Furthermore, AAA became pregnant as a result of the rape, and Martinez acknowledged that he was the father of the child, and even offered to support the child. This is clearly an admission that he engaged in sexual intercourse with AAA.

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[33] CA *rollo,* pp. 46-48.

[34] 746 Phil. 809 (2014).

[35] 702 Phil. 643 (2013).

[36] *People v. Quintos, supra* note 34, at 825.

[37] *Id.* at 820-821.

Additionally, both the trial court and the CA found that AAA's testimony was clear and unequivocal. It is well-settled that in matters pertaining to the victim's credibility, the appellate court gives great weight to the trial court's findings, considering that it had the full opportunity to observe directly the witnesses' demeanor, conduct and manner of testifying.[38] Indeed, the emphasis, gesture, and inflection of the voice are potent aids in ascertaining the witness' credibility, which no longer appear on the records.[39] These are important in unearthing the truth and determining the witnesses' candor. As such, the Court accords great respect to the findings of the trial court.

Martinez's defense that he and AAA are lovers was not proven by competent and convincing evidence and will not prosper considering AAA's mental condition

Finally, in a bid to exonerate himself from the charge, Martinez claims that he and AAA were sweethearts.

The contention does not hold water.

It cannot be gainsaid that in cases where the accused raises the "sweetheart defense," there must be proof by compelling evidence, that the accused and the victim were in fact lovers and that the victim consented to the alleged sexual relations. The second is as important as the first, because love is not a license for lust.[40] Similarly, evidence of the relationship is required, such as tokens, love letters, mementos, photographs, and the like.[41]

In the case at bar, aside from Martinez's bare allegation that he and AAA were lovers, he failed to present any iota of evidence to establish his purported romantic relationship with AAA. This renders his claim self-serving and of no probative value.

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[38] *People v. Bosi,* 689 Phil. 66, 73 (2012).

[39] *People v. Caoile*, 710 Phil. 564, 578 (2013).

[40] *People v. Olesco,* 663 Phil. 15, 16 (2011).

[41] *Id*. at 20-21, citing *People v. Baldo,* 599 Phil. 382, 388 (2009).

At any rate, even assuming for the sake of argument that Martinez and AAA had a romantic relation, carnal knowledge with AAA, (even if consensual) would amount to rape due to her mental disability. Considering her mental retardation, she was incapable of giving rational consent, as she is regarded as not having reached the level of maturity that would give her the capacity to make prudent decisions, especially on matters involving sexuality.[42] Thus, sexual intercourse with her is rape.

Neither can Martinez escape culpability by asserting that he had no knowledge of AAA's mental condition. The accused's knowledge of the victim's mental retardation is not an element for the charge of rape. "The RPC, as amended, punishes the rape of a mentally disabled person regardless of the perpetrator's awareness of his victim's mental condition."[43] Notably, proof that the accused knew of the victim's mental disability is important only for purposes of qualifying the charge of rape, under Article 266-B (paragraph 10) which imposes the death penalty if the offender knew of the victim's mental disability at the time of the commission of the rape.[44] This being said, ignorance of the victim's mental condition will not in any way exonerate the offender from the crime.

For his part, Granada claims that the rape charge was fabricated by CCC, who was motivated by ill-will in impleading him in the charge. Needless to say, the Court has time and again rejected the defense of denial as weak and self-serving. Verily, Granada's defense easily falters against the positive and categorical identification of AAA that he (Granada) raped her.

The proper charge and penalties

The Court notes that the CA convicted the accused-appellants of rape under Article 266-A, paragraph 1(d), of the RPC which pertains to carnal knowledge of a demented person. To put things in proper perspective, it must be stressed that carnal knowledge

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[42] *People v. Quintos, supra* note 34, at 830-831.

[43] *People v. Caoile, supra* note 39, at 580-581.

[44] REVISED PENAL CODE, Article 266-B, as amended.

of a woman suffering from mental retardation is rape under Article 266-A, paragraph 1(b), which refers to carnal knowledge of a woman who is deprived of reason.[45]

In the cases of *Monticalvo,*[46] and *People v. Rodriguez,*[47] the Court clarified that:

> [P]aragraph 1, Article 266-A of the [RPC], as amended by Republic Act No. 8353, provides for two (2) circumstances when carnal knowledge of a woman with mental disability is considered rape. Subparagraph (b) thereof refers to rape of a person "deprived of reason" while subparagraph (d) refers to rape of a "demented person." **The term "deprived of reason" has been construed to encompass those suffering from mental abnormality, deficiency or retardation.** The term "demented," on the other hand, means having *dementia,* which Webster defines as mental deterioration; also madness, insanity. *Dementia* has also been defined in Black's Law Dictionary as a "form of mental disorder in which cognitive and intellectual functions of the mind are prominently affected; x x x total recovery not possible since cerebral disease is involved." **Thus, a mental retardate can be classified as a person "deprived of reason," not one who is "demented" and carnal knowledge of a mental retardate is considered rape under subparagraph (b),** not subparagraph (d) of Article 266-A(l) of the [RPC], as amended.[48] (Citations omitted and emphasis Ours)

Accordingly, the proper charge against the accused-appellants should be rape under Article 266-A, paragraph 1(b). Guided by the Court's pronouncement in *People v. Caoile,*[49] and *Rodriguez,*[50] the accused-appellants' conviction stands, since the Information alleged that the accused-appellants had carnal knowledge of AAA, a "mentally defective" woman. This is

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[45] *People v. Dalan,* 736 Phil. 298, 300-301 (2014), citing *People v. Tablang,* 619 Phil. 757, 766 (2009).

[46] *Supra* note 35.

[47] G.R. No. 208406, February 29, 2016, 785 SCRA 262.

[48] *Id*. at 275-276.

[49] 710 Phil. 564, 578 (2013).

[50] *Supra* note 47.

sufficient compliance with the constitutional mandate that an accused be informed of the nature of the charge against him.

All told, the prosecution sufficiently established the accused-appellants' guilt beyond reasonable doubt. AAA's testimony was credible, natural and convincing. She positively identified the accused-appellants as her perpetrators and candidly and truthfully narrated the details of the harrowing ordeal she suffered in their hands. In contrast, all that Martinez offered to buttress his innocence was his weak and unsubstantiated claim that he and AAA were sweethearts and that their sexual congress was consensual. In the same vein, Granada's contention that the charge was created out of spite was unconvincing. Considering that the Information failed to state that the accused-appellants knew of the mental condition of AAA, the accused-appellants should be held guilty of simple rape, and must suffer the penalty of *reclusion perpetua,*[51] without eligibility for parole.

As for the penalties, the Court deems it necessary to modify the amount of damages awarded by the lower court. The lower court erred by failing to award civil indemnity, and for granting a meager sum of Php 25,000.00 as exemplary damages.[52]

It must be noted that the award of civil indemnity for the commission of an offense stems from Article 100 of the RPC which states that "[e]very person criminally liable for a felony is also civilly liable."[53] Civil indemnity is awarded to the offended party as a kind of monetary restitution or compensation to the victim for the damage or infraction inflicted by the accused.[54] Guided by the foregoing, an award of civil indemnity in the amount of Php 75,000.00 should be granted in favor of AAA.

Likewise, the amount of exemplary damages should be increased from Php 25,000.00 to Php 75,000.00 to conform to

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[51] REVISED PENAL CODE, Article 266-B. *Penalty*.- Rape under paragraph 1 of the next preceding article shall be punished by *reclusion perpetua.*

[52] CA *rollo*, p. 164.

[53] REVISED PENAL CODE, Article 100.

[54] *People v. Jugueta,* G.R. No. 202124, April 5, 2016, 788 SCRA 331.

current jurisprudence.[55] The importance of awarding the proper amount of exemplary damages cannot be overemphasized, as this species of damages is awarded to punish the offender for his outrageous conduct, and to deter the commission of similar dastardly and reprehensible acts in the future.[56]

Finally, the Court affirms the award of moral damages in the amount of Php 75,000.00. Notably, in rape cases, once the fact of rape is duly established, moral damages are awarded to the victim without need of proof, in recognition that the victim necessarily suffered moral injuries from her ordeal.[57] This serves as a means of compensating the victim for the manifold injuries such as "physical suffering, mental anguish, serious anxiety, besmirched reputation, wounded feelings, and social humiliation" that she suffered in the hands of her defiler.[58]

WHEREFORE, premises considered, the instant appeal is hereby **DISMISSED for lack of merit.** Accordingly, the Decision dated April 26, 2016 of the Court of Appeals, in CA-G.R. CEB-CR-H.C. No. 01664, is **AFFIRMED with modification.** The accused-appellants, Raul Martinez and Lito Granada, are sentenced to *reclusion perpetua* without eligibility for parole, and are ordered to pay victim AAA: (i) Php 75,000.00 as civil indemnity; (ii) Php 75,000.00 as moral damages; and (iii) Php 75,000.00 as exemplary damages. All amounts due shall earn legal interest of six percent (6%) *per annum* from the date of this Decision until full payment.

SO ORDERED.

Carpio[*] (*Chairperson*), *Peralta, Perlas-Bernabe,* and *Caguioa, JJ.,* concur.

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[55] *Id*. at 383.

[56] *People of the Philippines v. Rommel Ronquillo,* G.R. No. 214762, September 20, 2017.

[57] *Id*., citing *People v. Delabajan,* 685 Phil. 236, 245 (2012).

[58] *People of the Philippines v. Rommel Ronquillo, id.*

[*] Designated as Acting Chief Justice per Special Order No. 2539 dated February 28, 2018.

SECOND DIVISION

[G.R. No. 227990. March 7, 2018]

CITYSTATE SAVINGS BANK, *petitioner, vs.* **TERESITA TOBIAS and SHELLIDIE VALDEZ,** *respondents.*

SYLLABUS

1. MERCANTILE LAW; REPUBLIC ACT NO. 8791 (THE GENERAL BANKING LAW); BANKS; HAVE A FIDUCIARY DUTY TOWARDS THEIR CLIENTS AND THEY ARE OBLIGED TO EXERCISE THE HIGHEST DEGREE OF DILIGENCE IN ALL THEIR TRANSACTIONS.— The business of banking is one imbued with public interest. As such, banking institutions are obliged to exercise the highest degree of diligence as well as high standards of integrity and performance in all its transactions. The law expressly imposes upon the banks a fiduciary duty towards its clients and to treat in this regard the accounts of its depositors with meticulous care. The contract between the bank and its depositor is governed by the provisions of the Civil Code on simple loan or *mutuum*, with the bank as the debtor and the depositor as the creditor. In light of these, banking institutions may be held liable for damages for failure to exercise the diligence required of it resulting to contractual breach or where the act or omission complained of constitutes an actionable tort.

2. CIVIL LAW; CIVIL CODE; OBLIGATIONS AND CONTRACTS; A BANK'S LIABILITY AS DEBTOR IS NOT MERELY VICARIOUS BUT PRIMARY WHEN THE ACTION AGAINST IT IS PREMISED ON BREACH OF CONTRACTUAL OBLIGATIONS.— [W]hen the action against the bank is premised on breach of contractual obligations, a bank's liability as debtor is not merely vicarious but primary, in that the defense of exercise of due diligence in the selection and supervision of its employees is not available. Liability of banks is also primary and sole when the loss or damage to its depositors is directly attributable to its acts, finding that the proximate cause of the loss was due to the bank's negligence or breach.

3. ID.; ID.; ID.; AGENCY; DOCTRINE OF APPARENT AUTHORITY; IMPOSES LIABILITY, NOT AS THE RESULT OF THE REALITY OF A CONTRACTUAL RELATIONSHIP, BUT BECAUSE OF THE ACTIONS OF A PRINCIPAL IN SOMEHOW MISLEADING THE PUBLIC INTO BELIEVING THAT THE RELATIONSHIP OR THE AUTHORITY EXISTS.— The bank, in its capacity as principal, may also be adjudged liable under the doctrine of apparent authority. The principal's liability in this case however, is solidary with that of his employee. The doctrine of apparent authority or what is sometimes referred to as the "holding out" theory, or the doctrine of ostensible agency, imposes liability, *not* "*as the result of the reality of a contractual relationship*, but rather because of the actions of a principal or an employer in somehow misleading the public into believing that the relationship or the authority exists."

4. ID.; ID.; ID.; ID.; ID.; THE EXISTENCE OF APPARENT OR IMPLIED AUTHORITY IS MEASURED BY PREVIOUS ACTS THAT HAVE BEEN RATIFIED OR APPROVED OR WHERE THE ACCRUING BENEFITS HAVE BEEN ACCEPTED BY THE PRINCIPAL.— [W]hile it is clear that the proximate cause of respondents' loss is the misappropriation of Robles, petitioner is still liable under Article 1911 of the Civil Code x x x. The existence of apparent or implied authority is measured by previous acts that have been ratified or approved or where the accruing benefits have been accepted by the principal. It may also be established by proof of the course of business, usages and practices of the bank; or knowledge that the bank or its officials have, or is presumed to have of its responsible officers' acts regarding bank branch affairs. x x x [P]etitioner's evidence bolsters the case against it, as they support the finding that Robles as branch manager, has been vested with the apparent or implied authority to act for the petitioner in offering and facilitating banking transactions. The testimonies of the witnesses presented by petitioner establish that there was nothing irregular in the manner in which Robles transacted with the respondents. x x x Petitioner acknowledged Robles' authority and it honored the accounts so opened outside the bank premises. x x x [R]espondents cannot be blamed for believing that Robles has the authority to transact for and on behalf of the petitioner and for relying upon the representations made by him. After all, Robles as branch manager is recognized

"within his field and as to third persons as the general agent and is in general charge of the corporation, with apparent authority commensurate with the ordinary business entrusted him and the usual course and conduct thereof." Consequently, petitioner is estopped from denying Robles' authority. As the employer of Robles, petitioner is solidarity liable to the respondents for damages caused by the acts of the former, pursuant to Article 1911 of the Civil Code.

CAGUIOA, *J.*, *separate opinion:*

1. CIVIL LAW; CIVIL CODE; OBLIGATIONS AND CONTRACTS; CONTRACTUAL BREACH; WHEN THE WRONGFUL ACTIONS OF THE BANK'S EMPLOYEES RESULT IN THE VIOLATION OF THE TERMS AND CONDITIONS OF THE BANK'S CONTRACT WITH ITS CLIENT, THE BASIS OF THE BANK'S LIABILITY TO ITS CLIENT REMAINS BASED ON CONTRACTUAL BREACH.— I find that CSB's liability in this case is direct, and proceeds *not* from the principle of agency under Article 1911, but from the breach of its contracts of loan with Tobias. x x x CSB granted Tobias' loan application and released the corresponding proceeds on the basis of documents bearing Tobias' genuine signatures. **Consequently, three separate contracts of loan had in fact been created between CSB and Tobias, at least insofar as CSB is concerned**. Verily, the Court's ruling in *Prudential Bank v. Court of Appeals* (*Prudential*) is on all fours. x x x The Court's ruling in *Prudential* is unequivocal. Rather than serving as basis for the bank's liability, Article 1911 only serves to affirm the existence of a contract between the bank and its client. To be sure, the authority exercised by officers and/or employees is granted pursuant to, and in fulfillment of, such contract. **Hence, when the wrongful actions of the bank's officers' and/or employees' result in the violation of the terms and conditions of the bank's contract with its client, the basis of the bank's liability to its client remains based, as it should, on contractual breach.** On this score, I find that CSB's liability to Tobias in this case precisely lies in its failure to deliver the loan proceeds to the latter, in violation of the terms of the contracts of loan forged between the parties.

2. ID.; ID.; ID.; CONTRACT OF LOAN OR *MUTUUM*; CONTEMPLATES TWO SEPARATE OBLIGATIONS, THE DEBTOR'S OBLIGATION TO DELIVER MONEY TO THE BORROWER, AND THE BORROWER'S CORRESPONDING OBLIGATION TO RETURN THE MONEY IN ACCORDANCE WITH THE TERMS AND CONDITIONS AGREED UPON.— By the contract of loan or *mutuum*, one party delivers money to another upon the condition that the same be paid in return, with or without interest. Hence, a contract of loan contemplates two separate obligations – the debtor's obligation to deliver money to the borrower, and the borrower's corresponding obligation to return the money in accordance with the terms and conditions agreed upon.

3. ID.; ID.; ID.; DAMAGES; THOSE WHO, IN THE PERFORMANCE OF THEIR OBLIGATIONS, ARE GUILTY OF NEGLIGENCE, AND THOSE WHO IN ANY MANNER CONTRAVENE THE TENOR THEREOF, ARE LIABLE FOR DAMAGES.— It is elementary that those who, in the performance of their obligations, are guilty of negligence, and those who in any manner contravene the tenor thereof, are liable for damages. The fiduciary relationship between CSB and Tobias imposes upon the former the obligation to observe the "highest standards of integrity and performance." By releasing the loan proceeds to Robles instead of Tobias, CSB did not just fail to observe the highest standard of diligence imposed upon it as a banking institution, it also failed to comply with its obligation to deliver the proceeds of the disputed loans to Tobias, the actual borrower. In so doing, CSB violated the terms of its contracts of loan with Tobias, and should thus be held liable in this regard.

4. MERCANTILE LAW; REPUBLIC ACT NO. 8791 (THE GENERAL BANKING LAW); BANKS; ANY ACT OR OMISSION ON THE PART OF THE BANK WHICH RESULTS IN MATERIAL LOSS OR DAMAGE TO ITS DEPOSITORS CONSTITUTES THE CONDUCT OF BUSINESS IN AN UNSAFE OR UNSOUND MANNER.— Under Section 56 of the General Banking Act, any act or omission on the part of the bank which results in material loss or damage to its depositors constitutes the conduct of business in an unsafe or unsound manner. CSB undoubtedly allowed such unsound banking practice by allowing its branch manager to withdraw

at will from the account of its depositor to the latter's detriment. CSB not only violated its fiduciary obligation to Tobias in respect of both the loan and deposit transactions, but was also, and more so, grossly negligent in failing to curb the same.

APPEARANCES OF COUNSEL

Gerodias Suchianco Estrella for petitioner.
Valdecantos & Valencia Law Office for respondents.

D E C I S I O N

REYES, JR., *J.*:

This is a petition for review on *certiorari*[1] under Rule 45 of the Rules of Court seeking to annul and set aside the Decision[2] dated May 31, 2016 and Resolution[3] dated October 10, 2016 issued by the Court of Appeals (CA) in CA-G.R. CV No. 102545.

The Antecedent Facts

Rolando Robles (hereinafter referred to as Robles), a certified public accountant, has been employed with Citystate Savings Bank (hereinafter referred to as the petitioner) since July 1998 then as Accountant-trainee for its Chino Roces Branch. On September 6, 2000, Robles was promoted as acting manager for petitioner's Baliuag, Bulacan branch, and eventually as manager.[4]

Sometime in 2002, respondent Teresita Tobias (hereinafter referred to as Tobias), a meat vendor at the Baliuag Public Market, was introduced by her youngest son to Robles, branch manager of petitioner's Baliuag, Bulacan branch.[5]

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[1] *Rollo*, pp. 9-44.

[2] Penned by Associate Justice Japar B. Dimaampao, with Associate Justices Franchito N. Diamante, and Carmelita Salandanan-Manahan, concurring; *id*. at 47-59.

[3] *Id*. at 60-61.

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

[5] *Id*. at 48.

Robles persuaded Tobias to open an account with the petitioner, and thereafter to place her money in some high interest rate mechanism, to which the latter yielded.[6]

Thereafter, Robles would frequent Tobias' stall at the public market to deliver the interest earned by her deposit accounts in the amount of Php 2,000.00. In turn, Tobias would hand over her passbook to Robles for updating. The passbook would be returned the following day with typewritten entries but without the corresponding counter signatures.[7]

Tobias was later offered by Robles to sign-up in petitioner's back-to-back scheme which is supposedly offered only to petitioner's most valued clients. Under the scheme, the depositors authorize the bank to use their bank deposits and invest the same in different business ventures that yield high interest. Robles allegedly promised that the interest previously earned by Tobias would be doubled and assured her that he will do all the paper work. Lured by the attractive offer, Tobias signed the pertinent documents without reading its contents and invested a total of Php 1,800,000.00 to petitioner through Robles. Later, Tobias became sickly, thus she included her daughter and herein respondent Shellidie Valdez (hereinafter referred to as Valdez), as co-depositor in her accounts with the petitioner.[8]

In 2005, Robles failed to remit to respondents the interest as scheduled. Respondents tried to reach Robles but he can no longer be found; their calls were also left unanswered. In a meeting with Robles' siblings, it was disclosed to the respondents that Robles withdrew the money and appropriated it for personal use. Robles later talked to the respondents, promised that he would return the money by installments and pleaded that they do not report the incident to the petitioner. Robles however reneged on his promise. Petitioner also refused to make arrangements for the return of respondents' money despite several demands.[9]

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[6] *Id*.

[7] *Id*.

[8] *Id.*

[9] *Id*. at 49.

On January 8, 2007, respondents filed a Complaint for sum of money and damages against Robles and the petitioner.[10] In their Complaint, respondents alleged that Robles committed fraud in the performance of his duties as branch manager when he lured Tobias in signing several pieces of blank documents, under the assurance as bank manager of petitioner, everything was in order.[11]

After due proceedings, the Regional Trial Court (RTC), on February 12, 2014, rendered its Decision,[12] *viz.*:

WHEREFORE, in light of the foregoing, judgment is hereby rendered ordering defendant Robles to pay plaintiff the following:

1. the amount of Php1,800,000.00 as actual damages plus legal rate of interest from the filing of the complaint until fully paid;
2. the amount of Php100,000.00 as moral damages; and
3. the amount of Php50,000.00 as exemplary damages.

The plaintiff's claim for attorney's fees and litigation expenses are DENIED for lack of merit.

Further, defendant bank is absolved of any liability. Likewise, all counterclaims and cross-claims are DENIED for lack of merit.

SO ORDERED.[13]

Ruling of the CA

The matter was elevated to the CA. The CA in its Decision[14] dated May 31, 2016, found the appeal meritorious and accordingly, reversed and set aside the RTC's decision, in this wise:

WHEREFORE, the *Appeal* is hereby **GRANTED**. The Decision Dated 12 February 2014 of the [RTC], Third Judicial Region, Malolos

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[10] *Id*. at 193-206.

[11] *Id*. at 200.

[12] Rendered by Judge Guillermo P. Agloro; *id.* at 62-78.

[13] *Id*. at 77-78.

[14] *Id*. at 47-59.

City, Bulacan, Branch 83, in Civil Case No. 11-M-07, is **MODIFIED** in that [petitioner] and [Robles] are **JOINTLY** and **SOLIDARILY** to pay [respondents] the amounts set forth in the assailed Decisions as well as attorney's fees in the amount of **ONE HUNDRED THOUSAND PESOS** (₱ 100,000.00).

SO ORDERED.[15]

Petitioner sought a reconsideration of the decision, but it was denied by the CA in its Resolution[16] dated October 10, 2016.

In the instant petition, respondents put forward the following arguments to support their position:

V

ARGUMENTS

IN RENDERING THE ASSAILED DECISION AND RESOLUTION, THE CA DECIDED QUESTIONS OF SUBSTANCE WHICH ARE NOT IN ACCORD WITH APPLICABLE LAWS AND JURISPRUDENCE.

[A]

THE CA SERIOUSLY ERRED IN RULING THAT THE DOCTRINE OF APPARENT AUTHORITY IS APPLICABLE IN THIS CASE.

[B]

THE CA SERIOUSLY ERRED IN RULING THAT RESPONDENT TOBIAS IS NOT GUILTY OF CONTRIBUTORY NEGLIGENCE.

[C]

THE CA SERIOUSLY ERRED IN RULING THAT CITYSTATE IS JOINTLY AND SOLIDARILY LIABLE WITH ROBLES TO PAY FOR THE DAMAGE SUPPOSEDLY SUFFERED BY RESPONDENTS.

[D]

THE CA SERIOUSLY ERRED IN RULING THAT CITYSTATE IS JOINTLY AND SOLIDARILY LIABLE FOR ATTORNEY'S FEES.[17]

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[15] *Id*. at 59.

[16] *Id*. at 60-61.

[17] *Id*. at 19.

In this petition for review on *certiorari*, petitioner alleged that it should not be held liable considering that it has exercised a high degree of diligence in the selection and supervision of its employees, including Robles, and that it took proper measures in hiring the latter. Further, it posits that it has complied with standard bank operating procedures in the conduct of its operations.

Petitioner also argues that Robles acted in his personal capacity in dealing with Tobias, who agreed with full knowledge and consent to the back-to-back loans and that it was not privy to the transactions between them. Therefore, petitioner submits that the CA erred in applying the doctrine of apparent authority.

Ruling of the Court

The petition is denied.

The business of banking is one imbued with public interest. As such, banking institutions are obliged to exercise the highest degree of diligence as well as high standards of integrity and performance in all its transactions.[18]

The law expressly imposes upon the banks a fiduciary duty towards its clients[19] and to treat in this regard the accounts of its depositors with meticulous care.[20]

The contract between the bank and its depositor is governed by the provisions of the Civil Code on simple loan or *mutuum*, with the bank as the debtor and the depositor as the creditor.[21]

In light of these, banking institutions may be held liable for damages for failure to exercise the diligence required of it

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[18] *Comsavings Bank v. Spouses Capistrano*, 716 Phil. 547, 550 (2013).

[19] *Republic Act No. 8791*, or the General Banking Law, Section 2.

[20] *Simex International (Manila), Inc. v. Court of Appeals*, 262 Phil. 387, 396 (1990).

[21] CIVIL CODE OF THE PHILIPPINES, Article 1980 states:

Art. 1980. Fixed, savings, and current deposits of money in banks and similar institutions shall be governed by the provisions concerning simple loan.

resulting to contractual breach or where the act or omission complained of constitutes an actionable tort.[22]

The nature of a bank's liability is illustrated in the consolidated cases of *Philippine Commercial International Bank v. CA, et al., Ford Philippines, Inc. v. CA, et al. and Ford Philippines, Inc. v. Citibank, N.A., et al.*[23] The original actions *a quo* were instituted by Ford Philippines, Inc. (Ford) to recover the value of several checks it issued payable to the Commissioner of Internal Revenue (CIR) which were allegedly embezzled by an organized syndicate.

The first two of the three consolidated cases mentioned above involve twin petitions for review assailing the decision and resolution of the CA ordering the collecting bank, Philippine Commercial International Bank (PCIB) to pay the amount of a crossed Citibank N.A. (Citibank) check (No. SN-04867) drawn by Ford in favor of CIR as payment for its taxes.

The said check was deposited with PCIB and subsequently cleared by the Central Bank. Upon presentment with Citibank, the proceeds of the check were released to PCIB as the collecting/depository bank.

However, it was later discovered that the check was not paid to the CIR. Ford was then forced to make another payment to the CIR.

Investigation revealed that the check was recalled by the General Ledger Accountant of Ford on the pretext that there has been an error in the computation of tax, he then directed PCIB to issue two manager's checks in replacement thereof.

Both Citibank and PCIB deny liability, the former arguing that payment was in due course as it merely relied on the latter's guarantee as to "all prior indorsements and/or lack of indorsements." Thus, Citibank submits that the proximate cause of the injury is the gross negligence of PCIB in indorsing the

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[22] *Far East Bank and Trust Company v. CA*, 311 Phil. 783, 793 (1995).

[23] 403 Phil. 361 (2001).

check in question. The CA agreed and adjudged PCIB solely liable for the amount of the check.

On the other hand, the last of the three consolidated cases, assails the decision and resolution of the CA which held Citibank, the drawee bank, solely liable for the amount of crossed check nos. SN-10597 and 16508 as actual damages, the proceeds of which have been misappropriated by a syndicate involving the employees of the drawer Ford, and the collecting bank PCIB.

This Court in resolving the issue of liability in *PCIB v. CA,* considered the degree of negligence of the parties.

While recognizing that the doctrine of imputed negligence makes a principal liable for the wrongful acts of its agents, this Court noted that the liability of the principal would nonetheless depend on whether the act of its agent is the proximate cause of the injury to the third person.

In the case of Ford, this Court ruled that its negligence, if any, cannot be considered as the proximate cause, emphasizing in this regard the absence of confirmation on the part of Ford to the request of its General Ledger Accountant for replacement of the checks issued as payment to the CIR. In absolving Ford from liability, this Court clarified that the mere fact that the forgery was committed by the drawer/principal's employee or agent, who by virtue of his position had unusual facilities for perpetrating the fraud and imposing the forged paper upon the bank, does not automatically shift the loss to such drawer-principal, in the absence of some circumstance raising estoppel against the latter.

In contrast, this Court found PCIB liable for failing to exercise the necessary care and prudence required under the circumstances. This Court noted that the action of Ford's General Ledger Accountant in asking for the replacement of the crossed Citibank check No. SN-04867, was *not in the ordinary course of business* and thus should have prompted PCIB to validate the same. Likewise, considering that the questioned crossed check was deposited with PCIB in its capacity as collecting agent for the Bureau of Internal Revenue, it has the responsibility

to ensure that the check is deposited in the payee's account only; and is bound to consult BIR, as its principal, of unwarranted instructions given by the payor or its agent, especially so as neither of the latter is its client. Having established PCIB's negligence, this Court then held the latter solely liable for the proceeds of Citibank check (No. SN-04867).

Insofar as Citibank check Nos. SN-10597 and 16508, this Court affirmed the findings of the CA and the trial court that PCIB cannot be faulted for the embezzlement as it did not actually receive nor held the subject checks. Adopting the conclusion of the trial court, this Court advanced that the act of misappropriation was in fact "the clandestine or hidden actuations performed by the members of the syndicate in their own personal, covert and private capacity and done without the knowledge of the defendant PCIB."[24]

While this Court admitted that there was no evidence confirming the conscious participation of PCIB in the embezzlement, it nonetheless found the latter liable pursuant to the doctrine of imputed negligence, as it was established that its employees performed the acts causing the loss in their official capacity or authority albeit for their personal and private gain or benefit.

Yet, finding that the drawee, Citibank was remiss of its contractual duty to pay the proceeds of the crossed checks only to its designated payee, this Court ruled that Citibank should also bear liability for the loss incurred by Ford. It ratiocinated:

> Citibank should have scrutinized Citibank Check Numbers SN 10597 and 16508 before paying the amount of the proceeds thereof to the collecting bank of the BIR. One thing is clear from the record: the clearing stamps at the back of Citibank Check Nos. SN 10597 and 16508 do not bear any initials. Citibank failed to notice and verify the absence of the clearing stamps. Had this been duly examined, the switching of the worthless checks to Citibank Check Nos. 10597 and 16508 would have been discovered in time. For this reason, Citibank had indeed failed to perform what was incumbent upon it, which is to ensure that the amount of the checks should be paid only

[24] *Id*. at 385.

to its designated payee. The fact that the drawee bank did not discover the irregularity seasonably, in our view, constitutes negligence in carrying out the bank's duty to its depositors. The point is that as a business affected with public interest and because of the nature of its functions, 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.[25]

Then, applying the doctrine of comparative negligence, this Court adjudged PCIB and Citibank equally liable for the proceeds of Citibank Check Nos. SN 10597 and 16508.

It is without question that when the action against the bank is premised on breach of contractual obligations, a bank's liability as debtor is not merely vicarious but primary, in that the defense of exercise of due diligence in the selection and supervision of its employees is not available.[26] Liability of banks is also primary and sole when the loss or damage to its depositors is directly attributable to its acts, finding that the proximate cause of the loss was due to the bank's negligence or breach.[27]

The bank, in its capacity as principal, may also be adjudged liable under the doctrine of apparent authority. The principal's liability in this case however, is solidary with that of his employee.[28]

The doctrine of apparent authority or what is sometimes referred to as the "holding out" theory, or the doctrine of ostensible agency, imposes liability, *not* "*as the result of the reality of a contractual relationship*, but rather because of the actions of a principal or an employer in somehow misleading the public into believing that the relationship or the authority exists."[29] It is defined as:

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[25] *Id*. at 387-388.

[26] *Far East Bank and Trust Co. (now Bank of the Philippine Islands) v. Tentmakers Group, Inc., et al.*, 690 Phil. 134, 144 (2012).

[27] *PCIB v. CA, supra* note 23.

[28] CIVIL CODE OF THE PHILIPPINES, Article 1910.

[29] *Sargasso Construction & Development Corp./Pick & Shovel, Inc./ Atlantic Erectors, Inc., (Joint Venture) v. PPA*, 637 Phil. 259, 281-282 (2010).

[T]he power to affect the legal relations of another person by transactions with third persons arising from the other's manifestations to such third person such that the liability of the principal for the acts and contracts of his agent extends to those which are within the apparent scope of the authority conferred on him, although no actual authority to do such acts or to make such contracts has been conferred.[30] (Citations omitted)

Succinctly stating the foregoing principles, the liability of a bank to third persons for acts done by its agents or employees is limited to the consequences of the latter's acts which it has ratified, or those that resulted in performance of acts within the scope of actual or apparent authority it has vested.

In *PCIB v. CA,*[31] however, it is evident and striking that for purposes of holding the principal/banks liable, no distinction has been made whether the act resulting to injury to third persons was performed by the agent/employee was pursuant to, or outside the scope of an apparent or actual official authority. It must be noted nonetheless that this is because of the peculiar circumstance attendant in that case, that is, the direct perpetrators of the offense therein are fugitives from justice. Thus, this Court is left to determine who of the parties must bear the burden for the loss incurred by Ford.

In the case at bar, petitioner does not deny the validity of respondents' accounts, in fact it suggests that transactions with it have all been accounted for as it is based on official documents containing authentic signatures of Tobias. The point is well-taken. In fine, respondents' claim for damages is not predicated on breach of their contractual relationship with petitioner, but rather on Robles' act of misappropriation.

At any rate, it cannot be said that the petitioner is guilty of breach of contract so as to warrant the imposition of liability *solely* upon it.[32]

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[30] *Id*. at 281.

[31] *Supra* note 23.

[32] *Far East Bank and Trust Co. (now Bank of the Philippine Islands) v. Tentmakers Group, Inc., et al., supra* note 26.

Records show that respondents entered into two types of transactions with the petitioner, the first involving savings accounts, and the other loan agreements. Both of these transactions were entered into outside the petitioner bank's premises, through Robles.

In the first, the respondents, as the depositors, acts as the creditor, and the petitioner, as the debtor.[33] In these agreements, the petitioner, by receiving the deposit impliedly agrees to pay upon demand and only upon the depositor's order.[34] Failure by the bank to comply with these obligations would be considered as breach of contract.

The second transaction which involves three loan agreements, are the subject of contention. These loans were obtained by respondents, secured by their deposits with the petitioner, and executed with corresponding authorization letters allowing the latter to debit from their account in case of default. Respondents do not contest the genuineness of their signature in the relevant documents; rather they submit that they were merely lured by Robles into signing the same without knowing their import. The loans were approved and released by the petitioner, but instead of reinvesting the same, the proceeds were misappropriated by Robles, as a result, respondents' accounts were debited and applied as payment for the loan.

Under the premises, the petitioner had the authority to debit from the respondents' accounts having been appointed as their attorney-in-fact in a duly signed authentic document.[35] Furthermore, there is nothing irregular or striking that transpired which should have impelled petitioner into further inquiry as to the authenticity of the attendant transactions. Suffice it is to state that the questioned withdrawal was not the first time in which Robles has acted as the authorized representative of the petitioner or as intermediary between the petitioner and the respondents, who is also not merely an employee but petitioner's branch manager.

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[33] CIVIL CODE OF THE PHILIPPINES, Article 1980.

[34] *The Metropolitan Bank and Trust Co. v. Rosales, et al.*, 724 Phil. 66, 68 (2014).

[35] *Rollo,* p. 114.

Moreover, that the respondents have been lured by Robles into signing the said documents without knowing the implications thereof does not prove complicity or knowledge on the part of the petitioner of Robles' inappropriate acts.

Nonetheless, while it is clear that the proximate cause of respondents' loss is the misappropriation of Robles, petitioner is still liable under Article 1911 of the Civil Code, *to wit*:

Art. 1911. Even when the agent has exceeded his authority, the principal is solidarily liable with the agent if the former allowed the latter to act as though he had full powers.

The case of *Prudential Bank v. CA*[36] lends support to this conclusion. There, this Court first laid down the doctrine of apparent authority, with specific reference to banks, *viz.*:

Conformably, we have declared in countless decisions that the principal is liable for obligations contracted by the agent. The agent's apparent representation yields to the principal's true representation and the contract is considered as entered into between the principal and the third person.

A bank is liable for wrongful acts of its officers done in the interests of the bank or in the course of dealings of the officers in their representative capacity but not for acts outside the scope of their authority. A bank holding out its officers and agent as worthy of confidence will not be permitted to profit by the frauds they may thus be enabled to perpetuate in the apparent scope of their employment; nor will it be permitted to shirk its responsibility for such frauds, even though no benefit may accrue to the bank therefrom. Accordingly, **a banking corporation is liable to innocent third persons where the representation is made in the course of its business by an agent acting within the general scope of his authority even though, in the particular case, the agent is secretly abusing his authority and attempting to perpetrate a fraud upon his principal or some other person, for his own ultimate benefit.**

Application of these principles in especially necessary because banks have a fiduciary relationship with the public and their stability depends on the confidence of the people in their honesty and efficiency.

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[36] 295 Phil. 399 (1993).

Such faith will be eroded where banks do not exercise strict care in the selection and supervision of its employees, resulting in prejudice to their depositors.[37] (Citations omitted, and emphasis and underscoring Ours)

Petitioner, in support of its position, cites *Banate v. Philippine Countryside Rural Bank (Liloan, Cebu), Inc.*,[38] this Court finds however that the case presents a different factual milieu and is not applicable in the case at bar.

In *Banate,* this Court ruled that the doctrine of apparent authority does not apply and absolved the bank from liability resulting from the alteration by its branch manager of the terms of a mortgage contract which secures a loan obtained from the bank. In so ruling, this Court found "[n]o proof of the course of business, usages and practices of the bank about, or knowledge that the board had or is presumed to have of its responsible officers' acts regarding the branch manager's apparent authority"[39] to cause such alteration. Further, "[n]either was there any allegation, much less proof"[40] that the bank ratified its manager's acts or is estopped to make a contrary claim.

In contrast, in this controversy, the evidence on record sufficiently established that Robles as branch manager was 'clothed' or 'held out' as having the power to enter into the subject agreements with the respondents.

The existence of apparent or implied authority is measured by previous acts that have been ratified or approved or where the accruing benefits have been accepted by the principal. It may also be established by proof of the course of business, usages and practices of the bank; or knowledge that the bank or its officials have, or is presumed to have of its responsible officers' acts regarding bank branch affairs.[41]

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[37] *Id*. at 408-409.

[38] 639 Phil. 35 (2010).

[39] *Id*. at 47.

[40] *Id*.

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

As aptly pointed by the CA, petitioner's evidence bolsters the case against it, as they support the finding that Robles as branch manager, has been vested with the apparent or implied authority to act for the petitioner in offering and facilitating banking transactions.

The testimonies of the witnesses presented by petitioner establish that there was nothing irregular in the manner in which Robles transacted with the respondents.[42] In fact, petitioner's witnesses admitted that while the bank's general policy requires that transactions be completed inside the bank premises, exceptions are made in favor of valued clients, such as the respondents. In which case, banking transactions are allowed to be done in the residence or place of business of the depositor, since the same are verified subsequently by the bank cashier.[43]

Moreover, petitioner admitted that for valued clients, the branch manager has the authority to transact outside of the bank premises.[44] In fact, Robles previously transacted business on behalf of the petitioner as when it sought and facilitated the opening of respondents' accounts. Petitioner acknowledged Robles' authority and it honored the accounts so opened outside the bank premises.

To recall, prior to the alleged back-to-back scheme entered into by the respondents, Robles has consistently held himself out as representative of the petitioner in seeking and signing respondents as depositors to various accounts.[45] It bears to stress that in the course of the said investment, the practice has been for Tobias to surrender the passbook to Robles' for updating.[46] All of which accounts have been in order until after the respondents was lured into entering the back-to-back scheme.

In this light, respondents cannot be blamed for believing that Robles has the authority to transact for and on behalf of

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[42] *Rollo*, p. 54.

[43] *Id*. at 55-56.

[44] *Id*.

[45] *Id*. at 66.

[46] *Id*. at 48-49; 138.

the petitioner[47] and for relying upon the representations made by him. After all, Robles as branch manager is recognized "within his field and as to third persons as the general agent and is in general charge of the corporation, with apparent authority commensurate with the ordinary business entrusted him and the usual course and conduct thereof."[48]

Consequently, petitioner is estopped from denying Robles' authority.[49] As the employer of Robles, petitioner is solidarily liable to the respondents for damages caused by the acts of the former, pursuant to Article 1911 of the Civil Code.[50]

The ruling in *PCIB v. CA*[51] insofar as it imposes liability directly and solely upon the employer does not apply considering that Robles, while not a petitioner in this case, has been validly been served with summons by publication[52] and joined as party in the case before the trial court[53] and the CA.[54] Jurisdiction having been acquired over his person, this Court consequently has the authority to rule upon his liability.[55]

On a final note, it must be pointed out that the irregularity has only been discovered by the petitioner on March 30, 2006 when Valdez went to petitioner's Mabini branch to have her

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[47] *Rural Bank of Milaor (Camarines Sur) v. Ocfemia, et al.*, 381 Phil. 911 (2000).

[48] *Banate v. Philippine Countryside Rural Bank (Liloan, Cebu), Inc.*, *supra* note 38, at 48.

[49] *Advance Paper Corp., et al. v. Arma Traders Corp., et al.*, 723 Phil. 401 (2013).

[50] Art.1191. Even when the agent exceeded his authority, the principal is solidarily liable with the agent if the former allowed the latter to act as though he had full powers.

[51] *Supra* note 23.

[52] *Rollo,* p. 62.

[53] *Id*.

[54] *Id*. at 47.

[55] *Manotoc v. Court of Appeals,* 530 Phil. 454 (2006).

account with Tobias updated.[56] It bears to stress that petitioner had the opportunity to discover such irregularity at the time the loan application was submitted for its approval or at the latest, when the respondents defaulted with the payment of their obligation. With the extreme repercussions of the transactions entered into by the respondents, instead of just relying on the supposed authority of Robles and examining the documents submitted, petitioner should have at least communicated with the respondents in order to verify with them the genuineness of their signatures therein and whether they understood the implications of affixing the same. Nothing short is expected of petitioner considering that the nature of the banking business is imbued with public interest, and as such the highest degree of diligence is demanded.[57]

WHEREFORE, in view of the foregoing disquisitions, the petition for review on *certiorari* is hereby **DENIED.** The Decision dated May 31, 2016 and Resolution dated October 10, 2016 issued by the Court of Appeals in CA-G.R. CV No. 102545 are **AFFIRMED**.

SO ORDERED.

Carpio[*] *(Chairperson), J.,* concur.

Caguioa, J., see separate opinion.

Peralta and *Perlas-Bernabe, JJ.,* join the separate opinion of *J. Caguioa.*

SEPARATE OPINION

CAGUIOA, *J.*:

I concur in the result.

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[56] *Rollo,* pp. 12; 68-69.

[57] *Allied Banking Corp. v. BPI*, 705 Phil. 174 (2013).

[*] Designated as Acting Chief Justice per Special Order No. 2539 dated February 28, 2018.

I agree with the *ponencia* insofar as it finds Petitioner Citystate Savings Bank (CSB) liable for payment of actual, moral, and exemplary damages in favor of respondents Teresita Tobias (Tobias) and Shellidie Valdez (Valdez).

However, I do not agree that CSB's liability proceeds from the principle of agency under Article 1911 of the Civil Code; rather, I submit that such liability proceeds from CSB's breach of its contracts of loan with respondent Tobias.

At the outset, it bears to emphasize that the Petition only places CSB's liability in issue. This discussion is thus limited to the determination of CSB's liability, since Robles' liability is not in issue.

The facts are simple.

Tobias is a meat vendor at the Baliuag Public Market. The records show that sometime in 2002, Tobias' son introduced her to Robles, the manager of CSB's Baliuag, Bulacan branch. Robles convinced Tobias to open four (4) interest yielding-deposit accounts. It appears that all the transactions relating to these accounts were exclusively facilitated and processed by Robles outside of CSB's premises.

Thereafter, Robles enticed Tobias to enroll her deposits under CSB's back-to-back scheme,[1] where they would be placed in various investments for higher yield. Relying solely on Robles' representations, Tobias signed voluminous bank documents without perusing their contents.[2]

Unbeknownst to Tobias, Robles tricked her into signing loan application documents,[3] withdrawal slips[4] and authorization letters granting CSB authority to debit loan amortizations from Tobias' existing accounts, should they be left unpaid.[5]

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[1] *Rollo*, pp. 140-145.

[2] *Id.*

[3] *Id*.

[4] *Id.*

[5] *Id*. at 68

With the use of these documents, Robles obtained three (3) loans in Tobias' name, amounting to One Million Two Hundred Thousand Pesos (Php 1,200,000.00). These loans were secured by Tobias' existing deposits with CSB.[6] Notably, the loans were approved by CSB despite the fact that neither Tobias nor Valdez (whom Tobias later named co-depositor after falling ill) had been called upon to verify their respective identities and their intention to obtain the loans, either by personal appearance or through a simple telephone call.[7]

Subsequently, Robles withdrew the loan proceeds through withdrawal slips that Tobias had signed. Instead of reinvesting Tobias' deposits, Robles misappropriated the proceeds of the fraudulent loans and later disappeared. Since Tobias was unaware of the procurement of the fraudulent loans, she failed to pay for the corresponding amortizations. Consequently, CSB debited the payments due from her existing deposits.[8]

Tobias and Valdez sought relief from the Regional Trial Court (RTC) by filing a complaint for sum of money and damages against Robles and CSB. In its Decision dated February 12, 2014 the RTC held Robles **solely liable** for actual, moral and exemplary damages. The Court of Appeals (CA) later modified the RTC's disposition in its Decision dated July 12, 2011 by holding CSB jointly and solidarity liable with Robles.

Applying the principle of agency, the *ponencia* finds that CSB should be held jointly and solidarity liable with Robles for the damages resulting from the latter's misrepresentations anent CSB's so-called "back to back" scheme.

As stated at the outset, I find that CSB's liability in this case is direct, and proceeds *not* from the principle of agency under Article 1911, but from the breach of its contracts of loan with Tobias.

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[6] *Id*. at 67-69.

[7] *Id*. at 54.

[8] *Id*. at 48.

To recall, Robles facilitated two (2) sets of transactions between CSB and Tobias — *first*, the transactions involving Tobias' interest-yielding deposit accounts (deposit transactions) and *second*, the transactions involving the disputed loans which Robles procured on Tobias' behalf (loan transactions).

CSB argues that it cannot be held liable for beach of contract in connection with the loan transactions forged by Robles, the latter having facilitated the same on his own account. To bolster its defense, CSB places emphasis on the fact that the documents Robles used to procure the disputed loans and perpetrate his fraudulent scheme were all in order, and bore Tobias' genuine signature. **I believe that these allegations confirm, rather than negate, CSB's liability for breach of contract.**

It bears stressing that CSB granted Tobias' loan application and released the corresponding proceeds on the basis of documents bearing Tobias' genuine signatures. **Consequently, three separate contracts of loan had in fact been created between CSB and Tobias, at least insofar as CSB is concerned.** Verily, the Court's ruling in *Prudential Bank v. Court of Appeals*[9] (*Prudential*) is on all fours.

In *Prudential*, respondent therein invested Php200,000.00 in Central Bank bills with petitioner bank. The investment was recorded through a Confirmation of Sale (COS) and a Debit Memo (DM) showing that Php200,000.00 had been debited against respondent's account and applied to the investment. A certain Susan Quimbo (Quimbo), an employee of petitioner bank, facilitated the transaction.

However, respondent later discovered that the amount she invested had been withdrawn, and that no record of said investment existed in petitioner's bank's records. Petitioner bank refused to return respondent's investment, prompting the latter to file a complaint for breach of contract against the former. The RTC and CA ruled in favor of respondent, and held petitioner bank liable for actual, moral and exemplary damages, as well

[9] 295 Phil. 399 (1993). [First Division, Per *J.* Cruz].

as attorney's fees. Petitioner bank subsequently brought the case to the Court *via* Rule 45, faulting the RTC and CA for finding it liable on the basis of quasi-delict, when it was sued for breach of contract.

Resolving the issue, the Court held:

The judgment of the Court of Appeals is now faulted in this petition, mainly on the ground that the bank should not have been found liable for a quasi-delict when it was sued for breach of contract.

The petition shall fail. The petitioner is quibbling. It appears to be merely temporizing to delay enforcement of the liability clearly established against it.

x x x The private respondent claims she has not yet collected her investment of ₱200,000.00 and has submitted in proof of their contention the [COS] and the [DM] issued to her by Quimbo on the official forms of the bank. The petitioner denies her claim and points to the Withdrawal Slip, which it says Cruz has not denied having signed. It also contends that the [COS] and the [DM] are fake and should not have been given credence by the lower courts.

x x x [W]e find substantial basis for the conclusion that the private respondents signed the Withdrawal Slip only as part of the bank's new procedure of re-investment. She did not actually receive the amount indicated therein, which she was made to understand was being re-invested in her name. The bank itself so assured her in the [COS] and the [DM] later issued to her by Quimbo.

x x x x x x x x x

The bank has also not succeeded in impugning the authenticity of the [COS] and the [DM] which were made on its official forms. These are admittedly not available to the general public or even its depositors and are handled only by its personnel. Even assuming that they were not signed by its authorized officials, as it claims, there was no obligation on the part of Cruz to verify their authority because she had the right to presume it. The documents had been issued in the office of the bank itself and by its own employees with whom she had previously dealt. Such dealings had not been questioned before, much less invalidated. There was absolutely no reason why she should not have accepted their authority to act on behalf of their employer.

x x x x x x x x x

There is no question that the petitioner was made liable for its failure or refusal to deliver to Cruz the amount she had deposited with it and which she had a right to withdraw upon its maturity. That investment was acknowledged by its own employees, who had the apparent authority to do so and so could legally bind it by its acts *vis-a-vis* Cruz. Whatever might have happened to the investment — whether it was lost or stolen by whoever — was not the concern of the depositor. It was the concern of the bank.

As far as Cruz was concerned, she had the right to withdraw her ₱200,000.00 placement when it matured pursuant to the terms of her investment as acknowledged and reflected in the [COS]. The failure of the bank to deliver the amount to her pursuant to the [COS] constituted its breach of their contract, for which it should be held liable.

The liability of the principal for the acts of the agent is not even debatable. Law and jurisprudence are clearly and absolutely against the petitioner.

Such liability dates back to the Roman Law maxim, *Qui per alium facit per seipsum facere videtur*. "He who does a thing by an agent is considered as doing it himself." This rule is affirmed by the Civil Code thus:

> "Art. 1910. The principal must comply with all the obligations which the agent may have contracted within the scope of his authority.
>
> Art. 1911. Even when the agent has exceeded his authority, the principal is solidarily liable with the agent if the former allowed the latter to act as though he had full powers."

Conformably, we have declared in countless decisions that the principal is liable for obligations contracted by the agent. The agent's apparent representation yields to the principal's true representation and the contract is considered as entered into between the principal and the third person.[10] (Emphasis and underscoring supplied)

The Court's ruling in *Prudential* is unequivocal. Rather than serving as basis for the bank's liability, Article 1911 only serves to affirm the existence of a contract between the bank and its

[10] *Id*. at 405-408.

client. To be sure, the authority exercised by officers and/or employees is granted pursuant to, and in fulfillment of, such contract. **Hence, when the wrongful actions of the bank's officers' and/or employees' result in the violation of the terms and conditions of the bank's contract with its client, the basis of the bank's liability to its client remains based, as it should, on contractual breach.**

On this score, I find that CSB's liability to Tobias in this case precisely lies in its failure to deliver the loan proceeds to the latter, in violation of the terms of the contracts of loan forged between the parties.

By the contract of loan or *mutuum*, one party delivers money to another upon the condition that the same be paid in return, with or without interest.[11] Hence, a contract of loan contemplates two separate obligations — the debtor's obligation to deliver money to the borrower, and the borrower's corresponding obligation to return the money in accordance with the terms and conditions agreed upon.

In this case, CSB does not deny, and in fact admits, that it delivered the proceeds of Tobias' loans *not* to Tobias herself, but to Robles, who, in turn, used withdrawal slips purportedly authorizing him to receive the same on Tobias' behalf. What this shows is that CSB readily allowed its own employee, Robles, to withdraw the proceeds of the disputed loans without conducting any further verification to confirm the veracity of Robles' supposed authority, despite the questionable circumstances

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[11] Article 1933 of the Civil Code provides, in part:

By the contract of loan, one of the parties delivers to another, either something not consumable so that the latter may use the same for a certain time and return it, in which case the contract is called a commodatum; or money or other consumable thing, upon the condition that the same amount of the same kind and quality shall be paid, in which case the contract is simply called a loan or mutuum.

x x x x x x x x x

Simple loan may be gratuitous or with a stipulation to pay interest.

x x x x x x x x x

attending said withdrawal. Such banking practice on the part of CSB is grossly negligent and unsound.

It is elementary that those who, in the performance of their obligations, are guilty of negligence, and those who in any manner contravene the tenor thereof, are liable for damages.[12]

The fiduciary relationship between CSB and Tobias imposes upon the former the obligation to observe the "highest standards of integrity and performance."[13] By releasing the loan proceeds to Robles instead of Tobias, CSB did not just fail to observe the highest standard of diligence imposed upon it as a banking institution, it also failed to comply with its obligation to deliver the proceeds of the disputed loans to Tobias, the actual borrower. In so doing, CSB violated the terms of its contracts of loan with Tobias, and should thus be held liable in this regard.

Under Section 56 of the General Banking Act,[14] any act or omission on the part of the bank which results in material loss or damage to its depositors constitutes the conduct of business in an unsafe or unsound manner. CSB undoubtedly allowed such unsound banking practice by allowing its branch manager to withdraw at will from the account of its depositor to the latter's detriment. CSB not only violated its fiduciary obligation to Tobias in respect of both the loan and deposit transactions, but was also, and more so, grossly negligent in failing to curb the same.

Based on these premises, I vote to **DENY** the instant Petition for Review and **AFFIRM** the Decision of the Court of Appeals dated May 31, 2016 insofar as it finds Citystate Savings Bank liable to pay respondents Teresita Tobias and Shellidie Valdez actual, moral, and exemplary damages.

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[12] CIVIL CODE, Art. 1170.

[13] See generally *Philippine National Bank v. Pike*, 507 Phil. 322 (2005). [Second Division, Per *J.* Chico-Nazario]

[14] Republic Act No. 8791, *An Act Providing for the Regulation of the Organization and Operations of Banks, Quasi-Banks, Trust Entities and for Other Purposes* [THE GENERAL BANKING LAW OF 2000], May 23, 2000 in relation to Section X149, Appendix 48 of the Bangko Sentral ng Pilipinas Manual of Regulation for Banks, October 31, 2015.

SECOND DIVISION

[G.R. No. 231383. March 7, 2018]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **JOEY SANCHEZ *y* LICUDINE,** *accused-appellant.*

SYLLABUS

1. **REMEDIAL LAW; CRIMINAL PROCEDURE; APPEALS; AN APPEAL IN CRIMINAL CASES 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.—** [A]n 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. "The appeal confers the appellate court full jurisdiction over the case and renders such court competent to examine records, revise the judgment appealed from, increase the penalty, and cite the proper provision of the penal law."

2. **CRIMINAL LAW; REPUBLIC ACT NO. 9165 (THE COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002); ILLEGAL SALE OF DANGEROUS DRUGS; ELEMENTS. —** [I]n order to properly secure the conviction of an accused charged with illegal sale of dangerous drugs, the prosecution must prove: (*a*) the identity of the buyer and the seller, the object, and the consideration; and (*b*) the delivery of the thing sold and the payment.

3. **ID.; ID.; ILLEGAL POSSESSION OF DANGEROUS DRUGS; ELEMENTS.—** In instances wherein an accused is charged with illegal possession of dangerous drugs, the prosecution must establish the following elements to warrant his conviction: (*a*) the accused was in possession of an item or object identified as a prohibited drug; (*b*) such possession was not authorized by law; and (*c*) the accused freely and consciously possessed the said drug.

4. ID.; ID.; ILLEGAL SALE AND ILLEGAL POSSESSION OF DANGEROUS DRUGS; IDENTITY OF PROHIBITED DRUG; MUST BE ESTABLISHED WITH MORAL CERTAINTY, CONSIDERING THAT THE DANGEROUS DRUG ITSELF FORMS AN INTEGRAL PART OF THE *CORPUS DELICTI* OF THE CRIME.— [In illegal sale and illegal possession of dangerous drugs,] it is essential that the identity of the prohibited drug be established with moral certainty, considering that the dangerous drug itself forms an integral part of the *corpus delicti* of the crime. Thus, in order to obviate any unnecessary doubt on the identity of the dangerous drugs, the prosecution has to show an unbroken chain of custody over the same and account for each link in the chain of custody from the moment the drugs are seized up to their presentation in court as evidence of the crime.

5. ID.; ID.; CUSTODY AND DISPOSITION OF SEIZED ITEMS; NON-COMPLIANCE WITH THE REQUIREMENTS THEREOF, UNDER JUSTIFIABLE GROUNDS, WILL NOT RENDER VOID AND INVALID THE SEIZURE AND CUSTODY OVER THE SEIZED ITEMS SO LONG AS THE INTEGRITY AND EVIDENTIARY VALUE OF THE SEIZED ITEMS ARE PROPERLY PRESERVED BY THE APPREHENDING OFFICER.— Section 21, Article II of RA 9165 outlines the procedure which the apprehending officers must follow when handling the seized drugs in order to preserve their integrity and evidentiary value. Under the said section, prior to its amendment by RA 10640, the apprehending team shall, among others, **immediately after seizure and confiscation conduct a physical inventory and photograph the seized items in the presence of the accused or the person from whom the items were seized, or his representative or counsel, a representative from the media and the DOJ, and any elected public official** who shall be required to sign the copies of the inventory and be given a copy of the same, and the seized drugs must be turned over to the PNP Crime Laboratory within twenty-four (24) hours from confiscation for examination. x x x The Court, however, clarified that under varied field conditions, strict compliance with the requirements of Section 21, Article II of RA 9165 may not always be possible. In fact, the IRR of RA 9165 — which is now crystallized into statutory law with the passage of RA 10640 — provides that the said inventory and photography may be conducted at the nearest police station

or office of the apprehending team in instances of warrantless seizure, and that **non-compliance with the requirements of Section 21, Article II of RA 9165 — under justifiable grounds — will not render void and invalid the seizure and custody over the seized items so long as the integrity and evidentiary value of the seized items are properly preserved by the apprehending officer or team.** In other words, the failure of the apprehending team to strictly comply with the procedure laid out in Section 21, Article II of RA 9165 and its IRR does not *ipso facto* render the seizure and custody over the items as void and invalid, provided that the prosecution satisfactorily proves that: (*a*) there is justifiable ground for non-compliance; **and** (*b*) the integrity and evidentiary value of the seized items are properly preserved.

6. **ID.; ID.; ID.; ID.; THE APPREHENDING OFFICERS ARE COMPELLED NOT ONLY TO STATE REASONS FOR NON-COMPLIANCE, BUT MUST IN FACT, ALSO CONVINCE THE COURT THAT THEY EXERTED EARNEST EFFORTS TO COMPLY WITH THE MANDATED PROCEDURE, AND THAT UNDER THE GIVEN CIRCUMSTANCES, THEIR ACTIONS WERE REASONABLE.—** The law requires the presence of an elected public official, as well as representatives from the DOJ and the media during the actual conduct of inventory and photography to ensure that the chain of custody rule is observed and thus, remove any suspicion of tampering, switching, planting, or contamination of evidence which could considerably affect a case. However, minor deviations may be excused in situations where a justifiable reason for non-compliance is explained. In this case, despite the non-observance of the witness requirement, no plausible explanation was given by the prosecution. x x x At this point, it is well to note that the absence of these required witnesses does not *per se* render the confiscated items inadmissible. However, in *People v. Umipang*, the Court held that the prosecution must show that **earnest efforts** were employed in contacting the representatives enumerated under the law for "a sheer statement that representatives were unavailable without so much as an explanation on whether serious attempts were employed to look for other representatives, given the circumstances is to be regarded as a flimsy excuse." Verily, mere statements of unavailability, absent actual serious attempts to contact the required witnesses are unacceptable as justified

> grounds for non-compliance. These considerations arise from the fact that these officers are ordinarily given sufficient time — beginning from the moment they have received the information about the activities of the accused until the time of his arrest — to prepare for a buy-bust operation and consequently, make the necessary arrangements beforehand knowing fully well that they would have to strictly comply with the set procedure prescribed in Section 21, Article II of RA 9165. **As such, the apprehending officers are compelled not only to state reasons for their non-compliance, but must in fact, also convince the Court that they exerted earnest efforts to comply with the mandated procedure, and that under the given circumstances, their actions were reasonable.**

APPEARANCES OF COUNSEL

Office of the Solicitor General for plaintiff-appellee.
Public Attorney's Office for accused-appellant.

D E C I S I O N

PERLAS-BERNABE, *J.*:

Before the Court is an ordinary appeal[1] filed by accused-appellant Joey Sanchez *y* Licudine (Sanchez) assailing the Decision[2] dated February 19, 2016 of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 06911, which affirmed the Decision[3] dated May 21, 2014 of the Regional Trial Court of San Fernando City, La Union, Branch 27 (RTC) in Criminal Case Nos. 8842 and 8843, finding him guilty beyond reasonable doubt of violating Sections 5 and 11, Article II of Republic Act No. (RA) 9165,[4] otherwise known as the "Comprehensive

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[1] See Notice of Appeal dated March 16, 2016; *rollo*, pp. 17-18.

[2] *Rollo*, pp. 2-16. Penned by Associate Justice Rodil V. Zalameda with Associate Justices Sesinando E. Villon and Pedro B. Corales concurring.

[3] CA *rollo*, pp. 80-85. Penned by Presiding Judge Carlito A. Corpuz.

[4] Entitled "AN ACT INSTITUTING THE COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002, REPEALING REPUBLIC ACT NO.

Dangerous Drugs Act of 2002," respectively, with modification imposing fines therefor.

The Facts

This case stemmed from two (2) Informations[5] filed before the RTC charging Sanchez with the crimes of illegal sale and illegal possession of dangerous drugs, the accusatory portions of which state:

Criminal Case No. 8842

That on or about the 29th day of July, 2010 in the Municipality of Bacnotan, Province of La Union, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, did then and there wilfully, unlawfully and feloniously for and in consideration of in the amount of Five Hundred Pesos, sell and deliver one (1) heat sealed transparent plastic sachet containing methamphetamine hydrochloride otherwise known as SHABU, a dangerous drug, with a weight of 0.0352 gram to IO1 RAYMUND TABUYO, who posed as buyer thereof using marked money, a Five Hundred Pesos bill bearing Serial Number VX925142, without first securing the necessary permit, license or prescription from the proper government agency.

CONTRARY TO LAW.[6]

Criminal Case No. 8843

That on or about the 29th day of July, 2010 in the Municipality of Bacnotan, Province of La Union, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, did then and there, wilfully, unlawfully and feloniously have in his possession, control and custody two (2) heat sealed transparent plastic sachets containing methamphetamine hydrochloride, a dangerous drug, weighing 0.0430 gram and 0.0352 gram, without first securing the

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6425, OTHERWISE KNOWN AS THE DANGEROUS DRUGS ACT OF 1972, AS AMENDED, PROVIDING FUNDS THEREFOR, AND FOR OTHER PURPOSES," approved on June 7, 2002.

[5] See Information in Criminal Case No. 8842; records (Crim. Case No. 8842), p. 1; and Information in Criminal Case No. 8843; records (Crim. Case No. 8843), p. 1. See also *rollo*, pp. 4-5.

[6] Records (Crim. Case No. 8842), p. 1.

necessary permit, license or prescription from the proper government agency to possess the same.

CONTRARY TO LAW.[7]

The prosecution alleged that on July 29, 2010, with the help of a confidential informant, the members of the Philippine Drug Enforcement Agency (PDEA) and the Philippine National Police (PNP) Regional Public Safety Mobile Battalion organized a buy-bust operation against a certain alias "Totoy" (later on identified as Sanchez), who was allegedly engaged in illegal drug trade at the Bacnotan Public Market, Bacnotan, La Union. After a briefing where, *inter alia*, PDEA Investigation Officer (IO) 1 Raymund Tabuyo (IO1 Tabuyo) was designated as the poseur-buyer, the buy-bust team proceeded to the target area. Thereat, IO1 Tabuyo was able to meet Sanchez, who, after receiving the marked money, handed over a heat-sealed plastic sachet containing a white crystalline substance to the former. After IO1 Tabuyo examined the contents of the plastic sachet, he executed the pre-arranged signal, thus prompting the other members of the buy-bust team to rush to the scene and arrest Sanchez. The buy-bust team searched Sanchez and found two (2) other plastic sachets also containing a white crystalline substance.[8]

The buy-bust team then conducted the markings, inventory, and photography on site before proceeding to their office for documentation purposes.[9] Thereat, the team was met with representatives from the Department of Justice (DOJ) and the media,[10] both of whom signed the Certificate of Inventory.[11] The seized plastic sachets were then taken to the PNP Crime

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[7] Records (Crim. Case No. 8843), p. 1.

[8] See *rollo*, pp. 6-7. See also CA *rollo*, pp. 80-81.

[9] Records (Crim. Case No. 8842), p. 2; and records (Crim. Case No. 8843), p. 2. See also *rollo*, p. 7 and CA *rollo*, p. 81.

[10] See CA *rollo*, pp. 81 and 83.

[11] Records (Crim. Case No. 8842), p. 14; and records (Crim. Case No. 8843), p. 14.

Laboratory where it was confirmed[12] that their contents are indeed methamphetamine hydrochloride or *shabu*.[13]

For his part, Sanchez pleaded not guilty to the charges against him and offered his version of what transpired on the day he was arrested. He narrated that between 3:00 to 4:00 in the afternoon of July 29, 2010, he was in front of the public market collecting bets for *jueteng*, when two (2) men unknown to him suddenly approached him and gave their numbers; and that when they were about to pay, they handcuffed and arrested him for allegedly selling drugs. Sanchez then insisted that when he was frisked, the men were only able to find money from the bets he collected and that they only made it appear that they recovered sachets containing *shabu* from him.[14]

The RTC Ruling

In a Decision[15] dated May 21, 2014, the RTC found Sanchez guilty beyond reasonable doubt of the crimes charged, and accordingly, sentenced him as follows: (*a*) for illegal sale of dangerous drugs, the RTC sentenced Sanchez to suffer the penalty of life imprisonment, among others; and (*b*) for illegal possession of dangerous drugs, the RTC sentenced Sanchez to suffer the penalty of imprisonment for a period of twelve (12) years and one (1) day to twenty (20) years, among others.[16]

The RTC found that the buy-bust team validly arrested Sanchez who was caught *in flagrante delicto* selling *shabu* to the poseur-buyer; and that after his arrest, the arresting officers discovered two (2) more sachets, also containing *shabu*, from his pocket. Further, the RTC found that the arresting officers followed the procedures in conducting buy-bust operation, and that the

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[12] See Chemistry Report Number: D-066-10; records (Crim. Case No. 8842), p. 13; and records (Crim. Case No. 8843), p. 13.

[13] See *rollo*, p. 12. See also CA *rollo*, p. 82.

[14] See CA *rollo*, p. 83.

[15] *Id*. at 80-85.

[16] *Id*. at 84-85.

evidence were preserved as the chain of custody thereof was not broken.[17]

Aggrieved, Sanchez appealed to the CA.[18]

The CA Ruling

In a Decision[19] dated February 19, 2016, the CA affirmed the RTC ruling with modifications, further ordering Sanchez to pay a fine of ₱500,000.00 for violating Section 5, Article II of RA 9165, and ₱300,000.00 for violating Section 11, Article II of the same law.[20] It held that the prosecution had successfully established the elements necessary to convict Sanchez of the crimes charged.[21] It further held that the arresting officers had shown an unbroken chain of custody over the seized drugs, and thus, their integrity and evidentiary value were preserved.[22]

Hence, this appeal.[23]

The Issue Before the Court

The issue for the Court's resolution is whether or not the CA correctly upheld Sanchez's conviction for the crimes charged.

The Court's Ruling

The appeal 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.[24]

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

[18] See Notice of Appeal dated May 28, 2014; records (Crim. Case No. 8842), pp. 151-153; and records (Crim. Case No. 8843), pp. 54-56.

[19] *Rollo*, pp. 2-16.

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

[21] See *id*. at 12-13.

[22] See *id*.

[23] See Notice of Appeal dated March 16, 2016; *id*. at 17-18.

[24] See *People v. Dahil,* 750 Phil. 212, 225 (2015).

"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."[25]

Here, Sanchez was charged with the crimes of illegal sale and illegal possession of dangerous drugs, respectively defined and penalized under Sections 5 and 11, Article II of RA 9165. Notably, in order to properly secure the conviction of an accused charged with illegal sale of dangerous drugs, the prosecution must prove: (*a*) the identity of the buyer and the seller, the object, and the consideration; and (*b*) the delivery of the thing sold and the payment.[26] Meanwhile, in instances wherein an accused is charged with illegal possession of dangerous drugs, the prosecution must establish the following elements to warrant his conviction: (*a*) the accused was in possession of an item or object identified as a prohibited drug; (*b*) such possession was not authorized by law; and (*c*) the accused freely and consciously possessed the said drug.[27]

Case law states that in both instances, it is essential that the identity of the prohibited drug be established with moral certainty, considering that the dangerous drug itself forms an integral part of the *corpus delicti* of the crime. Thus, in order to obviate any unnecessary doubt on the identity of the dangerous drugs, the prosecution has to show an unbroken chain of custody over the same and account for each link in the chain of custody from the moment the drugs are seized up to their presentation in court as evidence of the crime.[28]

Section 21, Article II of RA 9165 outlines the procedure which the apprehending officers must follow when handling the seized drugs in order to preserve their integrity and evidentiary value.[29]

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[25] *People v. Comboy*, G.R. No. 218399, March 2, 2016, 785 SCRA 512, 521.

[26] *People v. Sumili*, 753 Phil. 342, 348 (2015).

[27] *People v. Bio*, 753 Phil. 730, 736 (2015).

[28] See *People v. Viterbo*, 739 Phil. 593, 601 (2014).

[29] See *People v. Sumili*, *supra* note 26, at 349-350.

Under the said section, prior to its amendment by RA 10640,[30] the apprehending team shall, among others, **immediately after seizure and confiscation conduct a physical inventory and photograph the seized items in the presence of the accused or the person from whom the items were seized, or his representative or counsel, a representative from the media and the DOJ, and any elected public official** who shall be required to sign the copies of the inventory and be given a copy of the same, and the seized drugs must be turned over to the PNP Crime Laboratory within twenty-four (24) hours from confiscation for examination.[31] In the case of *People v. Mendoza*,[32] the Court stressed that "**[w]ithout the insulating presence of the representative from the media or the [DOJ], or any elected public official during the seizure and marking of the [seized drugs], the evils of switching, 'planting' or contamination of the evidence** that had tainted the buy-busts conducted under the regime of [RA] 6425 (*Dangerous Drugs Act of 1972*) again reared their ugly heads as to **negate the integrity and credibility of the seizure and confiscation of the [said drugs] that were evidence herein of the *corpus delicti*, and thus adversely affected the trustworthiness of the incrimination of the accused**. Indeed, the x x x presence of such witnesses would have preserved an unbroken chain of custody."[33]

The Court, however, clarified that under varied field conditions, strict compliance with the requirements of Section 21, Article II of RA 9165 may not always be possible.[34] In

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[30] Entitled "AN ACT TO FURTHER STRENGTHEN THE ANTI-DRUG CAMPAIGN OF THE GOVERNMENT, AMENDING FOR THE PURPOSE SECTION 21 OF REPUBLIC ACT NO. 9165, OTHERWISE KNOWN AS THE 'COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002,'" approved on July 15, 2014. The crime subject of this case was allegedly committed before the enactment of RA 10640, or on July 29, 2010.

[31] See Section 21 (1) and (2), Article II of RA 9165.

[32] 736 Phil. 749 (2014).

[33] *Id.* at 764.

[34] See *People v. Sanchez*, 590 Phil. 214, 234 (2008).

fact, the IRR of RA 9165 — which is now crystallized into statutory law with the passage of RA 10640 — provides that the said inventory and photography may be conducted at the nearest police station or office of the apprehending team in instances of warrantless seizure, and that **non-compliance with the requirements of Section 21, Article II of RA 9165 — under justifiable grounds — will not render void and invalid the seizure and custody over the seized items so long as the integrity and evidentiary value of the seized items are properly preserved by the apprehending officer or team**.[35] In other words, the failure of the apprehending team to strictly comply with the procedure laid out in Section 21, Article II of RA 9165 and its IRR does not *ipso facto* render the seizure and custody over the items as void and invalid, provided that the prosecution satisfactorily proves that: (*a*) there is justifiable ground for non-compliance; **and** (*b*) the integrity and evidentiary value of the seized items are properly preserved.[36] In *People v. Almorfe*,[37] **the Court explained that for the above-saving clause to apply, the prosecution must explain the reasons behind the procedural lapses, and that the integrity and evidentiary value of the seized evidence had nonetheless been preserved**.[38] Also, in *People v. De Guzman*,[39] it was emphasized that **the justifiable ground for non-compliance must be proven as a fact, because the Court cannot presume what these grounds are or that they even exist**.[40]

After a judicious study of the case, the Court finds that the arresting officers committed unjustified deviations from the prescribed chain of custody rule, thereby putting into question the integrity and evidentiary value of the dangerous drugs allegedly seized from Sanchez.

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[35] See Section 21 (a), Article II of the IRR of RA 9165.

[36] *People v. Goco*, G.R. No. 219584, October 17, 2016, 806 SCRA 240, 252.

[37] 631 Phil. 51 (2010).

[38] *Id*. at 60; citation omitted.

[39] 630 Phil. 637 (2010).

[40] *Id*. at 649.

While it appears that representatives from the DOJ and the media were present during the conduct of the inventory as evidenced by their signatures on the Certificate of Inventory,[41] a more careful scrutiny of the records shows that the buy-bust team conducted the marking, inventory, and photography where the arrest was made,[42] and merely made the aforesaid representatives sign the Certificate of Inventory upon the buy-bust team's arrival at their office. Moreover, the said procedures were not done in the presence of any elected public official. During trial, IO1 Tabuyo admitted to these procedural mishaps, *viz.*:

[Pros. Crispin Lamong, Jr.] Q: Now, after your recovered [the] 2 sachets and the 1 piece ₱500.00 buy-bust money, what did you do next?

[IO1 Tabuyo] A: We conducted an inventory at the transaction area, your honor.

Q: When you said, in the transaction area, how did you conduct an inventory? [sic]

A: We made marking and photographs.

Q: Marking on what items, mr. witness?

A: All, the 3 plastic sachets, sir.

x x x x x x x x x

Q: Mr. witness, aside from the request you made, what else transpired at the PDEA Office?

A: We requested a DOJ representative to sign the inventory.

Q: Aside from the DOJ representative what else requested Mr. Witness made by your office? [sic]

A: The media representative[,] [Y]our [H]onor.

Q: And were the DOJ representative and media representative were able to sign the inventory? [sic]

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[41] Records (Crim. Case No. 8842), p. 14; and records (Crim. Case No. 8843), p. 14.

[42] Records (Crim. Case No. 8842), p. 2; and records (Crim. Case No. 8843), p. 2. See also *rollo*, p. 7 and CA *rollo*, p. 81.

A: Yes[,] [S]ir.

x x x x x x x x x

Q: While the DOJ representative and the media representative signing what happened next[,] if any, mr. witness? [sic]

A: They signed, [Y]our [H]onor.

Q: How about you[?] [W]hat were you doing then at the time the DOJ representative and the media representative signing, [mr.] witness? [sic]

A: I was there[,] [Y]our [H]onor[,] to witness that they signed.

Q: And how about the accused[?] [W]here was he when these DOJ and media representatives were signing?

A: There also, [S]ir.

Q: Mr. [w]itness, do you have any proof to show that these indeed the DOJ representative and the media representative signing?

A: Yes, pictures.

Q: And who took the pictures?

A: Our photographers, [Y]our [H]onor.[43] (Emphases and underscoring supplied)

The law requires the presence of an elected public official, as well as representatives from the DOJ and the media during the actual conduct of inventory and photography to ensure that the chain of custody rule is observed and thus, remove any suspicion of tampering, switching, planting, or contamination of evidence which could considerably affect a case. However, minor deviations may be excused in situations where a justifiable reason for non-compliance is explained. In this case, despite the non-observance of the witness requirement, no plausible explanation was given by the prosecution. For instance, in an attempt to justify the absence of any elected public official during the conduct of inventory and photography, IO1 Tabuyo stated on cross-examination that:

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[43] TSN, July 6, 2011, pp. 8-10.

[Atty. Loida Martirez] Q: Mr. Witness, in your Certificate of Inventory[,] it appears that there are only three (3) persons who signed, you as the seizing officer, a media representative, and a DOJ representative.

[IO1 Tabuyo] A: Yes, ma'am.

Q: Where was the elected public official? [W]hy was he not present at the place?

A: We were not able to get one elected official because it was a rush operation and after the inventory we proceeded right away to our office.

Q: So you are now trying to tell us that you did not coordinate with any barangay official that is why they were not present, Mr. Witness.

A: Yes, ma'am.

Q: And is it not a requirement that you have to coordinate with a local official, Mr. Witness, so that they will be present during the inventory[?] [sic]

A: No, ma'am.

Q: That is not a requirement Mr. Witness?

A: No, ma'am.

Q: So you went to Bacnotan [P]ublic [Mjarket which is a public place and you were not able to see even one elected public official at the place, Mr. Witness?

A: No, ma'am.

Q: That is just very near the municipal hall, is that correct, Mr. Witness?

A: (no answer)

Q: So you also did not coordinate with the Bacnotan Police, Mr. Witness?

A: We coordinate, ma'am. [sic]

Q: You coordinate with the Bacnotan PNP.

A: The precinct at the left side of the public market.

Q: You just coordinated with them after the operation when you were there already, is that correct?

A: No, ma'am.

Q: You just saw the police sub-station there, is that correct?

A: No, ma'am.[44] (Emphases and underscoring supplied)

At this point, it is well to note that the absence of these required witnesses does not *per se* render the confiscated items inadmissible.[45] However, in *People v. Umipang*,[46] the Court held that the prosecution must show that **earnest efforts** were employed in contacting the representatives enumerated under the law for "a sheer statement that representatives were unavailable without so much as an explanation on whether serious attempts were employed to look for other representatives, given the circumstances is to be regarded as a flimsy excuse."[47] Verily, mere statements of unavailability, absent actual serious attempts to contact the required witnesses are unacceptable as justified grounds for non-compliance.[48] These considerations arise from the fact that these officers are ordinarily given sufficient time – beginning from the moment they have received the information about the activities of the accused until the time of his arrest – to prepare for a buy-bust operation and consequently, make the necessary arrangements beforehand knowing fully well that they would have to strictly comply with the set procedure prescribed in Section 21, Article II of RA 9165. **As such, the apprehending officers are compelled not only to state reasons for their non-compliance, but must in fact, also convince the Court that they exerted earnest efforts to comply with the mandated procedure, and that under the given circumstances, their actions were reasonable.**[49]

Thus, for failure of the prosecution to provide justifiable grounds or show that special circumstances exist which would

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[44] TSN, October 5, 2011, pp. 11-12.

[45] *People v. Umipang*, 686 Phil. 1024, 1052 (2012).

[46] *Id.*

[47] *Id*. at 1053.

[48] See *id*.

[49] See *People v. Manansala*, G.R. No. 229092, February 21, 2018.

excuse their transgression — as in fact the only reason given was that they were conducting a "rush operation" — the Court is constrained to conclude that the integrity and evidentiary value of the items purportedly seized from Sanchez have been compromised. It is settled that in a prosecution for the sale and possession of dangerous drugs under RA 9165, the State carries the heavy burden of proving not only the elements of the offense, but also to prove the integrity of the *corpus delicti*, failing in which, renders the case for the State insufficient to prove the guilt of the accused beyond reasonable doubt.[50]

As a final note, the Court finds it fitting to echo its recurring pronouncement in recent jurisprudence on the subject matter:

> The Court strongly supports the campaign of the government against drug addiction and commends the efforts of our law enforcement officers against those who would inflict this malediction upon our people, especially the susceptible youth. But as demanding as this campaign may be, it cannot be more so than the compulsions of the Bill of Rights for the protection of liberty of every individual in the realm, including the basest of criminals. The Constitution covers with the mantle of its protection the innocent and the guilty alike against any manner of high-handedness from the authorities, however praiseworthy their intentions.
>
> Those who are supposed to enforce the law are not justified in disregarding the right of the individual in the name of order. [For indeed,] [o]rder is too high a price for the loss of liberty. x x x.[51]

"In this light, prosecutors are strongly reminded that they have the **positive duty** to prove compliance with the procedure set forth in Section 21[, Article II] of RA 9165, as amended. As such, **they must have the initiative to not only acknowledge but also justify any perceived deviations from the said procedure during the proceedings before the trial court**. Since compliance with the procedure is determinative of the integrity and evidentiary value of the *corpus delicti* and ultimately,

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[50] See *People v. Umipang*, *supra* note 45, at 1039-1040; citation omitted.

[51] See *People v. Miranda*, G.R. No. 229671, January 31, 2018; citations omitted.

the fate of the liberty of the accused, the fact that any issue regarding the same was not raise, or even threshed out in the court/s below, would not preclude the appellate court, including this Court, from fully examining the records of the case if only to ascertain whether the procedure had been completely complied with, and if not, whether justifiable reasons exist to excuse any deviation. If no such reasons exist, then it is the appellate court's bounden duty to acquit the accused, and perforce, overturn a conviction."[52]

WHEREFORE, the appeal is **GRANTED**. The Decision dated February 19, 2016 of the Court of Appeals in CA-G.R. CR-H.C. No. 06911 is hereby **REVERSED** and **SET ASIDE**. Accordingly, accused-appellant Joey Sanchez *y* Licudine is **ACQUITTED** of the crimes charged. The Director of the Bureau of Corrections is ordered to cause his immediate release, unless he is being lawfully held in custody for any other reason.

SO ORDERED.

Carpio[*] (*Chairperson*), *Peralta, Caguioa*, and *Reyes, Jr., JJ.*, concur.

SECOND DIVISION

[G.R. No. 231983. March 7, 2018]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **CRISPIAN MERCED LUMAYA *a.k.a.* "IPYANG", and DEREK JOSEPH LUMAYA,** *accused,* **CRISPIAN MERCED LUMAYA *a.k.a.* "IPYANG",** *accused-appellant.*

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[52] See *id.*

[*] Acting Chief Justice per Special Order No. 2539 dated February 28, 2018.

SYLLABUS

1. **CRIMINAL LAW; REPUBLIC ACT NO. 9165 (THE COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002); ILLEGAL SALE OF DANGEROUS DRUGS; ELEMENTS.** — [I]n every prosecution for Illegal Sale of Dangerous Drugs, the following elements must be proven with moral certainty: (*a*) the identity of the buyer and the seller, the object, and the consideration; and (*b*) the delivery of the thing sold and the payment.

2. **ID.; ID.; ILLEGAL POSSESSION OF DANGEROUS DRUGS; ELEMENTS.—** [I]n instances wherein an accused is charged with Illegal Possession of Dangerous Drugs, the prosecution must establish the necessary elements thereof, to wit: (*a*) the accused was in possession of an item or object identified as a prohibited drug; (*b*) such possession was not authorized by law; and (*c*) the accused freely and consciously possessed the said drug.

3. **ID.; ID.; ILLEGAL POSSESSION OF DRUG PARAPHERNALIA; ELEMENTS.—** [T]o properly secure the conviction of an accused charged with Illegal Possession of Drug Paraphernalia, the prosecution must show: (*a*) 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 (*b*) such possession is not authorized by law.

4. **ID.; ID.; ILLEGAL SALE AND ILLEGAL POSSESSION OF DANGEROUS DRUGS, AND ILLEGAL POSSESSION OF DRUG PARAPHERNALIA; IDENTITY OF PROHIBITED DRUGS AND/OR DRUG PARAPHERNALIA; MUST BE ESTABLISHED BEYOND REASONABLE DOUBT, CONSIDERING THAT THE PROHIBITED DRUG AND/OR DRUG PARAPHERNALIA FORM AN INTEGRAL PART OF THE *CORPUS DELICTI* OF THE CRIME/S.—** In x x x instances [of illegal sale and illegal possession of dangerous drugs, as well as illegal possession of drug paraphernalia], it is essential that the identity of the prohibited drugs and/or drug paraphernalia be established beyond reasonable doubt, considering that the prohibited drug and/or drug paraphernalia form an integral part of the *corpus delicti* of the

crime/s. The prosecution has to show an unbroken chain of custody over the dangerous drugs and/or drug paraphernalia. Thus, in order to obviate any unnecessary doubts on the identity of the dangerous drugs and/or drug paraphernalia on account of switching, "planting," or contamination of evidence, the prosecution must be able to account for each link of the chain from the moment of seizure up to presentation in court as evidence of the *corpus delicti*.

5. ID.; ID.; CUSTODY AND DISPOSITION OF SEIZED ITEMS; FAILURE TO STRICTLY COMPLY WITH THE REQUIREMENTS THEREOF DOES NOT *IPSO FACTO* RENDER THE SEIZURE AND CUSTODY OVER THE ITEMS AS VOID AND INVALID; CONDITIONS.— In this regard, Section 21, Article II of RA 9165 outlines the procedure which the police officers must follow when handling the seized drugs in order to preserve their integrity and evidentiary value. Under the said section, prior to its amendment by RA 10640, the apprehending team shall, among others, **immediately after seizure and confiscation conduct a physical inventory and photograph the seized items in the presence of the accused or the person from whom the items were seized, his representative or counsel, a representative from the media and the DOJ, and any elected public official** who shall be required to sign the copies of the inventory and be given a copy of the same, and the seized drugs must be turned over to the PNP Crime Laboratory within twenty-four (24) hours from confiscation for examination. The Court, however, clarified that under varied field conditions, strict compliance with the requirements of Section 21 of RA 9165 may not always be possible. x x x [T]he failure of the apprehending team to strictly comply with the procedure laid out in Section 21 of RA 9165 and the IRR does not *ipso facto* render the seizure and custody over the items as void and invalid, provided that the prosecution satisfactorily proves that: (*a*) there is justifiable ground for non-compliance; **and** (*b*) the integrity and evidentiary value of the seized items are properly preserved. In *People v. Almorfe*, **the Court stressed that for the above-saving clause to apply, the prosecution must explain the reasons behind the procedural lapses, and that the integrity and evidentiary value of the seized evidence had nonetheless been preserved**. Also, in *People v. De Guzman,* it was emphasized that **the justifiable ground for non-compliance must be proven as a**

fact, because the Court cannot presume what these grounds are or that they even exist.

6. ID.; ID.; ID.; CHAIN OF CUSTODY; MARKING; 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.— "[T]he first stage in the chain of custody rule 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 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 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**." To note, "[m]arking upon immediate confiscation has been interpreted to include **marking at the nearest police station, or x x x the office of the apprehending team**."

7. REMEDIAL LAW; CRIMINAL PROCEDURE; APPEALS; EFFECT OF APPEAL BY ANY OF SEVERAL ACCUSED; A FAVORABLE JUDGMENT SHALL BENEFIT THE CO-ACCUSED WHO DID NOT APPEAL; CASE AT BAR.— [T]he acquittal of Crispian on account of the police officers' failure to comply with the chain of custody rule should likewise result in the acquittal of his co-accused, Derek. This is because Derek was charged in Criminal Case No. 21618 for the alleged illegal sale of "one (1) heat-sealed transparent plastic sachet containing 0.03 gram of white crystalline substance of Methamphetamine Hydrochloride, commonly known as "*shabu*[,"] a dangerous drug"; this sachet is the same sachet for which Crispian was charged also in Criminal Case No. 21618, and hence, part of the seized items whose integrity and

> evidentiary value had been compromised. x x x While it is true that it was only Crispian who successfully perfected his appeal, the rule is that an appeal in a criminal proceeding throws the entire case out in the open, including those not raised by the parties. Considering that under Section 11 (a), Rule 122 of the Revised Rules of Criminal Procedure x x x, a favorable judgment — as in this case — shall benefit the co-accused who did not appeal, Derek should likewise be acquitted herein.

APPEARANCES OF COUNSEL

Office of the Solicitor General for plaintiff-appellee.
Public Attorney's Office for accused-appellant.

D E C I S I O N

PERLAS-BERNABE, *J.*:

Before the Court is an ordinary appeal[1] filed by accused-appellant Crispian Merced Lumaya a.k.a. "Ipyang" (Crispian) assailing the Decision[2] dated September 14, 2016 of the Court of Appeals (CA) in CA-G.R. CR HC No. 01846, which affirmed the Joint Judgment[3] dated March 23, 2014 of the Regional Trial Court of Negros Oriental, Branch 30 (RTC) in Criminal Case Nos. 21618, 21622, and 21623, finding Crispian guilty beyond reasonable doubt of violating Sections 5, 11, and 12, respectively, of Article II of Republic Act No. (RA) 9165,[4] otherwise known as the "Comprehensive Dangerous Drugs Act of 2002."

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[1] See Notice of Appeal dated October 7, 2016; *rollo*, p. 17.

[2] *Id.* at 4-16. Penned by Associate Justice Edward B. Contreras with Associate Justices Edgardo L. Delos Santos and Geraldine C. Fiel-Macaraig concurring.

[3] CA *rollo* at 73-92. Penned by Judge Rafael Crescencio C. Tan, Jr.

[4] Entitled "AN ACT INSTITUTING THE COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002, REPEALING REPUBLIC ACT NO. 6425, OTHERWISE KNOWN AS THE DANGEROUS DRUGS ACT OF 1972, AS AMENDED, PROVIDING FUNDS THEREFOR, AND FOR OTHER PURPOSES," approved on June 7, 2002.

The Facts

In an Information[5] dated March 20, 2013, Crispian and his co-accused Derek Joseph Lumaya (Derek; collectively, the accused) were charged of the crime of Illegal Sale of Dangerous Drugs, defined and penalized under Section 5, Article II of RA 9165, before the RTC, the accusatory portion of which reads:

Criminal Case No. 21618

That on or about the 4th day of March, 2013, in the City of Dumaguete, Philippines, and within the jurisdiction of this Honorable Court, the said accused conspiring together and mutually aiding one another not being then authorized by law, did, then and there willfully, unlawfully and criminally sell and/or deliver to a poseur buyer one (1) heat-sealed transparent plastic sachet containing 0.03 gram of white crystalline substance of Methamphetamine Hydrochloride, commonly called "shabu[,"] a dangerous drug.

Contrary to Sec. 5, Art. II of R.A. 9165.[6]

Crispian was likewise charged in two (2) separate Informations[7] dated March 20, 2013 of the crimes of Illegal Possession of Drugs and of Drug Paraphernalia, respectively defined and penalized under Sections 11 and 12, Article II of RA 9165, to wit:

Criminal Case No. 21622

That on or about the 4th day of March, 2013, in the City of Dumaguete, Philippines, and within the jurisdiction of this Honorable Court, the said accused, not being then authorized by law, did, then and there willfully, unlawfully and feloniously possess ten (10) heat-sealed transparent plastic sachets containing a total aggregate weight of 20.44 grams of Methamphetamine Hydrochloride, commonly called "shabu," a dangerous drug.

That the accused is found positive for use of Methamphetamine, as reflected in Chemistry Report No. DT-023/024-13.

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[5] Records, pp. 5-6.

[6] *Id*. at 5.

[7] *Id*. at 59-60 and 122-123. See also Amended Information for Criminal Case No. 21622 dated April 3, 2013; *id*. at 115-116.

Contrary to Section 11, Article II of R.A. 9165.[8]

Criminal Case No. 21623

That on or about the 4th day of March, 2013, in the City of Dumaguete, Philippines and within the jurisdiction of this Honorable Court, the said accused, not being then authorized by law, did then and there willfully, unlawfully and feloniously possess or have under his control the following items[,] to wit:

One (1) piece Scissor[s]
Two (2) pieces rolled tin foil
Two (2) pieces elongated tin foil
One (1) piece lighter
One (1) piece improvised bamboo clip

which are equipmen[t], instruments, apparatus or paraphernalia fit or intended for smoking, consuming, administering, injecting, ingesting, or introducing any dangerous drug into the body[.]

Contrary to Section 12, Art. II of R.A. 9165.[9]

The prosecution alleged that a tip was received by the Philippine National Police (PNP) — Dumaguete Station that a certain "Ipyang", who was later identified as Crispian, was peddling illegal drugs in San Jose Extension, Barangay Taclobo, Dumaguete City (Taclobo). Acting on the said tip, the police operatives successfully conducted a test-buy operation at his house in Taclobo at around 10:00 o'clock in the morning of February 26, 2013. The following day, they applied for a search warrant — which was likewise issued on the same day – before the Regional Trial Court of Dumaguete City, Branch 40 (subject warrant). Meanwhile, at around 9:00 o'clock in the evening of March 4, 2013, a confidential informant (informant) reported to the police officers of the PNP - Dumaguete Station that Crispian was again selling illegal drugs at his house. Despite the standing subject warrant, a buy-bust operation was organized in coordination with the Philippine Drug Enforcement Agency.[10]

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[8] *Id*. at 115.

[9] *Id*. at 122.

[10] See CA *rollo*, pp. 75-76.

Thus, at around 11:40 in the evening, the buy-bust team, together with the informant, proceeded to the target area in Barangay Motong. When the accused arrived, Derek immediately asked the informant how much *shabu* he would be buying, to which the informant replied that it was Police Officer I Harry Dumaguit (PO1 Dumaguit), the designated poseur-buyer, who wanted to purchase ₱500.00 worth of *shabu*. Crispian then pulled out one (1) sachet of *shabu* and gave it to PO1 Dumaguit, who, in turn, handed over the ₱500.00 buy-bust money. After examining the sachet of *shabu*, PO1 Dumaguit declared his authority as a police officer, prompting Crispian to run away. However, the other police operatives rushed towards the accused and arrested them.[11] A body search was then conducted, and ten (10) additional sachets of suspected *shabu* were recovered from Crispian's possession. Instead of marking the drugs upon seizure, the team decided to execute the subject warrant and went to the house of Crispian. Thereat, several drug paraphernalia were found and confiscated.[12] Shortly after, PO1 Dumaguit conducted the requisite marking and inventory of all the seized items in the presence of the accused, as well as an elected public official and representatives from the Department of Justice (DOJ) and media.[13] Concurrently, Police Officer 2 Xandro Paclauna (PO2 Paclauna) took photos, apparently showing eighteen (18) sachets of shabu.[14] After the operation, the team went back to the police station and prepared the letter-request for laboratory examination.[15] Subsequently, PO1 Dumaguit brought the said letter-request, together with only eleven (11) seized sachets of *shabu*, to the PNP Negros Oriental Crime Laboratory, where they were received by Police Chief Inspector Josephine Llena (PCI Llena).[16] PCI Llena then examined and confirmed that

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[11] See *id*. at 76.

[12] See *id*. at 77.

[13] See *id*.

[14] TSN, January 22, 2014, pp. 31-32.

[15] CA *rollo*, p. 78.

[16] *Id*.

the same contained *methamphetamine hydrochloride*, a dangerous drug.[17]

For their part, the accused interposed the defense of denial. Derek alleged that at around 8:00 o'clock in the evening of March 4, 2013, he was in the house of his live-in partner when he received a text message from his cousin, Crispian, inviting him for dinner. At around 9:30 o'clock that same evening, he fetched Crispian and proceeded to Nilo's *tocino* joint on a motorcycle. After dinner, the accused were on their way to the house of Crispian's friend in Candau-ay, Dumaguete City when it started to rain; they decided to let the rain pass at the house of Crispian's other friend in Barangay Motong. When the rain stopped, they then proceeded to Candau-ay, and on the way Derek saw a drunk man wobbling on the road, so he stopped the motorcycle. The man, however, suddenly grabbed him, introduced himself as a police officer, and took out a gun. Crispian attempted to escape, but the other police officers arrived, fired their guns, and accosted him. They then arrested the accused and effected a body search on them. Subsequently, they all went to Crispian's house to execute the subject warrant and conduct an inventory.[18] According to the accused, they were not informed that the said inventory was a result of the buy-bust operation and/or implementation of the subject warrant.[19] Thereafter, they were brought to the police station.

The accused entered a plea of "not guilty" upon arraignment.[20] However, only Derek testified for the defense, while Crispian, through counsel, waived his right to present evidence.[21]

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[17] *Id*. at 79. See also Chemistry Report No. D-040-13 dated March 5, 2013; records, p. 32.

[18] *Rollo*, pp. 7-8. See also CA *rollo*, pp. 80-81.

[19] CA *rollo*, p. 81.

[20] *Rollo*, p. 6.

[21] See CA *rollo*, p. 79.

The RTC Ruling

In a Joint Judgment[22] dated March 23, 2014, the RTC found the accused guilty as charged, and accordingly, sentenced them as follows: (*a*) in Crim. Case No. 21618, the accused were sentenced to suffer the penalty of life imprisonment and ordered to pay a fine of ₱500,000.00 each; (*b*) in Crim. Case No. 21622, Crispian was sentenced to suffer the penalty of life imprisonment and ordered to pay a fine of ₱500,000.00; and (*c*) in Crim. Case No. 21623, Crispian was sentenced to suffer the penalty of imprisonment for an indeterminate period of six (6) months and one (1) day, as minimum, to two (2) years, as maximum, and ordered him to pay a fine of ₱10,000.00.[23] It found that the prosecution duly established with moral certainty all the essential elements of the crimes charged.[24] On the contrary, it did not give credence to Derek's uncorroborated defense of denial in light of the positive and credible testimonies of the prosecution witnesses. Moreover, Crispian failed to overcome the presumption of regularity afforded to police officers, as he waived his right to present any evidence thereto.[25]

Aggrieved, the accused appealed[26] to the CA.

The CA Ruling

In a Decision[27] dated September 14, 2016, the CA affirmed the convictions of the accused, holding that the prosecution competently established an unbroken chain of custody of the dangerous drugs.[28] It ruled that the integrity and evidentiary

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[22] *Id*. at 73-92.

[23] *Id*. at 90-91.

[24] See *id*. at 81-86.

[25] See *id*. at 86-90.

[26] See Brief for Accused-Appellant Crispian Merced Lumaya dated January 14, 2015 (*id*. at 53-71) and Brief for Accused-Appellant Derek Joseph Lumaya dated December 29, 2014 (*id*. at 107-121).

[27] *Rollo*, pp. 4-16.

[28] See *id*. at 13-15.

value of the seized drugs were preserved, as it was shown that PO1 Dumaguit had exclusive custody of the same from the time they were confiscated from the accused until they were brought to the crime laboratory for testing. In fact, he was able to positively identify them in court as the same drugs recovered from the accused.[29]

Furthermore, the CA held that the belated marking of the seized drugs was warranted, since the police officers feared that the accused's companions might escape and that the contraband stored in Crispian's house would disappear.[30]

Only Crispian filed the instant appeal.

The Issue Before the Court

The issue for the Court's resolution is whether or not Crispian's conviction should be upheld.

The Court's Ruling

The appeal is meritorious.

Prefatorily, it must be stressed that an appeal in criminal cases opens the entire case for review, and it is the duty of the reviewing tribunal to correct, cite, and appreciate errors in the appealed judgment whether they are assigned or unassigned.[31] 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.[32]

Here, Crispian was charged with the crimes of Illegal Sale and Illegal Possession of Dangerous Drugs, as well as Illegal Possession of Drug Paraphernalia, respectively defined and

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[29] See *id*. at 14.

[30] *Id.*

[31] See *People v. Dahil,* 750 Phil. 212, 225 (2015); citation omitted.

[32] See *People v. Comboy*, G.R. No. 218399, March 2, 2016, 758 SCRA 512, 521; citation omitted.

penalized under Sections 5, 11, and 12, Article II of RA 9165. Case law states that in every prosecution for Illegal Sale of Dangerous Drugs, the following elements must be proven with moral certainty: (*a*) the identity of the buyer and the seller, the object, and the consideration; and (*b*) the delivery of the thing sold and the payment.[33] Meanwhile, in instances wherein an accused is charged with Illegal Possession of Dangerous Drugs, the prosecution must establish the necessary elements thereof, to wit: (*a*) the accused was in possession of an item or object identified as a prohibited drug; (*b*) such possession was not authorized by law; and (*c*) the accused freely and consciously possessed the said drug.[34] And finally, to properly secure the conviction of an accused charged with Illegal Possession of Drug Paraphernalia, the prosecution must show: (*a*) 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 (*b*) such possession is not authorized by law.[35]

In all these instances, it is essential that the identity of the prohibited drugs and/or drug paraphernalia be established beyond reasonable doubt, considering that the prohibited drug and/or drug paraphernalia form an integral part of the *corpus delicti* of the crime/s. The prosecution has to show an unbroken chain of custody over the dangerous drugs and/or drug paraphernalia. Thus, in order to obviate any unnecessary doubts on the identity of the dangerous drugs and/or drug paraphernalia on account of switching, "planting," or contamination of evidence, the prosecution must be able to account for each link of the chain from the moment of seizure up to presentation in court as evidence of the *corpus delicti*.[36]

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[33] See *People v. Sumili*, 753 Phil. 342, 348 (2015).

[34] See *People v. Bio*, 753 Phil. 730, 736 (2015).

[35] See *People v. Mariano*, 698 Phil. 772, 785 (2012); citation omitted.

[36] See *People v. Viterbo*, 739 Phil. 593, 601 (2014). See also *People v. Alivio*, 664 Phil. 565, 576-580 (2011) and *People v. Denoman*, 612 Phil. 1165, 1175 (2009).

In this regard, Section 21, Article II of RA 9165 outlines the procedure which the police officers must follow when handling the seized drugs in order to preserve their integrity and evidentiary value.[37] Under the said section, prior to its amendment by RA 10640,[38] the apprehending team shall, among others, **immediately after seizure and confiscation conduct a physical inventory and photograph the seized items in the presence of the accused or the person from whom the items were seized, his representative or counsel, a representative from the media and the DOJ, and any elected public official** who shall be required to sign the copies of the inventory and be given a copy of the same, and the seized drugs must be turned over to the PNP Crime Laboratory within twenty-four (24) hours from confiscation for examination.[39]

The Court, however, clarified that under varied field conditions, strict compliance with the requirements of Section 21 of RA 9165 may not always be possible.[40] In fact, the Implementing Rules and Regulations (IRR) of RA 9165 — which is now crystallized into statutory law with the passage of RA 10640[41] — provide that the said inventory and

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[37] See *People v. Sumili*, *supra* note 33, at 349-350.

[38] Entitled "AN ACT TO FURTHER STRENGTHEN THE ANTI-DRUG CAMPAIGN OF THE GOVERNMENT, AMENDING FOR THE PURPOSE SECTION 21 OF REPUBLIC ACT NO. 9165, OTHERWISE KNOWN AS THE 'COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002,'" approved on July 15, 2014.

[39] See Section 21 (1) and (2), Article II of RA 9165.

[40] See *People v. Sanchez,* 590 Phil. 214, 234 (2008).

[41] Section 1 of RA 10640 reads:

Section 1. Section 21 of Republic Act No. 9165, otherwise known as the "Comprehensive Dangerous Drugs Act of 2002", is hereby amended to read as follows:

"SEC. 21. *Custody and Disposition of Confiscated, Seized, and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/Paraphernalia and/or Laboratory Equipment*. — The PDEA shall take charge and have custody of all dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory

photography may be conducted at the nearest police station or office of the apprehending team in instances of warrantless seizure, and that **non-compliance with the requirements of Section 21 of RA 9165 — under justifiable grounds— will not render void and invalid the seizure and custody over the seized items so long as the integrity and evidentiary value of the seized items are properly preserved by the apprehending officer or team**.[42] In other words, the failure of the apprehending team to strictly comply with the procedure laid out in Section 21 of RA 9165 and the IRR does not *ipso facto* render the seizure and custody over the items as void and invalid, provided that the prosecution satisfactorily proves that: (*a*) there is justifiable ground for non-compliance; **and** (*b*) the integrity and evidentiary value of the seized items are properly preserved.[43] In *People v. Almorfe*,[44] **the Court stressed that for the above-saving clause to apply, the prosecution must**

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

"(1) The apprehending team having initial custody and control of the dangerous drugs, controlled precursors and essential chemicals, instruments/paraphernalia and/or laboratory equipment shall, immediately after seizure and confiscation, conduct a physical inventory of the seized items and photograph the same in the presence of the accused or the persons from whom such items were confiscated and/or seized, or his/her representative or counsel, with an elected public official and a representative of the National Prosecution Service or the media who shall be required to sign the copies of the inventory and be given a copy thereof: *Provided*, That the physical inventory and photograph shall be conducted at the place where the search warrant is served; or at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizures:*Provided, finally*, That noncompliance of these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures and custody over said items. x x x"

[42] See Section 21 (a), Article II of the IRR of RA 9165. See also *People v. Ceralde*, G.R. No. 228894, August 7, 2017.

[43] See *People v. Goco*, G.R. No. 219584, October 17, 2016, 806 SCRA 240, 252; citation omitted.

[44] 631 Phil. 51 (2010).

explain the reasons behind the procedural lapses, and that the integrity and evidentiary value of the seized evidence had nonetheless been preserved.[45] Also, in *People v. De Guzman*,[46] it was emphasized that **the justifiable ground for non-compliance must be proven as a fact, because the Court cannot presume what these grounds are or that they even exist**.[47]

While it appears that the apprehending officers in this case did conduct a physical inventory and photography of the drugs allegedly seized from the accused, it is, nonetheless, baffling that the number of sachets shown in the photographs taken (*i.e.*, eighteen (18) do not correspond with the number of sachets for which the accused, as per the subject Informations and inventory report,[48] were herein charged (*i.e.*, eleven [11]). This discrepancy — if left unaccounted for — clearly renders suspect the integrity and evidentiary value of the seized drugs because not only would it be difficult to determine the actual identity of the drugs for which the accused are charged (that is, which eleven [11] among the eighteen [18] sachets displayed in the photos taken were the charges based on), but a numerical variance would also arouse suspicions of planting and/or switching. Indeed, when the law requires that the drugs be physically inventoried and photographed immediately after seizure, it follows that the drugs so inventoried and photographed should — as a general rule — be the self-same drugs for which the charges against a particular accused would be based. The obvious purpose of the inventory and photography requirements under the law is precisely to ensure that the identity of the drugs seized from the accused are the drugs for which he would be charged. Any discrepancy should therefore be reasonably explained; otherwise, the regularity of the entire seizure procedure would be put into question.

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[45] See *id*. at 60; citation omitted.

[46] 630 Phil. 637 (2010).

[47] *Id*. at 649.

[48] See Receipt/Inventory of Property Seized Form dated March 5, 2013; records, p. 22.

During trial, PO2 Paclauna was questioned about the variance between the number of drug sachets in the photos taken and the number of sachets reflected in the Informations and examined by the chemist. Unfortunately, he failed to give any tenable explanation therefor:

COURT: You were the one who took these photographs?

PO2 Paclauna: Yes, sir.

Q: Which of these items are the, [sic] point to me where is the sachet being sold by the accused here?

A: I can't say, sir, which.....

Q: Which one? You were supposed to take photographs of the items being bought or seized? Where are the seized items and the bought items, which one?

A: I could not see clearly, sir, the "kuan", sir.

Q: You cannot tell which one is the...?

A: I cannot clearly see, sir.

Q: So it is possible that the bought item is not here?

A: I do not know, sir.

Q: There's no photograph of the bought item here? How about these, are these the seized items, all of these?

A: Yes, sir.

Q: How many items were seized?

A: I do not know, sir.

Q: You do not know?

A: Yes, sir.

Q: **The chemist examined eleven (11) sachets, are there eleven (11) sachets here? There are eighteen (18) sachets, how come there are eighteen (18) sachets in the picture? The accused is charged with how many? Possession?**

Pros. Montenegro

Possession Section 11, Section 12, and Section 5.

x x x x x x x x x[49]
(Emphasis and underscoring supplied)

In addition, the photos do not display the drug paraphernalia supposedly recovered during the execution of the subject warrant in Crispian's house. Accordingly, it is difficult to believe that the seized drug paraphernalia were lawfully recovered from Crispian's house, as there were no photos to support the same. The records of this case show that the lower court had, in fact, noted such absence. But all the same, the prosecution failed to give a credible excuse therefor:

> COURT: Ten (10) sachets, one (1) piece scissor, two (2) pieces rolled tin foil, two (2) pieces elongated tin foil, one (1) lighter, where are these items in the picture? Where are the tin foils here, pair of scissors? Lighter, where is the lighter here? Where in the picture? You cannot see a lighter. Okay, you are discharged.[50] (Underscoring supplied)

Furthermore, it deserves mentioning that the police officers also failed to observe the proper procedure in marking the seized items.

According to case law, "[t]he first stage in the chain of custody rule 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 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 forestalling switching, planting or contamination of evidence. **In short, the marking immediately**

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[49] TSN, January 22, 2014, pp. 31-32.

[50] *Id*. at 32.

upon confiscation or recovery of the dangerous drugs or related items is indispensable in the preservation of their integrity and evidentiary value."[51] To note, "[m]arking upon immediate confiscation has been interpreted to include **marking at the nearest police station, or x x x the office of the apprehending team**."[52]

In this case, it is undisputed that the police officers did not immediately mark the sachets of *shabu* at the place of confiscation during the buy-bust operation or at the nearest police station. Instead, they proceeded to the house of Crispian to implement the subject search warrant and only thereafter, conducted the marking. To justify the deviation, they proffered that that they could not "allow [the accused's] companions to escape and bring the possible huge amount of *shabu*."[53] Thus, they marked the items "only after the search of the house of the parents of Crispian."[54]

However, PO1 Dumaguit himself admitted that the actual marking of drugs would only take a short time, particularly less than five (5) minutes. He likewise mentioned that there were around nine (9) to ten (10) police operatives at the scene, to wit:

Q: And along with you in this operation, Officer Dumaguit, how many law enforcers were with you?

A: All the Dumaguete City Intel personnel sir.

Q: Around how many sir?

A: Around nine (9) or 10.

x x x x x x x x x[55]

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[51] See *People v. Ismael,* G.R. No. 208093, February 20, 2017.

[52] *People v. Rafols*, G.R. No. 214440, June 15, 2016, 793 SCRA 638, 649.

[53] TSN, January 2, 2014, p. 60.

[54] *Id.*

[55] *Id*. at 56.

Q: Officer, how long did it take you to just mark the buy bust item just to put the initial of the person arrested, (sic) the date? How long do you (sic) usually take you to mark the items?

A: It depends sir.

Q: I am not referring to the inventory. I am just referring to the marking of the item.

A: It will just take a short time sir.

Q: In less than a minute?

A: It's not possible sir because we still have to take the tape, ballpen, and [sic]

Q: Less than five (5) minutes?

A: Yes sir

x x x x x x x x x[56]

(Underscoring supplied)

If the police officers themselves admitted that the marking would only take less than five (5) minutes, and that there were around nine (9) to ten (10) police companions to secure the same, then there appears to be no appreciable reason as to why the marking could not have been made immediately after the drugs sachets were seized. By the police officers' own account, this short period of time would have barely affected their impending implementation of the subject warrant. More so, it was not claimed that the safety of the police officers would have been prejudiced if the marking was done at the place of seizure. Hence, the police officers were not justified in not following the procedure set in the law. To reiterate, "[t]he rule requires that [marking] should be done in the presence of the apprehended violator and immediately upon confiscation to ensure that they are the same items that enter the chain and are eventually the ones offered in evidence."[57]

By and large, the breaches of procedure committed by the police officers militate against a finding of guilt beyond

[56] *Id*. at 60.

[57] *Valencia v. People*, 725 Phil. 268, 285 (2014); citation omitted.

reasonable doubt against the accused, as the integrity and evidentiary value of the *corpus delicti* had been compromised.[58] It is well-settled that the procedure in Section 21 of RA 9165 is a matter of substantive law, and cannot be brushed aside as a simple procedural technicality; or worse, ignored as an impediment to the conviction of illegal drug suspects.[59] Perforce, since the prosecution failed to provide justifiable grounds for non-compliance with Section 21 of RA 9165, as amended by RA 10640, as well as its IRR, Crispian's acquittal is in order.

Notably, the acquittal of Crispian on account of the police officers' failure to comply with the chain of custody rule should likewise result in the acquittal of his co-accused, Derek. This is because Derek was charged in Criminal Case No. 21618 for the alleged illegal sale of "one (1) heat-sealed transparent plastic sachet containing 0.03 gram of white crystalline substance of Methamphetamine Hydrochloride, commonly known as "*shabu*[,"] a dangerous drug"; this sachet is the same sachet for which Crispian was charged also in Criminal Case No. 21618, and hence, part of the seized items whose integrity and evidentiary value had been compromised. Section 11 (a), Rule 122 of the Revised Rules of Criminal Procedure, as amended, states that:

> Section 11. *Effect of appeal by any of several accused.* — (a) An appeal taken by one or more of several accused shall not affect those who did not appeal,except insofar as the judgment of the appellate court is favorable and applicable to the latter. (Underscoring supplied)

While it is true that it was only Crispian who successfully perfected his appeal, the rule is that an appeal in a criminal proceeding throws the entire case out in the open, including those not raised by the parties.[60] Considering that under Section 11 (a), Rule 122 of the Revised Rules of Criminal Procedure as above-quoted, a favorable judgment — as in this case —

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[58] See *People v. Sumili*, *supra* note 33 at 352.

[59] See *People v. Macapundag*, G.R. No. 225965, March 13, 2017, citing *People v. Umipang*, 686 Phil. 1024, 1038 (2012).

[60] See *Benabaye v. People*, 755 Phil. 144, 157 (2015); citation omitted.

shall benefit the co-accused who did not appeal,[61] Derek should likewise be acquitted herein.

As a final note, the Court finds it fitting to echo its recurring pronouncement in recent jurisprudence on the subject matter:

> The Court strongly supports the campaign of the government against drug addiction and commends the efforts of our law enforcement officers against those who would inflict this malediction upon our people, especially the susceptible youth. But as demanding as this campaign may be, it cannot be more so than the compulsions of the Bill of Rights for the protection of liberty of every individual in the realm, including the basest of criminals. The Constitution covers with the mantle of its protection the innocent and the guilty alike against any manner of high-handedness from the authorities, however praiseworthy their intentions.
>
> Those who are supposed to enforce the law are not justified in disregarding the right of the individual in the name of order. [For indeed,] [o]rder is too high a price for the loss of liberty. x x x.[62]

WHEREFORE, the appeal is **GRANTED**. The Decision dated September 14, 2016 of the Court of Appeals in CA-G.R. CR HC No. 01846 is hereby **REVERSED** and **SET ASIDE**. Accordingly, accused-appellant Crispian Merced Lumaya a.k.a. "Ipyang" and his co-accused Derek Joseph Lumaya are **ACQUITTED** of the crimes charged. The Director of the Bureau of Corrections is ordered to cause their immediate release, unless they are being lawfully held in custody for any other reason.

SO ORDERED.

Carpio[*] (*Chairperson*), *Peralta, Caguioa*, and *Reyes, Jr., JJ.*, concur.

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[61] *Id.*

[62] *People v. Go*, 457 Phil. 885, 925 (2003), citing *People v. Aminnudin*, 246 Phil. 424, 434-435 (1988).

[*] Acting Chief Justice per Special Order No. 2539 dated February 28, 2018.

SECOND DIVISION

[G.R. No. 232189. March 7, 2018]

ALEX RAUL B. BLAY, *petitioner, vs.* **CYNTHIA B. BAÑA,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; DISMISSAL OF ACTIONS; DISMISSAL UPON MOTION OF PLAINTIFF; WHERE A COUNTERCLAIM HAS BEEN PLEADED BY THE DEFENDANT PRIOR TO THE SERVICE UPON HIM OF THE PLAINTIFF'S MOTION FOR DISMISSAL, THE DISMISSAL SHALL BE LIMITED TO THE COMPLAINT BUT WITHOUT PREJUDICE TO THE RIGHT OF THE DEFENDANT TO PROSECUTE HIS COUNTERCLAIM IN A SEPARATE ACTION, UNLESS WITHIN FIFTEEN DAYS FROM NOTICE OF MOTION HE MANIFESTS HIS DESIRE TO PROSECUTE HIS COUNTERCLAIM IN THE SAME ACTION.— Section 2, Rule 17 of the Rules of Court provides for the procedure relative to counterclaims in the event that a complaint is dismissed by the court at the plaintiff's instance x x x. [*I*]*f a counterclaim has been pleaded by the defendant prior to the service upon him of the plaintiff's motion for the dismissal* — as in this case — the rule is that **the dismissal shall be limited to the complaint**. Commentaries on the subject elucidate that "[i]nstead of an 'action' shall not be dismissed, the present rule uses the term 'complaint'. A dismissal of an action is different from a mere dismissal of the complaint. For this reason, since only the complaint and not the action is dismissed, the defendant inspite of said dismissal may still prosecute his counterclaim in the same action." However, as stated in the **third sentence** of Section 2, Rule 17, *if the defendant desires to prosecute his counterclaim in the same action, he is required to file a manifestation within fifteen (15) days from notice of the motion. Otherwise, his counterclaim may be prosecuted in a separate action*. x x x The rationale behind this rule is not difficult to discern: the passing of the fifteen (15)-day period triggers the finality of the court's dismissal of the complaint and hence, bars the conduct of further proceedings,

i.e., the prosecution of respondent's counterclaim, in the same action. Thus, in order to obviate this finality, the defendant is required to file the required manifestation within the aforesaid period; otherwise, the counterclaim may be prosecuted only in a separate action.

2. POLITICAL LAW; STATUTES; MUST BE SO CONSTRUED AS TO HARMONIZE AND GIVE EFFECT TO ALL THE PROVISIONS WHENEVER POSSIBLE.— It is hornbook doctrine in statutory construction that "[t]he whole and every part of the statute must be considered in fixing the meaning of any of its parts and in order to produce a harmonious whole. A statute must be so construed as to harmonize and give effect to all its provisions whenever possible. In short, every meaning to be given to each word or phrase must be ascertained from the context of the body of the statute since a word or phrase in a statute is always used in association with other words or phrases and its meaning may be modified or restricted by the latter." By narrowly reading Section 2, Rule 17 of the Rules of Court, the CA clearly violated the foregoing principle and in so doing, erroneously sustained the assailed RTC Orders declaring respondent's counterclaim "as remaining for independent adjudication" despite the latter's failure to file the required manifestation within the prescribed fifteen (15)-day period.

APPEARANCES OF COUNSEL

Bello Valdez Caluya & Fernandez for petitioner.
Lorenzo Padilla for respondent.

D E C I S I O N

PERLAS-BERNABE, *J.*:

Assailed in this petition for review on *certiorari*[1] are the Decision[2] dated February 23, 2017 and the Resolution[3] dated

[1] *Rollo*, pp. 11-27.

[2] *Id.* at 109-114. Penned by Associate Justice Socorro B. Inting with Associate Justices Priscilla J. Baltazar-Padilla and Jane Aurora C. Lantion concurring.

[3] *Id.* at 125-126.

June 6, 2017 of the Court of Appeals (CA) in CA-G.R. SP No. 146138, which affirmed the Orders dated May 29, 2015[4] and March 3, 2016[5] of the Regional Trial Court of Pasay City, Branch 109 (RTC) in Civil Case No. R-PSY-14-17714-CV that: (*a*) granted petitioner Alex Raul B. Blay's (petitioner) Motion to Withdraw; and (*b*) declared respondent Cynthia B. Baña's (respondent) Counterclaim for independent adjudication.

The Facts

On September 17, 2014, petitioner filed before the RTC a Petition for Declaration of Nullity of Marriage,[6] seeking that his marriage to respondent be declared null and void on account of his psychological incapacity pursuant to Article 36 of the Family Code.[7] Subsequently, respondent filed her Answer with Compulsory Counterclaim[8] dated December 5, 2014.

However, petitioner later lost interest over the case, and thus, filed a Motion to Withdraw[9] his petition. In her comment/ opposition[10] thereto, respondent invoked Section 2, Rule 17 of the Rules of Court (alternatively, Section 2, Rule 17), and prayed that her counterclaims be declared as remaining for the court's independent adjudication.[11] In turn, petitioner filed his reply,[12] averring that respondent's counterclaims are barred from being prosecuted in the same action due to her failure to file a manifestation therefor within fifteen (15) days from notice of the Motion to Withdraw, which — according to petitioner — was required under the same Rules of Court provision. In

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[4] *Id*. at 53-54. Penned by Judge Tingaraan U. Guiling.

[5] *Id*. at 55.

[6] Dated Apri1 11, 2014. *Id*. at 136-143.

[7] *Id*. at 142.

[8] *Id*. at 147-162.

[9] Dated March 11, 2015. *Id*. at 163-164.

[10] Dated March 26, 2015. *Id*. at 166-169.

[11] *Id*. at 168.

[12] Dated April 29, 2015. *Id*. at 170-174.

particular, petitioner alleged that respondent filed the required manifestation only on March 30, 2015. However, respondent's counsel received a copy of petitioner's Motion to Withdraw on March 11, 2015; hence, respondent had only until March 26, 2015 to manifest before the trial court her desire to prosecute her counterclaims in the same action.[13]

The RTC Ruling

In an Order[14] dated May 29, 2015, the RTC granted petitioner's Motion to Withdraw petition.[15] Further, it declared respondent's counterclaim "as remaining for independent adjudication" and as such, gave petitioner fifteen (15) days to file his answer thereto.[16]

Dissatisfied, petitioner filed a motion for reconsideration,[17] which was denied in an Order[18] dated March 3, 2016. Thus, he elevated the matter to the CA via a petition for *certiorari*,[19] praying that the RTC Orders be set aside to the extent that they allowed the counterclaim to remain for independent adjudication before the same trial court.[20]

The CA Ruling

In a Decision[21] dated February 23, 2017, the CA dismissed the petition for lack of merit.[22] It found no grave abuse of discretion on the part of the RTC, holding that under Section

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[13] See *id*. at 112.

[14] *Id*. at 53-54.

[15] *Id*. at 54.

[16] *Id.*

[17] Dated June 22, 2015. *Id*. at 100-109.

[18] *Id*. at 55.

[19] Dated May 12, 2016. *Id*. at 31-49.

[20] *Id*. at 47.

[21] *Id*. at 109-114.

[22] *Id*. at 114.

2, Rule 17 of the Rules of Court, if a counterclaim has been filed by the defendant before the service upon him of the petitioner's motion for dismissal, the dismissal shall be limited to the complaint.[23]

Aggrieved, petitioner moved for reconsideration,[24] which was denied in a Resolution[25] dated June 6, 2017; hence, this petition.

The Issue Before the Court

The issue for the Court's resolution is whether or not the CA erred in upholding the RTC Orders declaring respondent's counterclaim for independent adjudication before the same trial court.

The Court's Ruling

The petition is meritorious.

Section 2, Rule 17 of the Rules of Court provides for the procedure relative to counterclaims in the event that a complaint is dismissed by the court at the plaintiffs instance, *viz.*:

> Section 2. *Dismissal upon motion of plaintiff.* — Except as provided in the preceding section, a complaint shall not be dismissed at the plaintiff's instance save upon approval of the court and upon such terms and conditions as the court deems proper. **If a counterclaim has been pleaded by a defendant prior to the service upon him of the plaintiff's motion for dismissal, the dismissal shall be limited to the complaint. The dismissal shall be without prejudice to the right of the defendant to prosecute his counterclaim in a separate action unless within fifteen (15) days from notice of the motion he manifests his preference to have his counterclaim resolved in the same action**. Unless otherwise specified in the order, a dismissal under this paragraph shall be without prejudice. A class suit shall not be dismissed or compromised without the approval of the court.

As per the **second sentence** of the provision, *if a counterclaim has been pleaded by the defendant prior to the service upon*

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[23] *Id*. at 112-113.

[24] See Motion for Reconsideration dated March 28, 2017; *id.* at 115-123.

[25] *Id*. at 125-126.

him of the plaintiff's motion for the dismissal — as in this case — the rule is that **the dismissal shall be limited to the complaint**. Commentaries on the subject elucidate that "[i]nstead of an 'action' shall not be dismissed, the present rule uses the term 'complaint'. A dismissal of an action is different from a mere dismissal of the complaint. For this reason, since only the complaint and not the action is dismissed, the defendant inspite of said dismissal may still prosecute his counterclaim in the same action."[26]

However, as stated in the **third sentence** of Section 2, Rule 17, *if the defendant desires to prosecute his counterclaim in the same action, he is required to file a manifestation within fifteen (15) days from notice of the motion. Otherwise, his counterclaim may be prosecuted in a separate action*. As explained by renowned remedial law expert, former Associate Justice Florenz D. Regalado, in his treatise on the matter:

> Under this revised section, where the *plaintiff* moves for the dismissal of the complaint to which a counterclaim has been interpose, the dismissal shall be limited to the complaint. Such dismissal shall be without prejudice to the right of the defendant to either prosecute his counterclaim in a separate action or to have the same resolved in the same action. Should he opt for the first alternative, the court should render the corresponding order granting and reserving his right to prosecute his claim in a separate complaint. **Should he choose to have his counterclaim disposed of in the same action wherein the complaint had been dismissed, he must manifest within 15 days from notice to him of plaintiff's motion to dismiss**. x x x[27]

In this case, the CA confined the application of Section 2, Rule 17 to that portion of its second sentence which states that the "dismissal shall be limited to the complaint." Evidently, the CA ignored the same provision's third sentence, which provides for the alternatives available to the defendant who interposes a counterclaim prior to the service upon him of the

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[26] Herrera, Oscar M., *Remedial Law*, 2000 Ed., Vol. I, p. 785.

[27] Regalado, Florenz D., *Remedial Law Compendium*, 10th Ed., Vol. 1, p. 302.

plaintiff's motion for dismissal. As may be clearly inferred therefrom, should the defendant desire to prosecute his counterclaim, he is required to manifest his preference therefor within fifteen (15) days from notice of the plaintiffs motion to dismiss. Failing in which, the counterclaim may be prosecuted only in a separate action.

The rationale behind this rule is not difficult to discern: the passing of the fifteen (15)-day period triggers the finality of the court's dismissal of the complaint and hence, bars the conduct of further proceedings, *i.e.*, the prosecution of respondent's counterclaim, in the same action. Thus, in order to obviate this finality, the defendant is required to file the required manifestation within the aforesaid period; otherwise, the counterclaim may be prosecuted only in a separate action.

It is hornbook doctrine in statutory construction that "[t]he whole and every part of the statute must be considered in fixing the meaning of any of its parts and in order to produce a harmonious whole. A statute must be so construed as to harmonize and give effect to all its provisions whenever possible. In short, every meaning to be given to each word or phrase must be ascertained from the context of the body of the statute since a word or phrase in a statute is always used in association with other words or phrases and its meaning may be modified or restricted by the latter."[28]

By narrowly reading Section 2, Rule 17 of the Rules of Court, the CA clearly violated the foregoing principle and in so doing, erroneously sustained the assailed RTC Orders declaring respondent's counterclaim "as remaining for independent adjudication" despite the latter's failure to file the required manifestation within the prescribed fifteen (15)-day period. As petitioner aptly points out:

> [I]f the intention of the framers of the Rules of Court is a blanket dismissal of the complaint ALONE if a counterclaim has been pleaded prior to the service of the notice of dismissal then there is NO EVIDENT PURPOSE for the third (3rd) sentence of Sec. 2, Rule 17.

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[28] *Chavez v. Judicial and Bar Council*, 691 Phil. 173, 200-201 (2012).

x x x x x x x x x[29]

[I]t is clearly an ABSURD conclusion if the said provision will direct the defendant to manifest within fifteen (15) days from receipt of the notice of dismissal his preference to prosecute his counterclaim in the **SAME ACTION** when the same **AUTOMATICALLY REMAINS**. If the automatic survival of the counterclaim and the death of the complaint as being ruled by the Court of Appeals in its questioned Decision is indeed true, then the third sentence should have required defendant to manifest that he will prosecute his counterclaim in a **SEPARATE** [and not — as the provision reads — in the same] **ACTION**.[30] (Emphases and underscoring in the original)

Petitioner's observations are logically on point. Consequently, the CA rulings, which affirmed the patently erroneous RTC Orders, must be reversed. As it should be, the RTC should have only granted petitioner's Motion to Withdraw and hence, dismissed his Petition for Declaration of Nullity of Marriage, without prejudice to, among others, the prosecution of respondent's counterclaim in a separate action.

WHEREFORE, the petition is **GRANTED**. The Decision dated February 23, 2017 and the Resolution dated June 6, 2017 of the Court of Appeals in CA-G.R. SP No. 146138 are hereby **REVERSED** and **SET ASIDE.** A new one is **ENTERED** solely granting petitioner Alex Raul B. Blay's Motion to Withdraw his Petition for Declaration of Nullity of Marriage in Civil Case No. R-PSY-14-17714-CV. The aforesaid dismissal is, among others, without prejudice to the prosecution of respondent Cynthia B. Baña's counterclaim in a separate action.

SO ORDERED.

Carpio[*] (*Chairperson*), *Peralta, Caguioa*, and *Reyes, Jr., JJ.,* concur.

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[29] *Rollo*, p. 19.

[30] *Id.* at 21.

[*] Acting Chief Justice per Special Order No. 2539 dated February 28, 2018.

THIRD DIVISION

[G.R. No. 233489. March 7, 2018]

SPOUSES LARRY and FLORA DAVIS, *petitioners, vs.* **SPOUSES FLORENCIO and LUCRESIA DAVIS,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; SPECIAL CIVIL ACTIONS; *CERTIORARI*; A MOTION FOR RECONSIDERATION IS A CONDITION *SINE QUA NON* FOR THE FILING OF A PETITION FOR *CERTIORARI*; EXCEPTION.—** While it is true that a motion for reconsideration is a condition *sine qua non* for the filing of a Petition for *Certiorari*, the purpose of which is to grant an opportunity for the court to correct any actual or perceived error attributed to it by re-examination of the legal and factual circumstances of the case, it is not, however, an ironclad rule as it admits well-defined exceptions. One of these exceptions is **where the questions raised in the *certiorari* proceeding have been duly raised and passed upon by the lower court, or are the same as those raised and passed upon in the lower court**. This exception is applicable in the instant case.

2. **ID.; ID.; EXECUTION OF JUDGMENTS; EXECUTION BY MOTION; MAY BE ALLOWED EVEN AFTER THE LAPSE OF FIVE YEARS UPON MERITORIOUS GROUNDS.—** Under Section 6, Rule 39 of the Rules of Court, a "judgment may be executed within five (5) years from the date of its entry or from the date it becomes final and executory. After the lapse of such time, and before it is barred by the statute of limitations, a judgment may be enforced by action." Nonetheless, this Court held that there had been many instances where it allowed execution by motion even after the lapse of five years, upon meritorious grounds. These exceptions have one common denominator, and that is: *the delay is caused or occasioned by actions of the judgment debtor and/or is incurred for his benefit or advantage*. x x x Considering that the delay was not due to the fault of the petitioners but of the respondents, who deliberately sold the subject property to another to avoid

the outcome of the case filed against them, and which delay incurred to their benefit/advantage, it is only logical, just, and equitable that the period during which an action for annulment of title and document was being litigated upon shall be deemed to have interrupted or tolled the running of the five-year period for enforcement of a judgment by mere motion. Otherwise, the respondents were rewarded for escaping the fulfilment of their obligation. Therefore, in computing the time limited for suing out an execution, the time during which execution is stayed should be excluded, and the time will be extended by any delay occasioned by the debtor. It bears stressing that the purpose of the law in prescribing time limitations for enforcing judgments or actions is to prevent obligors from sleeping on their rights. Moreover, the statute of limitations has not been devised against those who wish to act but cannot do so for causes beyond their control. In the case under consideration, there has been no indication that the petitioners had ever slept on their rights to have the judgment executed by mere motions within the reglementary period.

APPEARANCES OF COUNSEL

Karaan and Karaan Law Office for petitioners.
Manuel Punzalan for respondents.

D E C I S I O N

VELASCO, JR., *J.*:

Challenged in this Petition for Review on *Certiorari* under Rule 45 of the Rules of Court are the Court of Appeals (CA) Resolutions dated May 22, 2017[1] and August 10, 2017[2] in CA-G.R. SP No. 150626, which dismissed outright on purely procedural grounds the Petition for *Certiorari* of the herein petitioners Spouses Larry and Flora Davis and subsequently denied their motion for reconsideration thereof.

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[1] Penned by Associate Justice Maria Filomena D. Singh with Associate Justices Ricardo R. Rosario and Edwin D. Sorongon, concurring, *rollo*, pp. 90-92.

[2] *Id*. at 103-106.

The antecedents are:

On January 29, 1991, the petitioners, as vendees, and the herein respondents Spouses Florencio and Lucresia Davis, as vendors, entered into a Contract to Sell over a 500-square meter lot in Banga, Meycauayan, Bulacan, covered by Transfer Certificate of Title (TCT) No. T-226201 (M) (subject property) for a consideration of ₱500,000. As agreed upon, the petitioners gave the respondents the sum of ₱200,000 as downpayment while the remaining balance of ₱300,000 was made payable in 12 equal monthly installments. The respondents agreed to execute the corresponding Deed of Absolute Sale upon full payment of the purchase price. After full payment thereof and despite repeated demands, however, the respondents failed and refused to execute the Deed of Absolute Sale to the petitioners. This prompted the latter to initiate a **Complaint for Specific Performance and Damages** (with prayer for a writ of preliminary injunction and temporary restraining order) against the former **before Branch 78 (Br. 78) of the Regional Trial Court of Malolos, Bulacan (RTC Malolos)**, docketed as Civil Case No. 581-M-95. A notice of *lis pendens* was then annotated at the back of TCT No. T-226201 (M). In their Answer, the respondents admitted receipt of the ₱200,000 downpayment but denied receipt of the balance of ₱300,000. They also insisted that the petitioners have no cause of action against them.[3]

In a **Decision**[4] d**ated February 13, 1998, the RTC Malolos (Br. 78) ruled in favor of the petitioners**. The dispositive portion reads:

WHEREFORE, the foregoing considered, this Court resolves the instant case in favor of plaintiffs Larry and Flora Davis and against defendants Florencio and Lucresia Davis ordering the aforesaid defendants to:

1. Execute the Deed of Absolute Sale in favor of herein plaintiffs covering the 500-square meter land covered by Transfer Certificate

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[3] *Id*. at 36-37.

[4] Penned by Judge Gregorio S. Sampaga, *id*. at 27-34.

of Title No. T-226201, and cause the necessary registration thereof to the Register of Deeds of Meycauayan;

2. Pay, jointly and severally, the plaintiffs the following amounts, to wit:

a. ₱50,000.00 as moral damages;
b. ₱30,000.00 as exemplary damages; and
c. ₱40,000.00 as attorney's fees and litigation expenses;

3. Pay, jointly and severally, the costs of suit.

SO ORDERED.[5]

On appeal, the CA affirmed *in toto* the aforesaid ruling in its Decision[6] dated August 31, 2004, which became final and executory on October 2, 2004.[7]

Accordingly, on May 11, 2005, the petitioners moved for the execution of the February 13, 1998 Decision of the RTC Malolos (Br. 78), which was granted. A writ of execution was subsequently issued.[8] Unfortunately, this writ was not implemented primarily because the respondents already sold the subject property to Carmina Erana, Spouses Hector and Maria Victoria Erana, Efren Erana, and Spouses Ma. Lourdes and Romie Aquino, who were issued new TCT No. 421671 (M). But the notice of *lis pendens* was still carried over to the new title. The petitioners moved for the cancellation of TCT No. 421671 (M) and for the Register of Deeds of Bulacan to issue a new certificate of title in their favor but this was denied on the ground that the new registered owners of the subject property were not privies to the case.[9]

The petitioners were, thus, compelled to file a**n action for annulment of title and document against the new registered owners** of the subject property **before Br. 15, RTC Malolos**,

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[5] *Id*. at 34.

[6] Penned by Associate Justice Arcangelita M. Romilla-Lontok with Associate Justices Rodrigo V. Cosico and Danilo B. Pine, concurring.

[7] Per Entry of Judgment, *id*. at 42.

[8] *Id*. at 46, 48.

[9] *Id*. at 48.

docketed as Civil Case No. 768-M-08. In a **Decision**[10] **dated March 18, 2011, the RTC Malolos (Br. 15) ruled in favor of the petitioners** and declared TCT No. 421671 (M) as null and void and restored TCT No. T-226201 (M). This Decision became final and executory on July 23, 2012;[11] thus, the petitioners moved for its execution, which was granted. TCT No. 421671 (M) in the names of Carmina Erana, Spouses Hector and Maria Victoria Erana, Efren Erana, and Spouses Ma. Lourdes and Romie Aquino was cancelled and TCT No. T-226201 (M) in the names of the respondents was restored.[12]

With this in view, the **petitioners filed an Urgent *Ex-Parte* Manifestation and Motion on July 13, 2016**[13] for the implementation of the February 13, 1998 Decision of the RTC Malolos (Br. 78) by issuing a writ of execution to direct the respondents to execute a Deed of Absolute Sale in their favor, or in the absence of the former, to appoint the clerk of court to execute the same pursuant to Section 10 (a), Rule 39 of the Rules of Court. In their Comment, the respondents opposed arguing that the said Decision cannot be enforced by a mere motion or by an action for revival of judgment since 10 years had already lapsed from the time it became final.[14] In their Reply, the petitioners insisted that the period within which to move for the execution of the aforesaid Decision was deemed suspended with their filing of an action for annulment of title and document involving the subject property before the RTC Malolos (Br. 15) to enable a complete and effective relief in their favor.[15]

In an **Order**[16] **dated February 7, 2017, the RTC Malolos (Br. 78) denied the petitioners' Urgent *Ex-Parte* Manifestation**

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[10] Penned by Judge Alexander P. Tamayo, *id*. at 47-51.

[11] *Id*. at 52.

[12] *Id*. at 53-54.

[13] *Id*. at 59-62, 67.

[14] *Id*. at 63.

[15] *Id*. at 65-66.

[16] *Id*. at 67-69.

and Motion explaining that the consequent filing of annulment of title involving the subject property before Br. 15 does not toll the running of the period. The writ of execution dated June 17, 2005 was not served on the respondents; thus, the February 13, 1998 Decision of Br. 78 remained unimplemented/ unexecuted. This is the reason why there is a need for its revival unless barred by the statute of limitations.[17]

On *certiorari* to the CA, the latter, in its **first assailed Resolution dated May 22, 2017, dismissed the petition outright** as it suffered from serious infirmities, to wit: (1) petitioners failed to file a Motion for Reconsideration of the RTC Order dated February 7, 2017 pursuant to Section 1, Rule 65 of the Rules of Court; and (2) except for RTC Order dated February 7, 2017, only photocopies of the pertinent pleadings and documents accompanied the petition, as required by the aforesaid rule. The CA held that a Motion for Reconsideration is a plain, speedy, and adequate remedy available to the petitioners to assail the said Order and it is a condition *sine qua non* before a Petition for *Certiorari* may be given due course. The subsequent **motion for reconsideration thereof was denied for lack of merit in the second assailed Resolution dated August 10, 2017**.

Aggrieved by the aforesaid rulings of the CA, the petitioners filed the present Petition for Review on *Certiorari* with this Court, raising the allegation that the appellate court committed a grave and reversible error in dismissing their Petition for *Certiorari* notwithstanding that the presiding judge of the RTC Malolos (Br. 78) was guilty of grave abuse of discretion amounting to lack or excess of jurisdiction in issuing its Order dated February 7, 2017.[18]

There is merit in the instant petition.

Before delving into the merits of the case, it is imperative to first resolve a procedural issue.

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[17] *Id*. at 69.

[18] *Id*. at 14.

While it is true that a motion for reconsideration is a condition *sine qua non* for the filing of a Petition for *Certiorari*, the purpose of which is to grant an opportunity for the court to correct any actual or perceived error attributed to it by re-examination of the legal and factual circumstances of the case,[19] it is not, however, an ironclad rule as it admits well-defined exceptions. One of these exceptions is **where the questions raised in the *certiorari* proceeding have been duly raised and passed upon by the lower court, or are the same as those raised and passed upon in the lower court**.[20] This exception is applicable in the instant case.

To note, in the petitioners' Urgent *Ex-Parte* Manifestation and Motion for the implementation of the February 13, 1998 Decision of the RTC Malolos (Br. 78), as well as in their Reply, they vehemently insisted that the period within which to file a motion for execution of the said Decision was deemed suspended with their filing of an action for annulment of title and document involving the subject property before Br. 15 to enable a complete and effective relief in their favor. But Br. 78 denied the said Urgent *Ex-Parte* Manifestation and Motion reasoning that the petitioners' filing of another case involving the subject property before Br. 15 does not toll the running of the period to file a motion for execution. It is clear therefrom that any motion for reconsideration would then be superfluous, as Br. 78 had already passed upon and resolved the very same issue raised in the Petition for *Certiorari* before the CA. It is, therefore, a reversible error on the part of the CA to outrightly dismiss the petitioners' petition based on that procedural ground.

Turning now to the merits of the present petition, this Court rules for the petitioners.

Under Section 6, Rule 39 of the Rules of Court, a "judgment may be executed within five (5) years from the date of its entry or from the date it becomes final and executory. After the lapse

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[19] *Republic v. Bayao*, G.R. No. 179492, June 5, 2013, 697 SCRA 313.

[20] *Saint Louis University, Inc., et al. v. Olairez, et al.*, G.R. Nos. 162299 & 174758, March 26, 2014.

of such time, and before it is barred by the statute of limitations, a judgment may be enforced by action." Nonetheless, this Court held that there had been many instances where it allowed execution by motion even after the lapse of five years, upon meritorious grounds. These exceptions have one common denominator, and that is: *the delay is caused or occasioned by actions of the judgment debtor and/or is incurred for his benefit or advantage*.[21]

Here, the decision sought to be enforced became final and executory on October 2, 2004. Upon the petitioners' motion, a writ of execution was issued in 2005, which was well within the said five-year period. The writ, however, was repeatedly returned unserved and unimplemented. The petitioners later discovered the reason therefor. The respondents had sold the subject property to other parties. Worse, a new title has already been issued to the latter. As such, the petitioners were compelled to file an action for annulment of title and document against these new registered owners. Fortunately, the court ruled in petitioners' favor, which ruling became final and executory on July 23, 2012. Petitioners consequently moved for its execution resulting in the cancellation of the title in the names of the new registered owners and the restoration of the title in the names of the respondents. Chronologically speaking, the motion for execution filed on July 13, 2016 was almost 12 years after the decision became final and executory. Petitioners, however, maintain that the period during which it was compelled to file another action involving the subject property just to enable a complete and effective relief in their favor should *not* be taken into account in the computation of the five-year period.

This Court sustains the petitioners' position. Considering that the delay was not due to the fault of the petitioners but of the respondents, who deliberately sold the subject property to another to avoid the outcome of the case filed against them, and which delay incurred to their benefit/advantage, it is only

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[21] *Republic v. Court of Appeals*, G.R. No. 91885, August 7, 1996, 260 SCRA 344.

logical, just, and equitable that the period during which an action for annulment of title and document was being litigated upon shall be deemed to have interrupted or tolled the running of the five-year period for enforcement of a judgment by mere motion. Otherwise, the respondents were rewarded for escaping the fulfilment of their obligation. Therefore, in computing the time limited for suing out an execution, the time during which execution is stayed should be excluded, and the time will be extended by any delay occasioned by the debtor.[22] It bears stressing that the purpose of the law in prescribing time limitations for enforcing judgments or actions is to prevent obligors from sleeping on their rights.[23] Moreover, the statute of limitations has not been devised against those who wish to act but cannot do so for causes beyond their control.[24] In the case under consideration, there has been no indication that the petitioners had ever slept on their rights to have the judgment executed by mere motions within the reglementary period.

With the foregoing, this Court holds that the CA, indeed, committed a reversible error in dismissing outright the petitioners' petition despite its being meritorious.

WHEREFORE, the present petition is **GRANTED**. The CA Resolutions dated May 22, 2017 and August 10, 2017 in CA-G.R. SP No. 150626 and the Order dated February 7, 2017 of the RTC Malolos, Branch 78 in Civil Case No. 581-M-95 are, thus, **REVERSED** and **SET ASIDE**. The Urgent *Ex-Parte* Manifestation and Motion filed by petitioners on July 13, 2016 in said civil case is hereby **GRANTED**. The RTC Malolos, Branch 78 is ordered to immediately issue a writ of execution in favor of petitioners- spouses Larry and Flora Davis to execute and implement the Decision dated February 13, 1998, the *fallo* of which reads:

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[22] *Jacinto v. Intermediate Appellate Court, et al.*, G.R. No. 66478, August 29, 1988.

[23] *Republic v. Court of Appeals*, *supra* note 21.

[24] *Jacinto v. Intermediate Appellate Court, et al.*, *supra* note 22.

WHEREFORE, the foregoing considered, this Court resolves the instant case in favor of plaintiffs Larry and Flora Davis and against defendants Florencio and Lucresia Davis ordering the aforesaid defendants to:

1. Execute the Deed of Absolute Sale in favor of herein plaintiffs covering the 500-square meter land covered by Transfer Certificate of Title No. T-226201, and cause the necessary registration thereof to the Register of Deeds of Meycauayan;

2. Pay, jointly and severally, the plaintiffs the following amounts, to wit:

a. ₱50,000.00 as moral damages;
b. ₱30,000.00 as exemplary damages; and
c. ₱40,000.00 as attorney's fees and litigation expenses;

3. Pay, jointly and severally, the costs of suit.

SO ORDERED.

Bersamin, Leonen, Martires, and *Gesmundo, JJ.*, concur.

FIRST DIVISION

[A.C. No. 9119. March 12, 2018]

EUGENIO E. CORTEZ, *complainant, vs.* **ATTY. HERNANDO P. CORTES,** *respondent.*

SYLLABUS

1. LEGAL ETHICS; ATTORNEYS; CONTINGENT FEE ARRANGEMENT; MUST BE LAID DOWN IN AN EXPRESS CONTRACT TO BE CONSIDERED VALID AND BINDING.— We have held that a contingent fee arrangement is valid in this jurisdiction. It is generally recognized as valid and binding, but must be laid down in an express contract.

x x x In this case, We note that the parties did not have an express contract as regards the payment of fees.

2. ID.; ID.; ATTORNEY'S FEES; THE AMOUNT OF ATTORNEY'S FEES DUE IS THAT STIPULATED IN THE RETAINER AGREEMENT BUT IN THE ABSENCE THEREOF, THE AMOUNT OF ATTORNEY'S FEES IS FIXED ON THE BASIS OF *QUANTUM MERUIT*.— Although we agree that the 50% contingency fee was excessive, We do not agree that the 10% limitation as provided in Article 111 is automatically applicable. x x x It would then appear that the contingency fees that Atty. Cortes required is in the ordinary sense as it represents reasonable compensation for legal services he rendered for complainant. Necessarily, the 10% limitation of the Labor Code would not be applicable. Beyond the limit fixed by Article 111, such as between the lawyer and the client, the attorney's fees may exceed 10% on the basis of *quantum meruit.* We, however, are hard-pressed to accept the justification of the 50% contingency fee that Atty. Cortes is insisting on for being exorbitant. Generally, the amount of attorney's fees due is that stipulated in the retainer agreement which is conclusive as to the amount of the lawyers compensation. In the absence thereof, the amount of attorney's fees is fixed on the basis of *quantum meruit, i.e.,* the reasonable worth of the attorneys services. Courts may ascertain also if the attorney's fees are found to be excessive, what is reasonable under the circumstances. In no case, however, must a lawyer be allowed to recover more than what is reasonable, pursuant to Section 24, Rule 138 of the Rules of Court.

3. ID.; ID.; PRACTICE OF LAW; A CALLING THAT IS IMPRESSED WITH PUBLIC INTEREST, FOR WHICH IT IS SUBJECT TO STATE REGULATION.— We believe and so hold that the contingent fee here claimed by Atty. Cortes was, under the facts obtaining in this case, grossly excessive and unconscionable. The issues involved could hardly be said to be novel and Atty. Cortes in fact already knew that complainant was already hard up. We have held that lawyering is not a moneymaking venture and lawyers are not merchants. Law advocacy, it has been stressed, is not capital that yields profits. The returns it births are simple rewards for a job done or service rendered. It is a calling that, unlike mercantile pursuits which enjoy a greater deal of freedom from governmental interference,

> is impressed with a public interest, for which it is subject to State regulation. x x x If the Law has to remain an honorable profession and has to attain its basic ideal, those enrolled in its ranks should not only master its tenets and principles but should also, by their lives, accord continuing fidelity to such tenets and principles.

D E C I S I O N

TIJAM, *J.*:

The instant controversy arose from a Complaint-Affidavit[1] filed by complainant Eugenio E. Cortez[2] against respondent Atty. Hernando P. Cortes (Atty. Cortes) for grave misconduct, and violation of the Lawyer's Oath and the Code for Professional Responsibility.

Complainant alleged that he engaged the services of Atty. Cortes as his counsel in an illegal dismissal case against Philippine Explosives Corporation (PEC). He further alleged that he and Atty. Cortes had a handshake agreement on a 12% contingency fee as and by way of attorney's fees.[3]

Atty. Cortes prosecuted his claims for illegal dismissal which was decided in favor of complainant. The Court of Appeals affirmed the decision of the National Labor Relations Commission ordering PEC to pay complainant the total amount of One Million One Hundred Thousand Pesos (₱1,100,000) three staggered payments. PEC then Issued City Bank Check No. 1000003986 dated March 31, 2005 in the amount of Five Hundred Fifty Thousand Pesos (₱550,000), Check No. 1000003988 in the amount of Two Hundred Seventy-Five Thousand Pesos (₱275,000) dated April 15, 2005, and Check No. 1000003989 also in the amount of Two Hundred Seventy-Five Thousand Pesos (₱275,000) dated April 30, 2005, all payable in the name of complainant.[4]

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

[2] Also referred to as "Eugenio P. Cortez" in Complaint-Affidavit.

[3] *Rollo,* p. 1.

[4] *Id.* at 1-2.

Complainant narrated that after the maturity of the first check, he went to China Bank, Southmall Las Pinas with Atty. Cortes and his wife to open an account to deposit the said check. Atty. Cortes asked complainant to wait outside the bank while he personally, for and in his behalf, facilitated the opening of the account. After thirty minutes, he was asked to go inside and sign a joint savings account with Atty. Cortes.[5]

On April 7, 2005, complainant alleged that when he was about to withdraw the amount of the initial check deposited, Atty. Cortes arrived with his wife and ordered the bank teller to hold off the transaction. When complainant asked why he did that, Atty. Cortes answered that 50% of the total awarded claims belongs to him as attorney's fees. When complainant questioned him, Atty. Cortes became hysterical and imposingly maintained that 50% of the total awarded claims belongs to him.[6]

Complainant then tried to pacify Atty. Cortes and his wife and offered to pay ₱200,000, and when Atty. Cortes rejected it, he offered the third check amounting to ₱275,000, but Atty. Cortes still insisted on the 50% of the total award. Complainant was then forced to endorse the second and third checks to Atty. Cortes, after which he was able to withdraw the proceeds of the first check. With the help of the lawyers in the Integrated Bar of the Philippines (IBP), complainant was able to have the drawer of the checks cancel one of the checks endorsed to Atty. Cortes before he was able to encash the same.

Atty. Cortes, in his Answer, admitted that his services were engaged by complainant to pursue the labor claims. He, however, denied that they agreed on a 12% contingency fee by way of attorney's fees.[7]

Atty. Cortes claimed that complainant is a relative of his, but considering that the case was to be filed in Pampanga and

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[5] *Id.* at 2.

[6] *Id.*

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

he resided in Las Pinas, he would only accept the case on a fifty-fifty sharing arrangement.[8]

Atty. Cortes alleged that the checks were issued pursuant to the pre-execution agreement reached by the parties at the office of Labor Arbiter Herminio V. Suelo. He and complainant agreed that the amount of the first check be divided fifty-fifty, the whole of the second check would be the complainant's, and the third check would be his.[9]

Atty. Cortes further alleged that he had to assist complainant in the opening of an account to deposit the checks. Atty. Cortes had to convince the bank manager to accept the checks issued in the name of Eugene E. Cortez despite the fact that complainant's ID's are all in the name of Eugenio E. Cortez.[10] He claimed that anyone in his place would have demanded for the holding off of the transaction because of the base ingratitude, patent deception and treachery of complainant.[11]

Atty. Cortes posited that the check forms part and parcel of the judgment award to which he had a lien corresponding to his attorney's fees and complainant should have at least invited him to witness the "harvest of the fruits."[12]

Atty. Cortes insisted that the alleged 12% agreement is false, being merely a concoction of complainant's fertile and unstable mind. He also pointed out that the fifty-fifty sharing arrangement is not unconscionably high because the complainant was given the option to hire other lawyers, but still he engaged his services.[13]

After hearing and submission of position papers, the IBP Commission on Bar Discipline, in a Report and Recommendation

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[8] *Id*. at 18.

[9] *Id*. at 35.

[10] *Id*. at 21.

[11] *Id*. at 22.

[12] *Id*. at 23.

[13] *Id*. at 26.

dated April 11, 2007, recommended the six-month suspension of Atty. Cortes. It ruled that a contingent fee arrangement should generally be in writing, and that contingent fees depend upon an express contract without which the lawyer can only recover on the basis of *quantum meruit.* It also pointed out that the Labor Code establishes a limit as to the amount of attorney's fees that a lawyer may collect or charge his client in labor cases.

The report and recommendation was adopted and approved by the IBP Board of Governors in an August 17, 2007 Resolution:

> **RESOLUTION NO. XVIII-2007-74**
> **CBD Case No. 05-1482**
> **Eugenio E. Cortez vs.**
> **Atty. Hernando P. Cortes**
>
> RESOLVED to ADOPT and APPROVE, as it is hereby ADOPTED and APPROVED the Report and Recommendation of the Investigating Commissioner of the above-entitled case, herein made part of this Resolution as Annex "A"; and, finding the recommendation fully supported by the evidence on record and the applicable laws and rules, and for violation of Article 11(b) of the Labor Code, Atty. Hernando P. Cortes is hereby **SUSPENDED** from the practice of law for six (6) months and Ordered to Return to complainant whatever amount he received in excess of the 10% allowable attorney's fees in labor case (sic).
>
> **TOMAS N. PRADO**
> National Secretary[14]

A motion for reconsideration[15] was filed by Atty. Cortes, which was denied by the IBP Board of Governors.[16]

The issue, plainly, is whether or not the acts complained of constitute misconduct on the part of Atty. Cortes, which would subject him to disciplinary action.

We rule in the affirmative.

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[14] *Rollo,* Vol. II, p.1.

[15] *Id*. at 15-19.

[16] *Id*. at 55.

We have held that a contingent fee arrangement is valid in this jurisdiction. It is generally recognized as valid and binding, but must be laid down in an express contract.[17] The case of *Rayos v. Atty. Hernandez*[18] discussed the same succinctly, thus:

> **A contingent fee arrangement is valid in this jurisdiction and is generally recognized as valid and binding but must be laid down in an express contract.** The amount of contingent fee agreed upon by the parties is subject to the stipulation that counsel will be paid for his legal services **only if** the suit or litigation prospers. A much higher compensation is allowed as contingent fee in consideration of the risk that the lawyer may get nothing if the suit fails. Contracts of this nature are permitted because they redound to the benefit of the poor client and the lawyer especially in cases where the client has meritorious cause of action, but no means with which to pay for legal services unless he can, with the sanction of law, make a contract for a contingent fee to be paid out of the proceeds of the litigation. Oftentimes, the contingent fee arrangement is the only means by which the poor and helpless can seek redress for injuries sustained and have their rights vindicated.[19] (Emphasis Ours)

In this case, We note that the parties did not have an express contract as regards the payment of fees. Complainant alleges that the contingency fee was fixed at 12% via a handshake agreement, while Atty. Cortes counters that the agreement was 50%.

The IBP Commission on Discipline pointed out that since what respondent handled was merely a labor case, his attorney's fees should not exceed 10%, the rate allowed under Article 111[20] of the Labor Code.

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[17] *Agdao Residents Inc., et al. v. Maramion, et al.,* G.R. Nos. 188642 and 189425, October 17, 2016.

[18] 544 Phil. 447 (2007).

[19] *Id*. at 460-461.

[20] Art. 111. *Attorneys fees.* (a) In case of unlawful withholding of wages the culpable party may be assessed attorneys fees equivalent to ten percent (10%) of the amount of wages recovered.

(b) **It shall be unlawful for any person to demand or accept, in any judicial or administrative proceedings for the recovery of the wages, attorneys fees which exceed ten percent (10%) of the amount of wages recovered.** (Emphasis Ours)

Although we agree that the 50% contingency fee was excessive, We do not agree that the 10% limitation as provided in Article 111 is automatically applicable.

The case of *Masmud v. NLRC (First Division), et al.,*[21] discussed the matter of application of Article 111 of the Labor Code on attorney's fees:

> There are two concepts of attorney's fees. **In the ordinary sense, attorney's fees represent the reasonable compensation paid to a lawyer by his client for the legal services rendered to the latter. On the other hand, in its extraordinary concept, attorney's fees may be awarded by the court as indemnity for damages to be paid by the losing party to the prevailing party,** such that, in any of the cases provided by law where such award can be made, *e.g.,* those authorized in Article 2208 of the Civil Code, the amount is payable not to the lawyer but to the client, *unless* they have agreed that the award shall pertain to the lawyer as additional compensation or as part thereof.
>
> x x x x x x x x x
>
> Contrary to Evangelina's proposition, **Article 111 of the Labor Code deals with the extraordinary concept of attorneys fees. It regulates the amount recoverable as attorney's fees in the nature of damages sustained by and awarded to the prevailing party. It may not be used as the standard in fixing the amount payable to the lawyer by his client for the legal services he rendered.**[22] (Emphasis Ours)

It would then appear that the contingency fees that Atty. Cortes required is in the ordinary sense as it represents reasonable compensation for legal services he rendered for complainant. Necessarily, the 10% limitation of the Labor Code would not be applicable. Beyond the limit fixed by Article 111, such as between the lawyer and the client, the attorney's fees may exceed 10% on the basis of *quantum meriut.*[23] We, however, are hard-

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[21] 598 Phil. 971 (2009).

[22] *Id*. at 976-977.

[23] *Kaisahan at Kapatiran ng mga Manggagawa at Kawani sa MWC East Zone Union, et al. v. Manila Water Co., Inc.,* 676 Phil. 262, 278-279.

pressed to accept the justification of the 50% contingency fee that Atty. Cortes is insisting on for being exorbitant.

Generally, the amount of attorney's fees due is that stipulated in the retainer agreement which is conclusive as to the amount of the lawyers compensation. In the absence thereof, the amount of attorney's fees is fixed on the basis of *quantum meruit, i.e.,* the reasonable worth of the attorneys services.[24] Courts may ascertain also if the attorney's fees are found to be excessive, what is reasonable under the circumstances. In no case, however, must a lawyer be allowed to recover more than what is reasonable, pursuant to Section 24, Rule 138[25] of the Rules of Court.[26]

Canon 20 of the Code of Professional Responsibility states that "A lawyer shall charge only fair and reasonable fees." Rule 20.01 of the same canon enumerates the following factors which should guide a lawyer in determining his fees:

(a) The time spent and the extent of the services rendered or required;
(b) The novelty and difficulty of the questions involved;
(c) The importance of the subject matter;
(d) The skill demanded;
(e) The probability of losing other employment as a result of acceptance of the proffered case;
(f) The customary charges for similar services and the schedule of fees of the IBP Chapter to which he belongs;
(g) The amount involved in the controversy and the benefits resulting to the client from the service;

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[24] *Bach v. Ongkiko Kalaw Manhit & Acorda Law Offices,* 533 Phil. 69 (2006).

[25] SEC. 24. *Compensation of attorneys; agreement as to fees.* - **An attorney shall be entitled to have and recover from his client no more than a reasonable compensation for his services, with a view to the importance of the subject matter of the controversy, the extent of the services rendered, and the professional standing of the attorney.** No court shall be bound by the opinion of attorneys as expert witnesses as to the proper compensation, but may disregard such testimony and base its conclusion on its own professional knowledge. **A written contract for services shall control the amount to be paid therefor unless found by the court to be unconscionable or unreasonable.** (Emphasis supplied.)

[26] *Rayos v. Hernandez, supra* note 18, at 463.

(h) The contingency or certainty of compensation;
(i) The character of the employment, whether occasional or established; and
(j) The professional standing of the lawyer.

Here, as set out by Atty. Cortes himself, the complainant's case was merely grounded on complainant's alleged absence without leave for the second time and challenging the plant manager, the complainant's immediate superior, to a fist fight. He also claimed that the travel from his home in Las Pinas City to San Fernando, Pampanga was costly and was an ordeal. We likewise note that Atty. Cortes admitted that complainant was a close kin of his, and that complainant appealed to his services because, since his separation from work, he had no visible means of income and had so many mouths to feed. These circumstances cited by Atty. Cortes to justify the fees; to Our mind, does not exculpate Atty. Cortes, but in fact, makes Us question all the more, the reasonableness of it.

We believe and so hold that the contingent fee here claimed by Atty. Cortes was, under the facts obtaining in this case, grossly excessive and unconscionable. The issues involved could hardly be said to be novel and Atty. Cortes in fact already knew that complainant was already hard up. We have held that lawyering is not a moneymaking venture and lawyers are not merchants.[27] Law advocacy, it has been stressed, is not capital that yields profits.[28] The returns it births are simple rewards for a job done or service rendered. It is a calling that, unlike mercantile pursuits which enjoy a greater deal of freedom from governmental interference, is impressed with a public interest, for which it is subject to State regulation.[29]

Here, considering that complainant was amenable to a 12% contingency fee, and which we likewise deem to be the reasonable worth of the attorney's services rendered by Atty. Cortes under

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[27] *Cortes v. CA,* 443 Phil. 42 (2003).

[28] *Bach v. Ongkiko Kalaw Manhit & Alcorda Law Offices, supra*, at 85.

[29] *Sesbreño v. Hon. Court of Appeals, et al.,* 574 Phil. 658, 671 (2008).

the circumstances, Atty. Cortes is hereby adjudged to return to complainant the amount he received in excess of 12% of the total award. If the Law has to remain an honorable profession and has to attain its basic ideal, those enrolled in its ranks should not only master its tenets and principles but should also, by their lives, accord continuing fidelity to such tenets and principles.[30]

We, however, find that the recommended suspension of six months is too harsh and considering that Atty. Cortes is nearing ninety years old and that there was no question that Atty. Cortes was able to get a favorable outcome, a reduction of the suspension is proper. We then reduce and sanction Atty. Cortes to a three-month suspension from the practice of law.

WHEREFORE, premises considered, respondent Atty. Hernando P. Cortes is found **GUILTY** of violation of Canon 20 of the Code of Professional Responsibility and is hereby **SUSPENDED** from the practice of law for three (3) months, and is ordered to return to complainant Eugenio E. Cortez the amount he received in excess of the 12% allowable attorney's fees.

SO ORDERED.

Leonardo-de Castro[*]*, del Castillo,* and *Jardeleza, JJ.,* concur.

Sereno, C.J., on leave.

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[30] *Jacinto v. Atty. Bangot,* A.C. No. 8494, October 5, 2016.

[*] Designated Acting Chairperson, First Division per Special Order No. 2540 dated February 28, 2018

SECOND DIVISION

[A.C. No. 10244. March 12, 2018]
(Formerly CBD Case No. 07-2085)

REMIGIO P. SEGOVIA, JR., FRANCISCO RIZABAL, PABLITO RIZABAL, MARCIAL RIZABAL ROMINES, PELAGIO RIZABAL ARYAP and RENATO RIZABAL, *complainants, vs.* **ATTY. ROLANDO S. JAVIER,** *respondent.*

SYLLABUS

1. LEGAL ETHICS; ATTORNEYS; A LAWYER HAS THE DUTY TO EXERT HIS BEST JUDGMENT IN THE PROSECUTION OR DEFENSE OF THE CASE ENTRUSTED TO HIM AND TO EXERCISE REASONABLE AND ORDINARY CARE AND DILIGENCE IN THE PURSUIT OR DEFENSE OF THE CASE.— A license to practice law is a guarantee by the courts to the public that the licensee possesses sufficient skill, knowledge and diligence to manage their cases. When a lawyer accepts a case, his acceptance is an implied representation that he possesses the requisite academic learning, skill and ability to handle the case. The lawyer has the duty to exert his best judgment in the prosecution or defense of the case entrusted to him and to exercise reasonable and ordinary care and diligence in the pursuit or defense of the case.

2. ID.; ID.; ATTORNEY-CLIENT RELATIONSHIP; ACCEPTANCE OF MONEY FROM A CLIENT ESTABLISHES AN ATTORNEY-CLIENT RELATIONSHIP AND GIVES RISE TO THE DUTY OF FIDELITY TO THE CLIENT'S CAUSE.— A lawyer owes fidelity to the cause of his client and must be mindful of the trust and confidence reposed in him. An attorney's duty to safeguard the client's interests commences from his retainer until his effective release from the case or the final disposition of the whole subject matter of the litigation. During that period, he is expected to take such reasonable steps and such ordinary care as his client's interests may require. In other words, acceptance of money from a client establishes an attorney-client relationship and gives rise to the

duty of fidelity to the client's cause.

3. ID.; ID.; FAILURE TO RETURN THE CLIENT'S MONEY DESPITE FAILURE TO USE THE SAME FOR THE INTENDED PURPOSE WARRANTS THE IMPOSITION OF DISCIPLINARY ACTION; CASE AT BAR.— In the instant case, it was undisputed that respondent failed to file the case of falsification of public documents and recovery of property in favor of complainants despite receiving the money in connection with the said case. Respondent's inaction despite repeated follow-ups and his promise that the case will be resolved in complainants' favor demonstrated his cavalier attitude and appalling indifference to his clients' cause. When a lawyer receives money from the client for a particular purpose, the lawyer is bound to render an accounting to the client showing that the money was spent for the intended purpose. Conversely, if the lawyer does not use the money for the intended purpose, he must immediately return the money to the client. x x x Respondent's failure to return the money to complainants despite failure to use the same for the intended purpose is conduct indicative of lack of integrity and propriety and a violation of the trust reposed on him. His unjustified withholding of money belonging to the complainants warrants the imposition of disciplinary action.

4. ID.; ID.; INTEGRATED BAR OF THE PHILIPPINES; COMMISSION ON BAR DISCIPLINE; THE ORDERS THEREOF AS THE INVESTIGATING ARM OF THE SUPREME COURT IN ADMINISTRATIVE CASES AGAINST LAWYERS ARE DIRECTIVES WHICH SHOULD BE COMPLIED WITH PROMPTLY AND COMPLETELY.— [R]espondent's violations were aggravated by his failure to comply with the CBD's directives for him to file his pleadings and to attend the hearing, which demonstrated not only his irresponsibility but also his disrespect for the judiciary and his fellow lawyers. Such conduct was unbecoming of a lawyer who is called upon to obey court orders and processes and is expected to stand foremost in complying with court directives as an officer of the court. As a member of the bar, he ought to have known that the orders of the CBD as the investigating arm of the Court in administrative cases against lawyers were not mere requests but directives which should have been complied with promptly and completely.

5. ID.; ID.; DISCIPLINARY PROCEEDINGS; THE RULE THAT DISCIPLINARY PROCEEDINGS SHOULD ONLY REVOLVE AROUND THE DETERMINATION OF THE RESPONDENT-LAWYER'S ADMINISTRATIVE AND NOT HIS CIVIL LIABILITY APPLIES ONLY TO CLAIMED LIABILITIES WHICH ARE PURELY CIVIL IN NATURE.— While the Court has previously held that disciplinary proceedings should only revolve around the determination of the respondent-lawyer's administrative and not his civil liability, it must be clarified that this rule remains applicable only to claimed liabilities which are purely civil in nature – for instance, when the claim involves moneys received by the lawyer from his client in a transaction separate and distinct and not intrinsically linked to his professional engagement, such as the acceptance fee. And considering further that respondent's receipt of the ₱30,000.00 remains undisputed, the Court finds the return of the same to the complainants, plus legal interest with the rate of twelve percent (12%) *per annum* from September 10, 2007 until June 30, 2013, then six percent (6%) interest *per annum* from July 1, 2013 until fully paid, to be in order.

D E C I S I O N

PERALTA, *J.*:

This case stemmed from a letter-complaint[1] filed by complainants Remigio P. Segovia, Jr., Francisco Rizabal, Pablito Rizabal, Marcial Rizabal Romines, Pelagio Rizabal Aryap and Renato Rizabal with the Integrated Bar of the Philippines (*IBP*) against respondent Atty. Rolando S. Javier, for allegedly abandoning them by failing to file the case on their behalf after collecting the amount of ₱57,000.00 for litigation fees.

Complainants alleged that they engaged the services of respondent as their counsel in a case involving falsification of documents and recovery of property. During the existence of attorney-client relationship, respondent asked the complainants the amount of ₱30,000.00 as filing fee, which they have dutifully paid. Complainants discovered that respondent also demanded

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

from one Riza Rizabal Tesalona the amount of ₱27,000.00 in connection with the case. Whenever they followed-up on the case, they always received a response from respondent to not worry as he would file the case within the week, and an assurance that the case will be resolved in their favor. However, respondent never filed the case.[2]

On May 8, 2012, the Commission on Bar Discipline (*CBD*), through IBP Commissioner Oliver A. Cachapero (*Commissioner Cachapero*), issued a Notice of Mandatory Conference[3] directing the parties to appear before the commission, and to submit their respective Mandatory Conference Brief. Both parties did not appear.

In an Order[4] dated July 6, 2012, Commissioner Cachapero directed the parties to file their respective verified position paper, however, both parties failed to file their position papers.

On November 14, 2012, Commissioner Cachapero submitted his Report,[5] a portion of which reads:

DISCUSSION

The disquisition is brief and concise.

Lawyers have always been reminded that their relationship with their clients must be characterized by trust which exemplifies fiduciary relationship absence of which the legal profession's image to the public would be debased. In this connection, best efforts must be exerted by the attorney to protect his client's interest and he must account for any fund received by him from his client.

In the instant case, Respondent had clearly breached the trust reposed in him by his client after accepting the case and collecting the filing fees and yet failed in his duty to file the case for his clients despite demands from the latter. These practices by lawyers degrade the legal profession and the administration of justice and breed delinquent

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[2] *Id.* at 2.

[3] *Id.* at 11.

[4] *Id.* at 12.

[5] *Id.* at 17-19.

lawyers. Such practices should not be tolerated since it could easily be done especially against indigent and marginalized clients.

Under *Rule 18.03* of the *Code of Professional Responsibility*, a lawyer has the bounden duty of not neglecting a legal matter entrusted to him, and his negligence in connection therewith shall render him liable. The Supreme Court, and this Commission, have consistently held, in construing this rule, that the mere failure of the lawyer to perform the obligations due to the client is considered *per se* a violation. Also, a lawyer who received money to handle a client's case but rendered no service at all shall be subject to disciplinary measure.

Unfortunately for the Respondent, he failed to submit his Answer and his Position Paper. He, as well, failed to attend the mandatory conference, hence, the undersigned has no means of knowing his contentions and had to rely on the allegations in the Complaint.

RECOMMENDATION

Foregoing premises considered, the undersigned believes and so holds that the instant complaint is with merit. Accordingly, he recommends that the Respondent be SUSPENDED for a period of one (1) year.[6]

The Board of Governors adopted the findings of the Commissioner in Resolution No. XX-2013-304, to wit:

RESOLVED to *ADOPT* and *APPROVE*, as it is hereby unanimously *ADOPTED* and *APPROVED*, the Report and Recommendation of the Investigating Commissioner in the above-entitled case, herein made part of this Resolution as Annex "A," and finding the recommendation fully supported by the evidence on record and the applicable laws and rules, and considering that respondent violated Rule 18.03 of the Code of Professional Responsibility, Atty. Rolando S. Javier is hereby ***SUSPENDED from the practice of law for one (1) year***.[7]

The Court's Ruling

We adopt the ruling of the IBP Board of Governors.

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[6] *Id.* at 18-19. (Citations omitted).

[7] *Id.* at 16. (Emphasis in the original)

A license to practice law is a guarantee by the courts to the public that the licensee possesses sufficient skill, knowledge and diligence to manage their cases. When a lawyer accepts a case, his acceptance is an implied representation that he possesses the requisite academic learning, skill and ability to handle the case. The lawyer has the duty to exert his best judgment in the prosecution or defense of the case entrusted to him and to exercise reasonable and ordinary care and diligence in the pursuit or defense of the case.[8]

A lawyer owes fidelity to the cause of his client and must be mindful of the trust and confidence reposed in him. An attorney's duty to safeguard the client's interests commences from his retainer until his effective release from the case or the final disposition of the whole subject matter of the litigation. During that period, he is expected to take such reasonable steps and such ordinary care as his client's interests may require.[9] In other words, acceptance of money from a client establishes an attorney-client relationship and gives rise to the duty of fidelity to the client's cause.[10]

The Code of Professional Responsibility (*CPR*) states:

CANON 16 — A lawyer shall hold in trust all moneys and properties of his client that may come into his possession.

x x x x x x x x x

RULE 16.03 A lawyer shall deliver the funds and property of his client when due or upon demand. x x x

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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[8] *Parias v. Paguinto,* 478 Phil. 239, 245 (2004).

[9] *Gamalinda v. Atty. Alcantara*, 283 Phil. 384, 389 (1992).

[10] *Nery v. Atty. Sampana,* 742 Phil. 531, 536 (2014).

In the instant case, it was undisputed that respondent failed to file the case of falsification of public documents and recovery of property in favor of complainants despite receiving the money in connection with the said case. Respondent's inaction despite repeated follow-ups and his promise that the case will be resolved in complainants' favor demonstrated his cavalier attitude and appalling indifference to his clients' cause.

When a lawyer receives money from the client for a particular purpose, the lawyer is bound to render an accounting to the client showing that the money was spent for the intended purpose. Conversely, if the lawyer does not use the money for the intended purpose, he must immediately return the money to the client.[11]

We note that while complainants allege that respondent specifically received ₱57,000.00 for filing fees, only the amount of ₱30,000.00 was supported by evidence. Since respondent failed to render any legal service to complainants for failing to file the said case, he should have promptly accounted for and returned the money to complainants.

Respondent's failure to return the money to complainants despite failure to use the same for the intended purpose is conduct indicative of lack of integrity and propriety and a violation of the trust reposed on him. His unjustified withholding of money belonging to the complainants warrants the imposition of disciplinary action.

Moreover, respondent's violations were aggravated by his failure to comply with the CBD's directives for him to file his pleadings and to attend the hearing, which demonstrated not only his irresponsibility but also his disrespect for the judiciary and his fellow lawyers. Such conduct was unbecoming of a lawyer who is called upon to obey court orders and processes and is expected to stand foremost in complying with court directives as an officer of the court. As a member of the bar, he ought to have known that the orders of the CBD as the investigating arm of the Court in administrative cases against

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[11] *Meneses v. Atty. Macalino,* 518 Phil. 378, 385 (2006).

lawyers were not mere requests but directives which should have been complied with promptly and completely.[12]

This Court notes that this is not the first time that respondent was held liable for similar infractions. He was found in both cases to have unlawfully withheld and misappropriated money. In *Igual v. Javier*,[13] the Court suspended respondent from the practice of law for a period of one month and ordered him to restitute the amount of ₱7,000.00 to Igual upon finding that respondent had unjustifiably refused to return Igual's money upon demand. Furthermore, his absence of integrity was highlighted by his "half-baked excuses, hoary pretenses and blatant lies in his testimony before the IBP Committee on Bar Discipline." In *Adrimisin v. Javier*,[14] the Court found that respondent unjustifiably refused to return the amount of ₱500.00 he received in 1983 despite his failure to immediately secure a bail bond in favor of Adrimisin's son-in-law. In that case, respondent was suspended from the practice of law for six (6) months.

The appropriate penalty on an errant lawyer requires sound judicial discretion based on the surrounding facts. In similar cases where lawyers neglected their clients' affairs and, at the same time, failed to return the latter's money and/or property despite demand, the Court meted out the penalty of suspension from the practice of law.[15] In *Andrada v. Atty. Cera*,[16] the Court suspended Cera from the practice of law for one (1) year for failing to exert any effort on his client's case and completely reneging on the obligations due his client. In *Segovia-Ribaya v. Atty. Lawsin*,[17] the Court suspended Lawsin for a similar period for his failure to perform his undertaking under his

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[12] *Jinon v. Atty. Jiz,* 705 Phil. 321, 329 (2013).

[13] 324 Phil. 698, 709 (1996).

[14] 532 Phil. 639 (2006).

[15] *Maglente v. Atty. Agcaoili, Jr.,* 756 Phil. 116 (2015).

[16] 764 Phil. 346 (2015).

[17] 721 Phil. 44, 53 (2013).

retainership agreement with his client and to return the money given to him by the latter. Likewise, in *Maglente v. Atty. Agcaoili, Jr.*,[18] the same penalty was imposed on the respondent who failed to render any legal service to his client as well as to return the money he received for such purpose and offered the flimsy excuse that the money he received was not enough to fully pay the filing fees.

From the foregoing, the Court finds a one-year suspension from the practice of law appropriate as penalty for respondent's misconduct.

While the Court has previously held that disciplinary proceedings should only revolve around the determination of the respondent-lawyer's administrative and not his civil liability, it must be clarified that this rule remains applicable only to claimed liabilities which are purely civil in nature — for instance, when the claim involves moneys received by the lawyer from his client in a transaction separate and distinct and not intrinsically linked to his professional engagement, such as the acceptance fee.[19] And considering further that respondent's receipt of the ₱30,000.00 remains undisputed, the Court finds the return of the same to the complainants, plus legal interest with the rate of twelve percent (12%) *per annum* from September 10, 2007 until June 30, 2013, then six percent (6%) interest *per annum* from July 1, 2013 until fully paid, to be in order.

WHEREFORE, the Court finds respondent Atty. Rolando S. Javier **GUILTY** of violation of the Code of Professional Responsibility. Accordingly, the Court **SUSPENDS** him from the practice of law for one (1) year effective immediately upon receipt of this Decision. He is **STERNLY WARNED** that a repetition of the same or similar acts in the future shall be dealt with more severely. He is **ORDERED** to **RETURN** to complainants the amount of ₱30,000.00 with interest at the rate of twelve percent (12%) *per annum* from September 10, 2007 until June 30, 2013, then six percent (6%) interest *per annum*

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[18] *Supra* note 15.

[19] *Pitcher v. Atty. Gagate*, 719 Phil. 82, 94 (2013).

from July 1, 2013 until fully paid. Respondent shall submit to the Court proof of restitution within ten (10) days from payment.

Let all the courts, through the Office of the Court Administrator, as well as the IBP and the Office of the Bar Confidant, be notified of this Decision and be it entered into respondent's personal record.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 197743. March 12, 2018]

HEIRS OF JOSE MARIANO and HELEN S. MARIANO, represented by DANILO DAVID S. MARIANO, MARY THERESE IRENE S. MARIANO, MA. CATALINA SOPHIA S. MARIANO, JOSE MARIO S. MARIANO, MA. LENOR S. MARIANO, MACARIO S. MARIANO and HEIRS OF ERLINDA MARIANO-VILLANUEVA, represented in this act by IRENE LOURDES M. VILLANUEVA through her ATTORNEY-IN-FACT EDITHA S. SANTUYO and BENJAMIN B. SANTUYO, *petitioners, vs.* **CITY OF NAGA,** *respondent.*

SYLLABUS

1. CIVIL LAW; CIVIL CODE; MODES OF ACQUIRING OWNERSHIP; DONATION; TO BE VALID, A DONATION OF REAL PROPERTY MUST BE MADE IN A PUBLIC INSTRUMENT.— Generally, contracts are obligatory in

[*] Acting Chief Justice per Special Order No. 2539 dated February 28, 2018.

whatever form they may have been entered into, provided all the essential requisites for their validity are present. However, when the law requires that a contract be in some form to be valid, such requirement is absolute and indispensable; its non-observance renders the contract void and of no effect. One such law is Article 749 of the Civil Code of the Philippines x x x. [D]onation of real property, which is a solemn contract, is void without the formalities specified in the x x x provision. Article 749 of the Civil Code requires that donation of real property must be made in a public instrument to be valid.

2. ID.; ID.; OBLIGATIONS AND CONTRACTS; VOID CONTRACTS; A DEED OF DONATION WHICH IS NOT MADE IN A PUBLIC INSTRUMENT IS A VOID CONTRACT AND HAS NO FORCE AND EFFECT FROM THE VERY BEGINNING.— The purported Deed of Donation submitted by the City cannot be considered a public document. While it contains an Acknowledgment before a notary public, the same is manifestly defective as it was made neither by the alleged donors (Macario and Gimenez) and their respective spouses, or by the donee (the City, through Mayor Imperial), but only by Eusebio M. Lopez, Faustino Dolor, Soledad Lirio Dolor and Lopez, Jr., as the Subdivision's President, Vice President, Secretary and General Manager, respectively. x x x Said Deed also shows that Mayor Imperial affixed his signature thereon on August 21, 1954, or four days after it was notarized, thus he could not have acknowledged the same before the notary public on August 16, 1954. Verily, the notary public could not have certified to knowing the parties to the donation, or to their execution of the instrument, or to the voluntariness of their act. This glaring defect is fatal to the validity of the alleged donation. It is settled that a defective notarization will strip the document of its public character and reduce it to a private instrument. Not being a public document, the purported Deed of Donation is void. A void or inexistent contract has no force and effect from the very beginning, as if it had never been entered into. It is equivalent to nothing and is absolutely wanting in civil effects. It cannot be validated either by ratification or prescription. Void contracts may not be invoked as a valid action or defense in any court proceeding, including an ejectment suit.

3. ID.; LAND REGISTRATION; CERTIFICATE OF TITLE; A PERSON WHO HAS A TORRENS TITLE OVER A

PARCEL OF LAND IS ENTITLED TO POSSESSION THEREOF AND THE REGISTERED OWNER HAS A SUPERIOR RIGHT TO POSSESS THE PROPERTY IN AN UNLAWFUL DETAINER CASE.— The Court has consistently upheld the registered owners' superior right to possess the property in unlawful detainer cases. A fundamental principle in land registration is that the certificate of title serves as evidence of an indefeasible and incontrovertible title to the property in favor of the person whose name appears therein. It is conclusive evidence as regards ownership of the land therein described, and the titleholder is entitled to all the attributes of ownership of the property, including possession. Thus, the Court has time and again reiterated the age-old rule that the person who has a Torrens title over a parcel of land is entitled to possession thereof. It has likewise been constantly emphasized that when the property is registered under the Torrens system, the registered owner's title to the property is presumed legal and cannot be collaterally attacked, especially in a mere action for unlawful detainer. It has even been held that it does not even matter if the party's title to the property is questionable. Furthermore, it has been held that a certificate of title has a superior probative value as against that of an unregistered deed of conveyance in ejectment cases.

4. **ID.; SUBDIVISION REGULATIONS; ROADS AND OPEN SPACES IN SUBDIVISIONS; LOCAL GOVERNMENTS DO NOT AUTOMATICALLY BECOME THE OWNER OF ROADS AND OPEN SPACE IN SUBDIVISIONS WITHIN THEIR JURISDICTION, SUCH THAT A POSITIVE ACT OF CONVEYANCE IS NECESSARY TO VEST OWNERSHIP IN THE CITY OR MUNICIPALITY.—** [T]he City cannot successfully invoke the Subdivision Regulations as basis to demand vested proprietary rights over the subject property. Contrary to its position that roads as well as open space in subdivisions instantly belong to the government without need of compensation or any overt act of donation, the Subdivision Regulations indicate that local governments did not automatically become the owner of roads and open space in subdivisions within their jurisdiction and a positive act of conveyance or dedication was necessary to vest ownership in the city or municipality x x x. Parenthetically, even under PD 957, specifically Section 31, it was optional on the part of the owner or developer of the subdivision to donate the roads and

open space found therein. Furthermore, under PD 1216, "(t)he-transfer of ownership from the subdivision owner-developer to the local government is not automatic but requires a positive act from the owner-developer before the city or municipality can acquire dominion over the subdivision roads," such that "until and unless the roads are donated, ownership remains with the owner-developer."

5. ID.; CIVIL CODE; PROPERTY, OWNERSHIP, AND ITS MODIFICATIONS; OWNERSHIP; BUILDER IN GOOD FAITH; REFERS TO ONE WHO IS NOT AWARE THAT THERE EXISTS IN HIS TITLE OR MODE OF ACQUISITION ANY FLAW WHICH INVALIDATES IT.— By law, one is considered in good faith if he is not aware that there exists in his title or mode of acquisition any flaw which invalidates it. The essence of good faith lies in an honest belief in the validity of one's right, ignorance of a superior claim, and absence of intention to overreach another. By these standards, the City cannot be deemed a builder in good faith. x x x The x x x circumstances ineluctably show that the City knew of a substantial flaw in its claim over the subject property. x x x It cannot, thus, be said that the City was of an honest belief that it had a valid right to the subject property or that its actions had not overreached the landowners. Accordingly, it cannot be considered to have acted in good faith. x x x Thus, petitioners, as hereditary successors of the registered owners of the subject property, have the right to appropriate what has been built on the property, without any obligation to pay indemnity therefor, and the City has no right to a refund of any improvement built therein.

6. REMEDIAL LAW; EVIDENCE; PRESENTATION OF EVIDENCE; EVIDENCE NOT OBJECTED TO IS DEEMED ADMITTED AND MAY BE VALIDLY CONSIDERED BY THE COURT IN ARRIVING AT ITS JUDGMENT.— It is well-settled that evidence not objected to is deemed admitted and may be validly considered by the court in arriving at its judgment. This is true even if by its nature the evidence is inadmissible and would have surely been rejected if it had been challenged at the proper time. Once admitted without objection, even though not admissible under an objection, We are not inclined now to reject it. Consequently, the evidence that was not objected to became property of the

case, and all parties to the case are considered amenable to any favorable or unfavorable effects resulting from the said evidence.

7. ID.; ACTIONS; ACTION TO RECOVER POSSESSION OF REGISTERED LAND; DOES NOT PRESCRIBE AND THE RULE ON IMPRESCRIPTIBILITY OF REGISTERED LANDS NOT ONLY APPLIES TO THE REGISTERED OWNER BUT EXTENDS TO THE HEIRS OF THE REGISTERED OWNER AS WELL.— The rule is that an action to recover possession of a registered land never prescribes in view of the provision of Section 44 of Act No. 496 to the effect that no title to registered land in derogation of that of a registered owner shall be acquired by prescription or adverse possession. It follows that a registered owner's action to recover a real property registered under the Torrens System does not prescribe. Thus, it has been consistently held that registered owners have the right to evict any person unlawfully occupying their property, and this right is imprescriptible and can never be barred by laches. Even if it be supposed that they were aware of the occupant's possession of the property, and regardless of the length of that possession, the lawful owners have a right to demand the return of their property at any time as long as the possession was unauthorized or merely tolerated, if at all. Moreover, it is well settled that the rule on imprescriptibility of registered lands not only applies to the registered owner but extends to the heirs of the registered owner as well. As explained in *Mateo v. Diaz*, prescription is unavailing not only against the registered owner, but also against his hereditary successors because the latter step into the shoes of the decedent by operation of law and are the continuation of the personality of their predecessor-in-interest.

8. ID.; CIVIL PROCEDURE; SPECIAL CIVIL ACTIONS; UNLAWFUL DETAINER; IN AN UNLAWFUL DETAINER CASE, THE RIGHTFUL POSSESSOR IS ENTITLED TO THE RETURN OF THE PROPERTY AND TO RECOVER DAMAGES.— [T]he rightful possessor in an unlawful detainer case is entitled to the return of the property and to recover damages, which refer to "rents" or "the reasonable compensation for the use and occupation of the premises," or the "fair rental value of the property" and attorney's fees and costs. More specifically, recoverable damages are "those which the plaintiff

could have sustained as a mere possessor, or those caused by the loss of the use and occupation of the property."

9. ID.; ID.; ID.; ID.; ID.; REASONABLE COMPENSATION; PARTAKES OF THE NATURE OF ACTUAL DAMAGES. — [T]he reasonable compensation contemplated in Section 17, Rule 70 "partakes of the nature of actual damages." While the court may fix the reasonable amount of rent, it must base its action on the evidence adduced by the parties. The Court has defined "fair rental value" as the amount at which a willing lessee would pay and a willing lessor would receive for the use of a certain property, neither being under compulsion and both parties having a reasonable knowledge of all facts, such as the extent, character and utility of the property, sales and holding prices of similar land and the highest and best use of the property. x x x The fair rental value is to be reckoned from the time of the demand to vacate.

10. ID.; ID.; ID.; ID.; A JUDGMENT DIRECTING A PARTY TO DELIVER POSSESSION OF PROPERTY BINDS ONLY THE PARTIES PROPERLY IMPLEADED AND DULY HEARD OR GIVEN AN OPPORTUNITY TO BE HEARD; EXCEPTIONS.— "A judgment directing a party to deliver possession of a property to another is *in personam*. x x x Any judgment therein is binding only upon the parties properly impleaded and duly heard or given an opportunity to be heard. However, **this rule admits of the exception, such that even a non-party may be bound by the judgment in an ejectment suit** where he is any of the following: (a) trespasser, squatter or agent of the defendant fraudulently occupying the property to frustrate the judgment; (b) guest or **occupant of the premises with the permission of the defendant**; (c) transferee *pendente lite*; (d) sublessee; (e) co-lessee; or (f) member of the family, relative or **privy of the defendant**." Exceptions (b) and (f) are clearly applicable. There is no dispute that the government offices were allowed by the City to occupy the subject property. Deriving their possession from the City, they are unmistakably the City's privies in the occupation of the premises. Thus, they too are bound by the judgment in this case.

APPEARANCES OF COUNSEL

Marlito I. Villanueva Law Office for petitioners.
Naga City Legal Officer for respondent.
Cadiz Tabayoyong & Partners Law Offices, co-counsel for respondent.

D E C I S I O N

TIJAM, *J.*:

This is a Petition for Review on *Certiorari*, filed under Rule 45 of the Rules of Court, assailing the July 20, 2011 Amended Decision[1] rendered by the Court of Appeals (CA) in CA-G.R. SP No. 90547 which reconsidered its March 7, 2011 Decision,[2] annulling the June 20, 2005 Decision[3] of the Regional Trial Court (RTC), Branch 26 of Naga City in Civil Case No. RTC 2005-0030, and reinstating the February 14, 2005 Decision[4] of the Municipal Trial Court (MTC), Branch 1 of Naga City in Civil Case No. 12334 dismissing the ejectment case instituted by petitioners.

The Facts

As culled by the CA from the records, the facts of the case are as follows:

On July 3, 1954, Eusebio M. Lopez, Sr., Soledad L. Dolor, Jose A. Gimenez and Eusebio Lopez, Jr. (Lopez Jr.), as the President, Secretary, Treasurer and General Manager of the City Heights Subdivision (Subdivision), respectively, wrote to the mayor of the City of Naga (City), offering to construct the

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[1] Penned by Associate Justice Franchito N. Diamante and concurred in by Associate Justices Josefina Guevara-Salonga and Mariflor P. Punzalan Castillo. *Rollo*, pp. 97-115.

[2] *Id*. at 117-141.

[3] Penned by Presiding Judge Filemon B. Montenegro., *id*. at 439-465.

[4] Penned by Presiding Judge Jose P. Nacional, *id*. at 434-438.

Naga City Hall within the premises of the Subdivision. Their letter indicated that the City Hall would be built on an area of not less than two hectares within the Subdivision, which would be designated as the open space reserved for a public purpose. The letter, which also indicated the terms of the construction contract, provided that the City would be free to accept another party's offer to construct the City Hall if it found the same to be more favorable.[5]

The City's Municipal Board subsequently passed Resolution No. 75, dated July 12, 1954, asking the Subdivision for a bigger area on which the City Hall would stand. Consequently, on July 30, 1954, the Subdivision amended its offer and agreed to donate five hectares to the City. The area is a portion of the land registered in the names of Macario Mariano (Macario) and Jose A. Gimenez (Gimenez) under Transfer Certificate of Title (TCT) No. 671 of the Registry of Deeds for Naga City, measuring a total of 22.9301 hectares. Along with its amended offer to construct the City Hall, the Subdivision specified the terms of its proposal to finance the construction.[6]

The amended offer was signed by Macario and Gimenez to indicate their "(c)onforme," and by their respective spouses, Irene P. Mariano (Irene) and Rose Fitzgerald De Gimenez (through one Josie A. Gimenez), to indicate their marital consent.[7]

On August 11, 1954, the Municipal Board adopted Resolution No. 89 accepting the Subdivision's offer of donation and its proposed contract. The Resolution also authorized the City Mayor to execute the deed of donation on the City's behalf.[8]

The parties submitted divergent accounts on what happened after Resolution No. 89 was passed.

According to the City, the City Mayor of Naga, Monico Imperial (Mayor Imperial), and the registered landowners,

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[5] *Id.* at 119.

[6] *Id.* at 120.

[7] *Id.*

[8] *Id.* at 121.

Macario and Gimenez, executed a Deed of Donation[9] on August 16, 1954, whereby the latter donated five hectares of land (subject property), two hectares of which to be used as the City Hall site, another two hectares for the public plaza, and the remaining hectare for the public market. By virtue of said Deed, the City entered the property and began construction of the government center. It also declared the five-hectare property in its name for tax purposes.[10] Thereafter, the Land Transportation Office (LTO), the National Bureau of Investigation (NBI), the Department of Labor and Employment (DOLE), the Philippine Postal Corporation (PPC), the Fire Department and other government agencies and instrumentalities entered the same property and built their offices thereon.[11]

In contrast, petitioners averred that the landowners' plan to donate five hectares to the City did not materialize as the contract to build the City Hall was not awarded to the Subdivision. As early as August 23, 1954, Lopez Jr., the Subdivision's General Manager, supposedly wrote to Macario telling him to suspend the signing of the deed of donation as the Municipal Board could not agree on the specific site where the City Hall would be built. Petitioners alleged that the construction contract was eventually awarded by the Bureau of Public Works (BPW) to a local contractor, Francisco O. Sabaria (Sabaria), who won in a public bidding. Mayor Imperial opposed the award, arguing that he and not the BPW had the authority to initiate the public bidding for the project. The BPW, however, asserted its authority to bid out and award the contract on the ground that national funds would be used for the project. Mayor Imperial and Sabaria litigated the issue, with the former losing before the trial court and subsequently withdrawing his appeal before the CA. Afterwards, the Municipal Board adopted Resolution No. 11 dated January 20, 1959 authorizing the City Mayor to enter into a contract with Sabaria for the construction of the City Hall.[12]

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[9] *Id.* at 315-316.

[10] *Id.* at 214.

[11] *Id.* at 215.

[12] *Id.* at 215.

Petitioners claimed that on February 5, 1959, Macario and officers of the Subdivision met with Mayor Imperial to demand the return of the five-hectare lot as the condition for the donation was not complied with. Mayor Imperial purportedly assured them that the City would buy the property from them. The purchase, however, did not materialize. Petitioners alleged that ten years later, or on May 14, 1968, Macario wrote to Lopez Jr., instructing him to make a follow-up on the City's payment for the subject lot. On December 2, 1971, Macario died without receiving payment from the City.[13]

In 1976, a certain Tirso Mariano filed an action for partition of Macario's estate. The action was opposed by Macario's widow, Irene, and their adopted children, Jose (Jose) and Erlinda (Erlinda) Mariano. As an offshoot of this action, a petition to annul Jose and Erlinda's adoption was instituted.[14]

Irene died in 1988. Jose died the following year which was also when his and Erlinda's adoption was declared valid and legal by the appellate court. In 1994, Irene's marriage to one Rolando Reluccio (Reluccio) was declared bigamous and void *ab initio*. And after a protracted litigation, Jose, then represented by his heirs, and Erlinda were declared as Irene's heirs to the exclusion of Reluccio who was also declared to be without right to represent Irene in Macario's estate.[15]

On March 11, 1997, the probate court issued letters of administration to one of the petitioners herein, Danilo David S. Mariano (Danilo), for the administration of Irene's estate. In September 2003, Danilo demanded upon then City Mayor of Naga, Jesse M. Robredo, to vacate and return the subject property. When the City did not comply, petitioners, as heirs of Jose and Erlinda, filed a Complaint[16] for unlawful detainer against the City, docketed as Civil Case No. 12334.[17]

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[13] *Id*. at 22.

[14] *Id*. at 78.

[15] *Id*. at 78-79.

[16] *Id*. at 363-376.

[17] *Id*. at 79.

The Unlawful Detainer Case

In their Complaint, filed on February 12, 2004,[18] petitioners asked the MTC to order the City and all agencies, instrumentalities or offices claiming rights under it, including the LTO, NBI, DOLE, PPC and the Fire Department, to vacate the subject property, shown in the Sketch Plan as Blocks 25 and 26 (LRC) Psd-9674, and to return possession thereof to them. In addition to attorney's fees, they asked the City to pay them a monthly rental of ₱ 2.5 million from the date it received the demand to vacate until it surrendered possession, as reasonable compensation for the use of the property.[19]

Arguing that the issue involved is one of ownership, the City moved to dismiss the complaint for lack of jurisdiction.[20] After the MTC denied the motion on March 22, 2004,[21] the City filed its Answer.[22] The parties subsequently submitted their respective Position Papers[23] and evidence.[24]

Petitioners averred that there was no donation of the subject property to the City as the obligation to donate on the part of Macario and Gimenez, conditioned on the Subdivision undertaking the construction of the City Hall therein, was abrogated when the City eventually awarded the construction contract to Sabaria. Petitioners further alleged that Macario thereafter demanded the return of the property but was assured by Mayor Imperial that the City would buy the same. The purchase, however, never materialized despite Macario's supposed reminder to Mayor Imperial of his assurance. Petitioners, thus, argued that the City's possession of the subject

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[18] *Id*. at 363 and 461.

[19] *Id*. at 373-376.

[20] *Id*. at 13, 444 and 566.

[21] *Id.*

[22] *Id*. at 14 and 377-384.

[23] *Id*. at 251-277 and 385-424.

[24] *Id*. at 14-15 and 221.

property was by mere tolerance which ceased when they required its return.[25]

The City countered that the donation actually took place, as evidenced by a Deed of Donation dated August 16, 1954, making the City the owner and lawful possessor of the subject property. This was supposedly why the subject property had long been declared in the City's name for tax purposes. Granting there was no donation, the City stressed that ownership of the premises automatically vested in it when they were designated as open spaces of the subdivision project, donation thereof being a mere formality. The City also argued that since the property was already occupied by several government offices for about 50 years, recovery thereof was no longer feasible and the landowners may simply demand just compensation from the City. The City further contended that the complaint was dismissible on the grounds of laches and prescription. In any case, the City averred that it could not be ejected from the premises as it possessed the rights of a builder in good faith.[26]

Petitioners in turn denied that laches had set in because Macario supposedly made a demand for the City to return the property, and subsequently, to abide by Mayor Imperial's commitment to purchase the same. Furthermore, as heirs of Macario and Irene, they themselves sought to recover the subject property after learning of their rights thereto through Danilo who collated Irene's properties following his appointment as administrator of her estate.[27]

Petitioners also argued that title to the property, which remained registered in the names of Macario and Gimenez, was indefeasible and could not be lost by prescription or be defeated by tax declarations. They further asserted that the requirement of open space in the subdivision for public use was already satisfied with the landowners' donation of road lots, measuring

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[25] *Id*. at 400-405.

[26] *Id*. at 261-269.

[27] *Id*. at 405-407.

120,280 square meters, to the City as annotated on TCT No. 671. They posited that Presidential Decree (PD) No. 957,[28] enacted in 1976, as amended by PD No. 1216,[29] which defined "open space," should not be applied because it was not yet in effect when the subdivision plan was approved in 1962.[30]

Petitioners contended that the City was a builder in bad faith because it continued to construct the City Hall and allowed other government agencies to build their offices on the subject property, knowing that the donation had been aborted when the condition therefor was not fulfilled and that its avowed purchase of the property was not forthcoming.[31]

The MTC's Ruling

In its February 15, 2005 Decision, the MTC gave weight to the Deed of Donation.[32] Nonetheless, it dismissed the complaint on the ground of lack of jurisdiction. It reasoned that the City's defense, which involved a claim of ownership, removed the issue from the case of unlawful detainer.[33]

The RTC's Ruling

On the City's appeal, the RTC set aside the MTC's dismissal. The dispositive portion of the RTC's June 20, 2005 Decision reads as follows:

WHEREFORE, premises considered [petitioners] having proved and convinced this Court by preponderance of evidence that the lower court committed a serious and reversible error in rendering the herein

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[28] REGULATING THE SALE OF SUBDIVISION LOTS AND CONDOMINIUMS, PROVIDING PENALTIES FOR VIOLATIONS THEREOF. Approved July 12, 1976.

[29] DEFINING "OPEN SPACE" IN RESIDENTIAL SUBDIVISIONS AND AMENDING SECTION 31 OF PRESIDENTIAL DECREE NO. 957 REQUIRING SUBDIVISION OWNERS TO PROVIDE ROADS, ALLEYS, SIDEWALKS AND RESERVE OPEN SPACE FOR PARKS OR RECREATIONAL USE. Approved October 14, 1977.

[30] *Id*. at 407-412.

[31] *Id*. at p. 416.

[32] *Id*. at 131 and 437.

[33] *Id.* at 125 and 438.

assailed decision, accordingly, the DECISION dated February 14, 2005 of the Court a quo is hereby REVERSED and SET ASIDE. Consequently, decision is hereby rendered in favor of [petitioners] and against [respondent] ORDERING the latter of the following:

(1) For the [respondent] City Government of Naga, including all other government instrumentalities, agencies and offices claiming right of possession through and under it which are but not limited to Land Transportation Office, National Bureau of Investigation, Department of Labor and Employment, Philippine Postal Corporation, Fire Department and all other offices and buildings which are all claiming rights under [respondent] to immediately vacate the subject properties, Blocks 25 and 26 (LRC) Psd-9674 forming part of TCT No. 671 in the name of Macario A. Mariano and Jose A. Gimenez, and to peacefully surrender and deliver its physical possession to the [petitioners], including all the improvements and structures erected thereon which were built in bad faith as they are now forfeited in favor of plaintiffs-appellants;

(2) For the [respondent] to pay [petitioners] the amount of ₱2,500,000.00 per month by way of reasonable compensation for the use and occupancy of the property in question reckoned from November 30, 2003 until such time that the [respondent] shall have actually vacated the subject property;

(3) For the [respondent] to pay [petitioners] Attorney's fees in the amount of ₱587,159.60; and

(4) For the [respondent] to pay the cost of the suit.

SO ORDERED.[34]

The RTC held that the MTC could have resolved the issue of ownership if only to resolve the issue of possession. It ruled against the existence of the Deed of Donation, purportedly acknowledged before a notary public for Manila, finding that the award of the construction contract to Sabaria released Macario and Gimenez from the obligation to execute said deed. Furthermore, the fact that the subject property remained registered in Macario and Gimenez's names and no annotation of the purported donation was ever inscribed on the title proved that

[34] *Id.* at 464.

the City recognized that its possession was by mere tolerance of the landowners. This finding, said the RTC, was bolstered by the Certification[35] issued on August 27, 2003 by the Records Management Archive Office of the National Archives that it had no record of such Deed, and a similar Certification[36] from the Office of the Clerk of Court of the Manila RTC as repository of notarial reports of notaries public for Manila. The RTC also noted that the purported Deed of Donation was unsigned by the donors and indicated merely the letters "SGD" opposite their names.[37]

The RTC explained that since the subject land was titled under the Torrens system in the name of Macario and Gimenez, the tax declaration in the City's name could not prevail, and the property could not be subject of acquisitive prescription. It also held that petitioners were not guilty of laches, noting the several cases they had to file to establish their right to inherit from, and to recover or preserve the estate of, Macario and Irene, as well as Danilo's discovery of the subject property as part of the latter's estate following the issuance to him of letters of administration over Irene's estate in 1997. Finally, the RTC agreed with petitioners that the road lots donated to the City in 1963 satisfied the requirement of open space in the subdivision at that time, and that the City was a builder in bad faith.[38]

The City moved for the Presiding Judge's inhibition on the ground of bias. Subsequently, it also filed a motion for reconsideration of the June 20, 2005 Decision with a motion for new trial based on newly discovered evidence[39] consisting of additional documents purportedly showing that the subject property was already donated to the City.[40] On July 15, 2005, the RTC issued an Order denying said motions.[41]

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[35] RTC Records, p. 386.

[36] *Rollo*, p. 354.

[37] *Id*. at 125-126 and 451-452.

[38] *Id*. at 126-127, 453-454, 457-458 and 460.

[39] *Id*. at 127.

[40] *Id*. at 222.

[41] *Id*. at 28 and 127-128.

The CA's March 7, 2011 Decision

Partly granting the City's appeal, the CA *inter alia* directed the City to pay only half of the monthly rental, which it reduced to ₱500,000, because the subject property was co-owned by Macario and Gimenez. The dispositive portion of the CA's Decision reads:

IN VIEW OF ALL THE FOREGOING, the instant petition for review is ***PARTIALLY GRANTED***.

The assailed Decision dated June 20, 2005 rendered by the Regional Trial Court (RTC) of Naga City (Branch 26), in Civil Case No. RTC 2005-0030 (*For*: Ejectment) is hereby **MODIFIED** in that:

(1) The City of Naga is hereby ***ORDERED*** to pay to the respondents as heirs of Don Macario Mariano **half** of the adjudged monthly rental for the use and enjoyment of the questioned property, or in the amount of Two Hundred Fifty Thousand Pesos (Php250,000.00), for the period November 3, 2003 until the City of Naga finally vacates that portion it has been occupying, or until such time when the City expropriates the same private property;

(2) The portion of the assailed Decision where all the other government instrumentalities and agencies, including but not limited to the Land Transportation Office, National Bureau of Investigation, Department of Labor and Employment, Philippine Postal Corporation, Fire Department, Municipal Trial Court, Regional Trial Court, which office buildings are standing on the lot in question, are ordered to immediately vacate therefrom as well as to deliver the physical possession of the improvements and structures they have introduced thereat to the Heirs of Don Macario Mariano, is ***DELETED*** because these other government instrumentalities and agencies are **not** parties to the case in the court below; *and*

(3) The award of attorney's fees in favor of the Heirs of Don Macario Mariano is reduced to Two Hundred Thousand Pesos (Php200,000.00) on equitable grounds.

All other aspects of the assailed Decision dated June 20, 2005 and Order dated July 15, 2005 are hereby ***affirmed***.

SO ORDERED.[42]

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

In reaching this decision, the CA ratiocinated that:

> [T]here could be no donation of the subject five (5) hectares of land by the landowners, DON MACARIO and Jose Gimenez (or GIMENEZ) to the City of Naga because the donee failed to present the original deed of donation before the trial court, and did not give a satisfactory explanation of the loss of the same. As against the Letter dated May 14, 1968 written by DON MACARIO instructing Eusebio Lopez, Sr., then City Heights Subdivision President, to do a follow-up of the City's proposal to buy the five (5) hectare-lot, We held the latter document to be a conclusive proof that the donation that DON MACARIO and the City of Naga intended was not consummated.[43]

The CA's July 20, 2011 Amended Decision

Both parties moved for reconsideration of the CA's March 7, 2011 Decision.[44] After a re-examination of the case records and the evidence adduced by the parties, the CA, on July 20, 2011, rendered an Amended Decision, the dispositive portion of which reads:

> ***WHEREFORE*** **,** premises considered , the Motion for Recondition filed by the City Of Naga is ***GRANTED.***
>
> Our Decision promulgated on March 7, 2011 is ***RECONSIDERED***. Accordingly, the Decision dated June 20, 2005 of the Regional Trial Court (RTC) of Naga City (Branch 26), in Civil Case No. RTC 2005-0030 (*For:* Ejectment), is ***ANNULLED*** and ***SET ASIDE,*** and the Decision dated February 14, 2005 rendered by the Municipal Trial Court (MTC) of Naga City (Branch), in Civil Case No. 12334, is hereby ***REINSTATED*** without prejudice to the filing either party of an action regarding the ownership of the property involved.
>
> On the other hand, the Motion for Reconsideration filed by the Heirs of Don Macario Mariano of Our Decision dated March 7, 2011 is ***DENIED.***
>
> ***SO ORDERED.***[45]

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[43] *Id*. at 102.

[44] *Id*. at 98.

[45] *Id*. at 113-114.

In so ruling, the CA held that pursuant to the best evidence rule under Section 3, Rule 130 of the Rules of Court, the photocopy of the letter dated May 14, 1968 was inadmissible and without probative value in the absence of a clear showing that the original writing was lost or destroyed. As an exception to the best evidence rule, the CA excused the City's failure to present the original Deed of Donation on the basis of the June 11, 2004 Certification issued by the Office of the Clerk of Court of the RTC-Manila that the Deed could not be found in its records as the Notarial Reports of Atty. Vicente M. Magpoc, before whom the instrument was acknowledged, for the period January 12, 1953 to December 31, 1954, could not be located and must have been destroyed by water spillage during the fire that razed their office on November 18, 1981. According to the CA, secondary evidence of the Deed could be admitted because it had been satisfactorily shown, through the Certification, that the Deed was lost due to *force majeure*, thus, without bad faith on the part of the offeror.

The CA further held that "the following secondary documents on record sufficiently confirmed the existence, execution and contents of the subject deed of donation," to wit:

(a) Letter dated July 3, 1954 of the President, Secretary, Treasurer and General Manager of the City Heights Subdivision (in the persons of Eusebio M. Lopez, Sr., Soledad L. Dolor, Jose A. Gimenez and Eusebio Lopez, Jr.) to the mayor of Naga expressing their offer to construct the Naga City Hall within the premises of not less than two (2) hectares of the Subdivision (Exhibit "1");

(b) Resolution No. 75 dated July 12, 1954 issued by the Municipal Board of Naga (then a municipality) requesting for a bigger area of land where the City Hall would stand, from the Subdivision (Exhibit "2");

(c) Letter dated July 30, 1954 of the Subdivision to the City amending its original offer and agreeing to donate a portion of five (5) hectares. Also, in this Letter, the Subdivision elaborated on its offer to finance the construction of the same building and specified the terms of such financing contract (Exhibit "3");

(d) Resolution No. 89 dated August 11, 1954 where the then Municipal Board resolved to accept the Subdivision's offer of donation

and of the financing contract to construct the government center, and at the same time, to authorize the Mayor to enter into a final deed of donation in behalf of the then municipality (Exhibit "4");

(e) Letter dated November 26, 1955 of the then City Mayor of Naga, Hon. Monico Imperial, to the Naga City Planning Board indicating the fact of donation of the same parcel of land by the Subdivision to the City (Exhibit "30");

(f) Letter dated March 6, 1968 of DON MACARIO referring to the open spaces of the Subdivision having been donated to the City of Naga (Exhibit "18");

(g) Letter dated September 6, 1970 of Hon. Virginia F. Perez, Vice-Mayor and Presiding Officer, indicating the existence of a Deed of Donation and the fact of Donation (Exhibit "6").[46]

The CA thus concluded that the existence and due execution of the Deed of Donation had been duly established, warranting the dismissal of the ejectment case. The CA also found that petitioners' claim was barred by laches, noting that the City had been in open, public and adverse possession of the subject property for 49 years at the time the ejectment case was filed.

The appellate court, however, emphasized that the case being one for unlawful detainer, its judgment was conclusive only as to possession, and its disquisition on the claim of ownership was merely provisional and without prejudice to a separate and independent action respecting title to the land.

Dissatisfied with the CA's Amended Decision, petitioners filed the instant petition for review.

Petitioners pray for the reinstatement of the RTC's Decision, asserting that in admitting secondary evidence of the Deed of Donation, the CA misapplied Section 5, Rule 130 and Section 19, Rule 132 of the Rules, Article 749 of the Civil Code, and Sections 245, 246 and 247 of the Notarial Law. Petitioners fault the CA for allegedly disregarding their evidence which received no objection from the City. Finally, petitioners impugn the CA's

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[46] *Id.* at 107-108.

finding that they were guilty of laches, insisting that the City's possession was by mere tolerance.[47]

The Court's Ruling

Petitions for review under Rule 45 should cover only questions of law[48] as this Court is not a trier of facts.[49] However, the incongruent factual conclusions of the MTC and the CA on the one hand, and the RTC on the other, compel us to revisit the factual circumstances of the case for the proper dispensation of justice.[50]

The sole issue for resolution in an unlawful detainer case is physical or material possession of the property involved, independent of any claim of ownership by any of the parties – possession *de facto* and not possession *de jure*.[51] When the defendant, however, raises the defense of ownership in his pleadings and the question of possession cannot be resolved without deciding the issue of ownership, the issue of ownership shall be resolved only to determine the issue of possession,[52] or more particularly, to determine who between the parties has the better right to possess the property.[53] Nonetheless, the adjudication is merely provisional and would not bar or prejudice an action between the same parties involving title to the property.[54]

In this case, the City, as the defendant in the unlawful detainer case, asserted ownership over the subject property by virtue of an alleged donation made in 1954 by the landowners in its favor. In support of this claim, the City proffered a copy of a Deed of Donation dated August 16, 1954.

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

[48] *Go v. Looyuko, et al.,* 713 Phil. 125 (2013).

[49] *Sps. Dela Cruz v. Sps.Capco*, 729 Phil. 624, 633 (2014).

[50] *Id*. at 633.

[51] *Id*. at 637.

[52] *Go v. Looyuko*, *et al*., *supra*, at 131.

[53] *Sps. Dela Cruz v. Sps. Capco*, *supra*, at 637.

[54] *Id.*

Purported donation lacked the formalities required for validity

Generally, contracts are obligatory in whatever form they may have been entered into, provided all the essential requisites for their validity are present. However, when the law requires that a contract be in some form to be valid, such requirement is absolute and indispensable; its non-observance renders the contract void and of no effect.[55] One such law is Article 749 of the Civil Code of the Philippines which requires that:

> Art. 749. **In order that the donation of an immovable may be valid, it must be made in a public document**, specifying therein the property donated and the value of the charges which the donee must satisfy.
>
> The acceptance may be made in the same deed of donation or in a separate public document, but it shall not take effect unless it is done during the lifetime of the donor.
>
> If the acceptance is made in a separate instrument, the donor shall be notified thereof in an authentic form, and this step shall be noted in both instruments. (Emphasis ours)

Thus, donation of real property, which is a solemn contract, is void without the formalities specified in the foregoing provision.[56]

Article 749 of the Civil Code requires that donation of real property must be made in a public instrument to be valid. In *Department of Education, Culture and Sports (DECS) v. Del Rosario*,[57] We stated:

> **A deed of donation acknowledged before a notary public is a public document. The notary public shall certify that he knows the person acknowledging the instrument and that such person is the same person who executed the instrument, acknowledging that the instrument is his free act and deed**. The acceptance may be made in the same deed of donation or in a separate instrument. An acceptance made in a separate instrument must also be in a public

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[55] *Abellana v. Sps. Ponc*e, 481 Phil. 125, 135 (2004).

[56] *Dept. of Education, Culture and Sports v. Del Rosario*, 490 Phil. 193, 202 (2005).

[57] *Id.*

document. If the acceptance is in a separate public instrument, the donor shall be notified in writing of such fact. Both instruments must state the fact of such notification.[58] (Emphasis ours)

The purported Deed of Donation submitted by the City cannot be considered a public document. While it contains an Acknowledgment before a notary public, the same is manifestly defective as it was made neither by the alleged donors (Macario and Gimenez) and their respective spouses, or by the donee (the City, through Mayor Imperial), but only by Eusebio M. Lopez, Faustino Dolor, Soledad Lirio Dolor and Lopez, Jr., as the Subdivision's President, Vice President, Secretary and General Manager, respectively. The Acknowledgment thus reads:

REPUBLIC OF THE PHILIPPINES)
IN THE CITY OF MANILA) s.s.
x - x

BEFORE ME, this 16th day of August, 1954, in the City of Manila, Philippines, personally appeared **EUSEBIO M. LOPEZ**, with Res. Cert. No. A-0232064, issued at Manila, on Feb. 24, 1954; **FAUSTINO DOLOR**, with Res. Cert. No. A-0295133, issued at Manila on Feb. 7, 1954; **SOLEDAD LIRIO DOLOR**, with Res. Cert. No. A-4782271, issued at Pasay City on July 27, 1954; and **EUSEBIO LOPEZ, JR.**, with Res. Cert. No. A-476353, issued at Naga City on July 8, 1954, all known to me and to me known to be the same persons who executed the foregoing instrument and they acknowledged to me that the same is their free act and voluntary deed.

This instrument relating to a Deed of Donation consist two pages only, including this page on which this acknowledgement is written and have been signed by the parties on each and every page thereof.

WITNESS MY HAND AND SEAL, the day, year, and place first above written.

Doc. No. 201; Page No. 70;
Book No. VI; Series of 1954

(SGD) VICENTE M. MAGPOC
Notary Public
Until December 31, 1954[58]

(Emphasis ours)

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[58] *Id*. at 202-203.

[58] *Rollo*, p. 316.

Said Deed also shows that Mayor Imperial affixed his signature thereon on August 21, 1954, or four days after it was notarized, thus he could not have acknowledged the same before the notary public on August 16, 1954. Verily, the notary public could not have certified to knowing the parties to the donation, or to their execution of the instrument, or to the voluntariness of their act. This glaring defect is fatal to the validity of the alleged donation. It is settled that a defective notarization will strip the document of its public character and reduce it to a private instrument.[59]

Not being a public document, the purported Deed of Donation is void.[60] A void or inexistent contract has no force and effect from the very beginning,[61] as if it had never been entered into.[62] It is equivalent to nothing and is absolutely wanting in civil effects. It cannot be validated either by ratification or prescription.[63]

Void contracts may not be invoked as a valid action or defense in any court proceeding, including an ejectment suit.[64] Thus:

> In *Spouses Alcantara v. Nido,* which involves an action for unlawful detainer, the petitioners therein raised a defense that the subject land was already sold to them by the agent of the owner. The Court rejected their defense and held that the contract of sale was void because the agent did not have the written authority of the owner to sell the subject land.
>
> Similarly, in *Roberts v. Papio*, a case of unlawful detainer, the Court declared that the defense of ownership by the respondent therein was untenable. The contract of sale invoked by the latter was void

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[59] *Adelaida Meneses (deceased) v. Venturozo*, 675 Phil. 641, 652 (2011); *The Heirs of Victorino Sarili v. Lagrosa*, 724 Phil. 608, 619 (2014).

[60] *Department of Education, Culture and Sports v. Del Rosario*, *supra*, at 202.

[61] *Fuentes, et al. v. Rosa, et al.*, 633 Phil. 9, 20 (2010), *Fullido v. Grilli*, G.R. No. 215014, February 29, 2016, 785 SCRA 278, 293.

[62] *Fullido v. Grilli*, *supra*, at 293.

[63] *Tan, Jr. v. Hosana*, G.R. No. 190846, February 3, 2016, 783 SCRA 87, 99.

[64] *Fullido v. Grilli*, *supra*, at 294.

because the agent did not have the written authority of the owner. A void contract produces no effect either against or in favor of anyone.

In *Ballesteros v. Abion*, which also involves an action for unlawful detainer, the Court disallowed the defense of ownership of the respondent therein because the seller in their contract of sale was not the owner of the subject property. For lacking an object, the said contract of sale was void *ab initio*.[65]

Since void contracts cannot be the source of rights, the City has no possessory right over the subject property.[66] In this light, to resolve whether to admit the copy of the purported Deed of Donation as secondary evidence will be futile as the instrument in any case produces no legal effect.

Circumstances controverting the City's right of possession based on the alleged donation

Other cogent facts and circumstances of substance engender veritable doubts as to whether the City has a better right of possession over the subject property than petitioners, as heirs of Mariano and Irene, based on the purported Deed of Donation.[67]

The City has, for more than 50 years since the donation supposedly took place on August 16, 1954, failed to secure title over the subject property in its name. If the City had acquired ownership of the premises, it is incredible that it would fail to register the donation and have the property titled in its name. That it would remain passive for such length of time is confounding and does not serve to bolster its proprietary or possessory claim to the property.[68]

At the very least, the City should have caused the annotation of the alleged Deed on TCT No. 671 immediately after August 16, 1954 or shortly thereafter. Such inscription would have

[65] *Id*. at 293-294.

[66] *Id*. at 298.

[67] See *Heirs of Rosendo Sevilla Florencio v. Heirs of Teresa Sevilla de Leon*, 469 Phil. 459 (2004).

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

been binding on petitioners, as Macario and Irene's successors-in-interest, as well as on third parties.[69]

Petitioners, as heirs of a registered owner of the subject property, have the preferred or better right of possession

Indeed, title to the subject property remains registered in the names of Macario and Gimenez. The alleged Deed of Donation does not appear to have been registered and TCT No. 671 does not bear any inscription of said Deed.

The Court has consistently upheld the registered owners' superior right to possess the property in unlawful detainer cases.[70] A fundamental principle in land registration is that the certificate of title serves as evidence of an indefeasible and incontrovertible title to the property in favor of the person whose name appears therein. It is conclusive evidence as regards ownership of the land therein described, and the titleholder is entitled to all the attributes of ownership of the property, including possession.[71] Thus, the Court has time and again reiterated the age-old rule that the person who has a Torrens title over a parcel of land is entitled to possession thereof.[72]

It has likewise been constantly emphasized that when the property is registered under the Torrens system, the registered owner's title to the property is presumed legal and cannot be collaterally attacked, especially in a mere action for unlawful detainer.[73] It has even been held that it does not even matter if the party's title to the property is questionable.[74]

Furthermore, it has been held that a certificate of title has a superior probative value as against that of an unregistered deed

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[69] *Id*. at 476.

[70] *Go v. Looyuko, supra* note 48, at 131.

[71] *Tolentino, et al. v. Laurel, et al.*, 682 Phil. 527, 540 (2012).

[72] *Go v. Looyuko*, *supra* note 48, at 132.

[73] *Id.*

[74] *Id.*

of conveyance in ejectment cases.[75] *Spouses Pascual v. Spouses Coronel*,[76] involving an unlawful detainer case, is on point; it instructs:

> In any case, [W]e sustain the appellate court's finding that the respondents have the better right to possess the subject property. As opposed to the unregistered deeds of sale, the certificate of title certainly deserves more probative value. Indeed, a Torrens Certificate is evidence of indefeasible title of property in favor of the person in whose name appears therein—such holder is entitled to the possession of the property until his title is nullified.
>
> x x x x x x x x x
>
> Even if [W]e sustain the petitioners' arguments and rule that the deeds of sale are valid contracts, it would still not bolster the petitioners' case. In a number of cases, the Court had upheld the registered owners' superior right to possess the property. In *Co v. Militar*, the Court was confronted with a similar issue of which between the certificate of title and an unregistered deed of sale should be given more probative weight in resolving the issue of who has the better right to possess. There, the Court held that the court *a quo* correctly relied on the transfer certificate of title in the name of petitioner, as opposed to the unregistered deeds of sale of the respondents. The Court stressed therein that the Torrens System was adopted in this country because it was believed to be the most effective measure to guarantee the integrity of land titles and to protect their indefeasibility once the claim of ownership is established and recognized.
>
> Likewise, in the recent case of *Umpoc v. Mercado*, the Court declared that **the trial court did not err in giving more probative weight to the TCT in the name of the decedent vis-à-vis the contested unregistered Deed of Sale**. Later in *Arambulo v. Gungab*, the Court held that **the registered owner is preferred to possess the property subject of the unlawful detainer case**. The age-old rule is that the person who has a Torrens Title over a land is entitled to possession thereof.[78] (Emphasis ours and citations omitted.)

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[75] See *Manila Electric Company v. Heirs of Sps. Deloy*, 710 Phil. 427, 443 (2013).

[76] 554 Phil. 351 (2007).

[78] *Id.* at 361-362.

Accordingly, as against the City's unregistered claim, the Torrens title in the name of Macario and Gimenez must prevail, conferring upon the registered owners the better right of possession. This superior or preferred right of possession applies to petitioners as Macario's hereditary successors[79] who have stepped into said decedent's shoes by operation of law.[80]

No automatic acquisition of ownership of open space in the subdivision

On the strength of the Court's ruling in *White Plains Association, Inc. v. Judge Legaspi,*[81] the City asserted that because the subject property had been designated as the open space of the City Heights Subdivision, intended for public use, ownership thereof automatically vested in the City, its donation being a mere formality. It disputed petitioners' claim that the road lots already donated to the City satisfied the open space requirement for subdivisions prior to the enactment of PD 957 dated July 12, 1976, as amended by PD 1216 dated October 14, 1977. It argued that the Subdivision Regulations then in effect expressly required a public open space of at least five percent (5%) of the gross area of the subdivision.

Several reasons impel us to reject the City's stance.

We start with the 1948 Subdivision Regulations[81] invoked by the City. As amended,[82] it required:

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[79] *See Heirs of Florencio v. Heirs of de Leon*, *supra* note 68, at 475-476.

[80] *Heirs of Anacleto B. Nieto v. Municipality of Meycauayan, Bulacan,* 564 Phil. 674, 680 (2007); Article 777 of the Civil Code of the Philippines provides that "(t)he rights to the succession are transmitted from the moment of the death of the decedent."

[81] 271 Phil. 806 (1991).

[81] Official Gazette, Vol. 45 No. 6). pp. 2417-2423.

[82] Amendments to the Provisions of the Subdivision Regulations of the Commission Adopted on December 31, 1948, Official Gazette, Vol. 51 (No. 11), p. 5548.

Sec. 14. Areas for Community Use.

a. ***Public open space***

Subdivisions of one hectare or more shall be provided with suitable areas **for parks, playgrounds, playlots and/or other recreational purposes to be dedicated for public use** which area or areas shall comprise at least 5 per cent of the gross area of the subdivision. Open spaces so dedicated for public use shall be consolidated as much as possible for maximum utility and not broken into small or odd-shaped parcels of land.[83] (Emphasis ours)

The Subdivision Regulations required a public open space in the subdivision, suitable for parks, playgrounds, playlots and/or other recreational purposes. The term "open space" necessarily signifies the absence of buildings or edifices. The enumeration of parks, playgrounds and playlots as the specified usage for such space buttresses the view that the area should be non-buildable. The phrase "other recreational purposes" should be read in conjunction with this enumeration and should thus be construed as usage akin to parks, playgrounds and playlots which have clear and open space as their common feature. This is consistent with the principle of *ejusdem generis* which provides that "where a general word or phrase follows an enumeration of particular or specific words of the same class or where the latter follow the former, the general word or phrase is to be construed to include, or to be restricted to persons, things or cases akin to, resembling, or of the same kind or class as those specifically mentioned."[84] The requirement under Section 14 (a) of the Subdivision Regulations, therefore, is an open, non-buildable space. Notably, this construction is consistent with the restriction under Section 2 of PD 1216 which requires that areas in a subdivision reserved for "parks, playgrounds and recreational use" shall be "non-buildable." The only exception, as provided in Section 14 (b) of the same Regulations, is the use of the open space as a school site in the absence of *barrio*,

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[83] *Id.*

[84] *Pelizloy Realty Corporation v. The Province of Benguet,* 708 Phil. 466, 480 (2013).

central or elementary schools in the vicinity of a proposed residential subdivision.

It appears from the records, however, that the subject property — Blocks 25 and 26 in the Subdivision Plan — had been designated not as an open space, but as the sites for the City Hall and market, respectively. Thus, TCT No. 671 contains the following inscription:

> Entry 3296 – O R D E R
>
> Existence of approved subdivision Plan LRC Psd-9671 with technical descriptions for Block 4 with 19 lots, Block 10 with 28 lots; Block 11 with 40 lots; Block 12 with 19 lots; Block 13 with 3 lots; Block 14 with 3 lots; Block 15 with 5 lots; Block 16 with 25 lots; Block 17 with 18 lots; Block 18 with 38 lots Block 19 with 44 lots; Block 20 with 45 lots; Block 21 with 11 lots, Block 22 with 9 lots; Block 23 with 18 lots; Block 24 with 17 lots; **Block 25 City Hall Site and Block 26 Market Site**; Road lots No. 10 to 30 cannot be disposed without prior approval of the court. Date of order Aug. 23, 1962. Inscribed September 13, 1962 10:35 a.m.
>
> (Sgd) ROLANDO G. ALBERTO
> Reg. of Deeds, Naga City[85]
> (Emphasis ours)

The City had represented to the CA that the Subdivision Plan had been approved by the National Planning Commission and the then Court of First Instance.[86] No evidence has been adduced to show that as so approved, the Subdivision Plan indicated areas within Blocks 25 and 26 for use as parks, playgrounds or other recreational purposes.

There is likewise no debate that the subject property is in fact used as the site of the City Hall and other government offices. During the pre-trial conference, the parties stipulated that four hectares of the subject property are occupied by the City Hall and other government agencies.[87] While one hectare

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[85] *Rollo*, p. 329A.

[86] TSN, October 5, 2005, p. 4.

[87] *Rollo*, p. 365.

of the subject property is admittedly occupied by the Naga Civic Center,[88] it has not been established that it comprises public open space as contemplated in the Subdivision Regulations.

In any event, the City cannot successfully invoke the Subdivision Regulations as basis to demand vested proprietary rights over the subject property. Contrary to its position that roads as well as open space in subdivisions instantly belong to the government without need of compensation or any overt act of donation, the Subdivision Regulations indicate that local governments did not automatically become the owner of roads and open space in subdivisions within their jurisdiction and a positive act of conveyance or dedication was necessary to vest ownership in the city or municipality, thus:

Sec. 17. *Improvements.*

x x x x x x x x x

h. Utilities in general. — **Unless street areas are conveyed to the city or municipality**, the approval of a subdivision plan binds the subdivider and his successors to permit all public utilities to use the streets for furnishing services to the subdivision, in accordance with existing municipal or city regulations.[90]

Sec. 19. *Approval.*

x x x x x x x x x

h. Dedication of streets, highways and ways — The approval of the Final Plan by the Commission **shall not be deemed to constitute or effect an acceptance by the government of the dedication of any street, or other proposed public way or space shown on the Plat**. The subdivider may, **if he so desires**, **offer to dedicate** all streets, highways, and other ways shown in the approved Final Plat for public use, but the government may, at its discretion, or upon the recommendation of the National Urban Planning Commission, **accept only such streets, highways and other ways as it deems necessary for public purposes**. It shall be the duty of the subdivider to improve, repair and maintain all streets, highways and other ways in the

[88] *Id*. at 366.

[90] Official Gazette, Vol. 45 (No. 6). p. 2422

subdivision **until their dedication to public use is accepted by the government**.[91] (Emphasis ours)

Parenthetically, even under PD 957, specifically Section 31,[92] it was optional on the part of the owner or developer of the subdivision to donate the roads and open space found therein. Furthermore, under PD 1216, "(t)he transfer of ownership from the subdivision owner-developer to the local government is not automatic but requires a positive act from the owner-developer before the city or municipality can acquire dominion over the subdivision roads," such that "until and unless the roads are donated, ownership remains with the owner-developer."[93]

The City's reliance on the 1991 *White Plains* case is misplaced. The case involved Road Lot 1 in the White Plains Subdivision, which had been set aside for the proposed Highway 38 of Quezon City. The Court held therein that said road was thus withdrawn from the commerce of man as the open space required by law to be devoted for public use, and its ownership was automatically vested in the Quezon City Government and/or the Republic of the Philippines without need of compensating the developer, the donation thereof being a mere formality. However, as explained by this Court in *Albon v. Mayor Fernando*:[94]

The ruling in the 1991 *White Plains Association* decision relied on by both the trial and appellate courts was modified by this Court

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[91] *Id.* at 2423.

[92] Section 31. *Donation of roads and open spaces to local government.* The registered owner or developer of the subdivision or condominium project, upon completion of the development of said project may, **at his option**, convey by way of donation the roads and open spaces found within the project to the city or municipality wherein the project is located. Upon acceptance of the donation by the city or municipality concerned, no portion of the area donated shall thereafter be converted to any other purpose or purposes unless, after hearing, the proposed conversion is approved by the Authority. (Emphasis ours).

[93] *Woodridge School, Inc. v. ARB Construction Co., Inc.,* 545 Phil. 83, 89 (2007).

[94] 526 Phil. 630 (2006).

in 1998 in *White Plains Association v. Court of Appeals*. Citing *Young v. City of Manila*, this Court held in its 1998 decision that subdivision streets belonged to the owner until donated to the government or until expropriated upon payment of just compensation.[95]

Furthermore, in *Woodridge School, Inc. v. ARB Construction Co., Inc.*,[96] where the 1991 *White Plains* case was similarly applied by the trial court in holding that a subdivision road automatically belonged to the government, the Court ruled:

> In the case of *Abellana, Sr. v. Court of Appeals*, the Court held that the road lots in a private subdivision are private property, hence, the local government should first acquire them by donation, purchase, or expropriation, if they are to be utilized as a public road. Otherwise, they remain to be private properties of the owner-developer.
>
> Contrary to the position of petitioners, the use of the subdivision roads by the general public does not strip it of its private character. The road is not converted into public property by mere tolerance of the subdivision owner of the public's passage through it. To repeat, the local government should first acquire them by donation, purchase, or expropriation, if they are to be utilized as a public road.[97]

Petitioners cannot simply demand just compensation in lieu of recovering possession as there was no expropriation

Invoking the case of *Alfonso v. Pasay City*,[97] as cited in *Republic v. Court of Appeals*,[98] the City argued that recovering possession of the subject property is no longer feasible because it is now occupied and used by the City Hall and other government offices, so that petitioners' remedy is merely to demand payment of just compensation.

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[95] *Id*. at 637.

[96] *Woodridge School, Inc. v. ARB Construction Co., Inc., supra.*

[97] *Id*. at 88.

[97] 106 Phil. 1017 (1960).

[98] 433 Phil. 106 (2002).

The Court's exact pronouncement in *Alfonso* states:

As registered owner, (Alfonso) could bring an action to recover possession at any time because possession is one of the attributes of ownership of land. However, said restoration of possession by the City of Pasay is neither convenient nor feasible because it is now and has been used for road purposes. So, the only relief available is for the City of Pasay to make due compensation, which it could and should have done years ago since 1925.[99]

It will be noted, however, that in the cases thus invoked, and in other cases where the Court made a similar ruling,[100] the government took the property in the exercise of its power of eminent domain. This case clearly involves a different factual milieu as the subject property was not expropriated by the government. It had been offered by its owners-developers, under certain terms, for donation to the City as the City Hall and market sites within the subdivision, which offer the City clearly had the option to refuse. In fact, the Subdivision's General Manager, Lopez Jr., appeared to have written to Macario essentially asking him to defer the donation because while the Municipal Board accepted their offer, they had considered "other and better alternative sites near the National Highway."[101]

The "power of eminent domain" has been defined thus:

The right of eminent domain is "the ultimate right of the **sovereign** power to **appropriate**, not only the public but the private property of all citizens within the territorial sovereignty, to public purpose."[102] (Emphasis ours)

[E]minent domain, also often referred to as expropriation and, with less frequency, as **condemnation**, is, like police power and taxation,

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[99] *Alfonso v. Pasay City, supra* at 1022.

[100] *National Power Corporation v. Court of Appeals*, 479 Phil. 850 (2004); *Amigable v. Cuenca, etc., et al.,* 150 Phil. 422 (1972); *Ministerio v. CFI of Cebu, etc., et al.,* 148-B Phil. 474 (1971).

[101] *Rollo,* p. 122; RTC Records, p. 412.

[102] *Rep. of the Phils. v. Heirs of Saturnino Q. Borbon, et al.,* 750 Phil. 37, 48 (2015).

an inherent power of sovereignty. It need not be clothed with any constitutional gear to exist; instead, provisions in our Constitution on the subject are meant more to regulate, rather than to grant, the exercise of the power. Eminent domain is generally so described as "the highest and most exact idea of property remaining in the government" that may be acquired for some public purpose through a method in the nature of a **forced purchase** by the State.[103] (Emphasis ours)

In the instant case, there was no such appropriation or condemnation or forced purchase to speak of. The City was not propelled by an imperative need to take the subject property for a public purpose. The City, in taking possession of the subject property, was not exercising a sovereign function as expropriator. In this light, the *Alfonso* ruling cannot be applied to petitioners.

The City is not entitled to the rights of a builder in good faith

By law, one is considered in good faith if he is not aware that there exists in his title or mode of acquisition any flaw which invalidates it.[104] The essence of good faith lies in an honest belief in the validity of one's right, ignorance of a superior claim, and absence of intention to overreach another.[105]

By these standards, the City cannot be deemed a builder in good faith.

The evidence shows that the contract for the construction of the City Hall by the Subdivision was an integral component of the latter's offer of donation, constituting an essential condition for the intended conveyance. Thus, by their July 30, 1954 letter[106] to the Naga City Mayor, the Subdivision and the registered owners of the subject property submitted their "amended offer to construct the City Hall for Naga City within the premises of

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[103] *Manosca v. CA,* 322 Phil. 442, 448 (1996).

[104] *Aquino v. Aguilar*, 762 Phil. 52, 64 (2015).

[105] *Id*. at 63.

[106] *Rollo*, pp. 283-286.

the subdivision." The letter stated that the City Hall would be erected on not less than two hectares of the five-hectare land to be donated by Macario and Gimenez to the City. It also proposed a financing scheme for the construction of the City Hall, the construction cost not to exceed ₱150,000. It is, thus, readily apparent that the construction contract was the impetus for the offer of donation, and that such offer was made to persuade the City to award the contract to the Subdivision.

On August 11, 1954, the Municipal Board adopted Resolution No. 89[107] accepting the Subdivision's July 30, 1954 offer as amended by Lopez Jr.'s oral representations in the Board's open session as regards the financing aspect of the transaction. Consequently, Macario and Gimenez delivered possession of the subject property to the City government of Naga.[108]

However, on January 20, 1959, the Municipal Board issued Resolution No. 11[109]authorizing the City Mayor to enter into a contract with Sabaria for the construction of the City Hall.

That the Subdivision would, by its July 30, 1954 proposal, undertake the construction is evident from Lopez Jr.'s letter[110] of August 23, 1954 informing Macario that he would defer the "making of the plans of the building" until the location of the City Hall was settled. That the construction contract was the condition for the proposed donation finds support in Macario's September 17, 1959 letter[111] to Mayor Imperial and May 14, 1968[112] letter to Lopez Jr. which indicated that in February 1959, or the month after the construction contract was awarded to Sabaria, Mayor Imperial proposed for the Naga City government to "buy instead" the subject property.

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[107] *Id*. at 287.

[108] *Id*. at 441.

[109] RTC Records, p. 411.

[110] *Id*. at 412.

[111] *Id*. at 428.

[112] *Id*. at 429.

Macario's September 17, 1959 letter to Mayor Imperial reads:

> Joe and I would like to know from you the status of your proposal you have intimated to us during our meeting last February at my residence regarding your offer for the city government of Naga to buy instead the parcels of land which we contemplated to donate to the city as city hall and market site.
>
> It has been long since then our last conversation regarding your proposal and have not heard any positive development from you.
>
> Please advice [sic] us soonest and hope this be given preferential action by your Office.[113]

His May 14, 1968 letter to Lopez Jr. in turn reads:

> Please be advised to disregard all my previous letters and instructions to you regarding the donation of the city hall and market sites to the City of Naga. Kindly make immediate representation to the City Mayor and insist on the previous proposal made by Mayor Monico Imperial for the city to buy the land we offered to them.
>
> Considering the lapse of time and until now, no clear actions have been made by the city, I suggest you take whatever appropriate actions on this matter the soonest possible time.[114]

The foregoing circumstances ineluctably show that the City knew of a substantial flaw in its claim over the subject property. The proposed donation was conditioned on the award of the construction contract to the Subdivision. By its Resolution No. 89, the City accepted the proposal with all its conditions. Thus, the City could not have been unaware that by awarding the same construction contract to Sabaria, it no longer had any cause to continue occupying the subject property as the condition for the proposed donation had not been satisfied. Accordingly, it should have vacated the subject property. However, it stayed on and allowed Sabaria to undertake the construction.

Furthermore, Macario's September 17, 1959 and May 14, 1968 letters showed that Mayor Imperial had proposed that

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[113] *Id*. at 428.

[114] *Id*. at 429.

the Naga City government would just buy the subject property from him and Gimenez. Said letters also indicated that Macario had long been waiting for the City to act on this proposal but the latter had not taken any action. The City, in the meantime, continued to enjoy possession of the subject property and subsequently allowed other government agencies to build their offices in the premises. The proposal, however, was never brought to fruition by the City.

It cannot, thus, be said that the City was of an honest belief that it had a valid right to the subject property or that its actions had not overreached the landowners. Accordingly, it cannot be considered to have acted in good faith.

Articles 449 and 450 of the Civil Code provide:

> Art. 449. He who builds, plants or sows in bad faith on the land of another, loses what is built, planted or sown without right of indemnity.
>
> Art. 450. The owner of the land on which anything has been built, planted or sown in bad faith may demand the demolition of the work, or that the planting or sowing be removed, in order to replace things in their former condition at the expense of the person who built, planted or sowed; or he may compel the builder or planter to pay the price of the land, and the sower the proper rent.

Thus, petitioners, as hereditary successors of the registered owners of the subject property, have the right to appropriate what has been built on the property, without any obligation to pay indemnity therefor, and the City has no right to a refund of any improvement built therein.[116]

The CA ruled that Macario's May 14, 1968 letter was a mere photocopy and could not thus be received as secondary evidence absent a clear showing that its original had been lost or destroyed. The Court notes, however, that this letter, along with Macario's September 17, 1959 missive, were offered by petitioners and admitted by the MTC[117] without any objection from the City

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[116] *Aquino v. Aguilar, supra* note 105.

[117] RTC Records, p. 579.

either as to their admissibility or the purposes for which they were submitted.

It is well-settled that evidence not objected to is deemed admitted and may be validly considered by the court in arriving at its judgment.[118] This is true even if by its nature the evidence is inadmissible and would have surely been rejected if it had been challenged at the proper time.[119] Once admitted without objection, even though not admissible under an objection, We are not inclined now to reject it.[120] Consequently, the evidence that was not objected to became property of the case, and all parties to the case are considered amenable to any favorable or unfavorable effects resulting from the said evidence.[121]

Neither laches nor prescription had set in

It is settled that:

> Laches is the failure or neglect, for an unreasonable and unexplained length of time, to do that which, by exercising due diligence, could or should have been done earlier; it is negligence or omission to assert a right within a reasonable time, warranting the presumption that the party entitled to assert it either has abandoned or declined to assert it. There is no absolute rule as to what constitutes laches or staleness of demand; each case is to be determined according to its particular circumstances, with the question of laches addressed to the sound discretion of the court. Because laches is an equitable doctrine, its application is controlled by equitable considerations and should not be used to defeat justice or to perpetuate fraud or injustice.[122]

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[118] *Interpacific Transit, Inc. v. Aviles,* 264 Phil. 753, 760 (1990); *Bank of the Philippine Islands v. Mendoza*, G.R. No. 198799, March 20, 2017.

[119] *Interpacific Transit, Inc. v. Aviles*, *supra*, at 760.

[120] *Id*. at 761; *Heirs of Marcelino Doronio v. Heirs of Fortunato Doronio,* 565 Phil. 766, 781 (2007).

[121] *Heirs of Marcelino Doronio v. Heirs of Fortunato Doronio*, *supra*, at 781.

[122] *Spouses Esmaquel and Sordevilla v. Coprada,* 653 Phil. 96, 107 (2010).

By his September 17, 1959 and May 14, 1968 letters, Macario has been shown to have taken steps to have the City act on Mayor Imperial's proposal to "buy instead" the subject property. His efforts were overtaken by his death three years later in 1971. Furthermore, as the RTC found, petitioners had been engaged in litigation to establish their right to inherit from Macario and Irene, and it was Danilo's discovery of the subject property, following the issuance to him of letters of administration over Irene's estate in 1997, that prompted them to issue a demand for the City to vacate the premises.

Given these circumstances, the Court is not disposed to conclude that there was an unreasonable or unexplained delay that will render petitioners' claim stale.

In contrast, the City, despite its claim of having acquired the subject property by donation in 1954, has itself failed to have the same transferred in its name for a long period of time. Indeed, the subject property remains registered in the name of petitioners' predecessor-in-interest as co-owner.

The rule is that an action to recover possession of a registered land never prescribes in view of the provision of Section 44 of Act No. 496 to the effect that no title to registered land in derogation of that of a registered owner shall be acquired by prescription or adverse possession. It follows that a registered owner's action to recover a real property registered under the Torrens System does not prescribe.[122]

Thus, it has been consistently held that registered owners have the right to evict any person unlawfully occupying their property, and this right is imprescriptible and can never be barred by laches.[123] Even if it be supposed that they were aware of the occupant's possession of the property, and regardless of the length of that possession, the lawful owners have a right to

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[122] *Heirs of Anacleto B. Nieto v. Municipality of Meycauayan, Bulacan, supra* note 79, at 679.

[123] *Tolentino v. Laurel*, *supra* note 71, at 541 citing *Labrador v. Sps. Perlas, et al.*, 641 Phil. 388, 395 (2010); *Esmaquel v. Coprada*, *supra*, at 108 (2010).

demand the return of their property at any time as long as the possession was unauthorized or merely tolerated, if at all.[124]

Moreover, it is well settled that the rule on imprescriptibility of registered lands not only applies to the registered owner but extends to the heirs of the registered owner as well. As explained in *Mateo v. Diaz*,[125] prescription is unavailing not only against the registered owner, but also against his hereditary successors because the latter step into the shoes of the decedent by operation of law and are the continuation of the personality of their predecessor-in-interest.[126] Consequently, petitioners, as heirs of registered landowner Macario, cannot be barred by prescription from claiming possession of the property.

Restitution of premises, reasonable rent and attorney's fees

Section 17, Rule 70 of the Rules of Court provides:

> Sec. 17. *Judgment.* — If after trial the court finds that the allegations of the complaint are true, it shall render judgment in favor of the plaintiff for the restitution of the premises, the sum justly due as arrears of rent or as reasonable compensation for the use and occupation of the premises, attorney's fees and costs. x x x

Thus, the rightful possessor in an unlawful detainer case is entitled to the return of the property and to recover damages, which refer to "rents" or "the reasonable compensation for the use and occupation of the premises," or the "fair rental value of the property" and attorney's fees and costs. More specifically, recoverable damages are "those which the plaintiff could have sustained as a mere possessor, or those caused by the loss of the use and occupation of the property."[127]

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[124] *Esmaquel v. Coprada, supra*, at 108.

[125] 42 Phil. 772, 781 (2002).

[126] *Heirs of Anacleto B. Nieto v. Municipality of Meycauayan, Bulacan, supra* note 79, at 665.

[127] *Province of Camarines Sur v. Bodega Glassware,* G.R. No. 194199, March 22, 2017.

The RTC granted petitioners' prayer for a monthly rental of ₱2.5 million (or ₱50.00 per square meter) as reasonable compensation for the City's use and occupation of the subject property from November 30, 2003 until the premises are actually vacated. However, in its March 7, 2011 Decision, the CA reduces the monthly rental to ₱500,000.00 (or ₱10.00 per square meter), holding that:

> The very reason why the monthly rental of the premises surrounding the City Hall is as high as that pegged by the lower appellate court (at Php 50.00 per square meter or Php 2,500,000.00 for the 50,000 square meters), is the presence of the local government at the site. It should not, therefore, be burdened too much in the computation of the monthly rental when it has contributed in a major way in making the area an upscale one. Thus, the Court submits that the monthly rental of Php 500,000.00 is just equitable under the circumstances.[128]

There is logic in the CA's ratiocination that the presence of the local government in the subject property enhanced the value of real estate in its vicinity. The Court, however, cannot lose sight of the fact that the City's occupation of the subject property has been blighted by bad faith. The benefit to the real estate values had been at the expense of the rights of Macario and Gimenez and their successors-in-interest.

Furthermore, it has been held that the reasonable compensation contemplated in Section 17, Rule 70 "partakes of the nature of actual damages." While the court may fix the reasonable amount of rent, it must base its action on the evidence adduced by the parties. The Court has defined "fair rental value" as the amount at which a willing lessee would pay and a willing lessor would receive for the use of a certain property, neither being under compulsion and both parties having a reasonable knowledge of all facts, such as the extent, character and utility of the property, sales and holding prices of similar land and the highest and best use of the property.[129]

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[128] *Rollo*, pp. 136-137.

[129] *Josefa v. San Buenaventura*, 519 Phil. 45, 58 (2006).

Petitioners based their prayer for a ₱50.00 rental rate on the ₱110.00 monthly rent per square meter under a 2004 lease contract over another property situated near the subject premises.[130] The burden of proof to show that the rental demanded is unconscionable or exorbitant rests upon the City.[131] The City, however, has not adduced controverting evidence as to the fair rental value of the premises.[132] All things considered, the Court finds petitioners' prayer for compensation at less than half the rate indicated in said lease contract to be reasonable.[133]

The fair rental value is to be reckoned from the time of the demand to vacate.[134] The City received two demand letters from petitioners; the second "extend(ed)" its stay in the subject property for another two months from the 30th day of the month when it received the initial demand letter on September 10, 2003.[135] Thus, the reasonable rent was due not from November 3, 2003 as the CA declared in its March 7, 2011 Decision, but from November 30, 2003, and should be paid until the subject property is vacated.

The Court agrees with the CA's holding in its March 7, 2011 Decision that the amount due to petitioners shall only be half of the reasonable rent as the subject property was co-owned by Macario with Gimenez. Absent proof to the contrary, the portions belonging to the co-owners in the co-ownership shall be presumed equal.[136]

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[130] RTC Records, pp. 561-567.

[131] *Josefa v. San Buenaventura, supra*, at 59; *Sia v. Court of Appeals*, 338 Phil. 652, 670 (1997).

[132] See *Fernando v. Spouses Lim,* 585 Phil. 141 (2008) and *Josefa v. San Buenaventura*, *supra*.

[133] See *Province of Camarines Sur v. Bodega Glassware, supra.*

[134] *Pro-guard Security Services Corp. v. Tormil Realty and Development Corp.,* 738 Phil. 417, 425 (2014).

[135] RTC Records, pp. 378-382.

[136] Article 485, Civil Code of the Philippines.

As regards attorney's fees, the RTC awarded the same in the amount of ₱587,159.60 or 10% of the property's market value based on the tax declarations. In its March 7, 2011 Decision, the CA reduced the award to ₱200,000.00 on equitable grounds, considering the extent of legal services rendered by petitioners' counsel.[137]

The Court finds either award to be excessive. Indubitably, petitioners were constrained to litigate to protect their interest.[138] However, considering the circumstances of the case, including the summary[139] nature of an unlawful detainer proceeding, the Court holds that an award of ₱75,000.00 as attorney's fees is fair and reasonable.

Decision is binding on privies or parties deriving possession from the City

In its March 7, 2011 Decision, the CA held that the government offices occupying the subject property, other than the City government of Naga, could not be ordered to vacate the same because they were not parties to the case.

Jurisprudence, however, instructs that:

> A judgment directing a party to deliver possession of a property to another is *in personam*. x x x Any judgment therein is binding only upon the parties properly impleaded and duly heard or given an opportunity to be heard. However, **this rule admits of the exception, such that even a non-party may be bound by the judgment in an ejectment suit** where he is any of the following: (a) trespasser, squatter or agent of the defendant fraudulently occupying the property to frustrate the judgment; (b) guest or **occupant of the premises with the permission of the defendant**; (c) transferee *pendente lite*; (d) sublessee; (e) co-lessee; or (f) member of the family, relative or **privy of the defendant**.[140] (Emphasis ours)

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[137] *Rollo,* p. 138.

[138] Article 2208, Civil Code of the Philippines.

[139] *Salandanan v. Spouses Mendez,* 600 Phil. 229 (2009).

[140] *Id.*

Exceptions (b) and (f) are clearly applicable. There is no dispute that the government offices were allowed by the City to occupy the subject property. Deriving their possession from the City, they are unmistakably the City's privies in the occupation of the premises.[141] Thus, they too are bound by the judgment in this case.

Determination of ownership is not conclusive

It must be stressed that the ruling in this case is limited only to the determination of who between the parties has a better right to possession. This adjudication is not a final determination on the issue of ownership and, thus, will not bar or prejudice an action between the same parties involving title to the property, if and when such action is brought seasonably before the proper forum.[143]

WHEREFORE, the petition is **GRANTED**. The Court of Appeals' Amended Decision dated July 20, 2011 is **SET ASIDE**. The Decision dated June 20, 2005 of the Regional Trial Court, Branch 26 of Naga City in Civil Case No. RTC 2005-0030 is **REINSTATED with MODIFICATION** in that: (a) petitioners shall be paid only half of the adjudged monthly rental of ₱2,500,000; and (b) the award of attorney's fees is reduced to ₱75,000.

SO ORDERED.

Leonardo-de Castro,[*] *del Castillo,* and *Jardeleza, JJ.,* concur.

Sereno, C.J., on leave.

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[141] *Heirs of Maximo Regoso v. The Hon. Court of Appeals,* 286 Phil. 454, (1992).

[143] Section 18, Rule 70, Rules of Court.

[*] Designated Acting Chairperson, First Division per Special Order No. 2540 dated February 28, 2018.

THIRD DIVISION

[G.R. No. 215790. March 12, 2018]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **MAURICIO CABAJAR VIBAR,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; REVISED PENAL CODE; RAPE; GUIDING PRINCIPLES IN DECIDING RAPE CASES.— Rape is a peculiar crime in that it is shrouded in mystery. More often than not, the victim is left alone at the hand of the assailant with no one to corroborate her claims; sometimes physical evidence to suggest she was defiled is even lacking. It becomes a battle of credibility where the courts are left to decide whether to believe in the victim's narration of her harrowing experience or to accept the abuser's plea of innocence. Thus, in deciding rape cases, the Court is guided by the following well-established principles: (1) an accusation of rape can be made with facility and while the accusation is difficult to prove, it is even more difficult for the accused, though innocent, to disprove; (2) considering that in the nature of things, only two persons are usually involved in the crime of rape, the testimony of the complainant should be scrutinized with great caution; and (3) the evidence of the prosecution must stand or fall on its own merits and cannot be allowed to draw strength from the weakness of the evidence for the defense. The Court is duty bound to conduct a thorough and exhaustive evaluation of a judgment of conviction for rape considering the grave consequences for both the accused and the complainant.

2. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; THE ASSESSMENT BY THE TRIAL COURTS OF A WITNESS' CREDIBILITY IS ACCORDED GREAT WEIGHT AND RESPECT, FOR TRIAL JUDGES HAVE THE ADVANTAGE OF DIRECTLY OBSERVING A WITNESS ON THE STAND.— The Court has consistently observed the rule that the assessment by the trial courts of a witness' credibility is accorded great weight and respect. This is so as trial court judges have the advantage of directly observing a witness on the stand and determining whether one is telling

the truth or not. Such findings of the trial courts are generally upheld absent any showing that they have overlooked substantial facts and circumstances which would materially affect the result of the case.

3. CRIMINAL LAW; REVISED PENAL CODE; RAPE; THE SLIGHTEST PENETRATION OF THE FEMALE GENITALIA CONSUMMATES THE CRIME OF RAPE.— AAA was straightforward and categorical in narrating how Vibar had forcibly taken her inside the house and mounted her while she was lying on the floor and then inserted his penis into her vagina. It did not matter that the penetration lasted only for a short period of time because carnal knowledge means sexual bodily connection between persons; and the slightest penetration of the female genitalia consummates the crime of rape.

4. ID.; ID.; ID.; MEDICAL REPORTS ARE MERELY CORROBORATIVE IN CHARACTER AND ARE NOT ESSENTIAL FOR A CONVICTION BECAUSE THE CREDIBLE TESTIMONY OF A VICTIM WOULD SUFFICE.— Vibar also laments that there was no physical evidence of penetration to support AAA's claims of defilement, noting that there were no medical reports that indicated even the slightest of penetration. It must be remembered, however, that medical reports are merely corroborative in character and are not essential for a conviction because the credible testimony of a victim would suffice. Nevertheless, in the case at bench, the findings from AAA's medical examination actually support her testimony. x x x AAA's medical report did not discount the fact that intercourse occurred even if her hymen was intact. As characterized by Dr. Alcantara, AAA's elastic hymen made it possible for an erect adult penis to penetrate her vagina without causing lacerations or rupture of the hymen.

5. REMEDIAL LAW; EVIDENCE; PRESENTATION OF EVIDENCE; PROOF OF PRIVATE DOCUMENT; IN ORDER FOR ANY PRIVATE DOCUMENT OFFERED AS AUTHENTIC TO BE ADMITTED AS EVIDENCE, ITS DUE EXECUTION AND AUTHENTICITY MUST BE PROVED.— Section 20, Rule 132 of the Rules of Court provides that in order for any private document offered as authentic to be admitted as evidence, its due execution and authenticity must be proved either: (1) by anyone who saw the document executed or written; or (2) by evidence of the genuineness of the signature

or handwriting of the maker. The authentication of private document before it is received in evidence is vital because during such process, a witness positively identifies that the document is genuine and has been duly executed or that the document is neither spurious nor counterfeit nor executed by mistake or under duress.

6. CRIMINAL LAW; REVISED PENAL CODE; RAPE; HOW COMMITTED.— Under Article 266-A(1) of the RPC, Rape is committed by a man who shall have carnal knowledge of a woman under any of the following circumstances: (a) Through force, threat or intimidation; (b) When the offended party is deprived of reason or is otherwise unconscious; (c) By means of fraudulent machination or grave abuse of authority; and (d) When the offended party is under twelve (12) years of age or is demented, even though none of the circumstances mentioned above is present. Here, AAA categorically testified that Vibar had carnal knowledge with her after the latter lay on top of her and inserted his penis into her vagina. In addition, force and intimidation were present x x x.

APPEARANCES OF COUNSEL

Office of the Solicitor General for plaintiff-appellee.
Public Attorney's Office for accused-appellant.

D E C I S I O N

MARTIRES, *J.*:

This is an appeal from the 14 March 2014 Decision[1] of the Court of Appeals *(CA)* in CA-G.R. CR-HC No. 05989, which affirmed the 12 December 2012 Judgment[2] of the Regional Trial Court, [redacted] Camarines Norte *(RTC)*, in Criminal Case No. 12249, finding accused-appellant Mauricio Cabajar Vibar *(Vibar)*

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[1] *Rollo*, pp. 2-10; penned by Associate Justice Franchito N. Diamante, and concurred in by Associate Justices Celia C. Librea-Leagogo and Zenaida T. Galapate-Laguilles.

[2] Records, pp. 148-154; penned by Acting/Assisting Judge Arniel A. Dating.

guilty beyond reasonable doubt of the crime of Rape defined and penalized under Article 266-B(1) of the Revised Penal Code *(RPC)*.

THE FACTS

In an Information dated 23 December 2004, Vibar was charged with the Crime of Rape committed agains[redacted]AAA[3]. The accusatory portion reads:

> That on or about 11:00 in the morning of August 4, 2002 at [redacted] Province of Camarines Norte, Philippines, and within the jurisdiction of this Honorable Court, the above named accused, with lewd design, motivated by bestial lust and by means of force and intimidation, did then and there wilfully, unlawfully and feloniously had carnal knowledge with [redacted] AAA, 15 years old, against her will and to her damage.
>
> CONTRARY TO LAW.[4]

During his arraignment on 7 March 2005, Vibar, with the assistance of his counsel, pleaded "Not Guilty."[5]

Evidence for the Prosecution

The prosecution presented AAA and Dr. Raul Alcantara *(Dr. Alcantara)* as witnesses. Their combined testimonies tended to establish the following:

On 4 August 2002, at around 11:00 A.M., while AAA was cooking lunch outside their nipa hut in Camarines Norte, Vibar

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[3] The true name of the victim has been replaced with fictitous initials in conformity with Administrative Circular No. 83-2015 (Subject: *Protocols and Procedures in the Promulgation, Publication, and Posting on the Websites of Decisions, Final Resolutions, and Final Orders Using FictitousNames/ Personal Circumstances*). The confidentiality of the identity of the victim is mandated by Republic Act (R.A.) No. 7610 (*"Special Protection of Children Against Abuse, Exploitation and Discrimination Act"*); R.A. No. 8505 (*"Rape Victim Assistance and Protection Act of 1998"*); R.A. No. 9208 *("Anti-Trafficking in Persons Act 2003"*); R.A. No. 9262 *("Anti-Violence Against Women and their Children Act of 2004"*); and R.A. No. 9344 (*"Juvenile Justice and Welfare Act of 2006"*).

[4] Records, p. 1.

[5] *Id.* at 24.

came and asked her to get his gloves from inside the house. When AAA refused to do so, he carried her inside and laid her on the floor,[6] removed her shorts and panty, zipped open his pants, placed himself on top of her, and made push and pull movements.[7] During this time, AAA felt Vibar's penis enter her vagina causing her pain.[8]

That same day, AAA reported the incident to the police. After executing an affidavit at the police station, she appeared before the judge of the Municipal Circuit Trial Court *(MCTC)* of San Lorenzo Ruiz for preliminary investigation.[9] AAA's first complaint for rape, however, was dismissed because she refused to speak during that time. She did not cooperate with the preliminary investigation because she was afraid of [redacted] who had threatened to kill her.[10] Further, AAA was hesitant because she did not have the support of her mother, who initially chose to side with Vibar.[11]

After the incident, AAA left Camarines Norte and went to Antipolo to work. On 7 July 2004, she returned to Camarines Norte to study. Unfortunately, AAA was constantly harassed by Vibar; he would touch her breast and kiss her. This prompted her to file anew the complaint for rape [redacted].[12] On 20 August 2004, AAA was subjected to a medical examination where it was discovered that she had an elastic hymen that could be penetrated by a penis without causing any lacerations.[13]

Evidence for the Defense

The defense presented Vibar as its lone witness, whose testimony sought to prove the following:

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[6] TSN, 5 July 2005, pp. 6 and 8.

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

[8] TSN, 24 January 2006, p. 13.

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

[10] *Id*. at 14.

[11] TSN, 5 July 2005, pp. 12-13.

[12] TSN, 24 January 2006, pp. 8-10.

[13] TSN, 25 January 2011, pp.10-11.

On 4 August 2002, at around 11:00 A.M., Vibar went home after attending Sunday worship. Once home, he asked AAA why she did not prepare lunch, and the latter retorted in a disrespectful manner. Because he was hungry and had an earlier misunderstanding with his wife BBB, Vibar scolded her and uttered other unsavory remarks. After the verbal confrontation, AAA went to the police station and accused him of attempted rape.[14]

In 2004, however, AAA re-filed the case against Vibar with the prodding of BBB, Arlene Rosinto *(Arlene),* and a certain Shirley: Arlene and Shirley belonged to the same religious sect as Vibar. They conspired against him and used AAA to exact vengeance upon him: BBB had a paramour and wanted to elope with him but could not do so because she was still living with Vibar; Arlene had an axe to grind against him after he did not vote for her husband, a candidate chosen by their sect, during the elections; Shirley got mad at Vibar when he distanced himself from the sect after refusing to vote for Arlene's husband.[15]

While in detention, Vibar received a letter[16] from AAA in 2006 wherein she alleged that she was merely coerced to re-file the complaint for rape and that she regretted her decision to do so. Relevant portions of the letter read:

[redacted] *patawarin mo po ako. Hindi ko po kagustuhan ang pangyayaring ito. Natakot lang po ako at ang sabi po nila Ate Arlene na taga DSWD na humahawak sa kaso mo, kapag hindi ko raw pinanindigan ang kasong isinampa nila sa yo at ikaw ay nadismiss at nakalaya, ako raw po ang ipapalit nila sa kulungan.*

x x x *x x x* *x x x*

[redacted] *gulong-gulo na po ang isip ko, hindi ko na po alam kung ano ang gagawin ko para makalaya ka, naisip ko na lang* [redacted] *ang magpakalayo-layo na lang ako, wag po kayong malungkot sa paglayo ko, ito na lang po ang naisip kong paraan, at ito na rin po ang huling sulat ko sa yo.*

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[14] Records, pp. 137-138.

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

[16] *Id.* at 142.

The RTC Ruling

In its 12 December 2012 judgment, the RTC found Vibar guilty of rape. The trial court ruled that the prosecution was able to prove that AAA was indeed sexually abused [redacted] noting that AAA's straightforward testimony trumped Vibar's defenses of denial and alibi. The RTC averred that no family member would fabricate a case of rape against another family member and undergo public prosecution if it were untrue. The dispositive portion reads:

> **WHEREFORE**, the prosecution having proven the guilt of accused Mauricio Vibar *y* Cabajar beyond reasonable doubt for the crime of Rape, he is hereby sentenced to suffer the penalty of reclusion perpetua without eligibility of parole and to pay offended party the following:
>
> a. ₱75,000.00 by way of civil indemnity;
> b. ₱75,000.00 by way of moral damages;
> c. ₱30,000.00 by way of exemplary damages
>
> with interest of 6% per annum on all the aforesaid damages from the date of finality of this judgment until fully paid.
>
> **With costs**.
>
> **SO ORDERED**.[17]

Aggrieved, Vibar appealed before the CA.

The CA Ruling

In its assailed decision, the CA affirmed the RTC judgment. The appellate court upheld AAA's testimony, which was found credible by the trial court after having directly observed her demeanor and behavior on the witness stand. It highlighted that the physical evidence corroborated her testimony. The CA brushed aside Vibar's imputation of conspiracy for being self-serving. Finally, the appellate court disregarded AAA's purported letter for lack of authentication. It ruled:

> **WHEREFORE**, in view of the foregoing, the instant appeal is hereby **DENIED**. The assailed Judgment dated December 12, 2012

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

of the Daet, Camarines Norte RTC, Branch 40, in Criminal Case No. 12249 for Rape is hereby **AFFIRMED** *in toto*.

SO ORDERED.[18]

Hence, this appeal raising the following:

ISSUE

WHETHER THE ACCUSED IS GUILTY BEYOND REASONABLE DOUBT OF RAPE.

THE COURT'S RULING

The appeal has no merit.

Rape is a peculiar crime in that it is shrouded in mystery. More often than not, the victim is left alone at the hand of the assailant with no one to corroborate her claims; sometimes physical evidence to suggest she was defiled is even lacking. It becomes a battle of credibility where the courts are left to decide whether to believe in the victim's narration of her harrowing experience or to accept the abuser's plea of innocence.

Thus, in deciding rape cases, the Court is guided by the following well-established principles: (1) an accusation of rape can be made with facility and while the accusation is difficult to prove, it is even more difficult for the accused, though innocent, to disprove; (2) considering that in the nature of things, only two persons are usually involved in the crime of rape, the testimony of the complainant should be scrutinized with great caution; and (3) the evidence of the prosecution must stand or fall on its own merits and cannot be allowed to draw strength from the weakness of the evidence for the defense.[19] The Court is duty bound to conduct a thorough and exhaustive evaluation of a judgment of conviction for rape considering the grave consequences for both the accused and the complainant.[20]

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[18] *Rollo,* p. 10.

[19] *People v. Salidaga,* 542 Phil. 295, 301 (2007).

[20] *People v. Celocelo,* 653 Phil. 251, 261 (2010).

Credible and categorical testimony of the victim sufficient to convict accused for rape

The Court has consistently observed the rule that the assessment by the trial courts of a witness' credibility is accorded great weight and respect. This is so as trial court judges have the advantage of directly observing a witness on the stand and determining whether one is telling the truth or not.[21]Such findings of the trial courts are generally upheld absent any showing that they have overlooked substantial facts and circumstances which would materially affect the result of the case.[22]

Vibar bewails that the courts *a quo* erred in lending credibility to AAA's testimony claiming that it was against human nature for a young girl to fabricate a story that would expose herself to ridicule and place a family member behind bars. Truly, the Court in past rulings has held that testimonies of female or child victims should be given full weight and credence because when they say they have been raped, they are saying in effect all that is necessary to show that rape has indeed been committed.[23]

In *People v. Amarela*,[24] however, the Court cautioned against the over-reliance on the presumption that no woman would spin a tale of sexual abuse if it were untrue because it would tarnish her honor:

> More often than not, where the alleged victim survives to tell her story of sexual depredation, rape cases are solely decided based on the credibility of the testimony of the private complainant. **In doing so, we have hinged on the impression that no young Filipina of decent repute would publicly admit that she has been sexually**

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[21] *People v. Albalate, Jr.,* 623 Phil. 437, 447 (2009).

[22] *Id*.

[23] *People v. Ogarte,* 664 Phil. 642, 661 (2011), citing *People v. Tayaban,* 357 Phil. 494, 508 (1998).

[24] G.R. Nos. 225642-43, January 17, 2018.

abused, unless that is the truth, for it is her natural instinct to protect her honor. However, this misconception, particularly in this day and age, not only puts the accused at an unfair disadvantage, but creates a travesty of justice.

x x x x x x x x x

This opinion borders on the fallacy of *non sequitor*. And while the factual setting back then would have been appropriate to say it is natural for a woman to be reluctant in disclosing sexual assault; today, we simply cannot be stuck to the Maria Clara stereotype of a demure and reserved Filipino woman. We, should stay away from such mindset and accept the realities of a woman's dynamic role in society today; she who has over the years transformed into a strong and confidently intelligent and beautiful person, willing to fight for her rights.

In this way, we can evaluate the testimony of a private complainant of rape without gender bias or cultural misconception**. It is important to weed out these unnecessary notions because an accused may be convicted solely on the testimony of the victim, provided of course, that the testimony is credible, natural, convincing and consistent with human nature and the normal course of things**. (emphases and underscoring supplied)

Nevertheless, when AAA's testimony is taken in a vacuum and examined devoid of any preconceptions or presumption, it stands sufficient to convict Vibar of Rape, thus:

Direct Examination

FISCAL MANLAPAZ:

Q: You will agree with me that it is normal [redacted] to enter the nipa hut during that time?
A: I was outside the nipa hut that time because our kitchen is outside.

Q: So, what is this untoward incident that happened?
A: He came and then he asked me to get his glo[v]es but I do not want to enter the house, so what he did is he forced me to enter and he almost carried me and put me on the floor.

Q: When you say he forced you and almost carried you, can you describe it to me?
A: He carried me up in going inside.

x x x x x x x x x

Q: So, after he managed to carry you and laid you to the floor, what happened next?
A: He removed my shorts and panty and then he opened up his zipper and place[d] himself on top of me.

Q: What happened next?
A: I felt something touched my vagina.

Q: You just felt it?
A: Yes sir.

Q: What is that?
A: His penis.

x x x x x x x x x

Q: While the accused was doing all of these from the time that he grabbed you and brought you inside the house and then he opened his zipper and he mounted you and he touched your vagina, what did he say to you?
A: None, sir.

Q: Can you describe to us his appearance while he was on top of you?
A: He was lying and he was on top of me and pressing my vagina.

Q: While the accused was on top of you, what did the accused do if any?
A: He was trying to insert his penis.

Q: So, what movement did he make?
A: (Witness is making a push and pull movement).[25]

Re-Direct

Q: After he removed your shorts what happened next?
A: He opened the zipper of his pants and laid on top of me, sir.

Q: After that what else happened?
A: I felt his penis touched my vagina, sir.

Q: Touched only?
A: It penetrated my vagina, sir.

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[25] TSN, 5 July 2005, pp. 8-11.

Q: For how long?
A: It was for a short time only, sir.

Q: And after he finished what did you notice, if any?
A: I felt pain, sir.

Q: You were hurt?
A: Yes, sir.[26]

AAA was straightforward and categorical in narrating how Vibar had forcibly taken her inside the house and mounted her while she was lying on the floor and then inserted his penis into her vagina. It did not matter that the penetration lasted only for a short period of time because carnal knowledge means sexual bodily connection between persons; and the slightest penetration of the female genitalia consummates the crime of rape.[27]

Moreover, it is noteworthy that AAA immediately sought help from the authorities when she was defiled [redacted] in August 2002. Unfortunately, the case was dismissed during the preliminary investigation stage due to her reluctance to speak before the investigating MCTC judge.

AAA's hesitation, nonetheless, was caused by the initial lack of support of her mother, who sided with Vibar, and the threats of the accused towards her. It should not diminish her urgency to report the gruesome incident to the police. If the delay in reporting incidents of rape may cast doubt upon the courts as to the veracity of the alleged crime,[28] then the swift desire to achieve justice should strengthen the victim's claims. In this case, AAA's minority coupled with her immediate action to seek redress for the wrong committed against her, tend to support her testimony that indeed she was raped [redacted]

Medical reports corroborative evidence in rape.

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[26] TSN, 24 January 2006, p. 13.

[27] *People v. Butiong*, 675 Phil. 621, 630 (2011).

[28] *People v. Relorcasa*, 296-A Phil. 24, 31 (1993).

Vibar also laments that there was no physical evidence of penetration to support AAA's claims of defilement, noting that there were no medical reports that indicated even the slightest of penetration. It must be remembered, however, that medical reports are merely corroborative in character and are not essential for a conviction because the credible testimony of a victim would suffice.[29]

Nevertheless, in the case at bench, the findings from AAA's medical examination actually support her testimony. Dr. Alacantara explained the findings as follows:

FISCAL BOADO:

Q: Doctor, in the conclusions of Dr. Jane Perpetua F. Fajardo, she states, "hymenal orifice wide (measure 2.5cm wide) as to allow complete penetration by an average sized adult Filipino organ in full erection without producing hymenal injury." What does she mean by that, can you interpret?

A: Taking into consideration the shape of the hymen and as mentioned by Dr. Fajardo, as I said that the hymen is elastic and has a diameter of 2.5 cm., that means fully elastic male organ can easily visible to the examining physician.

Q: So you are saying Doctor, that although the hymen is still intact it is still possible that there was sexual intercourse? I will rephrase, Your Honor. You said Doctor, that although the hymen is intact the allegations of AAA [redacted] the accused in this case, had intercourse with her [is] inconsistent with her testimony?

A: It is possible.

Q: So, it means Doctor that even though the minor in this case was a victim of sexual abuse, healed hymen can still be considered intact?

A: Yes, ma'am.

Q: What is the layman's term of this hymen intact but distensible?

A: Elastic.

x x x x x x x x x

[29] *People v. Ferrer*, 415 Phil. 188, 199 (2001).

Q: So, even if the incident transpired on August 4, 2002 if there is a penetration by a penis, adult penis, inside the vagina of AAA because the hymen is elastic it can no longer be determined whether there is a laceration?

A: The characteristic of the hymen is elastic. If there is a penetration then the hymen will just distense and accommodate the male organ and it is possible that no laceration.[30]

Thus, it is clear that AAA's medical report did not discount the fact that intercourse occurred even if her hymen was intact. As characterized by Dr. Alcantara, AAA's elastic hymen made it possible for an erect adult penis to penetrate her vagina without causing lacerations or rupture of the hymen.

Lack of authentication of private documents renders them inadmissible.

As a last-ditch effort to convince the courts of his innocence, Vibar claimed that he received a letter from AAA sometime in 2006 wherein the latter explained that she was merely coerced to re-file the complaint for rape and she very much regretted doing so. He stated the while it was not AAA herself who gave the letter, he was sure that it was AAA who wrote it because no one else by AAA's name would call her [redacted] and that he was familiar with her handwriting.[31]

Section 20, Rule 132 of the Rules of Court provides that in order for any private document offered as authentic to be admitted as evidence, its due execution and authenticity must be proved either: (1) by anyone who saw the document executed or written; or (2) by evidence of the genuineness of the signature or handwriting of the maker. The authentication of private document before it is received in evidence is vital because during such process, a witness positively identifies that the document is genuine and has been duly executed or that the document is neither spurious nor counterfeit nor executed by mistake or under duress.[32]

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[30] TSN, 25 January 2011, pp. 6-7 and 11.

[31] TSN, 22 November 2012, pp. 13-15.

[32] *Salas v. Sta. Mesa Market Corporation*, 554 Phil. 343, 349 (2007).

In order to bolster his claim of innocence, Vibar testified:

Cross-examination

FISCAL BOADO:

Q: You also presented, Mr. witness, a letter allegedly written by AAA the private complainant in this case addressed to you, is that correct?
A: Yes, ma'am.

Q: But you do not have any proof to substantiate your claim that this letter was really prepared by [redacted] AAA aside from your bare allegation?
A: She is the one, ma'am, because no other AAA would call me [redacted] and all the contents of the letter speak [to] all the incidents involving our case, ma'am.

Q: But you cannot present any documents written by AAA to prove that this penmanship belongs to Anilyn, is that correct?
A: I do not have, ma'am.

x x x x x x x x x

Court

Q: Mr. witness, when did you receive the letter allegedly coming from AAA?
A: On May 2006, Your Honor.

Q: Can you not remember the date of May?
A: More or less May 24, 2006, Your Honor.

Q: And when you received the said alleged letter, AAA [had] already testified in court?
A: Yes, Your Honor.

Q: Who handed to you the letter?
A: It was given to me by the one who visited me in jail, he said that it was given to him by AAA, Your Honor.[33]

A plain reading of Vibar's testimony immediately reveals that he miserably failed to comply with the authentication requirement set forth under the Rules. Neither was there any

[33] TSN, 22 November 2012, pp. 13-15.

witness who could testify that the alleged letter was voluntarily and personally made by AAA nor was there any document from which her handwriting could have been compared. Curiously, the person who purportedly handed to Vibar AAA's letter was not presented in court to testify as to the genuineness of the document.

Vibar merely relies on his self-serving testimony that he was sure that the letter was AAA's doing. Such hollow assurance, however, in no way proves thatAAA had indeed voluntarily executed the said document. He could have easily fabricated the letter and feigned that it was made [redacted] As such, AAA's professed letter is but a mere scrap of paper with no evidentiary value for lack of proper authentication.

With this in mind, the Court agrees that all the elements of rape are present in the case at bar. Under Article 266-A(1) of the RPC, Rape is committed by a man who shall have carnal knowledge of a woman under any of the following circumstances: (a) Through force, threat or intimidation; (b) When the offended party is deprived of reason or is otherwise unconscious; (c) By means of fraudulent machination or grave abuse of authority; and (d) When the offended party is under twelve (12) years of age or is demented, even though none of the circumstances mentioned above is present. Here, AAA categorically testified that Vibar had carnal knowledge with her after the latter lay on top of her and inserted his penis into her vagina. In addition, force and intimidation were present [redacted][34]

Modification of damages to conform to recent jurisprudence

In convicting Vibar, the RTC ordered that he pay AAA ₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages and ₱30,000.00 as exemplary damages. Under Article 266-B

[34] *People v. Dominguez, Jr.*, 650 Phil. 492, 519 (2010).

of the RPC, the penalty of death shall be imposed [redacted] In view of Republic Act *(R.A.)* No. 9346,[35] however, the penalty of *reclusion perpetua* shall be imposed in lieu of the death penalty when the law violated uses the nomenclature of the penalties under the RPC.

On the other hand, the Court in *People v. Jugueta*[36] set the award of damages for the crime of rape wherein it stated that when the penalty imposed is death but reduced because of R.A. No. 9346, the victim is entitled to ₱100,000.00 as civil indemnity, ₱100,000.00 as moral damages and ₱100,000.00 as exemplary damages.[37] In conformity with the said ruling, all damages awarded to AAA should be increased accordingly.

WHEREFORE, the 14 March 2014 Decision of the Court of Appeals in CA-G.R. CR-HC No. 05989 is **AFFIRMED with MODIFICATION**. Accused-appellant Mauricio Vibar *y* Cabajar is ordered to pay AAA ₱100,000.00 as civil indemnity, ₱100,000.00 as moral damages, and ₱100,000.00 as exemplary damages with interest at the rate of six percent (6%) per annum computed from the finality of this judgment until fully paid.

SO ORDERED.

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

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[35] An Act Prohibiting the Imposition of Death Penalty in the Philippines.

[36] G.R. No. 202124, April 5, 2016, 788 SCRA 331.

[37] *Id*. at 382-383.

FIRST DIVISION

[G.R. No. 219111. March 12, 2018]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **NELSON NUYTE *y* ASMA,** *accused-appellant.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; NOT ADVERSELY AFFECTED BY DELAY IN REPORTING AN INCIDENT OF RAPE.— "[D]elay in reporting rape incidents, in the face of threats of physical violence, cannot be taken against the victim because delay in reporting an incident of rape is not an indication of a fabricated charge and does not necessarily cast doubt on the credibility of the complainant."

2. CRIMINAL LAW; REVISED PENAL CODE; RAPE; TENACIOUS RESISTANCE AGAINST RAPE IS NOT REQUIRED.— As to appellant's claim that there was no resistance exhibited by "AAA" before and during the incidents since they had an amorous relation, the same cannot be taken in his favor. "Tenacious resistance against rape is not required; neither is a determined or a persistent physical struggle on the part of the victim necessary. x x x Rape through intimidation includes the moral kind such as the fear caused by threatening the girl with a knife or pistol." In the case at bar, appellant's act of pointing a knife at "AAA" while doing his dastardly acts easily cowed the latter into submission.

3. ID.; ID.; ID.; BEING SWEETHEARTS DOES NOT NEGATE THE COMMISSION OF RAPE.— The "sweetheart theory" claimed by appellant is futile. It was never substantiated by the evidence on record. The only evidence adduced to show such relationship were his testimony and that of his wife. The alleged love letter supposedly written by "AAA" was never presented in court. Thus, other than his self-serving assertion and that of his wife, which were rightly discredited by the trial court, nothing supported his claim that he and "AAA" were indeed lovers. As the Court emphasized in *People v. Gito* "being sweethearts does not negate the commission of rape because such fact does not give appellant license to have sexual

intercourse against her will and will not exonerate him from the criminal charge of rape. Being sweethearts does not prove consent to the sexual act."

4. **ID.; ID.; ID.; EVERY CHARGE OF RAPE IS A SEPARATE AND DISTINCT CRIME AND EACH MUST BE PROVED BEYOND REASONABLE DOUBT.—** "AAA's" bare statements that appellant repeated what he had done on her previously were not enough to establish beyond reasonable doubt the incidents subject of Criminal Case Nos. FC-00-781, FC-00-784 and FC-00-785. Said declarations were mere general conclusions. The prosecution must endeavor to present in detailed fashion the manner by which each of the crimes was committed. "[E]very charge of rape is a separate and distinct crime and each must be proved beyond reasonable doubt." There is no reason why the foregoing principle should not be applied in the aforementioned cases. Prescinding therefrom, appellant should be acquitted in these cases.

5. **REMEDIAL LAW; CRIMINAL PROCEDURE; PROSECUTION OF OFFENSES; INFORMATION; THE DESIGNATION OF THE OFFENSE IS NOT CONTROLLING BUT THE RECITAL OF THE FACTS DESCRIBING HOW THE OFFENSE WAS COMMITTED.—** Anent the incidents that transpired on May 6, 2004 and May 3, 2004 subject of Criminal Case Nos. FC-00-782 and FC-00-783, respectively, the designation of the offense in the Information was for violation of Section 5(b) of RA7610 x x x. A cursory reading of the two Informations reveals with pristine clarity that each contained elements of both crimes of rape defined under Article 266-A of the Revised Penal Code and of child abuse defined and penalized under Section 5(b) of RA 7610. However, the offender cannot be accused of both crimes for the same act without traversing his right against double jeopardy. In *People v. Abay*, it was explained that if the victim is 12 years or older, as in this case, the offender should be charged with either sexual abuse under Section 5(b) of RA 7610 or rape. x x x As elucidated in *People v. Abay* and *People v. Pangilinan*, in such instance, the court must examine the evidence of the prosecution, whether it focused on the specific force or intimidation employed by the offender or on the broader scope of coercion or influence to have carnal knowledge with the victim." In the present case, the evidence of the prosecution

in no uncertain terms focused on the force or intimidation employed by appellant against "AAA" under Article 266-A (1)(a) of the RPC. The prosecution, through the steadfast declaration of "AAA", was able to establish that the appellant forced her to lie down on a grassy ground and, at knifepoint, inserted his penis into her vagina. The testimony of "AAA" pertaining to the May 3, 2004 and May 6, 2004 incidents subject of Criminal Case Nos. FC-00-782 and FC-00-783 x x x established beyond reasonable doubt the elements of rape, to wit: appellant had carnal knowledge of "AAA" through force and intimidation, and without her consent and against her will. Moreover, it is settled that the designation of the offense is not controlling but the recital of the facts describing how the offense was committed. Here, the Informations in Criminal Case No. FC-00-782 and Criminal Case No. FC-00-783 clearly charged appellant with rape. Thus, he cannot claim denial of his right to be informed of the nature and cause of the accusation and to fully defend himself. Appellant therefore, should be held guilty of rape under Article 266-A(1)(a) of the RPC and sentenced to *reclusion perpetua* instead of violation of Section 5(b)of RA 7610.

6. CRIMINAL LAW; REVISED PENAL CODE; RAPE; QUALIFIED BY THE USE OF A DEADLY WEAPON; PENALTY IN CASE AT BAR.— Pursuant to Article 266-B of the RPC, whenever the crime of rape is committed with the use of deadly weapon, the penalty shall be *reclusion perpetua* to death. The Information in Criminal Case No. FC-00-780 specifically alleged the use of a knife, a bladed weapon, in the commission of the rape. The prosecution duly proved this allegation from the testimony of "AAA". Under the aforesaid Article, the use of a deadly weapon qualified the rape so that the imposable penalty is *reclusion perpetua* to death. Since the two penalties are indivisible, Article 63 of the RPC finds application in that, when there are neither mitigating nor aggravating circumstances in the commission of a deed, the lesser penalty shall be imposed. In the case at bar, there was no other aggravating circumstance alleged in the Information and proven during the trial, hence, the penalty of *reclusion perpetua* imposed on appellant by the trial court and affirmed by the appellate court is proper.

APPEARANCES OF COUNSEL

The Solicitor General for plaintiff-appellee.
Public Attorney's Office for accused-appellant.

D E C I S I O N

DEL CASTILLO, *J.*:

Challenged in this appeal is the September 25, 2014 Decision[1] of the Court of Appeals (CA) in CA-G.R. CR-HC No. 05409 which affirmed the December 9, 2011 Decision[2] of the Regional Trial Court (*RTC*) of Legazpi City, Branch 8, finding appellant Nelson Nuyte *y* Asma (Nuyte) guilty beyond reasonable doubt of one count of rape and five counts of violation of Section 5(b) of Republic Act (RA) No. 7610, as amended.[3]

The Antecedent Facts

Appellant was charged in six separate Informations with one count of rape under Article 266-A of the Revised Penal Code (RPC) docketed as Criminal Case No. FC-00-780, and five counts of violation of Section 5(b) of RA 7610 docketed as Criminal Case Nos. FC-00-781 to FC-00-785 inclusive, before the RTC of Legazpi City, Branch 8.

The Informations read as follows:

Criminal Case No. FC-00-780 – Rape

That on April 10, 2004 at more or less 12:00 o'clock noon, x x x Province of Albay, Philippines, and within the jurisdiction of this Honorable Court, the above named accused, with lewd and unchaste design, thru force, threat and intimidation, armed with a knife, did

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[1] CA *rollo*, pp. 82-93; penned by Associate Justice Samuel H. Gaerlan and concurred in by Presiding Justice Andres B. Reyes, Jr. (now a member of this Court) and Associate Justice Apolinario D. Bruselas, Jr.

[2] Records, Crim. Case No. FC-00-780, pp. 180-195; penned by Judge Isabelo T. Rojas.

[3] SPECIAL PROTECTION OF CHILDREN AGAINST CHILD ABUSE, EXPLOITATION AND DISCRIMINATION ACT.

then and there willfully, unlawfully and feloniously have sexual intercourse with "AAA",[4] 14 years old against her will and consent, to her damage and prejudice.

ACTS CONTRARY TO LAW.[5]

Criminal Case No. FC-00-781 – Violation of RA 7610

That on April 12, 2004 at more or less 4:00 o'clock in the afternoon, x x x Province of Albay, Philippines, and within the jurisdiction of this Honorable Court, the above named accused, with lewd and unchaste design, by means of intimidation, coercion, influence and other consideration, did then and there willfully, unlawfully and feloniously have sexual intercourse with "AAA", x x x 14 years old, x x x against her will and consent, act which debased and degraded her intrinsic worth and dignity as a human being, to her damage and prejudice.

ACTS CONTRARY TO LAW.[6]

Criminal Case No. FC-00-782 – Violation of RA 7610

That on May 6, 2004 at more or less 7:00 o'clock in the morning, x x x Province of Albay, Philippines, and within the jurisdiction of this Honorable Court, the above named accused, with lewd and unchaste design, by means of intimidation, coercion, influence and other consideration, did then and there willfully, unlawfully and feloniously have sexual intercourse with "AAA" x x x 14 years old, x x x against her will and consent, act which debased and degraded her intrinsic worth and dignity as a human being, to her damage and prejudice.

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[4] "The identity of the victim or any information which could establish or compromise her identity, as well as those of her immediate family or household members, shall be withheld pursuant to Republic Act No. 7610, An Act Providing for Stronger Deterrence And Special Protection Against Child Abuse, Exploitation And Discrimination, Providing Penalties for its Violation, And for Other Purposes; Republic Act No. 9262, An Act Defining Violence Against Women And Their Children, Providing For Protective Measures For Victims, Prescribing Penalties Therefor, And for Other Purposes; and Section 40 of A.M. No. 04-10-11-SC, known as the Rule on Violence against Women and Their Children, effective November 15, 2004." *People v. Dumadag*, 667 Phil. 664, 669 (2011).

[5] Records (Crim. Case No. FC-00-780), p. 1.

[6] Records (Crim. Case No. FC-00-781), p. 1.

ACTS CONTRARY TO LAW.[7]

Criminal Case No. FC-00-783 – Violation of RA 7610

That on May 3, 2004 at more or less 5:00 o'clock in the afternoon, x x x Province of Albay, Philippines, and within the jurisdiction of this Honorable Court, the above named accused, with lewd and unchaste design, by means of intimidation, coercion, influence and other consideration, did then and there willfully, unlawfully and feloniously have sexual intercourse with "AAA", x x x 14 years old, x x x against her will and consent, act which debased and degraded her intrinsic worth and dignity as a human being, to her damage and prejudice.

ACTS CONTRARY TO LAW.[8]

Criminal Case No. FC-00-784 – Violation of RA 7610

That on April 19, 2004 at more or less 7:00 o'clock in the morning, x x x Province of Albay, Philippines, and within the jurisdiction of this Honorable Court, the above named accused, with lewd and unchaste design, by means of intimidation, coercion, influence and other consideration, did then and there willfully, unlawfully and feloniously have sexual intercourse with "AAA", x x x 14 years old, x x x against her will and consent, act which debased and degraded her intrinsic worth and dignity as a human being, to her damage and prejudice.

ACTS CONTRARY TO LAW.[9]

Criminal Case No. FC-00-785 – Violation of RA 7610

That on April 14, 2004 at more or less 12:00 x x x noon, x x x Province of Albay, Philippines, and within the jurisdiction of this Honorable Court, the above named accused, with lewd and unchaste design, by means of intimidation, coercion, influence and other consideration, did then and there willfully, unlawfully and feloniously have sexual intercourse with "AAA", x x x 14 years old, x x x against her will and consent, act which debased and degraded her intrinsic worth and dignity as a human being, to her damage and prejudice.

ACTS CONTRARY TO LAW.[10]

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[7] Records (Crim. Case No. FC-00-782), p. 1.

[8] Records (Crim. Case No. FC-00-783), p. 1.

[9] Records (Crim. Case No. FC-00-784), p. 1.

[10] Records (Crim. Case No. FC-00-785), p. 1.

Appellant pleaded not guilty to the charges.

The trial court summarized the prosecution's version of the incidents in the following manner:

> ["AAA"] is the youngest in a brood of three. Her eldest brother works in a junkshop, while her elder brother usually stays home because of a lingering illness. Her parents work in a mountainous area in x x x Albay. When nobody else can, ["AAA"] usually assumes the obligation to tether the cows (4 heads of them) in the morning and untether them in the afternoon after [arriving] from school.
>
> On April 10, 2004 at about 12:00 noon, after tethering the cows, ["AAA"] heard a clapping [sound]. On her way back home, appellant [Nuyte] suddenly appeared, grabbed her by the hair, held her up and at knife point, warned her against telling her mother, or else he will kill them both. Nuyte forced ["AAA"] to the ground and started kissing her chest. He removed her undergarment and his, mounted her and inserted his penis into her vagina. After ejaculating, he wiped his penis, wore back his underwear and left.
>
> The same act was committed under the same instance and in the same place on April 12, 2004 at 4:00 o'clock in the afternoon, and on April 19, 2004 at 7:00 o'clock in the afternoon.[11] ["AAA"] tried to make an outcry, but because of the distance of the *situs criminis* from the neighboring houses, nobody heard her.
>
> On May 3, 2004 at 5:00 o'clock in the afternoon and on May 6, 2004 at 7:00 o'clock in the morning, Nuyte again succeeded in carrying out his dastardly acts against ["AAA"] also at knifepoint. [This time, "AAA" broke] her silence and finally decided to divulge everything to her mother, notwithstanding [appellant's] threat of physical harm against her and her mother.
>
> On May 12, 2004, the parents of ["AAA", "BBB" and "CCC", who were] in a coconut plantation [attending] to the copra at the kiln[,] were fetched by ["DDD"], sister of Rowena Nuyte, wife of the [appellant], allegedly because ["AAA"] was raped by Nuyte. The spouses rushed home and saw ["AAA"] crying and [thereupon] revealed to them about the rape committed by Nuyte. They repaired to the house of Nuyte, but the latter was already nowhere to be found. They thus decided to make a report to the police and submitted ["AAA"]

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[11] Should be in the morning, TSN, p. 10, August 17, 2010.

for physical examination, whereupon ["AAA"] was found to have multiple healed deep and superficial [hymenal] lacerations x x x.[12]

The evidence for the defense was also summarized by the trial court as follows:

x x x [N]uyte had been living in x x x Albay for thirty years already. [His mother-in-law] and the grandfather of ["AAA" were] siblings. x x x ["AAA"] and [appellant's wife], Rowena, would usually exchange conversations when the latter visits the Nuyte household. The family of ["AAA"] owns a sari-sari store which [Nuyte] also frequents to buy some stuff. It was only [in] December 2003 that Nuyte met ["AAA"] when the latter introduced herself to him. This meeting was followed by regular exchange of tete-a-tete which eventually blossomed into a relationship which lasted for about a year. Even prior thereto, Rowena already observed the budding closeness between her husband and ["AAA"]. Her doubts were confirmed when she discovered from the wallet of Nuyte the letter of ["AAA"] particularly telling him — "*Kahit wala ka rito mahal na mahal kita. Kahit na laglagan na ako di pa rin kita malilimutan*."

Rowena showed the letter to ["EEE"], brother of the father of ["AAA"], but after reading the letter, ["EEE"] told them that he cannot do anything about it because ["AAA's"] parents were still in the mountain, so Rowena requested ["DDD"] to fetch them.

The parents of ["AAA"] proceeded directly to the residence of Nuyte. ["BBB"], the father of ["AAA"], was particularly very mad and started hacking the banana plants nearby. Because Nuyte did not go out of his house, ["BBB"] decided to leave.

The discovery of ["AAA's"] letter fomented domestic strife between Nuyte and his wife. ["AAA"] tried to talk to him about the letter, but [Nuyte] advised her to better stay home to avoid adding fuel to the fire. That was the last [time] that they talked. To the mind of the accused, these cases were [filed because] the parents of ["AAA"] could not accept what had happened to their daughter.

Theirs was a consensual sex, Nuyte admitted. In fact their sexual congress happened [several times], usually at noontime in the same grassy place where ["AAA"] tethers the cows x x x, around 50 to 60

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[12] Records (Crim. Case No. FC-00-780), pp. 185-186.

meters away from the residence of Nuyte. She was then only 14 years old and he was 29. Nuyte recalls that in the letter, ["AAA"] was begging him not to leave as she was about to receive the sacrament of confirmation. Their sexual relations bore a child, but it was aborted when ["AAA"] was undergoing Citizens Army Training.[13]

Ruling of the Regional Trial Court

On December 9, 2011, the RTC found appellant guilty as charged, ruling in this wise:

> ALL THE FOREGOING CONSIDERED, this Court entertains no doubt that the prosecution had established that the accused raped the private complainant under the circumstances mentioned in Article 266-A paragraph 1(a) of the Revised Penal Code and that he violated Sec. 5(b) of Republic Act 7610. Accordingly, accused NELSON NUYTE is hereby found GUILTY beyond reasonable doubt in Criminal Case No. FC-00-780 and sentenced to suffer the penalty of *reclusion perpetua*. He is likewise found GUILTY of five (5) counts of violation of Section 5(b) of Republic Act No. 7610 and likewise meted the penalty of imprisonment ranging from 8 years and 1 day of *prision mayor* in its medium period as minimum to 17 years, 4 months and 1 day of *reclusion temporal* in its maximum period as maximum, subject to the provision of Article 70 of the Revised Penal Code.
>
> Consistent with relevant jurisprudence, Nelson Nuyte is likewise ordered to indemnify the private offended party, ["AAA"], the sum of Php75,000.00 for each case as civil indemnity; Php75,000.00 as moral damages and Php30,000.00 as exemplary damages.
>
> SO ORDERED.[14]

The trial court found conclusive evidence that on April 10, 2004, "AAA" was raped at knifepoint with the use of force and intimidation against her will. Thus, it convicted appellant of rape in Crim. Case No. FC-00-780. In addition, the court took into consideration appellant's admission of having sexual intercourse with "AAA" several times. Thus, it deemed "AAA" as a child exploited and subjected to sexual abuse under Section

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[13] Records (Crim. Case No. FC-00-780), pp. 186-187.

[14] Records (Crim. Case No. FC-00-780), pp. 194-195.

5(b) of RA 7610 and convicted appellant of five counts of violation of Section 5(b) of RA 7610.

Insisting on his innocence by invoking love affair as his defense, appellant elevated the judgment of conviction to the CA *via* a Notice of Appeal.

Ruling of the Court of Appeals

On September 25, 2014, the CA affirmed appellant's conviction in the six cases, *viz.*:

> WHEREFORE, premises considered, the assailed Decision is hereby AFFIRMED.
>
> SO ORDERED.[15]

The CA was not persuaded by appellant's contentions that no force or intimidation was actually employed on the victim; that it was impossible for "AAA" to have been sexually abused considering that her classes began in the morning and ended in the afternoon and that she did not suffer any physical injury though the incident happened on grassy ground. The CA did not accord weight to his contention that the inaction of "AAA's" mother and the delay in the disclosure of the incidents affected "AAA's" credibility.

Hence, this appeal.

In our Resolution[16] dated September 2, 2015, we required the parties to submit their respective supplemental briefs if they so desired within 30 days from notice. The parties filed their separate manifestations that they were no longer filing supplemental briefs; instead, they were adopting their briefs filed before the CA.[17]

Our Ruling

The appeal is partly granted.

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[15] CA *rollo*, p. 93.

[16] *Rollo*, p. 19.

[17] *Id.* at 20-31.

In assailing his conviction, appellant harps on the credibility of "AAA" and her mother, contending that it was unnatural for the mother not to take prompt action upon learning the fate suffered by her daughter; that it was impossible for "AAA" to have been at the crime scene on April 10, 2004, April 19, 2004, and May 3, 2004 considering that these were school days; the absence of physical injury on "AAA's" body was enough proof that she was not forced to lie on a grassy ground; and, her delayed disclosure of the incidents was just an act to protect her relationship with him.

Appellant's arguments are untenable.

Assuming that "AAA's" mother did not show any sign of outrage upon learning of her daughter's fate, such was not of relevant consideration for being extraneous. It did not refer to the central fact of the crime and was not an element thereof. Besides, it is well-settled that "different people react differently to a given situation or type of situation."[18] Neither did the delay in disclosing the incidents to her mother undermine the credibility of "AAA". "[D]elay in reporting rape incidents, in the face of threats of physical violence, cannot be taken against the victim because delay in reporting an incident of rape is not an indication of a fabricated charge and does not necessarily cast doubt on the credibility of the complainant."[19]

Appellant's contention that it was quite impossible for "AAA" to have attended her afternoon classes after having been sexually abused fails to persuade. It has been consistently ruled that "no standard form of behavior can be anticipated of a rape victim following her defilement, particularly a child who could not be expected to fully comprehend the ways of an adult. People react differently to emotional stress and rape victims are no different from them."[20]

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[18] *People v. Tuazon*, 585 Phil. 119, 131 (2008).

[19] *People v. Rusco*, G.R. No. 212157, September 28, 2016, 804 SCRA 346, 357.

[20] *People v. Crespo*, 586 Phil. 542, 566 (2008).

Neither did the absence of physical injury on "AAA" taint the veracity of her testimony. "Infliction of physical injury is not an essential element of rape."[21]

As to appellant's claim that there was no resistance exhibited by "AAA" before and during the incidents since they had an amorous relation, the same cannot be taken in his favor. "Tenacious resistance against rape is not required; neither is a determined or a persistent physical struggle on the part of the victim necessary. x x x Rape through intimidation includes the moral kind such as the fear caused by threatening the girl with a knife or pistol."[22] In the case at bar, appellant's act of pointing a knife at "AAA" while doing his dastardly acts easily cowed the latter into submission.

The "sweetheart theory" claimed by appellant is futile. It was never substantiated by the evidence on record. The only evidence adduced to show such relationship were his testimony and that of his wife. The alleged love letter supposedly written by "AAA" was never presented in court. Thus, other than his self-serving assertion and that of his wife, which were rightly discredited by the trial court, nothing supported his claim that he and "AAA" were indeed lovers. As the Court emphasized in *People v. Gito*[23] "being sweethearts does not negate the commission of rape because such fact does not give appellant license to have sexual intercourse against her will and will not exonerate him from the criminal charge of rape. Being sweethearts does not prove consent to the sexual act."

This Court finds no reason to reverse appellant's conviction for rape in Criminal Case No. FC-00-780. "AAA" categorically testified that on April 10, 2004, the appellant had carnal knowledge of her against her will and consent, *viz.*:

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[21] *People v. Teczon*, 586 Phil. 740, 746 (2008).

[22] *People v. Ballacillo*, G.R. No. 201106, August 3, 2016, 799 SCRA 408, 421.

[23] G.R. No. 199397, September 14, 2016, 803 SCRA 75, 89 (2016).

PROS. NEBRES:

q- Now, madam witness, will you please tell us where were you on April 10, 2004 at about 12 o'clock noon if you can still recall?
a- At x x x Albay.

q- Now, do you recall of an incident that happened on that particular date and time?
a- Yes.

q- Will you please tell this Honorable Court that incident?
a- On that date and time[,] I was tending a cow [then] I heard a clapping [sound].

q- And what happened?
a- [When] I was on my way home[, appellant]suddenly [appeared].

q- What happened next?
a- He suddenly grab[bed] my hair, held me x xx and poke[d] a knife [at] me.

q- What else happened if any?
a- He told me not to tell my mother otherwise he will [kill us both].

q- x x x x x x x x x

a- He forcibly [laid] me x x x on the grassy area and again told me not to tell my parents about it.

q- After you were forcibly laid on the grass what happened?
a- [H]e started kissing x x x my chest and removed my undergarment.

q- After removing your undergarment what happened x x x if any?
a- [H]e also removed his garments and his brief and then mounted x x x me.

q- [W]hat happened next, if any?
a- [H]e inserted his penis inside my vagina.

x x x x x x x x x

q- How long did he [insert] his penis inside your vagina?
a- I cannot tell x x x.

q- What happened after the accused inserted his penis into your vagina?
a- He ejaculated and wipe[d] his private part.[24]

With regard to the alleged incidents on April 12, 14 and 19, 2004, subject matter of Criminal Case Nos. FC-00-781, FC-00-784 and FC-00-785, respectively, the Court finds "AAA's" testimony to be inadequate and lacking specific details on how they were accomplished.

Anent Criminal Case No. FC-00-781 (April 12, 2004 incident), the testimony of "AAA" consisted merely of the following:

q- Now, aside from this incident that happened on April 10, 2004 do you recall of any incident that happened to you?
a- Yes, on April 12, 2004.

q- What time?
a- 4:00 p.m.

q- Will you please tell this Honorable Court what happened to you?
a- The same situation while I am [sic] tending to our cow at x x x Albay.

q- What happened next, if any?
a- Nelson Nuyte again pulled me [towards] the grassy area and performed the same act he did before.

x x x x x x x x x

q- What did you do, if any, x x x?
a- I tried to ask for help but nobody hear[d] my plea because the houses were far from that site.

q- How did you ask for help?
a- I shouted for help.

q- Was there any person who responded to your request for help?
a- Nobody.[25]

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[24] TSN, August 17, 2010, pp. 6-8.

[25] TSN, August 17, 2010, pp. 9-10.

Similarly, the totality of "AAA's" declaration regarding Criminal Case No. FC-00-785 pertaining to the April 14, 2004 incident is as follows:

q- Now, aside from the [April 10, 2004 and April 12, 2004] incidents that you mentioned[,] x x x was there any other incident x x x?
a- April 14, 2004.

q- Could you still recall the time?
a- 12:00 noon.

q- Now, please tell this Honorable Court what happened to you on that date and time?
a- He pursue the same act against my person on the process as before [sic].

q- What action did you do, if any, for the third time that the accused made [sic]?
a- He always warned me.[26]

Likewise, with respect to Criminal Case No. FC-00-784 (April 19, 2004), "AAA" testified as follows:

q- Aside from the April 10, April 12 and then April 14, 2004 [incidents,] was there any other incident that happened to you?
a- April 19, 7:00 a.m.

q- What year?
a- 2004.

q- Can you still recall the incident x x x?
a- Yes.

q- And please tell this Honorable Court the place of the incident?
a- The same situation, in the grassy area he performed the same acts against my person.

q- Will you please tell this court what did you do when the incident happened?
a- He always poke[d] a knife that's why I [did not] inform my parents about it.[27]

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[26] TSN, August 17, 2010, p. 10.

[27] TSN, August 17, 2010, pp. 10-11.

"AAA's" bare statements that appellant repeated what he had done on her previously were not enough to establish beyond reasonable doubt the incidents subject of Criminal Case Nos. FC-00-781, FC-00-784 and FC-00-785. Said declarations were mere general conclusions. The prosecution must endeavor to present in detailed fashion the manner by which each of the crimes was committed. "[E]very charge of rape is a separate and distinct crime and each must be proved beyond reasonable doubt."[28] There is no reason why the foregoing principle should not be applied in the aforementioned cases. Prescinding therefrom, appellant should be acquitted in these cases.

Anent the incidents that transpired on May 6, 2004 and May 3, 2004 subject of Criminal Case Nos. FC-00-782 and FC-00-783, respectively, the designation of the offense in the Information was for violation of Section 5(b) of RA 7610, *viz.*:

Criminal Case No. FC-00-782 – Violation of RA 7610

That on May 6, 2004 at more or less 7:00 o'clock in the morning, x x x Province of Albay, Philippines, and within the jurisdiction of this Honorable Court, the above named accused, with lewd and unchaste design, by means of intimidation, coercion, influence and other consideration, did then and there willfully, unlawfully and feloniously have sexual intercourse with "AAA", x x x 14 years old, x x x against her will and consent, act which debased and degraded her intrinsic worth and dignity as a human being, to her damage and prejudice.

ACTS CONTRARY TO LAW.[29]

Criminal Case No. FC-00-783 – Violation of RA 7610

That on May 3, 2004 at more or less 5:00 o'clock in the afternoon, x x x Province of Albay, Philippines, and within the jurisdiction of this Honorable Court, the above named accused, with lewd and unchaste design, by means of intimidation, coercion, influence and other consideration, did then and there willfully, unlawfully and feloniously have sexual intercourse with "AAA", x x x 14 years old,

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[28] *People v. Mercado*, 664 Phil. 747, 752 (2011).

[29] Records (Crim. Case No. FC-00-782), p. 1.

x x x against her will and consent, act which debased and degraded her intrinsic worth and dignity as a human being, to her damage and prejudice.

ACTS CONTRARY TO LAW.[30]

A cursory reading of the two Informations reveals with pristine clarity that each contained elements of both crimes of rape defined under Article 266-A of the Revised Penal Code and of child abuse defined and penalized under Section 5(b) of RA 7610. However, the offender cannot be accused of both crimes for the same act without traversing his right against double jeopardy. In *People v. Abay*,[31] it was explained that if the victim is 12 years or older, as in this case, the offender should be charged with either sexual abuse under Section 5(b) of RA 7610 or rape.

In the two cases under consideration, the victim was 14 years old when the crimes were committed. Following *Abay*, appellant may either be charged with violation of Section 5(b) of RA 7610 or with rape under Article 266-A of the RPC. Here, appellant was charged with violation of Section 5(b) of RA 7610. In the recent case of *People v. Tubillo*[32] it was held that "[a] reading of the information would show that the case at bench involves both the elements of Article 266-A(1) of the RPC and Section 5(b) of RA 7610. As elucidated in *People v. Abay* and *People v. Pangilinan,* in such instance, the court must examine the evidence of the prosecution, whether it focused on the specific force or intimidation employed by the offender or on the broader scope of coercion or influence to have carnal knowledge with the victim."

In the present case, the evidence of the prosecution in no uncertain terms focused on the force or intimidation employed by appellant against "AAA" under Article 266-A (1)(a) of the RPC. The prosecution, through the steadfast declaration of "AAA", was able to establish that the appellant forced her to

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[30] Records (Crim. Case No. FC-00-783), p. 1.

[31] 599 Phil. 390 (2009).

[32] G.R. No. 220718, June 21, 2017.

lie down on a grassy ground and, at knifepoint, inserted his penis into her vagina.

The testimony of "AAA" pertaining to the May 3, 2004 and May 6, 2004 incidents subject of Criminal Case Nos. FC-00-782 and FC-00-783 was as follows:

q- Now, aside from these four incidents that happened to you on April 10, April 12, April 14 and 19, 2004, was there any other incident that happened to you [involving] the accused?

Witness:

Yes, May 3, 2004, 3:00 p.m.

PROS. NEBRES:

q- Can you tell this Honorable Court what happened?
a- x x x he pulled me to another site farther from the first site but he [had] with him that knife he poked on me.

x x x x x x x x x

q- Now, after you were brought to the other site x x x by the accused what happened?
a- He raped me again.
q- Will you tell this Honorable Court how the accused rape[d] you?
a- By removing my shorts and undergarments and lay[ing] me down [on] the grassy area.

q- Now, did you follow the instruction to [lie] down?
a- It was done forcibly against me.

x x x x x x x x x

q- What happened after you were forcibly requested to [lie] down?
a- He mounted x x x me, removed his undergarment.

q- After removing your underwear and x x x his garments what happened?
a- He inserted his penis inside my vagina.

q- After the accused inserted his penis inside your vagina what happened?
a- After performing his acts he [wore] back his garments and left.

q- Please tell this Honorable Court how long the penis was inserted [into] your vagina?
a- I cannot tell.

q- Did you feel [anything] unusual when the accused inserted his penis inside your vagina?
a- Yes, sir.

q- What did you feel?
a- Painful.

q- Now, aside from this x x x incident, do you recall of any other incident done by the accused?
a- Yes.

x x x x x x x x x

q- Please tell this Honorable Court of the date and time?
a- May 6, 2004, 7:00 a.m.

x x x x x x x x x

q- Please tell us how this incident happened?
a- He pulled me [towards] that area while a knife was poked on my person.

q- What happened in that area where you were pulled by the accused x x x?
a- He raped me again.

q- Please tell us how the accused rape[d] you x x x?
a- He forcibly [laid] me down[,] remov[ed] his garments and insert[ed] his penis inside my vagina.

x x x x x x x x x

q- Did you feel anything after the accused inserted his penis inside your vagina?
a- Yes, sir.

q- What did you feel?
a- It was painful.[33]

The foregoing narration established beyond reasonable doubt the elements of rape, to wit: appellant had carnal knowledge

[33] TSN, August 17, 2010, pp. 11-15.

of "AAA" through force and intimidation, and without her consent and against her will.

Moreover, it is settled that the designation of the offense is not controlling but the recital of the facts describing how the offense was committed. Here, the Informations in Criminal Case No. FC-00-782 and Criminal Case No. FC-00-783 clearly charged appellant with rape. Thus, he cannot claim denial of his right to be informed of the nature and cause of the accusation and to fully defend himself.[34]

Appellant therefore, should be held guilty of rape under Article 266-A(1)(a) of the RPC and sentenced to *reclusion perpetua* instead of violation of Section 5(b) of RA 7610.

The penalty and pecuniary liabilities

Pursuant to Article 266-B of the RPC, whenever the crime of rape is committed with the use of deadly weapon, the penalty shall be *reclusion perpetua* to death. The Information in Criminal Case No. FC-00-780 specifically alleged the use of a knife, a bladed weapon, in the commission of the rape. The prosecution duly proved this allegation from the testimony of "AAA". Under the aforesaid Article, the use of a deadly weapon qualified the rape so that the imposable penalty is *reclusion perpetua* to death. Since the two penalties are indivisible, Article 63 of the RPC finds application in that, when there are neither mitigating nor aggravating circumstances in the commission of a deed, the lesser penalty shall be imposed. In the case at bar, there was no other aggravating circumstance alleged in the Information and proven during the trial, hence, the penalty of *reclusion perpetua* imposed on appellant by the trial court and affirmed by the appellate court is proper.

As to the pecuniary liabilities, the Court upholds the award of ₱75,000.00 as civil indemnity since this is mandatory upon the finding of the fact of rape. The award of ₱75,000.00 as moral damages is likewise upheld as the same is automatically granted in rape cases without need of further proof other than

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[34] See *People vs. Escosio*, 292-A Phil. 606 (1993).

the commission of the crime. However, the award of exemplary damages is increased to ₱75,000.00 following prevailing jurisprudence.[35] Likewise, interest at the rate of 6% *per annum* shall be imposed on all damages awarded from the date of finality of this Decision until fully paid.

The same penalty and pecuniary liabilities are imposed on appellant in Criminal Case Nos. FC-00-782 and FC-00-783.

WHEREFORE, the appeal is **PARTLY GRANTED**. The Decision dated September 25, 2014 of the Court of Appeals in CA-G.R. CR-HC No. 05409 is **AFFIRMED with MODIFICATIONS**:

1. In Criminal Case Nos. FC-00-780, FC-00-782, and FC-00-783, the appellant is found **GUILTY** of rape and sentenced to suffer the penalty of *reclusion perpetua* for each count. He is **ORDERED** to pay "AAA" ₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages, and ₱75,000.00 as exemplary damages, for each count, all with interest of 6% *per annum* from finality of this Decision until fully paid.

2. Appellant is **ACQUITTED** in Criminal Case Nos. FC-00-781, FC-00-784 and FC-00-785 for insufficiency of evidence.

SO ORDERED.

Leonardo-de Castro,[*] *Bersamin,*[**] and *Tijam, JJ.,* concur.

Sereno, C.J., on leave.

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[35] *People v. Jugueta*, G.R. No. 202124, April 5, 2016, 788 SCRA 331.

[*] Designated as Acting Chairperson per Special Order No. 2540 dated February 28, 2018.

[**] Designated as additional member per October 18, 2017 raffle vice J. Jardeleza who recused due to prior action as Solicitor General.

THIRD DIVISION

[G.R. No. 228373. March 12, 2018]

PEOPLE OF THE PHILIPPINES, *petitioner, vs.* **PO1 JOHNNY K. SULLANO,** *respondent.*

SYLLABUS

1. CRIMINAL LAW; REPUBLIC ACT NO. 9165 (THE COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002); SECTION 15, ARTICLE II; ONLY APPREHENDED OR ARRESTED PERSONS FOUND TO BE POSITIVE FOR USE OF ANY DANGEROUS DRUG MAY BE PROSECUTED UNDER THE PROVISION.— At the heart of this petition is the question of whether Section 15, Article II of R.A. No. 9165 requires the apprehension or arrest of a person for the latter to be considered as violating the provision. Taking into consideration the text of the law itself, general criminal law principles, and previous jurisprudential interpretation, the answer is in the affirmative, given the specific facts of this case. x x x The cardinal rule in statutory construction is the plain-meaning rule. *Verba legis non est recendendum* — "from the words of a statute there should be no departure." When the statute is clear, plain, and free from ambiguity, the words should be given its literal meaning and applied without attempted interpretation. Especially for penal provisions, it is not enough to say that the legislature intended to make a certain act an offense, the legislature must use words which in some way express that intent. An analysis of the construction of the sentence yields no other conclusion. Section 15 is unambiguous: the phrase "apprehended or arrested" immediately follows "a person," thus qualifying the subject person. It necessarily follows that only apprehended or arrested persons found to be positive for use of any dangerous drug may be prosecuted under the provision. Moreover, the elementary rule in statutory construction that the express mention of one person, thing, act, or consequence excludes all others, also known as *expressio unius est exclusion alterius*, is relevant and applicable. This rule applies where the very terms of the statute expressly limit it to certain matters; thus it may not, by interpretation or construction, be extended

to others. The legislature would not have made specified enumerations in a statute had the intention been not to restrict its meaning and to confine its terms to those expressly mentioned. In the provision in question, Congress itself confined and restricted the liability arising from use of dangerous drugs to those who were apprehended or arrested if charged with a violation of Section 15.

2. **REMEDIAL LAW; CRIMINAL PROCEDURE; PROSECUTION OF OFFENSES; INFORMATION; MUST BE COMPLETE AND FULLY STATE THE ELEMENTS OF THE SPECIFIC OFFENSE ALLEGED TO HAVE BEEN COMMITTED, FOR AN INFORMATION IS A RECITAL OF THE ESSENTIALS OF A CRIME, DELINEATING THE NATURE AND CAUSE OF THE ACCUSATION AGAINST THE ACCUSED.—** The information x x x against respondent is straightforward: respondent "wilfully, unlawfully and feloniously use methamphetamine hydrochloride, otherwise known as shabu, which is a dangerous drug and found positive for use, after a confirmatory test." The essential element, *i.e*. the accused was apprehended or arrested, was not specifically alleged. Moreover, nowhere in the information was Section 36 mentioned. Urging the inclusion of Section 36 in accusing the respondent of the crime will deprive the latter of the opportunity to prepare his defense and violate his constitutional right to be informed of the nature and cause of the accusation against him. An information must be complete, fully state the elements of the specific offense alleged to have been committed as an information is a recital of the essentials of a crime, delineating the nature and cause of the accusation against the accused. Convicting an accused of a ground not alleged while he is concentrating his defense against the ground alleged would plainly be unfair and underhanded. This appears to be petitioner's intention here and should not be condoned.

3. **CRIMINAL LAW; POLITICAL LAW; STATUTES; INTERPRETATION OF PENAL STATUTES; ANY CRIMINAL LAW SHOWING AMBIGUITY WILL ALWAYS BE CONSTRUED STRICTLY AGAINST THE STATE AND IN FAVOR OF THE ACCUSED.—** [C]riminal law is rooted in the concept that there is no crime unless a law specifically calls for its punishment. *Nullum crimen poena sine lege*. Another basic criminal law precept important to remember

here is *in dubiis reus est absolvendus* — all doubts should be resolved in favor of the accused. Any criminal law showing ambiguity will always be construed strictly against the state and in favor of the accused. These concepts signify that courts *must not* bring cases within the provision of law that are not clearly embraced by it. An act must be pronounced criminal clearly by the statute prior to its commission. The terms of the statute must clearly encompass the act committed by an accused for the latter to be held liable under the provision.

APPEARANCES OF COUNSEL

Office of the Solicitor General for petitioner.
Maglinte Aragon-Ronquillo & Avila Law Offices for respondent.

D E C I S I O N

GESMUNDO, *J.*:

This is a petition for review on *certiorari* seeking to reverse and set aside the Decision[1] promulgated on June 10, 2016 and Resolution[2] promulgated on November 17, 2016 of the Court of Appeals-Cagayan de Oro City (*CA*) in CA-G.R. SP No. 06247-MIN. The CA affirmed the Order[3] dated March 7, 2014 and Resolution[4] dated April 8, 2014 of the Regional Trial Court of Butuan City, Branch 4 (*RTC*) in Crim. Case No. 16757 which granted the demurrer of evidence of accused PO1 Johnny K. Sullano (*respondent*) and dismissed the case for violation of Section 15, Article II, Republic Act No. 9165 otherwise known as the Comprehensive Dangerous Drugs Act of 2002 *(R.A. No. 9165)* against respondent.

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[1] *Rollo,* pp. 55-61; penned by Associate Justice Oscar V. Badelles with Associate Justices Romulo V. Borja and Ronaldo B. Martin, concurring.

[2] *Id*. at 63-66.

[3] *Id*. at 88-89; penned by Judge Godofredo B. Abul, Jr.

[4] *Id*. at 90.

The Antecedents

On October 16, 2012, Senior Superintendent Nerio T. Bermudo (*P/SSupt Bermudo*), the City Director of the Butuan City Police Office, ordered fifty (50) randomly selected police officers under the Butuan City Police Office to undergo drug testing pursuant to Section 36, Article III of R.A. No. 9165. Among those who underwent testing was respondent, a police officer at Butuan City Police Station 5.

Respondent's urine sample was received on October 17, 2012. According to the Initial Chemistry Report[5] of the Philippine National Police Regional Crime Laboratory Office 13, the test conducted on respondent's urine specimen gave a positive result for the presence of methamphetamine. The confirmatory test[6] on the same specimen completed on November 5, 2012 yielded the same result.

Given the result of the random drug test and confirmatory test, P/SSupt. Bermudo filed a Complaint Affidavit[7] against respondent for violation of Section 15, Article II of R.A. No. 9165. In lieu of a counter-affidavit, respondent filed a Manifestation,[8] wherein he claimed that he voluntarily submitted to the random drug test ordered by P/SSupt. Bermudo; the urine sample he submitted gave a positive result to the presence of methamphetamine; he did not use the dangerous drug but had no means to contest the test's veracity; and he entered into a rehabilitation program with Cocoon Foundation for Substance Abuse. He concluded by pleading for the dismissal of the complaint against him.

Assistant City Prosecutor Isabel Corazon Cabuga-Plaza recommended the dismissal of the complaint through a Resolution[9]

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[5] *Id*. at 100.

[6] *Id*. at 101.

[7] *Id*. at 102.

[8] *Id*. at 103.

[9] *Id*. at 108-109.

dated February 1, 2013.[10] This was reversed by Deputy City Prosecutor Aljay O. Go in an Order[11] dated April 8, 2013, finding probable cause against respondent. Consequently, an information was filed, the delictual allegations of which read:

> That sometime on October 17, 2012 at Butuan City, Philippines and within the jurisdiction of this Honorable Court, the above-named accused not being authorized by law, did then and there wilfully, unlawfully and feloniously use methamphetamine hydrochloride, otherwise known as shabu, which is a dangerous drug and found positive for use, after a confirmatory test.
>
> CONTRARY TO LAW. (Violation of Section 15, Article II of Republic Act No. 9165, as amended)[12]

Respondent pleaded not guilty to the charge. Trial then ensued. After the prosecution rested its case, respondent filed a Demurrer to Evidence.[13]

In his Demurrer to Evidence,[14] respondent argued that the case against him should be dismissed as the State failed to adduce sufficient evidence to prove his guilt beyond reasonable doubt. The essential elements of the crime were not proven as it was never asserted that respondent was apprehended or arrested or actually caught using any dangerous drug.

RTC Ruling

The RTC granted the demurrer to evidence through its order dated March 7, 2014. The RTC relied upon the wording of Sec. 15, Article II of R.A. No. 9165 articulating its reasoning thus:

> It pre-supposes that accused was arrested or apprehended committing a crime and therefore should be subjected to a drug

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[10] The date stated in the resolution is February 1, 2012. However, given the time line of the instant case, it appears that the year should be 2013.

[11] *Rollo*, p. 110.

[12] *Id.* at 111.

[13] *Id*. at 113-117.

[14] *Id*.

examination, considering that this could be alleged as an aggravating circumstance in any criminal case filed against him.

In this case, the accused was never arrested nor apprehended committing an offense. He was only subjected to a random drug examination per directive of the PNP Superior Officer.

It is the opinion of the Court that the accused should not be charged for violation of Section 15, Article II of R.A. 9165, but, should be administratively charged for being a user of prohibited drugs under the other provisions of R.A. 9165.

WHEREFORE, premises considered, the Demurrer to Evidence is granted.

This case is dismissed, for insufficiency of evidence.

The bail bond in the amount of Thirty thousand pesos (₱30,000.00) as evidence per Official Receipt No. 3502863, dated June 20, 2013 is ordered cancelled and released to the bondsman, Mr. Juanito A. Sullano.

SO ORDERED.[15]

Petitioner filed a motion for reconsideration of this RTC order. The same was denied in the resolution dated April 8, 2014, citing that there was no good reason to grant the motion for reconsideration.

CA Ruling

Due to the dismissal of the case, petitioner filed a petition for *certiorari* with the CA, alleging that the RTC committed grave abuse of discretion in granting the demurrer to evidence.

In its decision dated June 10, 2016, the CA was not convinced of petitioner's arguments and denied the petition. The CA ratiocinated:

As can be deduced from the foregoing, the elements to be charged under Section 15 of R.A. 9165 are as follows: 1) a person is apprehended or arrested; 2) the said person was subjected to a drug test; and 3) the person tested positive for use of any dangerous drug after a confirmatory test.

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[15] *Id*. at 88-89.

In the case at bar, the first element for private respondent to be charged under Section 15 of R.A. 9165 is absent. It bears stressing that private respondent was not apprehended nor arrested. As borne by the records, private respondent was subjected to a random drug testing conducted by the PNP Crime Laboratory as directed by P/S Superintendent Bermudo. Accordingly, as correctly pointed out by the trial court, there is no sufficient evidence to charge private respondent for violation of Section 15 of R.A. 9165.

The findings of the trial court also finds support in the recent case of *Dela Cruz v. People*. x x x

In fine, petitioner have failed to show that the trial court capriciously and whimsically exercised its discretion or grossly misapprehended the facts in granting the demurrer to evidence filed by private respondent. Grave abuse of discretion implies such capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction. It is a patent and gross abuse of discretion amounting to an evasion of 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 and hostility. Absent any showing that trial court abused its discretion, much less gravely, the instant petition must be dismissed.[16]

The *fallo* of the decision reads:

WHEREFORE, the petition is DISMISSED. The Order dated March 7, 2014 and Resolution dated April 8, 2014 of the Regional Trial Court, Branch 4, Butuan City, in Criminal Case No. 16757 [are] AFFIRMED.

SO ORDERED.[17]

Petitioners filed a motion for reconsideration but the same was denied for lack of merit.

Hence, this petition, raising the sole issue of — whether the CA committed a reversible error when it held that Hon. Godofredo B. Abul, Jr., in his capacity as the Presiding Judge of the Butuan City RTC, Branch 4, did not gravely abuse

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[16] *Id*. at 58-60.

[17] *Id*. at 60.

his discretion, amounting to lack or excess of jurisdiction, in granting respondent's demurrer to evidence.[18]

Petitioner contends that the CA erred in interpreting R.A. No. 9165, instead insisting that Section 15, Article II of R.A. No. 9165 does not exclusively apply to circumstances where the accused was apprehended or arrested. To petitioner, once the results of the mandatory drug test showed a positive result, the person tested may be criminally prosecuted under Section 15, Article II of R.A. No. 9165. In the instant case, since there was an order for respondent to undergo mandatory drug testing, and the initial and confirmatory tests gave a positive result, he was properly charged with violating Section 15, Article II of R.A. No. 9165 in relation to Sec. 36, Article III of R.A. No. 9165.

Petitioner maintains that under Section 36, Article II of R.A. No. 9165, arrest or apprehension of the accused is not required prior to the submission to drug examination. Random drug tests are allowed under certain circumstances, which include the instant case. Petitioner further insists that the case of *Dela Cruz v. People of the Philippines*[19] (*Dela Cruz)* does not preclude the application of Section 36, Article III of R.A. No. 9165 in relation to Section 15, Article II of R.A. No. 9165. To petitioner, the narrow interpretation of Section 15 will result in an absurd situation where an individual, found to be positive for the use of dangerous drugs through a random mandatory drug test, may not be penalized.

Petitioner further claims grave abuse of discretion on the part of the RTC judge when the latter found that respondent should only be held administratively liable for his conduct. Petitioner also points out that respondent failed to comply with Section 54, Article VIII of R.A. No. 9165, and respondent was likewise not exempt from criminal liability under Section 55, Article VIII of R.A. No. 9165 for his failure to justify his exemption.

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[18] *Id*. at 31.

[19] 739 Phil. 578 (2014).

Finally, petitioner avers that respondent is not placed in double jeopardy as the instant case is an exception to the rule, there being grave abuse of discretion amounting to excess or lack of jurisdiction on the part of the trial judge.

On the other hand, respondent maintains that a person may only be charged of violating Section 15, Article II of R.A. No. 9165, if he was apprehended or arrested, and later found to be positive for use of any dangerous drugs. Petitioner expands the scope of Section 15 even when the information did not relate the respondent's offense to Section 36, Article III of R.A. No. 9165. An indictment under Section 15 is totally different from Section 36; they are not interchangeable. Petitioner's position effectively denies respondent his right to be informed of the nature and cause of the allegations against him. Finally, the petition places the accused in double jeopardy as his acquittal is final and unappealable.

The Court's Ruling

The petition is unmeritorious.

At the heart of this petition is the question of whether Section 15, Article II of R.A. No. 9165 requires the apprehension or arrest of a person for the latter to be considered as violating the provision. Taking into consideration the text of the law itself, general criminal law principles, and previous jurisprudential interpretation, the answer is in the affirmative, given the specific facts of this case.

The provision, Section 15, Article II of R.A. No. 9165, reads:

Section 15. *Use of Dangerous Drugs.* — **A person apprehended or arrested, who is found to be positive for use of any dangerous drug, after a confirmatory test, shall be imposed a penalty of a minimum of six (6) months rehabilitation in a government center for the first offense, subject to the provisions of Article VIII of this Act.** If apprehended using any dangerous drug for the second time, he/she shall suffer the penalty of imprisonment ranging from six (6) years and one (1) day to twelve (12) years and a fine ranging from Fifty thousand pesos (PhP50,000.00) to Two hundred thousand pesos (PhP200,000.00): *Provided*, That this Section shall not be

applicable where the person tested is also found to have in his/her possession such quantity of any dangerous drug provided for under Section 11 of this Act, in which case the provisions stated therein shall apply. (emphasis supplied)

Petitioner claims that this section should be read in conjunction with Section 36, Article III of the same law, which mandates the random drug testing for certain employees, and pertinently includes police officers like respondent. Section 36, Article III of R.A. No. 9165 states:

Section 36. *Authorized Drug Testing*. — Authorized drug testing shall be done by any government forensic laboratories or by any of the drug testing laboratories accredited and monitored by the DOH to safeguard the quality of test results. The DOH shall take steps in setting the price of the drug test with DOH accredited drug testing centers to further reduce the cost of such drug test. The drug testing shall employ, among others, two (2) testing methods, the screening test which will determine the positive result as well as the type of the drug used and the confirmatory test which will confirm a positive screening test. Drug test certificates issued by accredited drug testing centers shall be valid for a one-year period from the date of issue which may be used for other purposes. The following shall be subjected to undergo drug testing:

x x x x x x x x x

(e) Officers and members of the military, police and other law enforcement agencies. — Officers and members of the military, police and other law enforcement agencies shall undergo an annual mandatory drug test;

In addition to the above stated penalties in this Section, those found to be positive for dangerous drugs use shall be subject to the provisions of Section 15 of this Act. (emphasis supplied)

The constitutionality of certain portions of Section 36 has already been questioned in *Social Justice Society v. Dangerous Drugs Board and Philippine Drug Enforcement Agency*[20] (*SJS*).

As stated, several factors militate against petitioner's construction of the phrase "a person apprehended or arrested"

[20] 591 Phil. 393 (2008).

appearing in Section 15. *It is likewise important to note that the allegations in the information against respondent clearly state that he is only being prosecuted for Section 15 and nowhere in the information was it stated that it should be read in relation to Section 36.*

The cardinal rule in statutory construction is the plain-meaning rule. *Verba legis non est recendendum* — "from the words of a statute there should be no departure." When the statute is clear, plain, and free from ambiguity, the words should be given its literal meaning and applied without attempted interpretation.[21] Especially for penal provisions, it is not enough to say that the legislature intended to make a certain act an offense, the legislature must use words which in some way express that intent.[22]

An analysis of the construction of the sentence yields no other conclusion. Section 15 is unambiguous: the phrase "apprehended or arrested" immediately follows "a person," thus qualifying the subject person. It necessarily follows that only apprehended or arrested persons found to be positive for use of any dangerous drug may be prosecuted under the provision.

Moreover, the elementary rule in statutory construction that the express mention of one person, thing, act, or consequence excludes all others, also known as *expressio unius est exclusion alterius,* is relevant and applicable. This rule applies where the very terms of the statute expressly limit it to certain matters; thus it may not, by interpretation or construction, be extended to others. The legislature would not have made specified enumerations in a statute had the intention been not to restrict its meaning and to confine its terms to those expressly mentioned.[23] In the provision in question, Congress itself confined and restricted the liability arising from use of dangerous drugs to those who were apprehended or arrested if charged with a violation of Section 15.

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[21] See *Padilla, et al. v. Congress of the Philippines*, G.R. No. 231671, July 25, 2017.

[22] See *United States v. Ambata*, 3 Phil. 327, 329 (1904).

[23] See *Centeno v. Judge Villalon-Pornillos, et al.*, 306 Phil. 219, 228 (1994).

Petitioner also advances the argument that a narrow interpretation of Section 15 will result in an absurd situation where a person found to be positive for use of dangerous drugs through Section 36 may not be penalized for not being arrested or apprehended, rendering Section 36 meaningless.

The Court disagrees.

The information, quoted above, against respondent is straightforward: respondent "wilfully, unlawfully and feloniously use methamphetamine hydrochloride, otherwise known as shabu, which is a dangerous drug and found positive for use, after a confirmatory test." The essential element, *i.e.* the accused was apprehended or arrested, was not specifically alleged. Moreover, nowhere in the information was Section 36 mentioned. Urging the inclusion of Section 36 in accusing the respondent of the crime will deprive the latter of the opportunity to prepare his defense and violate his constitutional right to be informed of the nature and cause of the accusation against him. An information must be complete, fully state the elements of the specific offense alleged to have been committed as an information is a recital of the essentials of a crime, delineating the nature and cause of the accusation against the accused.[24] Convicting an accused of a ground not alleged while he is concentrating his defense against the ground alleged would plainly be unfair and underhanded.[25] This appears to be petitioner's intention here and should not be condoned.

It is true that every part of a statute must be considered together with other parts, and kept subservient to the general intent of the whole law. The statute's clauses and phrases must not be taken as detached and isolated expressions, but the whole and every part thereof must be considered in fixing the meaning of any of its parts in order to produce a harmonious whole.[26] Parenthetically, the Court finds no difficulty in harmonizing

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[24] See *People of the Philippines v. Cutamora and Cutamora*, 396 Phil. 405, 414 (2000).

[25] See *People of the Philippines v. Capinpin*, 398 Phil. 333, 344 (2000).

[26] *Philippine International Trading Corporation v. COA*, 635 Phil. 447, 454 (2010).

Section 36 with a strict interpretation of Section 15. Section 36, last paragraph states "[I]n addition to the above stated penalties in this Section, those found to be positive for dangerous drugs use shall be subject to the provisions of Section 15 of this Act." This may be construed to mean that rehabilitation for six (6) months in a government center, as stated in Section 15, may be imposed on those found positive of use of dangerous drugs through a random drug test. This reading of the provisions would still pursue the intent of the law to encourage not the prosecution and incarceration of those using dangerous drugs, but their rehabilitation. This reading especially finds relevance in this case as respondent voluntarily submitted himself to rehabilitation.

Also, criminal law is rooted in the concept that there is no crime unless a law specifically calls for its punishment. *Nullum crimen poena sine lege.* Another basic criminal law precept important to remember here is *in dubiis reus est absolvendus* — all doubts should be resolved in favor of the accused. Any criminal law showing ambiguity will always be construed strictly against the state and in favor of the accused.[27]

These concepts signify that courts *must not* bring cases within the provision of law that are not clearly embraced by it. An act must be pronounced criminal clearly by the statute prior to its commission.[28] The terms of the statute must clearly encompass the act committed by an accused for the latter to be held liable under the provision. Hence, it has been held:

> For, it is a well-entrenched rule that penal laws are to be construed strictly against the State and liberally in favor of the accused. They are not to be extended or enlarged by implications, intendments, analogies or equitable considerations. They are not to be strained by construction to spell out a new offense, enlarge the field of crime or multiply felonies. **Hence, in the interpretation of a penal statute, the tendency is to subject it to careful scrutiny and to construe it with such strictness as to safeguard the rights of the accused.** If the statute is ambiguous and admits of two reasonable but contradictory constructions, that which operates in favor of a party

[27] See *People of the Philippines v. Geronimo, et al.*, 100 Phil. 90, 98 (1956).

[28] See *Causing v. COMELEC, et al.*, 742 Phil. 539, 555 (2014).

accused under its provisions is to be preferred. The principle is that acts in and of themselves innocent and lawful cannot be held to be criminal unless there is a clear and unequivocal expression of the legislative intent to make them such. **Whatever is not plainly within the provisions of a penal statute should be regarded as without its intendment.**

The purpose of strict construction is not to enable a guilty person to escape punishment through a technicality but to provide a precise definition of forbidden acts.[29] (emphasis supplied)

Applying these age-old precepts to the case at bar, petitioner's arguments should be rejected. Petitioner wishes to expand the coverage of Section 15 to cover those under Section 36, and beyond what is specifically limited by the wording of the statue under Section 15, even when the information only alleges a violation of Section 15. Because of the strict construction of penal laws, this is not possible.

Petitioner claims that the *Dela Cruz* case cannot be used here as the facts of the case are different. Indeed this much is true. In *Dela Cruz*, Jaime De La Cruz, a public officer, was arrested in an entrapment operation for the crime of extortion. After his arrest, he was required to submit his urine for drug testing. The issue tackled by the Court was whether the drug test conducted on petitioner was legal. Nevertheless, the *Dela Cruz* ruling is helpful as to the Court's interpretation therein of the coverage of the phrase "a person apprehended or arrested," to wit:

First, "[a] person apprehended or arrested" cannot literally mean any person apprehended or arrested for any crime. The phrase must be read in context and understood in consonance with R.A. 9165. **Section 15 comprehends persons arrested or apprehended for unlawful acts listed under Article II of the law.**

Hence, a drug test can be made upon persons who are apprehended or arrested for, among others, the "importation", "sale, trading, administration, dispensation, delivery, distribution and transportation", "manufacture" and "possession" of dangerous drugs and/or controlled precursors and essential chemicals; possession thereof "during parties, social gatherings or meetings"; being "employees and visitors of a

[29] *Centeno v. Judge Villalon-Pornillos, et al.*, *supra* note 23, at 230-231.

den, dive or resort"; "maintenance of a den, dive or resort"; "illegal chemical diversion of controlled precursors and essential chemicals"; "manufacture or delivery" or "possession" of equipment, instrument, apparatus, and other paraphernalia for dangerous drugs and/or controlled precursors and essential chemicals; possession of dangerous drugs "during parties, social gatherings or meetings"; "unnecessary" or "unlawful" prescription thereof; "cultivation or culture of plants classified as dangerous drugs or are sources thereof"; and "maintenance and keeping of original records of transactions on dangerous drugs and/or controlled precursors and essential chemicals." **To make the provision applicable to all persons arrested or apprehended for any crime not listed under Article II is tantamount to unduly expanding its meaning.** Note that accused appellant here was arrested in the alleged act of extortion.

A charge for violation of Section 15 of R.A. 9165 is seen as expressive of the intent of the law to rehabilitate persons apprehended or arrested for the unlawful acts enumerated above instead of charging and convicting them of other crimes with heavier penalties. The essence of the provision is more clearly illustrated in *People v. Martinez* as follows:

x x x x x x x x x

Furthermore, making the phrase "a person apprehended or arrested" in Section 15 applicable to all persons arrested or apprehended for unlawful acts, not only under R.A. 9165 but for all other crimes, is tantamount to a mandatory drug testing of all persons apprehended or arrested for any crime. To overextend the application of this provision would run counter to our pronouncement in *Social Justice Society v. Dangerous Drugs Board and Philippine Drug Enforcement Agency*, to wit:

> . . .[M]andatory drug testing can never be random and suspicionless. The ideas of randomness and being suspicionless are antithetical to their being made defendants in a criminal complaint. They are not randomly picked; neither are they beyond suspicion. When persons suspected of committing a crime are charged, they are singled out and are impleaded against their will. The persons thus charged, by the bare fact of being haled before the prosecutor's office and peaceably submitting themselves to drug testing, if that be the case, do not necessarily consent to the procedure, let alone waive their right to privacy. To impose mandatory drug testing on the accused is a blatant attempt to harness a medical test as a tool for criminal prosecution,

> contrary to the stated objectives of RA 6195. Drug testing in this case would violate a person's right to privacy guaranteed under Sec. 2, Art. III of the Constitution. Worse still, the accused persons are veritably forced to incriminate themselves.[30] (Emphasis supplied)

The above ruling, in not extending the phrase "apprehended or arrested," is instructive. The Court recognized that only apprehended or arrested persons for the specified offenses fall within the provisions of the law and the Court already narrowly interpreted the terms of the statute, as it should be. Section 15 is thus already limited in scope and coverage.

Furthermore, a grant of the petition would also expose respondent to double jeopardy. Truly, all the elements of double jeopardy are present in respondent's case. Under exceptional circumstances, *i.e.*, where there is grave abuse of discretion on the part of the RTC, double jeopardy will not attach.[31] As stated earlier and as ruled by the CA, the dismissal of the case and grant of demurrer were not attended with grave abuse of discretion.

Considering the above, the inescapable conclusion is that Section 15 cannot be expanded to include respondent, who underwent mandatory drug testing pursuant to Section 36 (e), Article III of R.A. No. 9165 where the information only alleged a violation of Section 15. The letter of the law, basic statutory construction, criminal law precepts, and jurisprudence are plainly incompatible with petitioner's line of reasoning. Thus, neither courts *a quo* committed any grave abuse of discretion in granting the demurrer or a reversible error in dismissing the case against the respondent.

WHEREFORE, the petition is **DENIED.** The June 10, 2016 Decision and the November 17, 2016 Resolution of the Court of Appeals in CA-G.R. SP No. 06247-MIN are hereby **AFFIRMED.**

SO ORDERED.

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

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[30] *Supra* note 19, at 585-589.

[31] See *People of the Philippines v. Tan*, 639 Phil. 402, 411 (2010).

EN BANC

[A.C. No. 7186. March 13, 2018]

ROMEO A. ZARCILLA and MARITA BUMANGLAG, *complainants, vs.* **ATTY. JOSE C. QUESADA, JR.,** *respondent.*

SYLLABUS

1. LEGAL ETHICS; ATTORNEYS; DISBARMENT; CONSIDERED *SUI GENERIS* FOR IT IS NEITHER PURELY CIVIL NOR PURELY CRIMINAL.— A disbarment case is *sui generis* for it is neither purely civil nor purely criminal, but is rather an investigation by the court into the conduct of its officers. The issue to be determined is whether respondent is still fit to continue to be an officer of the court in the dispensation of justice. Hence, an administrative proceeding for disbarment continues despite the desistance of a complainant, or failure of the complainant to prosecute the same, or in this case, the failure of respondent to answer the charges against him despite numerous notices.

2. ID.; ID.; DISBARMENT OR SUSPENSION; CLEAR PREPONDERANT EVIDENCE IS NECESSARY TO JUSTIFY THE IMPOSITION THEREOF.— [I]n administrative proceedings, the complainant has the burden of proving, by substantial evidence, the allegations in the complaint. Substantial evidence has been defined as such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. For the Court to exercise its disciplinary powers, the case against the respondent must be established by clear, convincing and satisfactory proof. As in this case, considering the serious consequence of the disbarment or suspension of a member of the Bar, this Court has consistently held that clear preponderant evidence is necessary to justify the imposition of the administrative penalty.

3. ID.; ID.; DISBARMENT; A DISBARMENT PROCEEDING IS NOT THE OCCASION TO DETERMINE THE ISSUE OF FALSIFICATION OR FORGERY BECAUSE THE SOLE ISSUE TO BE DETERMINED THEREIN IS

WHETHER OR NOT THE RESPONDENT ATTORNEY IS STILL FIT TO CONTINUE TO BE AN OFFICER OF THE COURT IN THE DISPENSATION OF JUSTICE.— [I]n the instant case, the allegations of falsification or forgery against Atty. Quesada must be competently proved because falsification or forgery cannot be presumed. As such, the allegations should first be established and determined in appropriate proceedings, like in criminal or civil cases, for it is only by such proceedings that the last word on the falsity or forgery can be uttered by a court of law with the legal competence to do so. A disbarment proceeding is not the occasion to determine the issue of falsification or forgery simply because the sole issue to be addressed and determined therein is whether or not the respondent attorney is still fit to continue to be an officer of the court in the dispensation of justice. Accordingly, We decline to rule herein whether or not the respondent had committed the supposed falsification of the subject affidavit in the absence of the prior determination thereof in the appropriate proceeding.

4. **ID.; NOTARIES PUBLIC; A LAWYER WHO NOTARIZES A DOCUMENT WITHOUT ALL THE AFFIANTS' PERSONAL APPEARANCE IS A VIOLATION OF THE NOTARIAL LAW AND THE LAWYER'S OATH.—** [A] notary public should not notarize a document unless the person who signed the same is the very same person who executed and personally appeared before him to attest to the contents and the truth of what are stated therein. Without the appearance of the person who actually executed the document in question, the notary public would be unable to verify the genuineness of the signature of the acknowledging party and to ascertain that the document is the party's free act or deed. Here, Atty. Quesada's act of notarizing the deed of sale appeared to have been done to perpetuate a fraud. This is more evident when he certified in the acknowledgment thereof that he knew the vendors and knew them to be the same persons who executed the document. When he then solemnly declared that such appeared before him and acknowledged to him that the document was the vendor's free act and deed despite the fact that the vendors cannot do so as they were already deceased, Atty. Quesada deliberately made false representations, and was not merely negligent. Thus, by his actuations, Atty. Quesada violated not only the notarial law but also his oath as a lawyer when he notarized the deed of

sale without all the affiant's personal appearance. His failure to perform his duty as a notary public resulted not only damage to those directly affected by the notarized document but also in undermining the integrity of a notary public and in degrading the function of notarization.

5. **ID.; ID.; NOTARIZATION OF DOCUMENTS; INVESTED WITH SUBSTANTIVE PUBLIC INTEREST, SUCH THAT ONLY THOSE WHO ARE QUALIFIED OR AUTHORIZED MAY ACT AS NOTARIES PUBLIC.—** [N]otarization of a document is not an empty act or routine. It is invested with substantive public interest, such that only those who are qualified or authorized may act as notaries public. Notarization converts a private document into a public document, thus, making that document admissible in evidence without further proof of its authenticity. A notarial document is by law entitled to full faith and credit upon its face. Courts, administrative agencies and the public at large must be able to rely upon the acknowledgment executed by a notary public and appended to a private instrument. For this reason, notaries public must observe with utmost care the basic requirements in the performance of their duties. Otherwise, the confidence of the public in the integrity of this form of conveyance would be undermined. Hence, a notary public should not notarize a document unless the persons who signed the same are the very same persons who executed and personally appeared before him to attest to the contents and truth of what are stated therein. The purpose of this requirement is to enable the notary public to verify the genuineness of the signature of the acknowledging party and to ascertain that the document is the party's free act and deed.

6. **ID.; ATTORNEYS; DISBARMENT; WILLFUL DISOBEDIENCE OF THE LAWFUL ORDERS OF THE SUPREME COURT IS SUFFICIENT CAUSE FOR DISBARMENT; CASE AT BAR.—** Aside from Atty. Quesada's violation of his duty as a notary public, what this Court find more deplorable was his defiant stance against the Court as demonstrated by his repetitive disregard of the Court's directives to file his comment on the complaint. x x x Atty. Quesada's acts constitute willful disobedience of the lawful orders of this Court, which under Section 27, Rule 138 of the Rules of Court is in itself alone is a sufficient cause for suspension or disbarment. His cavalier attitude in repeatedly ignoring the orders of the Supreme Court

constitutes utter disrespect to the judicial institution. His conduct indicates a high degree of irresponsibility. We have repeatedly held that a Court's Resolution is "not to be construed as a mere request, nor should it be complied with partially, inadequately, or selectively." Atty. Quesada's obstinate refusal to comply with the Court's orders "not only betrays a recalcitrant flaw in his character; it also underscores his disrespect of the Court's lawful orders which this Court will not tolerate." x x x As an officer of the court, it is a lawyer's duty to uphold the dignity and authority of the court. The highest form of respect for judicial authority is shown by a lawyer's obedience to court orders and processes. Considering Atty. Quesada's predisposition to disregard not only the laws of the land but also the lawful orders of the Court, it only shows him to be wanting in moral character, honesty, probity and good demeanor. Worse, with his repeated disobedience to this Court's orders, Atty. Quesada displayed no remorse as to his misconduct which, thus, proved himself unworthy of membership in the Philippine Bar. Clearly, Atty. Quesada is unfit to discharge the duties of an officer of the court and deserves the ultimate penalty of disbarment.

APPEARANCES OF COUNSEL

Tristram B. Zoleta for complainant.
Maximo D. Quesada, Jr. for respondent.

D E C I S I O N

***PER CURIAM*:**

Before us is a Petition for Disbarment[1] dated February 9, 2006 filed by complainants Romeo A. Zarcilla (*Zarcilla*) and Marita Bumanglag (*Bumanglag*) against respondent Atty. Jose C. Quesada, Jr. (*Atty. Quesada*) for gross misconduct.

The facts are as follows:

On August 5, 2002, complainant Zarcilla executed an Affidavit-Complaint[2] against respondent Atty. Quesada and complainant

[1] *Rollo*, pp. 1-5.

[2] *Id*. at 6.

Marita Bumanglag, among others, for falsification of public documents docketed as I.S. No. 02-128-SF. Zarcilla alleged that Bumanglag conspired with certain spouses Maximo Quezada and Gloria Quezada (*Spouses Quezada*) and Atty. Quesada to falsify a Deed of Sale[3] dated April 12, 2002 by making it appear that his parents, Perfecto G. Zarcilla and Tarcela A. Zarcilla, sold a parcel of land under TCT No. T-18490 in favor of the Spouses Quezada despite knowledge that his parents were already deceased since March 4, 2001 and January 9, 1988, respectively, as per Death Certificates[4] issued by the Office of the Municipal Civil Registrar of Santo Tomas, La Union. Said signing of deed of sale was allegedly witnessed by a certain Norma Zafe and Bumanglag, and notarized by Atty. Quesada.

Other than the alleged falsified deed of sale, Zarcilla also claimed that on March 20, 2002, the Spouses Quezada filed a petition for the administrative reconstitution of the original copy of TCT No. 18490 where they presented the Joint Affidavit of his then already deceased parents, the spouses Perfecto Zarcilla and Tarcela A. Zarcilla as the petitioners.[5] Said Joint-Affidavit of the Spouses Quezada was again notarized by Atty. Quesada.

However, on October 9, 2002, Bumanglag executed a Counter-affidavit[6] in the same case where she claimed to be the real owner of the property after Perfecto Zarcilla sold the same to her mother. Bumanglag also stated therein that she facilitated the sale transaction to the Spouses Quezada which, in effect, exonerated her co-respondents, including Atty. Quesada, the pertinent portion of which reads:

x x x x x x x x x

6. That after the death of my mother I needed money to pay for the expenses she incurred when she was sick and need medication and all the (sic) to pay for the expenses of her burial. I offered to sell

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[3] *Id*. at 21-22.

[4] *Id*. at 23-24.

[5] *Id*. at 25.

[6] *Id*. at 7-8.

the property to Spouses MAX QUEZADA and GLORIA QUEZADA. I showed them the Deed of Sale between PERFECTO ZARCILLA and my mother. I also showed them the paper that my mother signed giving me the land;

7. That the Spouses Quezada told me that they will buy the land provided I will be the one to transfer the said land to their name. They gave me an advance payment so that I could transfer the land to them. **I made it appear that PERFECTO ZARCILLA sold the property to the said spouses because the title of the land was still in the name of Perfecto Zarcilla. I did not have [any] criminal intent when I did it because the land no longer belong to Perfecto Zarcilla.** I did all the subsequent acts like Petition for Reconstitution in the name of Perfecto Zarcilla because then, the title was still in his name. However, there was no damage to the heirs of PERFECTO ZARCILLA because the land had long been sold to my mother and the sons and daughters no longer had no legal claim to the said land;

8. **That SPOUSES MAXIMO QUEZADA & GLORIA QUEZADA did not falsify any document because I was the one who facilitated the transaction knowing that the land I was selling really belonged to me. Not one of my brothers and (sic) sisters never (sic) complained when I sold the land. I just delivered the document to the Spouses MAXIMO QUEZADA & GLORIA QUEZADA including the title in their name.** I was paid the balance after the Certificate of Title in their name was finally delivered.[7]

All other respondents in the said falsification case, except for Atty. Quesada, also filed their respective counter-affidavits where they reiterated Bumanglag's admission.[8]

In a Resolution[9] dated April 14, 2003, the Office of the Provincial Prosecutor of La Union held Bumanglag only to undergo trial. All other respondents, including Atty. Quesada who did not even file his counter-affidavit, were exonerated for insufficiency of evidence.

Both Zarcilla and Bumanglag filed their respective motions for reconsideration, but both were denied. Consequently, Bumanglag

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[7] *Id.* at 7. (Emphasis ours)

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

[9] *Id.* at 11-13.

was indicted for four counts of falsification of public documents before the Municipal Trial Court of Sto. Tomas, La Union, docketed as Criminal Cases Nos. 3594, 3595, 3597, and 3598.

However, Zarcilla later on withdrew said cases when he learned that Bumanglag was not aware of the contents of her counter-affidavit when she signed the same. He also found out that Bumanglag was deceived by her co-accused, including Atty. Quesada. Thus, upon the motion of Zarcilla, in an Order[10] dated July 27, 2005, the court dismissed all falsification cases against Bumanglag.

In a Resolution[11] dated June 26, 2006, the Court resolved to require Atty. Quesada to file a comment on the complaint against him.

On August 28, 2006, Atty. Quesada filed a Motion for Extension of Time to File Comment[12] due to voluminous workload. On September 18, 2006, Atty. Quesada filed a second motion for extension to file comment. In a Resolution[13] dated November 20, 2006, the Court granted Atty. Quesada's motions for extension with a warning that the second motion for extension shall be the last and that no further extension will be given.

On September 26, 2007, due to Atty. Quesada's failure to file a comment on the complaint against him within the extended period which expired on October 17, 2006, the Court resolved to require Atty. Quesada to (a) show cause why he should not be disciplinarily dealt with or held in contempt from such failure, and (b) comply with the Resolution dated June 26, 2006 by submitting the required comment.[14]

Due to Atty. Quesada's failure to comply with the Show Cause Resolution dated September 26, 2007, the Court resolved

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[10] *Id.* at 18-19.

[11] *Id.* at 26.

[12] *Id.* at 27-28.

[13] *Id.* at 36.

[14] *Id.* at 37.

to (a) impose upon Atty. Quesada, a fine of ₱1,000.00, and (b) require Atty. Quesada to comply with the Resolution dated June 26, 2006 by filing the comment required therein.[15]

No payment of fine was made as of January 13, 2009 as evidenced by a Certification[16] which was issued by Araceli Bayuga, Supreme Court Chief Judicial Staff Officer.

Again, failing to comply with the directives of the Court to pay the fine imposed against him and to submit his comment, the Court, in a Resolution[17] dated February 16, 2009, resolved to (a) impose upon Atty. Quesada an additional fine of ₱1,000.00, or a penalty of imprisonment of five (5) days if said fines are not paid within 10 days from notice, and (b) order Atty. Quesada to comply with the Resolution dated June 26, 2006 to submit his comment on the complaint against him. Atty. Quesada was also warned that should he fail to comply, he shall be ordered arrested and detained by the National Bureau of Investigation until he shall have made the compliance or until such time as the Court may order.

Despite repeated notices and warnings from the Court, no payment of fine was ever made as of September 3, 2010 as evidenced by a Certification[18] which was issued by Araceli Bayuga, Supreme Court Chief Judicial Staff Officer. On December 28, 2010, another Certification[19] was issued anew showing no record of payment of fine by Atty. Quesada.

Thus, in a Resolution[20] dated March 9, 2011, the Court resolved to (1) increase the fine imposed on Atty. Quesada to ₱3,000.00, or imprisonment of ten (10) days if such fine is not paid within

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[15] Resolution of the Third Division of the Supreme Court, dated June 16, 2008; *id*. at 38.

[16] *Rollo*, p. 39.

[17] *Id*. at 40.

[18] *Id*. at 42.

[19] *Id*. at 45.

[20] *Id*. at 46.

the prescribed period; and (2) require Atty. Quesada to comply with the Resolution dated June 26, 2006 by submitting the required comment on the complaint.

No payment of fine was made as of July 12, 2011, as evidenced by a Certification[21] which was issued by Araceli Bayuga, Supreme Court Chief Judicial Staff Officer.

It appearing that Atty. Quesada failed to comply with the numerous Resolutions of the Court to pay the fine imposed upon him and submit comment on the complaint against him, in a Resolution[22] dated August 24, 2011, the Court ordered the arrest of Atty. Quesada, and directed the NBI to arrest and detain him until he shall have complied with the Court's Resolution dated March 9, 2011. Subsequently, the Court issued a Warrant of Arrest.[23]

Apparently forced by his looming detention, after five (5) years, Atty. Quesada filed his Comment[24] dated October 10, 2011, in compliance with Resolution dated June 26, 2006. He claimed that he is a victim of political harassment, vengeance and retribution, and that the instant case against him was filed solely for the purpose of maligning his person. Attached to his compliance was postal money order in the amount of ₱3,000.00 as payment for the fine imposed upon him.

In a Letter[25] dated October 10, 2011, Atty. Ricardo S. Pangan, Jr., Regional Director of the NBI, informed the Court that Atty. Quesada voluntarily surrendered before the agents of the NBI on October 11, 2011, and claimed that he had already complied with the Resolution of the Court. Atty. Quesada submitted a copy of his comment and payment of fine, thus, on the same day, Atty. Quesada was immediately released from custody.

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[21] *Id.* at 48.

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

[23] *Id.* at 66-67.

[24] *Id.* at 52-57.

[25] *Id.* at 63.

On February 1, 2012, the Court referred the instant case to the Integrated Bar of the Philippines (*IBP*) for investigation, report and recommendation.[26]

During the mandatory conference before the IBP-Commission on Bar Discipline (*IBP-CBD*), only Bumanglag and her counsel appeared. Atty. Quesada failed to appear thereto, thus, the mandatory conference was reset to July 11, 2012. However, on July 11, 2012, Atty. Quesada failed again to appear, thus, the mandatory conference was reset anew to July 25, 2012. Meanwhile, Bumanglag informed the IBP-CBD that co-complainant Romeo Zarcilla passed away in 2005.

On July 23, 2012, Atty. Quesada requested that the mandatory conference be reset due to health reasons. He submitted his Medical Certificate dated May 2, 2012 showing that he underwent a head operation and that he is still on recovery period.

On July 25, 2012, Atty. Quesada failed again to appear, thus, the parties were directed to appear on August 23, 2012 and submit their respective verified position papers. However, on August 23, 2012, only Bumanglag and her counsel appeared, and Atty. Quesada failed to appear anew. Thus, considering that the parties were duly notified of the hearing, the case was deemed submitted for resolution.

On May 30, 2014, the IBP-CBD, in its Report and Recommendation, recommended that respondent Atty. Quesada be disbarred from the practice of law.

In a Resolution No. XXI-2015-097 dated January 31, 2015, the IBP-Board of Governors resolved to adopt and approve the report and recommendation of the IBP-CBD.

RULING

We adopt the findings and recommendation of the IBP.

A disbarment case is *sui generis* for it is neither purely civil nor purely criminal, but is rather an investigation by the court

[26] *Id.* at 87-88.

into the conduct of its officers.[27] The issue to be determined is whether respondent is still fit to continue to be an officer of the court in the dispensation of justice. Hence, an administrative proceeding for disbarment continues despite the desistance of a complainant, or failure of the complainant to prosecute the same, or in this case, the failure of respondent to answer the charges against him despite numerous notices.

However, in administrative proceedings, the complainant has the burden of proving, by substantial evidence, the allegations in the complaint. Substantial evidence has been defined as such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. For the Court to exercise its disciplinary powers, the case against the respondent must be established by clear, convincing and satisfactory proof. As in this case, considering the serious consequence of the disbarment or suspension of a member of the Bar, this Court has consistently held that clear preponderant evidence is necessary to justify the imposition of the administrative penalty.[28]

Thus, in the instant case, the allegations of falsification or forgery against Atty. Quesada must be competently proved because falsification or forgery cannot be presumed. As such, the allegations should first be established and determined in appropriate proceedings, like in criminal or civil cases, for it is only by such proceedings that the last word on the falsity or forgery can be uttered by a court of law with the legal competence to do so. A disbarment proceeding is not the occasion to determine the issue of falsification or forgery simply because the sole issue to be addressed and determined therein is whether or not the respondent attorney is still fit to continue to be an officer of the court in the dispensation of justice. Accordingly, We decline to rule herein whether or not the respondent had committed the supposed falsification of the subject affidavit in the absence of the prior determination thereof in the appropriate proceeding.[29]

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[27] *In re Almacen*, No. L-27654, February 18, 1970, 31 SCRA 562.

[28] *Ferancullo v. Atty. Ferancullo*, 538 Phil. 501, 511 (2006).

[29] See *Flores-Salado v. Villanueva, Jr.*, A.C. No. 11099, September 27, 2016.

We, however, noted that Atty. Quesada violated the notarial law for his act of notarizing the: (1) Deed of Sale[30] dated April 12, 2002 purportedly executed by and between the spouses Maximo F. Quezada and Gloria D. Quezada, the buyers, and complainant Zarcilla's parents, the spouses Tarcela Zarcilla and Perfecto Zarcilla; and the (2) Joint Affidavit[31] dated March 20, 2002 purportedly executed by the spouses Tarcela Zarcilla and Perfecto Zarcilla for the reconstitution of TCT No. T-18490, when in both occasions the spouses Tarcela Zarcilla and Perfecto Zarcilla could no longer execute said documents and appear before Atty. Quesada since they have long been deceased as evidenced by their death certificates. Tarcela Zarcilla died on January 9, 1988, while Perfecto Zarcilla died on March 4, 2001.[32]

Section 2 (b) of Rule IV of the 2004 Rules on Notarial Practice stresses the necessity of the affiant's personal appearance before the notary public:

x x x x x x x x x

(b) A person shall not perform a notarial act if the person involved as signatory to the instrument or document —

(1) is not in the notary's presence personally at the time of the notarization; and

(2) is not personally known to the notary public or otherwise identified by the notary public through competent evidence of identity as defined by these Rules.

Thus, a notary public should not notarize a document unless the person who signed the same is the very same person who executed and personally appeared before him to attest to the contents and the truth of what are stated therein. Without the appearance of the person who actually executed the document in question, the notary public would be unable to verify the genuineness of the signature of the acknowledging party and

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[30] *Rollo*, pp. 21-22.

[31] *Id*. at 25.

[32] *Id*. at 24, 23.

to ascertain that the document is the party's free act or deed. Here, Atty. Quesada's act of notarizing the deed of sale appeared to have been done to perpetuate a fraud. This is more evident when he certified in the acknowledgment thereof that he knew the vendors and knew them to be the same persons who executed the document. When he then solemnly declared that such appeared before him and acknowledged to him that the document was the vendor's free act and deed despite the fact that the vendors cannot do so as they were already deceased, Atty. Quesada deliberately made false representations, and was not merely negligent.

Thus, by his actuations, Atty. Quesada violated not only the notarial law but also his oath as a lawyer when he notarized the deed of sale without all the affiant's personal appearance. His failure to perform his duty as a notary public resulted not only damage to those directly affected by the notarized document but also in undermining the integrity of a notary public and in degrading the function of notarization. The responsibility to faithfully observe and respect the legal solemnity of the oath in an acknowledgment or *jurat* is more pronounced when the notary public is a lawyer because of his solemn oath under the Code of Professional Responsibility to obey the laws and to do no falsehood or consent to the doing of any. Lawyers commissioned as notaries public are mandated to discharge with fidelity the duties of their offices, such duties being dictated by public policy and impressed with public interest.[33]

Time and again, We have held that notarization of a document is not an empty act or routine. It is invested with substantive public interest, such that only those who are qualified or authorized may act as notaries public. Notarization converts a private document into a public document, thus, making that document admissible in evidence without further proof of its authenticity. A notarial document is by law entitled to full faith and credit upon its face. Courts, administrative agencies and the public at large must be able to rely upon the acknowledgment

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[33] *Agbulos v. Atty. Viray*, 704 Phil. 1, 9 (2013).

executed by a notary public and appended to a private instrument.[34]

For this reason, notaries public must observe with utmost care the basic requirements in the performance of their duties. Otherwise, the confidence of the public in the integrity of this form of conveyance would be undermined. Hence, a notary public should not notarize a document unless the persons who signed the same are the very same persons who executed and personally appeared before him to attest to the contents and truth of what are stated therein. The purpose of this requirement is to enable the notary public to verify the genuineness of the signature of the acknowledging party and to ascertain that the document is the party's free act and deed.[35]

Aside from Atty. Quesada's violation of his duty as a notary public, what this Court find more deplorable was his defiant stance against the Court as demonstrated by his repetitive disregard of the Court's directives to file his comment on the complaint. Despite several Court resolutions, notices, directives and imposition of fines for Atty. Quesada's compliance and payment, he ignored the same for more than five years. Consequently, this case has dragged on for an unnecessary length of time. More than five (5) years have already elapsed from the time the Court issued the first Resolution dated June 26, 2006 which required Atty. Quesada to file his comment until his eventual submission of comment on October 10, 2011. It took a warrant of arrest to finally move Atty. Quesada to file his Comment and pay the fines imposed upon him. While the Court has been tolerant of his obstinate refusal to comply with its directives, he shamelessly ignored the same and wasted the Court's time and resources.

And even with the submission of his comment, he did not offer any apology and/or any justification for his long delay in complying with the directives/orders of this Court. We surmised that when Atty. Quesada finally complied with the Court's

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[34] *Vda. de Rosales v. Atty. Ramos*, 383 Phil. 498, 504 (2002).

[35] *Dela Cruz v. Atty. Dimaano, Jr.*, 586 Phil. 573, 578 (2008).

directives, his compliance was neither prompted by good faith or willingness to obey the Court nor was he remorseful of his infractions but was actually only forced to do so considering his impending arrest. There is, thus, no question that his failure or obstinate refusal without justification or valid reason to comply with the Court's directives constitutes disobedience or defiance of the lawful orders of Court, amounting to gross misconduct and insubordination or disrespect.[36]

Atty. Quesada's acts constitute willful disobedience of the lawful orders of this Court, which under Section 27, Rule 138 of the Rules of Court is in itself alone is a sufficient cause for suspension or disbarment. His cavalier attitude in repeatedly ignoring the orders of the Supreme Court constitutes utter disrespect to the judicial institution. His conduct indicates a high degree of irresponsibility. We have repeatedly held that a Court's Resolution is "not to be construed as a mere request, nor should it be complied with partially, inadequately, or selectively." Atty. Quesada's obstinate refusal to comply with the Court's orders "not only betrays a recalcitrant flaw in his character; it also underscores his disrespect of the Court's lawful orders which this Court will not tolerate."[37]

Section 27, Rule 138 of the Rules of Court provides:

> 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 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. The practice of soliciting cases for the purpose of gain, either personally or through paid agents or brokers, constitutes malpractice.

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[36] *In Re: Resolution dated August 14, 2013 of the Court of Appeals in CA-G.R. CV No. 94656 v. Mortel,* 798 Phil. 1, 9 (2006).

[37] See *Sebastian v. Atty. Bajar*, 559 Phil. 211, 224 (2007).

As an officer of the court, it is a lawyer's duty to uphold the dignity and authority of the court. The highest form of respect for judicial authority is shown by a lawyer's obedience to court orders and processes.[38] Considering Atty. Quesada's predisposition to disregard not only the laws of the land but also the lawful orders of the Court, it only shows him to be wanting in moral character, honesty, probity and good demeanor. Worse, with his repeated disobedience to this Court's orders, Atty. Quesada displayed no remorse as to his misconduct which, thus, proved himself unworthy of membership in the Philippine Bar. Clearly, Atty. Quesada is unfit to discharge the duties of an officer of the court and deserves the ultimate penalty of disbarment.

IN VIEW OF ALL THE FOREGOING, We find respondent **ATTY. JOSE C. QUESADA JR. GUILTY** of gross misconduct and willful disobedience of lawful orders rendering him unworthy of continuing membership in the legal profession. He is, thus, ordered **DISBARRED** from the practice of law and his name stricken-off of the Roll of Attorneys, effective immediately. We, likewise, **REVOKE** his incumbent notarial commission, if any, and **PERPETUALLY DISQUALIFIES** him from being commissioned as a notary public.

Let copies of this Decision be furnished the Office of the Bar Confidant, which shall forthwith record it in the personal file of respondent. All the Courts of the Philippines; the Integrated Bar of the Philippines, which shall disseminate copies thereof to all its Chapters; and all administrative and *quasi*-judicial agencies of the Republic of the Philippines.

SO ORDERED.

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

Sereno, C.J., on leave.

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[38] *Santeco v. Atty. Avance*, 659 Phil. 48, 51 (2011).

[*] Acting Chief Justice per Special Order No. 2539 dated February 28, 2018.

EN BANC

[A.M. No. 17-11-06-CA. March 13, 2018]

RE: ANONYMOUS LETTER-COMPLAINT (with Attached Pictures) AGAINST ASSOCIATE JUSTICE NORMANDIE B. PIZARRO, COURT OF APPEALS.

SYLLABUS

1. **REMEDIAL LAW; CHARGES AGAINST JUDGES; HOW ADMINISTRATIVE COMPLAINTS AGAINST JUDGES AND THE JUSTICES OF THE COURT OF APPEALS AND THE SANDIGANBAYAN MAY BE INSTITUTED.—** Under the Rules of Court, administrative complaints against judges of regular courts and special courts as well as justices of the CA and the Sandiganbayan may be instituted: (1) by the Supreme Court *motu proprio;* (2) upon a verified complaint, supported by affidavits of persons who have personal knowledge of the facts alleged therein or by documents which may substantiate said allegations; or (3) upon an anonymous complaint, supported by public records of indubitable integrity.

2. **ID.; ID.; IT IS REQUIRED THAT THE COMPLAINTS MUST BE ACCOMPANIED BY SUPPORTING EVIDENCE.—** The rationale for the requirement that complaints against judges and justices of the judiciary must be accompanied by supporting evidence is to protect magistrates from the filing of flimsy and virtually unsubstantiated charges against them. This is consistent with the rule that in administrative proceedings, the complainants bear the burden of proving the allegations in their complaints by substantial evidence. If they fail to show in a satisfactory manner the facts upon which their claims are based, the respondents are not obliged to prove their exception or defense. x x x Inasmuch as the Court would want to cleanse the Judiciary of its erring and undesirable members and personnel, such policy could only be implemented with the strict observance of due process, such that substantial evidence is required to prove the charges against a member of the Judiciary. The Court is duty bound to protect its ranks or any member or personnel of the Judiciary from baseless or unreasonable charges.

3. POLITICAL LAW; ADMINISTRATIVE LAW; CIRCULAR NO. 4 AND A.M. NO. 1544-0; JUDGES AND COURT PERSONNEL STRICTLY PROHIBITED FROM GAMBLING OR BEING SEEN IN GAMBLING PLACES; NOT APPLICABLE TO JUSTICES.— [T]he Office of the Court Administrator *(OCA)* reminded judges and court personnel to strictly comply with the prohibition against gambling or being seen in gambling places such as the casino. The OCA cited Circular No. 4 issued by the Court on 27 August 1980 which reads: The attention of the Court has been invited to the presence of some judges in gambling casinos operating under Presidential Decree No. 1067-B. This is clearly violative or Section 5(3-b) of said Decree. It reads as follows: (3-b) Persons not allowed to play – **(a) Government officials connected directly with the operation of the government or any of its agencies."** In accordance with law and pursuant to the Resolution of the Court en banc in Administrative Matter No. 1544-0, dated August 21, 1980, **judges of inferior courts and the court personnel** are enjoined from playing in or being present in gambling casinos. x x x With respect to Circular No. 4 and Administrative Matter No. 1544-0, it is with regret that the Court finds them inapplicable to the present case. It is clear from the words of these issuances that the prohibition from entering and gambling in casinos is applicable only to judges of inferior courts and court personnel. x x x Although the term "judge" has been held to comprehend all kinds of judges, the same is true only if the said term is not modified by any word or phrase. In the case of Circular No. 4 and Administrative Matter No. 1544-0, the term "judge" has been qualified by the phrase "inferior courts."

4. ID.; ID.; P.D. NO. 1869, SECTION 14(4)(A); PROHIBITION ON "GOVERNMENT OFFICIALS CONNECTED DIRECTLY WITH THE OPERATION OF THE GOVERNMENT OR ANY OF ITS AGENCIES" FROM GAMBLING IN A CASINO; INCLUDES JUSTICES OF THE COURT.— [Although not actually defined,] it is opined that the term "government official connected directly to the operation of the government or any of its agencies" refers to any person employed by the government whose tasks is the performance and exercise of any of the functions and powers of such government or any agency thereof, as conferred on them by law, without any intervening agency. Simply put, a "government official connected directly to the operation of the

government or any of its agencies" is a government officer who performs the functions of the government on his own judgment or discretion – essentially, a government officer under Section 2(14) of E.O. No. 292. Applying the above definition to the present case, it is clear that Justice Pizarro is covered by the term "government official connected directly with the operation of the government." Indeed, one of the functions of the government, through the Judiciary, is the administration of justice within its territorial jurisdiction. Justice Pizarro, as a magistrate of the CA, is clearly a government official directly involved in the administration of justice; and in the performance of such function, he exercises discretion. Thus, by gambling in a casino, Justice Pizarro violated the prohibition from gambling in casinos as provided under Section 14(4)(a) of P.D. No. 1869.

5. LEGAL ETHICS; JUDGES; GAMBLING IN CASINOS IS VIOLATION OF PARAGRAPHS 3 AND 22 OF THE CANONS OF JUDICIAL ETHICS AND CANONS 2 AND 4 OF THE NEW CODE OF JUDICIAL CONDUCT FOR THE PHILIPPINE JUDICIARY.— Although P.D. No. 1869 did not provide for a penalty for any act done in contravention of its provisions particularly the prohibition on gambling, in *City Government of Tagbilaran v. Hontanosas, Jr.,* it was held that such transgression constitutes violations of Paragraphs 3 and 22 of the Canons of Judicial Ethics, x x x Further, Justice Pizarro also violated Canons 2 and 4 of the New Code of Judicial Conduct for the Philippine Judiciary x x x Accordingly, the Court finds respondent Justice Pizarro guilty of conduct unbecoming of a member of the judiciary. Considering, however, that this is the respondent justice's first transgression, and further bearing in mind his immediate admission of his indiscretion as well as the number of years he has been in government service, the Court finds the imposition of a fine in the amount of ₱100,000.00 sufficient in this case.

LEONEN, *J.*, *dissenting opinion*:

POLITICAL LAW; ADMINISTRATIVE LAW; JUDGES; GAMBLING IN CASINOS IN VIOLATION OF PD NO. 1896 WARRANTS THE PENALTY OF DISMISSAL FROM SERVICE.— By respondent's own admission, he had not only entered at least two casinos, but had gambled both times, albeit in what he terms in a parlor game concept: x x x This makes

it at least two times he has violated the express prohibition laid down in Presidential Decree No. 1896. Canon 2 of the New Code of Judicial Conduct emphasizes that the requirement of integrity not only in a judge's discharge of their office, but in their personal demeanor as well: x x x Moreover, Canon 4 of the New Code of Judicial Conduct requires propriety and the appearance of propriety in all of a judge's activities: x x x Respondent's repeated violations of Presidential Decree No. 1896 not only demonstrate his disregard of the law and the norms of judicial service, but also seriously taint the public's perception of the judiciary and corrode the image it strives to uphold. In violating Canons 2 and 4 of the New Code of Judicial Conduct, respondent committed gross misconduct. Gross misconduct includes "an act that is inspired by the intention to violate the law, or that is a persistent disregard of well-known rules", and tends to seriously undermine the faith and confidence of the people in the Judiciary. As gross misconduct is a serious charge, dismissal from the service with all the accessory penalties is one of the sanctions which may be imposed. Considering respondent's judicial rank, as well as the fact that he had admitted to violating the law at least twice, such a severe penalty is necessary under the circumstances.

D E C I S I O N

MARTIRES, *J.*:

This administrative matter arose from an anonymous letter-complaint[1] charging Associate Justice Normandie B. Pizarro (*Justice Pizarro*) of the Court of Appeals *(CA)* of habitually gambling in casinos, "selling" decisions, and immorally engaging in an illicit relationship. The subject letter-complaint was initially filed with the Office of the Ombudsman (*Ombudsman*) on 20 September 2017. The matter was referred by the Ombudsman to this Court on 24 October 2017.[2]

The anonymous letter-complaint accused Justice Pizarro of being a gambling addict who would allegedly lose millions of

[1] *Rollo*, (no proper pagination).

[2] *Id*.

pesos in the casinos daily, and insinuated that Justice Pizarro resorted to "selling" his cases in order to support his gambling addiction.

The anonymous complainant further accused Justice Pizarro of having an illicit relationship, claiming that Justice Pizarro bought his mistress a house and lot in Antipolo City, a condominium unit in Manila, and brand new vehicles such as Toyota Vios and Ford Everest worth millions of pesos. Lastly, the anonymous complainant alleged that Justice Pizarro, together with his mistress and her whole family, made several travels abroad to shop and to gamble in casinos.

Attached to the anonymous letter-complaint are four (4) sheets of photographs[3] showing Justice Pizarro sitting at the casino tables allegedly at the Midori Hotel and Casino in Clark, Pampanga.

On 21 November 2017, the Court issued a Resolution[4] noting the 27 September 2017 Letter of the Ombudsman referring the anonymous letter-complaint; and requiring Justice Pizarro to file his comment on the anonymous letter-complaint.

On 8 December 2017, Justice Pizarro filed his comment[5] wherein he admitted to his indiscretion. He stated that he was indeed the person appearing on the subject photographs sitting at a casino table. He explained that the photographs were taken when he was accompanying a *balikbayan* friend; and that they only played a little in a parlor game fashion without big stakes and without their identities introduced or made known. Justice Pizarro averred that the photographs may have been taken by people with ulterior motives considering his plan for early retirement.

He further confessed that sometime in 2009 he also played at the casino in what he termed, again, a parlor game concept. He maintained, however, that such was an indiscretion committed

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[3] *Id.*

[4] *Id.*

[5] *Id.*

by a dying man because, prior to this, he had learned that he had terminal cancer.

He also found as cruel, baseless, and highly unfair the accusation that he is the "most corrupt justice in the Philippines" noting that no administrative case had been filed against him for the past seven (7) years; that his first administrative case, which this Court resolved in his favor, actually involved his former driver in Ilocos Sur who forged his signature to make it appear that the driver was employed in the judiciary; and that all of the few administrative cases filed against him did not involve corruption; and that he was absolved in all.

Justice Pizarro likewise categorically denied having a mistress. He characterized such accusations as cowardly acts of his detractors, who even furnished copies of the anonymous complaint to the presiding justice of the appellate court and the leader of a major religious group, with the intent of destroying his character.

ISSUE

The sole issue before the Court is whether Justice Pizarro is guilty of the accusations against him for which he may be held administratively liable.

THE COURT'S RULING

Under the Rules of Court, administrative complaints against judges of regular courts and special courts as well as justices of the CA and the Sandiganbayan may be instituted: (1) by the Supreme Court *motu proprio*; (2) upon a verified complaint, supported by affidavits of persons who have personal knowledge of the facts alleged therein or by documents which may substantiate said allegations; or (3) upon an anonymous complaint, supported by public records of indubitable integrity.[6]

The rationale for the requirement that complaints against judges and justices of the judiciary must be accompanied by

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[6] RULES OF COURT, Rule 140, Section 1, as amended by A.M. No. 01-8-10-SC.

supporting evidence is to protect magistrates from the filing of flimsy and virtually unsubstantiated charges against them.[7] This is consistent with the rule that in administrative proceedings, the complainants bear the burden of proving the allegations in their complaints by substantial evidence. If they fail to show in a satisfactory manner the facts upon which their claims are based, the respondents are not obliged to prove their exception or defense.[8]

In this case, the anonymous complaint accused Justice Pizarro of selling favorable decisions, having a mistress, and habitually playing in casinos; and essentially charging him of dishonesty and violations of the Anti-Graft and Corrupt Practices Law, immorality, and unbecoming conduct. These accusations, however, with the only exception of gambling in casinos, are not supported by any evidence or by any public record of indubitable integrity. Thus, the bare allegations of corruption and immorality do not deserve any consideration. For this reason, the charges of corruption and immorality against Justice Pizarro must be dismissed for lack of merit.

Inasmuch as the Court would want to cleanse the Judiciary of its erring and undesirable members and personnel, such policy could only be implemented with the strict observance of due process, such that substantial evidence is required to prove the charges against a member of the Judiciary.[9] The Court is duty bound to protect its ranks or any member or personnel of the Judiciary from baseless or unreasonable charges.[10]

Indeed, while the law and justice abhor all forms of abuse committed by public officers and employees whose sworn duty is to discharge their duties with utmost responsibility, integrity,

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[7] *Rondina v. Justice Bello, Jr.*, 501 Phil. 319, 326 (2005).

[8] *Re: Letter of Lucena Ofendoreyes alleging Illicit Activities of a certain Atty. Cajayon involving Cases in the Court of Appeals, Cagayan de Oro City*, A.M. No. 16-12-03-CA, 6 June 2017.

[9] *Alegria v. Duque*, 549 Phil. 25, 27 (2007).

[10] *Relova v. Rosales*, 441 Phil. 104, 107 (2002).

competence, accountability, and loyalty, the Court must protect them against unsubstantiated charges that tend to adversely affect, rather than encourage, the effective performance of their duties and functions.[11]

As regards the accusation of habitually playing in casinos, it is clear that the anonymous complaint was not supported by public records of indubitable integrity as required by the rules. Nevertheless, it is equally undisputed, as in fact it was admitted, that Justice Pizarro was the same person playing in a casino in Clark, Pampanga, as shown by the photographs attached to the anonymous complaint. He also admitted that he played in a casino sometime in 2009. The Court cannot simply ignore this evident and admitted fact. The issue now is whether Justice Pizarro may be held administratively liable for gambling in casinos.

Recently, the Office of the Court Administrator (*OCA*) reminded judges and court personnel to strictly comply with the prohibition against gambling or being seen in gambling places such as the casino.[12] The OCA cited Circular No. 4[13] issued by the Court on 27 August 1980 which reads:

> The attention of the Court has been invited to the presence of some judges in gambling casinos operating under Presidential Decree No. 1067-B. This is clearly violative of Section 5(3-b) of said Decree. It reads as follows:
>
> (3-b) Persons not allowed to play —
>
> **(a) Government officials connected directly with the operation of the government or any of its agencies.**"
>
> In accordance with law and pursuant to the Resolution of the Court en banc in Administrative Matter No. 1544-0, dated August 21, 1980, **judges of inferior courts and the court personnel** are enjoined from playing in or being present in gambling casinos.

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[11] *Balasbas v. Monayao*, 726 Phil. 664, 665 (2014).

[12] OCA Circular No. 231-2015 dated 12 October 2015.

[13] As cited in *City Government of Tagbilaran v. Hontanosas, Jr.*, 425 Phil. 592, 599-600 (2002).

Moreover, judges are likewise enjoined to keep in mind the Canons of Judicial Ethics, paragraph 3 of which provides:

> 3. *Avoidance of appearance of impropriety.* — A judge's official conduct should be free from the appearance of impropriety, and his personal behavior, not only upon the bench and in the performance of judicial duties, but also in his everyday life, should be beyond reproach." (emphases supplied and italics in the original)

With respect to Circular No. 4 and Administrative Matter No. 1544-0, it is with regret that the Court finds them inapplicable to the present case. It is clear from the words of these issuances that the prohibition from entering and gambling in casinos is applicable only to judges of inferior courts and court personnel. Stated differently, the aforesaid issuances do not cover justices of collegial courts for the simple reason that they are neither judges of the inferior courts nor can they be described as personnel of the court. Although the term "judge" has been held to comprehend all kinds of judges, the same is true only if the said term is not modified by any word or phrase.[14] In the case of Circular No. 4 and Administrative Matter No. 1544-0, the term "judge" has been qualified by the phrase "inferior courts." Thus, absurd as it may seem, Justice Pizarro cannot be held administratively liable under Circular No. 4 and Administrative Matter No. 1544-0.

Nevertheless, the inapplicability of the aforestated Court issuances to justices of collegial courts does not necessarily mean that Justice Pizarro is absolutely cleared of his evident and admitted act of playing in casinos.

Section 5 (3-b)(a) of Presidential Decree *(P.D.)* No. 1067-B and Section 14(4)(a) of P.D. No. 1869, which consolidated P.D. No. 1067-B with other presidential decrees issued relative to the franchise and powers of the Philippine Amusement and Gaming Corporation, did not define the meaning of the term "government officials connected directly with the operation of

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[14] *The Collector of Customs Airport Customhouse v. Villaluz*, 163 Phil. 354, 389 (1976).

the government or any of its agencies" as well as the words used therein. The same is true with respect to the presidential issuances relative to such prohibition.[15] Considering, however, that the obvious purpose of the subject prohibition is the regulation of conduct of government officials, reference may be made to pertinent administrative laws and jurisprudence pertaining thereto to comprehend the meaning of the term under scrutiny.

In this regard, Section 2(1) of Executive Order *(E.O.)* No. 292 or the Administrative Code of 1987 defines "Government of the Republic of the Philippines" as "the corporate governmental entity through which the functions of government are exercised throughout the Philippines, including, save as the contrary appears from the context, the various arms through which political authority is made effective in the Philippines, whether pertaining to the autonomous regions, the provincial, city, municipal or barangay subdivisions or other forms of local government."[16] The term "Government of the Republic of the Philippines" or "Philippine Government" is broad enough to include the local governments and the central or national government which, in turn, consist of the legislative, executive, and judicial branches, as well as constitutional bodies and other bodies created in accordance with the constitution.[17]

Section 2(4) of E.O. No. 292 further states that "Agency of the Government" refers to any of the various units of the Government, including a department, bureau, office, instrumentality, or government-owned or controlled corporations, or a local government or a distinct unit therein.

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[15] Memorandum Circular No. 20, series of 1986, issued by Executive Secretary Joker P. Arroyo on 8 October 1986; Memorandum Circular No. 8, series of 2001, issued by Executive Secretary Alberto G. Romulo on 28 August 2001; Memorandum Circular No. 6, series of 2016 issued by Executive Secretary Salvador C. Medialdea on 20 September 2016.

[16] See also Act 2711, Section 2 or the Revised Administrative Code of 1917, which was in effect upon the enactment of P.D. Nos. 1067-B and 1869.

[17] *Central Bank of the Philippines v. CA*, 159-A Phil. 21, 34 (1975); Executive Order No. 292, Book II; see also Act No. 2711, Article IV, Section 17.

Section 2(14) of E.O. No. 292 also defines an "officer" as distinguished from a "clerk" or "employee" as "a person whose duties, not being of a clerical or manual nature, involves the exercise of discretion in the performance of the functions of the government." On the other hand, when used with reference to a person having authority to do a particular act or perform a particular function in the exercise of governmental power, "officer" includes any government employee, agent or body having authority to do the act or exercise that function.

As regards the qualifying phrase "connected directly with the operation," its definition could not be found in the Administrative Code and other similarly applicable statutes and rules. It is settled, however, that in the absence of legislative intent to the contrary, words and phrases used in a statute should be given their plain, ordinary, and common usage meaning.[18] The words should be read and considered in their natural, ordinary, commonly accepted and most obvious signification, according to good and approved usage and without resorting to forced or subtle construction.[19] Indeed, the lawmaker is presumed to have employed the words in the statute in their ordinary and common use and acceptation.[20]

Thus, the words "connected," "directly," and "operation" must be given their ordinary meaning in relation to their ordinary use in organizations or institutions such as the government. Hence, the term "connected" may mean "involved" "associated" or "related;" "directly" may mean "immediately" "without any intervening agency or instrumentality or determining influence" or "without any intermediate step;" and "operation" may mean "doing or performing action" or "administration." Additionally, "to operate" is synonymous to the terms "to exercise" and "to act."

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[18] *The Secretary of Justice v. Koruga,* 604 Phil. 405, 416 (2009).

[19] *South African Airways v. Commissioner of Internal Revenue*, 626 Phil. 566, 573 (2010).

[20] *Delfino v. St. James Hospital, Inc.*, 532 Phil. 551, 558 (2006) citing *People v. Kottinger*, 45 Phil. 352, 357 (1923).

From the foregoing, it is opined that the term "government official connected directly to the operation of the government or any of its agencies" refers to any person employed by the government whose tasks is the performance and exercise of any of the functions and powers of such government or any agency thereof, as conferred on them by law, without any intervening agency. Simply put, a "government official connected directly to the operation of the government or any of its agencies" is a government officer who performs the functions of the government on his own judgment or discretion — essentially, a government officer under Section 2(14) of E.O. No. 292.

Applying the above definition to the present case, it is clear that Justice Pizarro is covered by the term "government official connected directly with the operation of the government." Indeed, one of the functions of the government, through the Judiciary, is the administration of justice within its territorial jurisdiction. Justice Pizarro, as a magistrate of the CA, is clearly a government official directly involved in the administration of justice; and in the performance of such function, he exercises discretion. Thus, by gambling in a casino, Justice Pizarro violated the prohibition from gambling in casinos as provided under Section 14(4)(a) of P.D. No. 1869.

Although P.D. No. 1869 did not provide for a penalty for any act done in contravention of its provisions particularly the prohibition on gambling, in *City Government of Tagbilaran v. Hontanosas, Jr.,*[21] it was held that such transgression constitutes violations of Paragraphs 3 and 22 of the Canons of Judicial Ethics, which respectively provide:

> 3. Avoidance of appearance of impropriety —
>
> A judge's official conduct should be free from the appearance of impropriety, and his personal behavior, not only upon the bench and in the performance of judicial duties, but also in his everyday life, should be beyond reproach.
>
> x x x x x x x x x

[21] *Supra* note 13.

22. Infractions of law —

The judge should be studiously careful himself to avoid even the slightest infraction of the law, lest it be a demoralizing example to others.[22]

Further, Justice Pizarro also violated Canons 2 and 4 of the New Code of Judicial Conduct for the Philippine Judiciary which pertinently provides:

CANON 2
INTEGRITY

Integrity is essential not only to the proper discharge of the judicial office but also to the personal demeanor of judges.

SEC. 1. Judges shall ensure that not only is their conduct above reproach, but that it is perceived to be so in the view of a reasonable observer.

SEC. 2. The behavior and conduct of judges must reaffirm the people's faith in the integrity of the judiciary. Justice must not merely be done but must also be seen to be done.

x x x x x x x x x

CANON 4
PROPRIETY

Propriety and the appearance of propriety are essential to the performance of all the activities of a judge.

SEC. 1. Judges shall avoid impropriety and the appearance of impropriety in all of their activities.

SEC. 2. As a subject of constant public scrutiny, judges must accept personal restrictions that might be viewed as burdensome by the ordinary citizen and should do so freely and willingly. In particular, judges shall conduct themselves in a way that is consistent with the dignity of the judicial office.

The Court has repeatedly reminded judges to conduct themselves irreproachably, not only while in the discharge of official duties but also in their personal behavior every day.[23]

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[22] *Id.* at 600.

[23] *Re: Anonymous Complaint against Judge Gedorio,* 551 Phil. 174, 180 (2007).

No position demands greater moral righteousness and uprightness from its occupant than does the judicial office. Judges in particular must be individuals of competence, honesty and probity, charged as they are with safeguarding the integrity of the court and its proceedings. Judges should behave at all times so as to promote public confidence in the integrity and impartiality of the judiciary, and avoid impropriety and the appearance of impropriety in all their activities. A judge's personal behaviour outside the court, and not only while in the performance of his official duties, must be beyond reproach, for he is perceived to be the personification of law and justice. Thus, any demeaning act of a judge degrades the institution he represents.[24]

Accordingly, the Court finds respondent Justice Pizarro guilty of conduct unbecoming of a member of the judiciary. Considering, however, that this is the respondent justice's first transgression, and further bearing in mind his immediate admission of his indiscretion as well as the number of years he has been in government service, the Court finds the imposition of a fine in the amount of ₱100,000.00 sufficient in this case.

WHEREFORE, the Court finds respondent Associate Justice Normandie B. Pizarro **GUILTY** of conduct unbecoming of a member of the judiciary, and is hereby **ORDERED** to pay a fine in the amount of ₱100,000.00.

SO ORDERED.

Carpio (Acting C.J.), *Velasco, Jr., Leonardo-de Castro, Peralta, del Castillo, Perlas-Bernabe, Jardeleza, Caguioa, Tijam, Reyes, Jr.,* and *Gesmundo, JJ.,* concur.

Leonen, J., see dissenting opinion.

Bersamin, J., no part, close relations to party.

Sereno, C.J., on leave.

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[24] *Anonymous v. Achas*, 705 Phil. 17, 24-25 (2013) citing *City Government of Tagbilaran v. Judge Agapito Hontanosas, Jr.*, *supra* note 13 at 601.

DISSENTING OPINION

LEONEN, *J.*:

Justice Pizarro's acts warrant not merely a fine of ₱100,000.00, but dismissal from the service. I dissent from the *ponencia*'s conclusions concerning the imposable penalty.

Concededly, in *City Government of Tagbiliran v. Judge Hontanosas, Jr.*,[1] this Court imposed a ₱12,000.00 fine and issued a stern warning against the respondent therein for playing slot machines in a casino and going to cockpits and placing bets on cockfights. However, the facts and circumstances in this case show that a higher penalty must be imposed on respondent.

In contrast to *City Government of Tagbiliran*, the respondent in this case is not a Municipal Trial Court judge, but a Justice of the Court of Appeals. By virtue of his higher judicial rank as a member of a collegiate appellate court, a degree below only to this Court, respondent should be held to a higher standard of judicial conduct.

The *ponencia*'s analysis of Supreme Court Circular No. 4 issued on August 27, 1980 and Administrative Matter No. 1544-0 dated August 21, 1980 reasons that justices of collegiate courts are without the prohibition from entering and gambling in casinos as they are neither judges of inferior courts nor personnel of the court. Instead, respondent was found to have violated, among others, Section 14(4)(a) of Presidential Decree No. 1896, which disallows government officials connected directly with the operation of the government or any of its agencies from playing in Philippine Amusements and Gaming Corporation casinos.

The difference between Supreme Court Circular No. 4 issued on August 27, 1980 and Administrative Matter No. 1544-0 dated August 21, 1980, and Presidential Decree No. 1896, is that the

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[1] 425 Phil. 592-603 (2002) [Per *C.J.* Davide, Jr., First Division].

former prohibits not only playing in gambling casinos, but even mere entry therein. This strict prohibition was emphasized in OCA Circular No. 231-15 dated October 12, 2015, in which judges and court personnel were strictly reminded that they cannot gamble or be seen in casinos.

The stricter version is also found in Memorandum Circular No. 20 issued on October 6, 1986,[2] Memorandum Circular No. 8 issued on August 28, 2011,[3] and Memorandum Circular No. 6 dated September 20, 2016.[4] This stringent prohibition against government officials entering or being present in gambling casinos is consistent with the code of conduct imposed on public servants. As stated in Memorandum Circular No. 6 dated September 20, 2016:

> In view of its negative effect on the public perception of government service as a whole, the mere entry or presence of government officials and employees in a gambling casino shall be considered as conduct prejudicial to the best interest of the service, unless the same was in the performance of official duties and functions.

I disagree that only judges of the inferior courts and court personnel must abide by a severe proscription, while justices of collegiate courts, the latter of which necessarily includes the members of this Court, are given more leniency in the activities they may engage in. Members of the judiciary with higher judicial rank must abide by more stringent norms in the conduct of their professional and personal lives. High-ranking members of the judiciary are the benchmark by which their colleagues and subordinates model their own behavior. Should they act in such a manner not befitting their rank, they should

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[2] Titled "Enjoining Strict Enforcement of P.D. No. 1067-B Granting a Franchise to the Philippine Amusement and Gaming Corporation (PAGCOR) to Establish, Operate and Maintain Gambling Casinos."

[3] Titled "Enjoining Government Personnel and All Concerned from Entering or Playing in Casinos."

[4] Titled "Enjoining All Government Officials and Employees to Strictly Observe and Comply with The Prohibition Against Going to Gambling Casinos."

be penalized accordingly. This is the price of occupying an exalted position within our ranks.[5]

By respondent's own admission, he had not only entered at least two casinos, but had gambled both times, albeit in what he terms in a parlor game concept:

> Stripped of all technicalities, and to save your Honors of your precious worktime, on the casino table photos, I plead guilty to my indiscretion. My specifics: the same was taken at a Clark casino when I was accompanying a balikbayan US-based provincemate and former friend in Saudi Arabia some forty (40) years ago. We played a little after early breakfast, without our identity introduced or known, in parlor game fashion, small not big stakes. The photos might have been taken by people with ulterior motives knowing that I am planning for early retirement. I also confess that, sometime in 2009, when I was found to be sick of terminal cancer and was "biking and biking until I die", I also played casino parlor game concept. Again, an indiscretion for a dying man.[6]

This makes it at least two times he has violated the express prohibition laid down in Presidential Decree No. 1896.

Canon 2 of the New Code of Judicial Conduct emphasizes that the requirement of integrity not only in a judge's discharge of their office, but in their personal demeanor as well:

CANON 2
Integrity

Integrity is essential not only to the proper discharge of the judicial office but also to the personal demeanor of judges.

SECTION 1. Judges shall ensure that not only is their conduct above reproach, but that it is perceived to be so in the view of a reasonable observer.

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[5] *Dacera, Jr. v. Judge Dizon*, 391 Phil. 835–845 (2000) [Per *J*. Ynares-Santiago, First Division] citing *Vda. De Enriquez v. Judge Bautista*, 387 Phil. 544–554 (2000) [Per *J*. Vitug, Third Division]; *Anonymous v. Judge Achas*, 705 Phil. 17-25 (2013) [Per *J*. Mendoza, Third Division].

[6] Comment, p. 1.

SECTION 2. The behavior and conduct of judges must reaffirm the people's faith in the integrity of the judiciary. Justice musty not merely be done but must also be seen to be done.

SECTION 3. Judges should take or initiate appropriate disciplinary measures against lawyers or court personnel for unprofessional conduct of which the judge may have become aware.

Moreover, Canon 4 of the New Code of Judicial Conduct requires propriety and the appearance of propriety in all of a judge's activities:

CANON 4
Propriety

Propriety and the appearance of propriety are essential to the performance of all the activities of a judge.

SECTION 1. Judges shall avoid impropriety and the appearance of impropriety in all of their activities.

SECTION 2. As a subject of constant public scrutiny, judges must accept personal restrictions that might be viewed as burdensome by the ordinary citizen and should do so freely and willingly. In particular, judges conduct themselves in a way that is consistent with the dignity of the judicial office. …

Judges and justices must be irreproachable in their conduct, professional and personal, considering the exacting demands of moral righteousness and uprightness on the judiciary.[7] The personal restrictions imposed on members of the judiciary and all other court personnel on entry in gambling casinos may appear burdensome, even excessive, but appearance is as important as reality in the performance of judicial functions and public service.[8]

Respondent's repeated violations of Presidential Decree No. 1896 not only demonstrate his disregard of the law and the norms of judicial service, but also seriously taint the public's perception of the judiciary and corrode the image it strives to uphold.

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[7] *Atty. Rosales v. Judge Villanueva*, 452 Phil. 121–128 (2003) [Per *J.* Azcuna, First Division]; *Dela Cruz v. Judge Bersamira*, 402 Phil. 671-684 (2001) [Per *J.* Ynares-Santiago, First Division].

[8] *Ascaño, Jr. v. Judge Jacinto, Jr.,* A.M. No. RTJ-15-2405, January 12, 2015 [Per C.*J.* Sereno, First Division].

In violating Canons 2 and 4 of the New Code of Judicial Conduct, respondent committed gross misconduct.[9] Gross misconduct includes "an act that is inspired by the intention to violate the law, or that is a persistent disregard of well-known rules,"[10] and tends to seriously undermine the faith and confidence of the people in the Judiciary.[11] As gross misconduct is a serious charge, dismissal from the service with all the accessory penalties is one of the sanctions which may be imposed.[12] Considering respondent's judicial rank, as well as the fact that he had admitted to violating the law at least twice, such a severe penalty is necessary under the circumstances.

ACCORDINGLY, I vote to hold Court of Appeals Associate Justice Normandie B. Pizarro **GUILTY** of gross misconduct. I vote that he be **DISMISSED** from the service, with the accessory penalties of forfeiture of all his retirement benefits, except accrued leave benefits, and disqualification from reinstatement or appointment to any public office, including government-owned or controlled corporations.

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[9] Section 8, Rule 140 of the Rules of Court states, in part:

Sec. 8. *Serious charges*. — Serious charges include: …

3. Gross misconduct constituting violations of the Code of Judicial Conduct. …

[10] *Rosqueta v. Asuncion*, 730 Phil. 64-78 (2014) [Per *J*. Bersamin, First Division].

[11] *Id*.

[12] Section 11, Rule 140 of the Rules of Court states, in part:

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.

EN BANC

[A.M. No. P-17-3638. March 13, 2018]
(Formerly A.M. No. 17-01-03-MCTC)

OFFICE OF THE COURT ADMINISTRATOR, *complainant, vs.* **RUBY M. DALAWIS, CLERK OF COURT II, MUNICIPAL CIRCUIT TRIAL COURT OF MONKAYO-MONTEVISTA, COMPOSTELA VALLEY,** *respondent.*

SYLLABUS

POLITICAL LAW; ADMINISTRATIVE LAW; CLERK OF COURT; GROSS NEGLECT OF DUTY AND GRAVE MISCONDUCT; MISHANDLING OF JUDICIARY COLLECTIONS AND SAVINGS; DISMISSAL WARRANTED EVEN FOR THE FIRST OFFENSE.— In this case, [Clerk of Court] Dalawis' failure to remit and/or deposit her judiciary collections for the period covering April 2015 to December 2015, her unauthorized withdrawals from the court's FF savings account, and the fact that she appropriated for her personal use her judiciary collections amounting to ₱1,903,148.00 are evident manifestations of her inability to efficiently and conscientiously discharge her duties as the administrative officer of the court. Such actions constitute gross neglect of duty and grave misconduct in violation of OCA Circular No. 50-95 dated October 11, 1995, Amended Administrative Circular No. 35-2004 dated August 16, 2004, and OCA Circular No. 113-2004 dated September 16, 2004. Gross Neglect of Duty and Grave Misconduct are classified as grave offenses under Section 50 (a) of Rule 10 of the *2017 Rules on Administrative Cases in the Civil Service*. The penalty for each of these offenses is dismissal even for the first offense.

D E C I S I O N

***PER CURIAM*:**

This is an administrative complaint against Ms. Ruby M. Dalawis *(Dalawis),* Clerk of Court *(COC)* II, Municipal Circuit

Trial Court *(MCTC)* of Monkayo-Montevista, Compostela Valley, which stemmed from the financial audit on the books of accounts of the Monkayo-Montevista MCTC conducted by the Financial Audit Team *(Audit Team)* of the Fiscal Monitoring Division, Court Management Office of the Office of the Court Administrator *(OCA)*.

The factual antecedents are as follows:

Pursuant to Travel Authority[1] and Travel Order No. 67-2016,[2] dated May 24, 2016 and June 1, 2016, respectively, the Audit Team conducted a financial audit in the MCTC of Monkayo-Montevista, Compostela Valley, covering the period of accountabilities of the following personnel:

Accountable Officer	Position	Accountability Period	Status of Employment
Ms. Caridad G. Cuevas	Court Stenographer II	February 1, 2007 to February 29, 2008	Incumbent Court Stenographer II
Ms. Ruby M. Dalawis	Clerk of Court II	March 1, 2008 to June 16, 2016	Relieved as COC on June 17, 2016
Ms. Tresennia Veni M. Butaslac	Court Stenographer I	June 17, 2016 to present	Officer-in-Charge[3]

The said financial audit was undertaken upon the directive of then Deputy Court Administrator *(DCA)* Thelma C. Bahia in view of the letter[4] dated May 24, 2016 of Ms. Marina Dela Cruz, a concerned citizen, regarding the alleged irregularities in the handling of court funds in the MCTC of Monkayo-Montevista. In addition, Dalawis herself had admitted in her letter[5] dated March 11, 2016 that she had appropriated her judiciary collections for her personal use.

Based on the documents presented for audit, the Audit Team came up with the following findings and observations:

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[1] Annex "A", *rollo,* p. 18.

[2] Annex "B", *id.* at 20.

[3] *Rollo,* p. 4.

[4] Annex "E", *id.* at 23.

[5] Annex "F", *id.* at 24.

1) The Fiduciary Fund (*FF*) and Sheriff's Trust Fund (*STF*) had a cash shortage of ₱1,606,600.00, of which the total amount of ₱32,000.00 had been restituted, leaving a balance of ₱1,574,600.00; the Judiciary Development Fund (*JDF*) had a cash shortage of ₱79,008.40; the Special Allowance for the Judiciary Fund (*SAJF*) had a cash shortage of ₱204,039.60; the Mediation Fund (*MF*) had a cash shortage of ₱39,500.00; and the General Fund – New (*GF-New*) had a cash shortage of ₱6,000.00. Of the total cash shortage amounting to ₱1,903,171.00, Dalawis was accountable for the amount of **₱1,903,148.00**.

2) The computed shortages Dalawis incurred in the JDF, SAJF, MF, and GF-New primarily resulted from her undeposited collections covering the following periods:

Month/Year	**JDF**	**SAJF**	**MF**	**GF-New**
May-December 2013		₱500.00	₱9,500.00	
February 2014				
March-December 2014			16,500.00	
January 2015			1,500.00	
February 2015			1,000.00	
April 2015		28,178.40	1,000.00	₱2,500.00
May 2015	₱8,672.40	25,747.20	3,500.00	500.00
June 2015	7,904.40	24,945.60	1,000.00	3,000.00
July 2015	22,148.40	9,451.60	1,000.00	
August 2015	10,992.00	36,358.00	1,000.00	
September 2015	6,813.20	18,486.80		
October 2015	8,878.40	22,021.60		
November 2015	8,646.80	22,703.20	1,500.00	
December 2015	4,952.80	15,647.20	500.00	
April-May 2016			1,500.00	
TOTAL	**₱79,008.40**	**₱204,039.60**	**₱39,500.00**	**₱6,000.00**[6]

[6] *Rollo,* p. 10.

3) On the other hand, the computed shortage incurred by Dalawis in the FF resulted from the accumulated unauthorized withdrawals covering the period April 2008 to December 2015.

4) Dalawis admitted that she could personally withdraw the same from the Land Bank of the Philippines, even though the savings account of the court needed the signature of the presiding judge. The Audit Team was unable to verify whether the withdrawal slips pertaining to the unauthorized withdrawals contained the signature of the Presiding Judge as Dalawis refused to turn-over the said slips to the Team for inspection.

During the exit conference held on June 17, 2016, the Audit Team discussed with Hon. Maria Sophia T. Palma Gil-Torrejos, Acting Presiding Judge of the MCTC of Monkayo-Montevista, and Dalawis the result of the financial audit.

The Audit Team explained to Dalawis that her computed shortages were the result of her failure to remit or deposit her judiciary collections from April 2015 to December 2015. Likewise, the Audit Team informed Dalawis that her unauthorized withdrawals from the FF savings account, notwithstanding the occasional deposits and restitutions she made, caused the balance of the FF savings account to fall below the minimum balance allowed by the bank; thus, the bank charges amounting to ₱2,600.00.

The Audit Team recommended to Judge Palma Gil-Torrejos that Dalawis be relieved of her duties as financial officer of the court to prevent further loss of the judiciary funds. Ms. Tresennia Veni M. Butaslac *(Butaslac)*, Court Stenographer I, was then designated by Judge Palma Gil-Torrejos as the new financial officer of the court, in charge of the collections, deposits, and reporting of all financial transactions of the court effective June 17, 2016. Butaslac was advised by the Audit Team to open a new FF and STF savings account for her collections in order to separate the financial accountability of Dalawis.

In her handwritten letter to DCA Bahia, dated March 11, 2016, Dalawis wrote:

"x x x Amidst the quest for survival, I was so confident enough that I can immediately recover financially and submit regularly my required financial reports, but to my great disgust, the Rural Banks of our province were tremendously affected by Typhoon Pablo in view of the fact that farmers were their (sic) major clients; therefore, they have to declare bank holidays/bankruptcy, which of course also affected me considering that ***I can no longer avail renewal of my loan to pay off my court collections. At about that time my financial reports were already delayed.***"[7]

In another letter[8] dated July 12, 2016, Dalawis promised "to pay 100% interest for the whole amount to be restituted. x x x By July and August 2016, I can restitute ₱500,000.00 as I plead to give me considerable time to pay it in full."

However, despite the time given to Dalawis to restitute the shortages she incurred, she still failed to settle her financial accountabilities.

In view of the findings of the Audit Team, the OCA, in a Memorandum[9] issued on December 14, 2016, requested approval of the following recommendations:

1. This report be docketed as a regular administrative complaint against **Ms. RUBY M. DALAWIS,** Clerk of Court II, MCTC, Monkayo – Montevista, Compostela Valley, for gross neglect of duty and grave misconduct for non-remittance of her judiciary collections in violation of OCA Circular No. 50-95 dated 11 October 1995, Amended Administrative Circular No. 35-2004 dated 16 August 2004 and OCA Circular No. 113-2004 dated 16 September 2004;
2. **Ms. RUBY M. DALAWIS** be **PREVENTIVELY SUSPENDED** from office pending resolution of this administrative matter;

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[7] *Id.* at 33. (Emphasis ours)

[8] *Id.* at 70-72.

[9] *Id.* at 1-3.

3. **Ms. RUBY M. DALAWIS** be **DIRECTED** to **EXPLAIN** her non-remittance of judiciary collections in violation of OCA Circular No. 50-95 dated 11 October 1995, Amended Administrative Circular No. 35-2004 dated 16 August 2004 and OCA Circular No. 113-2004 dated 16 September 2004;

4. **Ms. RUBY M. DALAWIS** be **DIRECTED** to **RESTITUTE** the following shortages: x x x

5. **Ms. TRESENNIA VENI M. BUTASLAC**, Court Stenographer I/Officer-in-Charge, MCTC, Monkayo-Montevista, Compostela Valley, be **DIRECTED** to:

   a. **STRICTLY ADHERE TO** the procedural guidelines in the handling of the Sheriff's Trust Fund;

   b. **UPDATE** regularly the recording of financial transactions for each fund in the official cashbooks and **CERTIFY** at the end of every month the correctness of the entries therein; and

   c. **STERNLY ADHERE TO** and **FOLLOW** the issuances of the Court on the proper handling and reporting of judiciary funds, particularly the prescribed period within which to remit court collections as well as the proper collection and allocation of filing fees; and

6. **Hon. MARIA SOPHIA T. PALMA GIL-TORREJOS**, Acting Presiding Judge, MCTC, Monkayo-Montevista, Compostela Valley, be **DIRECTED** to:

   a. **ENSURE** that the Clerk of Court/Officer-in-Charge religiously complies with the directives/circulars issued by the Court, particularly on the proper handling of judiciary funds;

   b. **CLOSELY MONITOR** the financial transactions of the court to ensure strict observance of the issuances of the Court in order to avoid any irregularity in the collections, deposits and withdrawals/ disbursements of court funds, otherwise, she may

be held equally liable for the infractions committed by the employees under [her] supervision; and

c. **INFORM** the Presiding Judge who will be permanently appointed in the subject court of the same **DIRECTIVES** to her to avoid the malversation of public funds.

7. a **HOLD DEPARTURE ORDER** be issued against **Ms. RUBY M. DALAWIS** to prevent her from leaving the country.[10]

The Court adopts the findings and recommendations of the OCA.

No less than the Constitution mandates that a public office is a public trust and that all public officers must be accountable to the people, and serve them with responsibility, integrity, loyalty and efficiency.[11] This constitutional mandate should always be in the minds of all public servants to guide them in their actions during their entire tenure in the government service.[12] As frontliners in the administration of justice, court personnel should live up to the strictest standards of honesty and integrity in the public service.[13]

Clerks of Court such as Dalawis have general administrative supervision over all the personnel of the court. They perform a delicate function as designated custodians of the court's funds, revenues, records, properties, and premises.[14] Their administrative

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[10] *Id.*

[11] Section 1, Article XI of the 1987 Constitution provides: "Public office is a public trust. Public officers and employees must at all times be accountable to the people, serve them with utmost responsibility, integrity, loyalty, and efficiency, act with patriotism and justice, and lead modest lives."

[12] *Licardo v. Licardo*, 560 Phil. 454, 464 (2007).

[13] *OCA v. Dequito,* A.M. No. P-15-3386, November 15, 2016, 809 SCRA 1, 14.

[14] *Re: Report on the Financial Audit Conducted at the Municipal Trial Court, Baliuag, Bulacan,* 753 Phil. 31, 37 (2015).

functions are as vital to the prompt and proper administration of justice as their judicial duties.[15] As custodian of court funds and revenues, clerks of court are primarily accountable for all funds that are collected for the court, whether personally received by them, or by a duly-appointed cashier who is under their supervision and control.[16]

Time and again, this Court has held that it will not countenance any conduct, act or omission on the part of those involved in the administration of justice which violates the norm of public accountability and diminishes the faith of the people in the Judiciary.[17] In this case, Dalawis' failure to remit and/or deposit her judiciary collections for the period covering April 2015 to December 2015, her unauthorized withdrawals from the court's FF savings account, and the fact that she appropriated for her personal use her judiciary collections amounting to ₱1,903,148.00 are evident manifestations of her inability to efficiently and conscientiously discharge her duties as the administrative officer of the court. Such actions constitute gross neglect of duty and grave misconduct in violation of OCA Circular No. 50-95[18] dated October 11, 1995, Amended Administrative Circular No. 35-2004[19] dated August 16, 2004, and OCA Circular No. 113-2004[20] dated September 16, 2004.

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[15] *OCA v. Atty. Buencamino,* 725 Phil. 110, 120 (2014).

[16] *Id.*

[17] *OCA v. Dequito, supra* note 13.

[18] "B. Guidelines in Making Withdrawals

x x x x x x x x x

(4) All collections from bailbonds, rental deposits, and other fiduciary collections shall be deposited within twenty-four (24) hours by the Clerk of Court concerned, upon receipt thereof, with the Land Bank of the Philippines."

[19] *Guidelines in the Allocation of the Legal Fees Collected Under Rule 141 of the Rules of Court, as Amended, Between the Special Allowance for the Judiciary Fund and the Judiciary Development Fund* which provides, among others, that the daily collection for the JDF and the SAJF shall be deposited everyday with the nearest branch of the Land Bank of the Philippines under Savings Account No. 0591-1116-34 and 0591-1744-28, respectively.

[20] *Re: Submission of Month Reports of Collections and Deposits.*

Gross Neglect of Duty and Grave Misconduct are classified as grave offenses under Section 50 (a) of Rule 10 of the *2017 Rules on Administrative Cases in the Civil Service*. The penalty for each of these offenses is dismissal even for the first offense.

WHEREFORE, premises considered, Ms. Ruby M. Dalawis, Clerk of Court II, MCTC of Monkayo-Montevista, Compostela Valley, is found **GUILTY** of Gross Neglect of Duty and Grave Misconduct, and is hereby **DISMISSED FROM THE SERVICE,** with forfeiture of retirement benefits, perpetual disqualification from holding public office in any branch or instrumentality of the government, including government-owned or controlled corporations. Dalawis is ordered to restitute the total amount of ₱1,903,148.00 representing her shortages in the following: Fiduciary Fund – ₱1,574,600.00; Judiciary Development Fund – ₱70,008.40; Special Allowance for the Judiciary Fund – ₱204,039.60; Mediation Fund – ₱39,500.00; and General Fund – New – ₱6,000.00.

The Office of the Court Administrator is hereby **DIRECTED** to file the appropriate criminal charges against respondent Dalawis.

This Decision is immediately **EXECUTORY**.

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

Sereno, C.J., on leave.

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[*] Acting Chief Justice per Special Order No. 2539 dated February 28, 2018.

EN BANC

[A.M. No. P-17-3710. March 13, 2018]
(Formerly A.M. No. 13-6-44-MeTC)

OFFICE OF THE COURT ADMINISTRATOR, *complainant, vs.* **VLADIMIR A. BRAVO, Court Interpreter II, Branch 24, Metropolitan Trial Court, Manila,** *respondent.*

[A.M. No. P-18-3822. March 13, 2018]
(Formerly A.M. No. 13-7-62-MeTC)

OFFICE OF THE COURT ADMINISTRATOR, *complainant, vs.* **VLADIMIR A. BRAVO, Court Interpreter II, Branch 24, Metropolitan Trial Court, Manila,** *respondent.*

SYLLABUS

1. **POLITICAL LAW; ADMINISTRATIVE LAW; MEMORANDUM CIRCULAR NO. 4, SERIES OF 1991, OF THE CIVIL SERVICE COMMISSION (CSC); HABITUAL ABSENTEEISM.—** Under Memorandum Circular No. 4, Series of 1991, of the Civil Service Commission (*CSC*), an officer or employee in the civil service shall be considered habitually absent if he or she 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.** To stress, mere failure to file leave of absence does not by itself result in any administrative liability. However, unauthorized absence is punishable if the same becomes frequent or habitual. Absences become habitual only when an officer or employee in the civil service exceeds the allowable monthly leave credit, which is 2.5 days within the given time frame.

2. **ID.; ID.; ADMINISTRATIVE CIRCULAR NO. 14-2002 AND THE UNIFORM RULES ON ADMINISTRATIVE CASES IN THE CIVIL SERVICE; PENALTY IN CASE OF FREQUENT UNAUTHORIZED ABSENCES.—** Administrative Circular No. 14-2002 and The Uniform Rules on Administrative Cases in the Civil Service impose the penalty

of suspension of six (6) months and one (1) day to one (1) year, for the first offense, and dismissal, for the second offense, in case of frequent unauthorized absences. However, in the determination of the penalty imposed, attendant circumstances, such as physical fitness, habituality, and length of service in the government, may be considered.

D E C I S I O N

***PER CURIAM*:**

Time and again, We must recapitulate that to inspire public respect for the justice system, court officials and employees are at all times behooved to strictly observe official time. As punctuality is a virtue, absenteeism and tardiness are impermissible.[1]

Factual Antecedents

These consolidated administrative cases discuss the habitual absenteeism of Vladimir A. Bravo (*Bravo*), Court Interpreter II, of the Metropolitan Trial Court (*MeTC*), Manila, Branch 24.

Teodora R. Balboa, the Branch Clerk of Court of the MeTC, Br. 24, Manila, wrote in a letter dated December 11, 2012, to the Office of the Court Administrator (*OCA*) requesting the latter that Bravo be considered Absent Without Official Leave (*AWOL*), in view of Bravo's continuous absence since September 19, 2012, up to the date of this letter, without filing any leave of absence.[2] Thus, the OCA issued a 1st Indorsement dated June 19, 2013, directing Bravo to comment on the aforesaid report. However, he failed to comply with the said directive, thus, on April 23, 2014, the OCA issued a Tracer[3] reiterating its earlier directive for him to file a comment. No comment has been filed to this date.

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[1] *Re: Habitual Absenteeism of Mr. Fernando P. Pascual*, 507 Phil. 546, 549 (2005).

[2] *Rollo* (A.M. No. P-18-3822), p. 5.

[3] *Rollo* (A.M. No. P-17-3710), p. 8.

As to Bravo's second violation, a directive[4] was sent to him dated July 15, 2013, directing him to comment on the charge against him. However, he did not comment as well. Thus, a Tracer[5] dated April 23, 2014, was dispatched to Bravo's residence referring to the Certification dated June 18, 2013 of Ms. Irmina Cristina G. Permito, Officer-in-Charge, Employees Leave Division, Office of Administrative Services (*OAS*), OCA, directing him to file his comment.[6] However, instead of filing his comment, he tendered his resignation from the Judiciary effective on August 23, 2013.[7]

As evinced in the certifications submitted by the Leave Division, OAS, OCA, it discloses that Bravo has incurred the following unauthorized absences in the years 2012[8] and 2013,[9] respectively:

Year 2012	
MONTHS	**NUMBER OF DAYS ABSENT**
September 1-30	20
October 1-31	21.5
November 5-29	19
December 3-18	12
Year 2013	
MONTHS	**NUMBER OF DAYS ABSENT**
March	19
April	21
May	21

[4] *Rollo* (A.M. No. P-18-3822), p. 8.

[5] *Id.* at 9.

[6] *Id.*

[7] *Rollo* (A.M. No. P-18-3822), p. 17.

[8] *Rollo* (A.M. No. P-17-3710), p. 2.

[9] *Rollo* (A.M. No. P-18-3822), p. 2.

Report and Recommendation of the Office of the Court Administrator

In its Administrative Matter for Agenda[10] dated February 9, 2017, the OCA aptly observed that Bravo's refusal to comment can be interpreted as an admission of the charges against him. In a similar case,[11] it was held that it is totally against human nature to remain silent and say nothing in the face of false accusations. Here, Bravo made no effort to explain his unauthorized absences and instead tried to circumvent his impending liability by tendering his resignation from the Judiciary. The Court Administrator explained that Bravo's resignation from the service keeps the door open for a possible re-employment in the Judiciary. Thus, to prevent his re-employment, the imposition of the accessory penalties of dismissal, *i.e.,* forfeiture of separation benefits and privileges, except accrued leave credits, and with prejudice to re-employment in the government is called for.

The Court Administrator recommended that the complaint be re-docketed as a regular administrative matter and that Bravo be held liable for two (2) counts of habitual absenteeism, for the periods September 2012 to February 2013, and March 2013 to May 2013, and be meted the penalty of dismissal from the service, but considering that he has already resigned from the service, that Bravo be meted with the accessory penalties of forfeiture of all benefits, except accrued leave credits, if any, **and with prejudice to re-employment in any branch or instrumentality of the government, including government-owned or controlled corporations.**[12]

The Court *En Banc* issued a Resolution[13] dated June 20, 2017, which consolidated A.M. No. 13-7-62-MeTC with A.M. No. 13-6-44-MeTC, and re-docketed this case as a regular administrative matter.

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[10] *Rollo* (A.M. No. P-17-3710), p. 14.

[11] *Mendoza v. Tablizo*, 614 Phil. 30, 39 (2009).

[12] *Rollo* (A.M. No. P-17-3710), pp. 15-16. (Emphasis ours)

[13] *Rollo* (A.M. No. P-18-3822), p. 14.

Issue

Whether or not Bravo is guilty of habitual absenteeism such that he must be meted the penalty of being barred from entering public service.

The Court's Ruling

The Court resolves to adopt the findings and recommendations of the OCA, and holds Bravo guilty of habitual absenteeism.

Under Memorandum Circular No. 4, Series of 1991, of the Civil Service Commission (*CSC*), an officer or employee in the civil service shall be considered habitually absent if he or she 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.** To stress, mere failure to file leave of absence does not by itself result in any administrative liability. However, unauthorized absence is punishable if the same becomes frequent or habitual. Absences become habitual only when an officer or employee in the civil service exceeds the allowable monthly leave credit, which is 2.5 days within the given time frame.[14]

Applying the foregoing rule, Bravo is considered to have incurred unauthorized absences exceeding the allowable period by law. Bravo incurred 72.5 absences in the year 2012, while in 2013, he incurred 61 unauthorized absences. In sum, Bravo incurred a total of 133.5 unauthorized absences. Clearly, beyond what is allowed by law. This is aggravated by the fact that he made no effort to offer any reasonable explanation as to why he should not be penalized.

The Court Administrator aptly observed that it appears that Bravo resigned from the service in order to preserve an opportunity for a re-employment in the Judiciary. Such scheme employed by Bravo to evade the dire consequences of his

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[14] *Judge Arabani, Jr. v. Arabani*, A.M. Nos. SCC-10-14-P, SCC-10-15-P & SCC-11-17, February 21, 2017. (Emphasis ours)

acts cannot be countenanced by this Court, lest allow unbefitting individuals to blemish the high standards attributed to officials and employees in the Judiciary.

By reason of the nature and functions of their office, officials and employees of the Judiciary must faithfully observe the constitutional canon that public office is a public trust. This duty calls for the observance of prescribed office hours and the efficient use of official time for public service, if only to recompense the Government, and, ultimately, the people who shoulder the cost of maintaining the judiciary. Thus, to inspire public respect for the justice system, court officials and employees should, at all times, strictly observe official time.[15] Frequent unauthorized absences are inimical to public service, and for this, the respondent must be meted the proper penalty. Indeed, even with the fullest measure of sympathy and patience, the Court cannot act otherwise since the exigencies of government service cannot and should never be subordinated to purely human equations.[16]

Similarly, in *Balloguing v. Dagan*,[17] wherein a utility worker in a Regional Trial Court who has incurred unauthorized absences was dismissed from the service. The Court explained that Dagan deserves not just the dropping of his name from the rolls. His disservice to the Judiciary gives the Court sufficient reason to dismiss him and declare him ineligible for public service.

Here, Bravo is similarly guilty of habitual absenteeism which warrants the same penalty having failed to comply with what is incumbent of him under the law.

Administrative Circular No. 14-2002 and The Uniform Rules on Administrative Cases in the Civil Service impose the penalty

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[15] *Office of the Court Administrator v. Alfonso*, A.M. No. P-17-3634, March 1, 2017.

[16] *RE: Habitual Absenteeism of Eva Rowena J. Ypil, Court Legal Researcher II, Regional Trial Court, Branch 143 Makati City*, 555 Phil. 1, 7-8 (2007).

[17] A.M. No. P-17-3645, January 30, 2018.

of suspension of six (6) months and one (1) day to one (1) year, for the first offense, and dismissal, for the second offense, in case of frequent unauthorized absences. However, in the determination of the penalty imposed, attendant circumstances, such as physical fitness, habituality, and length of service in the government, may be considered.[18]

Here, there is no applicable mitigating circumstance that can be considered in Bravo's favor. Aside from being habitually absent, he blatantly ignored the communications sent to him. Such act is a manifestation of Bravo's lack of interest to the impending consequence of being barred from entering the judiciary again which he tried to circumvent by submitting his resignation early on.

WHEREFORE, Vladimir A. Bravo, Court Interpreter II, Metropolitan Trial Court, Manila City, Branch 24, is found **GUILTY** of habitual absenteeism. He is hereby **DISMISSED FROM THE SERVICE** with prejudice to re-employment in any government agency, including government-owned or controlled corporations, and with forfeiture of retirement benefits, except accrued leave credits.

SO ORDERED.

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

Sereno, C.J., on leave.

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[18] Civil Service Commission Memorandum Circular No. 19, s. 1999, Section 53.

[*] Acting Chief Justice per Special Order No. 2539 dated February 28, 2018.

EN BANC

[G.R. No. 178083. March 13, 2018]

FLIGHT ATTENDANTS AND STEWARDS ASSOCIATION OF THE PHILIPPINES (FASAP), *petitioner, vs.* **PHILIPPINE AIRLINES, INC., PATRIA CHIONG and THE COURT OF APPEALS,** *respondents.*

[A.M. No. 11-10-1-SC. March 13, 2018]

IN RE: LETTERS OF ATTY. ESTELITO P. MENDOZA RE: G.R. NO. 178083 - FLIGHT ATTENDANTS and STEWARDS ASSOCIATION OF THE PHILIPPINES (FASAP) VS. PHILIPPINE AIRLINES, INC., *ET AL*.

SYLLABUS

1. POLITICAL LAW; 1987 CONSTITUTION; JUDICIAL DEPARTMENT; REQUIREMENT FOR THE COURT TO STATE THE LEGAL AND FACTUAL BASIS FOR ITS DECISION DOES NOT INCLUDE COURT RESOLUTIONS.— The petitioner urges the Court to declare as void the October 4, 2011 resolution promulgated in A.M. No. 11-10-1-SC for not citing any legal basis in recalling the September 7, 2011 resolution of the Second Division. The urging of the petitioner is gravely flawed and mistaken. The requirement for the Court to state the legal and factual basis for its decisions is found in Section 14, Article VIII of the 1987 Constitution, x x x The constitutional provision clearly indicates that it contemplates only a *decision*, which is the judgment or order that *adjudicates on the merits of a case*. This is clear from the text and tenor of Section 1, Rule 36 of the *Rules of Court*, the rule that implements the constitutional provision.

2. REMEDIAL LAW; CIVIL PROCEDURE; JUDGMENTS; HARMLESS ERROR RULE; APPLIED WHERE ERROR FOUND DOES NOT AFFECT THE SUBSTANTIAL RIGHTS OR EVEN THE MERITS OF THE CASE.— FASAP assails the impropriety of the recall of the September 7, 2011 resolution. It contends that the raffle of G.R. No. 178083 to the Second

Division had not been erroneous but in "*full and complete consonance with Section 4(3) Article VIII of the Constitution*;" and that any error thereby committed was only procedural, and thus a mere "*harmless error*" that did not invalidate the prior rulings made in G.R. No. 178083. x x x FASAP is wrong to insist on the application of the *harmless error* rule. The rule is embodied in Section 6, Rule 51 of the *Rules of Court*, x x x The *harmless error* rule obtains during review of the things done by either the trial court or by any of the parties themselves in the course of trial, and any error thereby found does not affect the substantial rights or even the merits of the case. The Court has had occasions to apply the rule in the correction of a misspelled name due to clerical error; the signing of the decedents' names in the notice of appeal by the heirs; the trial court's treatment of the testimony of the party as an adverse witness during cross-examination by his own counsel; and the failure of the trial court to give the plaintiffs the opportunity to orally argue against a motion. All of the errors extant in the mentioned situations did not have the effect of altering the dispositions rendered by the respective trial courts. Evidently, therefore, the rule had no appropriate application herein.

3. **ID.; ID.; ID.; SECOND MOTION FOR RECONSIDERATION IS GENERALLY A PROHIBITED PLEADING; EXCEPTION; THE GRANTING OF THE MOTION FOR LEAVE TO FILE A SECOND MOTION FOR RECONSIDERATION AUTHORIZES THE FILING OF THE SAME, IN THE HIGHER INTEREST OF JUSTICE.—** FASAP asserts that PAL's *Second Motion for Reconsideration of the Decision of July 22, 2008* was a prohibited pleading; and that the July 22, 2008 decision was not anymore subject to reconsideration due to its having already attained finality. FASAP's assertions are unwarranted. With the Court's resolution of January 20, 2010 granting PAL's motion for leave to file a second motion for reconsideration, PAL's *Second Motion for Reconsideration of the Decision of July 22, 2008* could no longer be challenged as a prohibited pleading. It is already settled that the granting of the motion for leave to file and admit a second motion for reconsideration authorizes the filing of the second motion for reconsideration. Thereby, the second motion for reconsideration is no longer a prohibited pleading, and the Court cannot deny it on such basis alone. Nonetheless, we should stress that the rule prohibiting the filing of a second motion for reconsideration is by no means absolute.

Although Section 2, Rule 52 of the *Rules of Court* disallows the filing of a second motion for reconsideration, the *Internal Rules of the Supreme Court* (IRSC) allows an exception, x x x The conditions that must concur in order for the Court to entertain a second motion for reconsideration are the following, namely: 1. The motion should satisfactorily explain why granting the same would be in the higher interest of justice; 2. The motion must be made before the ruling sought to be reconsidered attains finality; 3. If the ruling sought to be reconsidered was rendered by the Court through one of its Divisions, at least three members of the Division should vote to elevate the case to the Court *En Banc*; and 4. The favorable vote of at least two-thirds of the Court *En Banc*'s actual membership must be mustered for the second motion for reconsideration to be granted. Under the IRSC, a second motion for reconsideration may be allowed to prosper upon a showing by the movant that a reconsideration of the previous ruling is necessary in the higher interest of justice. There is 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.

4. LABOR AND SOCIAL LEGISLATION; EMPLOYMENT; RETRENCHMENT; CONDITIONS FOR VALIDITY.— Retrenchment (Article 298 of the Labor Code) or downsizing is a mode of terminating employment initiated by the employer through no fault of the employee and without prejudice to the latter, resorted to by management during periods of business recession, industrial depression or seasonal fluctuations or during lulls over shortage of materials. It is a reduction in manpower, a measure utilized by an employer to minimize business losses incurred in the operation of its business. x x x Accordingly, the employer may resort to retrenchment in order to avert serious business losses. To justify such retrenchment, the following conditions must be present, namely: 1. The retrenchment must be reasonably necessary and likely to prevent business losses; 2. The losses, if already incurred, are not merely *de minimis*, but substantial, serious, actual and real, or, if only expected, are reasonably imminent; 3. The expected or actual losses must be proved by sufficient and convincing evidence; 4. The retrenchment must be in good faith for the advancement of its interest and not to defeat or circumvent the employees' right to security of tenure; and 5. There must be fair and

reasonable criteria in ascertaining who would be dismissed and who would be retained among the employees, such as status, efficiency, seniority, physical fitness, age, and financial hardship for certain workers.

5. **ID.; ID.; ID.; ID.; SERIOUS FINANCIAL LOSSES; NEED NOT BE PROVED AS THE SAME HAD BECOME A JUDICIAL ADMISSION.—** FASAP's express recognition of PAL's grave financial situation meant that such situation no longer needed to be proved, the same having become a judicial admission in the context of the issues between the parties. As a rule, indeed, admissions made by parties in the pleadings, or in the course of the trial or other proceedings in the same case are conclusive, and do not require further evidence to prove them. By FASAP's admission of PAL's severe financial woes, PAL was relieved of its burden to prove its dire financial condition to justify the retrenchment. Thusly, PAL should not be taken to task for the non-submission of its audited financial statements in the early part of the proceedings inasmuch as the non-submission had been rendered irrelevant. x x x At any rate, *even assuming that serious business losses had not been proved by PAL*, it would still be justified under Article 298 of the *Labor Code* to retrench employees *to prevent the occurrence of losses or its closing of the business*, provided that the projected losses were not merely *de minimis*, but substantial, serious, actual, and real, or, if only expected, were reasonably imminent as perceived objectively and in good faith by the employer. In the latter case, proof of actual financial losses incurred by the employer would not be a condition *sine qua non* for retrenchment.

6. **ID.; ID.; ID.; ID.; GOOD FAITH REQUIRED IN IMPLEMENTING THE RETRENCHMENT PROGRAM.—** The employer is burdened to observe good faith in implementing a retrenchment program. Good faith on its part exists when the retrenchment is intended for the advancement of its interest and is not for the purpose of defeating or circumventing the rights of the employee under special laws or under valid agreements.

7. **ID.; ID.; ID.; ID.; USE OF FAIR AND REASONABLE CRITERIA REQUIRED IN SELECTING EMPLOYEES TO BE RETRENCHED.—** In selecting the employees to be dismissed, the employer is required to adopt fair and reasonable criteria, taking into consideration factors like: (*a*) preferred status; (*b*) efficiency; and (*c*) seniority, among others. The requirement

of fair and reasonable criteria is imposed on the employer to preclude the occurrence of arbitrary selection of employees to be retrenched. Absent any showing of bad faith, the choice of who should be retrenched must be conceded to the employer for as long as a basis for the retrenchment exists. We have found arbitrariness in terminating the employee under the guise of a retrenchment program wherein the employer discarded the criteria it adopted in terminating a particular employee; when the termination discriminated the employees on account of their union membership without regard to their years of service; the timing of the retrenchment was made a day before the employee may be regularized; when the employer disregarded altogether the factor of seniority and choosing to retain the newly hired employees; that termination only followed the previous retrenchment of two non-regular employees; and when there is no appraisal or criteria applied in the selection. On the other hand, we have considered as valid the retrenchment of the employee based on work efficiency, or poor performance; or the margins of contribution of the consultants to the income of the company; or absenteeism, or record of disciplinary action, or efficiency and work attitude; or when the employer exerted efforts to solicit the employees' participation in reviewing the criteria to be used in selecting the workers to be laid off. In fine, the Court will only strike down the retrenchment of an employee as capricious, whimsical, arbitrary, and prejudicial in the absence of a clear-cut and uniform guideline followed by the employer in selecting him or her from the work pool.

8. ID.; ID.; ID.; QUITCLAIMS; BASIC CONTENTS OF VALID AND EFFECTIVE QUITCLAIMS AND WAIVERS.— In *EDI Staffbuilders International, Inc. v. National Labor Relations Commission*, we laid down the basic contents of valid and effective quitclaims and waivers, to wit: In order to prevent disputes on the validity and enforceability of quitclaims and waivers of employees under Philippine laws, said agreements should contain the following: 1. A **fixed amount** as full and final compromise settlement; 2. The **benefits** of the employees if possible with the corresponding amounts, **which the employees are giving up in consideration of the fixed compromise amount**; 3. A **statement that the employer has clearly explained to the employee in English, Filipino, or in the dialect known to the employees** — that by signing the waiver or quitclaim, they are forfeiting or relinquishing their right to receive the benefits which

are due them under the law; and 4. A statement that the **employees signed and executed the document voluntarily, and had fully understood the contents of the document and that their consent was freely given** without any threat, violence, duress, intimidation, or undue influence exerted on their person. x x x Indeed, not all quitclaims are *per se* invalid or against public policy. A quitclaim is invalid or contrary to public policy only: (1) where there is clear proof that the waiver was wrangled from an unsuspecting or gullible person; or (2) where the terms of settlement are unconscionable on their face.

CAGUIOA, *J., concurring opinion*:

1. **REMEDIAL LAW; CIVIL PROCEDURE; JUDGMENTS; SECOND MOTION FOR RECONSIDERATION; WHEN THE COURT ADMITTED THE 2ND MR, IT MEANT THAT THE FORMER DECISION AND RESOLUTION (IN THE CASE AT BAR) WERE NOT RENDERED EXECUTORY AND COULD NOT HAVE BEEN IMPLEMENTED.—** The fact that the Court granted PAL's motion for leave to file its 2nd MR means exactly that — that the 2nd MR is no longer prohibited and may be granted "in the higher interest of substantial justice" and for "extraordinarily persuasive reasons." Thus, with the Court admitting the 2nd MR, this meant that the 2008 Decision and the 2009 Resolution were **not** rendered executory and could not have been implemented. **To hold otherwise would be to render nugatory and illusory the Court *en banc's* action of allowing and accepting the 2nd MR.** I am not unaware that there has been an instance where the Court has declared that the "grant of leave to file the Supplemental Motion for Reconsideration x x x did not prevent [a] Resolution from becoming final and executory." I do not share the same view and believe that this declaration runs counter to the logic and very rationale of the Court's action of allowing the filing of a 2nd MR. Nevertheless, it should be noted that the Court in the same case admits that a second motion for reconsideration may still be granted and an entry of judgment lifted notwithstanding that the resolution has been deemed final and executory. Thus, the lone fact that a decision and/or a resolution has attained finality does not negate the Court's power, in the higher interest of substantial justice, to entertain and grant subsequent motions for reconsideration filed by the parties. x x x Thus, the power of

the Court to entertain PAL's 2nd MR (and even a Third Motion for Reconsideration) and to grant such motion should the interest of substantial justice so warrant is undoubtedly clear and unequivocal. Accordingly, even on the assumption that this is PAL's Third Motion for Reconsideration (which, as explained, it is not), the power of the Court to grant PAL's motion is not negated.

2. **ID.; ID.; ID.; ID.; JURISDICTION OF THE COURT *EN BANC*; DIRECTLY TRAVERSED BY THE COURT *EN BANC* IN ITS MARCH 2012 RESOLUTION IN A.M. NO. 11-10-1-SC.—** [T]he dissent questions the transfer of this case to the Court *en banc* considering that no formal resolution was issued by the Second Division referring PAL's 2nd MR to the Court *en banc* pursuant to the Internal Rules of the Supreme Court (IRSC). However, as already stated, this issue regarding the Court *en banc's* jurisdiction was already directly traversed by the Court *en banc* in its March 2012 Resolution in A.M. No. 11-10-1-SC.

3. **ID.; ID.; ID.; ID.; UNANIMOUS VOTE OF THE COURT SITTING *EN BANC* TO GRANT THE MOTION FOR RECONSIDERATION IS NOT REQUIRED.—** Anent the assertion that the unanimous vote of the Court sitting *en banc* must be required to grant PAL's motion for reconsideration (whether second or third), there is absolutely no legal or jurisprudential basis for such.

4. **LABOR AND SOCIAL LEGISLATION; EMPLOYMENT; RETRENCHMENT; CONDITIONS FOR VALIDITY; SERIOUS FINANCIAL LOSSES; ESTABLISHED BY THE CATEGORICAL ADMISSION OF EMPLOYER'S DIRE FINANCIAL CONDITION; INSTEAD OF AUDITED FINANCIAL STATEMENTS, SUBMISSION TO CORPORATE REHABILITATION AND RECEIVERSHIP EQUALLY ATTESTS TO FINANCIAL REVERSES.—** I agree with the *ponencia* when he points out that Petitioner's categorical admission of PAL's dire financial condition had discharged the burden to prove financial losses. As has been consistently held by this Court, a judicial admission no longer requires proof. An admission made in a pleading cannot be controverted by the party making such admission, and is conclusive as to such party. x x x I am aware of decisions which state that in cases where retrenchment is premised on substantial business losses,

proof of such losses becomes the determining factor in proving the legitimacy of retrenchment; and that the presentation of financial statements audited by independent auditors is required, as they best attest to a company's economic status and stand as the most authentic proof of losses. However, I submit that these financial statements cannot be recognized as the sole proof of financial distress. This has been amply discussed in the case of *Blue Eagle Management, Inc. v. Naval*, citing *Revidad v. National Labor Relations Commission*, where it was declared that "proof of actual financial losses incurred by the company is not a condition *sine qua non* for retrenchment," and retrenchment may be undertaken by the employer to prevent even future losses. x x x Inasmuch as financial statements paint a clear picture of a company's finances, other clear indicators of substantial losses — if not more compelling evidence thereof — exist. Verily, **as clearly as financial statements demonstrate financial distress, a company's submission to corporate rehabilitation and receivership equally attests to, if not represents a more tangible manifestation of, financial reverses**.

LEONEN, *J., dissenting opinion*:

1. REMEDIAL LAW; CIVIL PROCEDURE; JUDGMENTS; MOTION FOR RECONSIDERATION; A DECISION DENYING A MOTION FOR RECONSIDERATION OF A DECISION BECOMES FINAL AND EXECUTORY UPON THE LAPSE OF 15 DAYS FROM THE PARTY'S RECEIPT OF A COPY OF THE DECISION.— "A judgment becomes final and executory *by operation of law*," "not by judicial declaration." A decision or resolution denying a motion for reconsideration of a decision becomes final and executory upon the lapse of 15 days from the party's receipt of a copy of the decision or resolution. After the lapse of the 15-day reglementary period, the finality of judgment becomes *a matter of fact*. Therefore, no motion for reconsideration of a resolution denying a motion for reconsideration of a decision may be filed *by the same party*. Allowing second and subsequent motions for reconsideration of the same decision prevents the resolution of judicial controversies. Rule 52, Section 2 of the Rules of Court explicitly prohibits second motions for reconsideration: x x x As an exception, by leave of court, a party may file a second motion for reconsideration of the decision. The second motion for

reconsideration may be subsequently granted "in the higher interest of justice." x x x Nothing in Rule 15, Section 3 of the Internal Rules, however, states that the resolution denying the motion for reconsideration of a decision will not lapse into finality. The grant of leave to file a second motion for reconsideration only means that the second motion for reconsideration is no longer prohibited. Regardless of the grant of leave to file a second motion for reconsideration, the resolution denying the motion for reconsideration of the decision becomes final and executory by operation of law [with the date of finality of the judgment considered as the date of its entry]. The grant of a second motion for reconsideration only means that the judgment, had it been entered in the book of entries of judgments, may be lifted.

2. ID.; CIVIL PROCEDURE; JUDGMENTS; REFERRAL TO THE COURT *EN BANC* OF A FINAL DECISION RENDERED BY A DIVISON MUST BE FAVORABLY VOTED BY AT LEAST THREE (3) MEMBERS OF THE DIVISION WHO ACTUALLY TOOK PART IN THE DELIBERATIONS ON THE ISSUES IN THE CASE.— [A] case is considered decided and a decision rendered by the Supreme Court of the Philippines when a majority of the Members of the Division who actually took part in the deliberations on the issues in the case voted to concur in the decision. In no case shall the concurrence be less than three (3). When a Division already rendered a final decision or resolution in a case, the Court *En Banc* cannot set this final decision or resolution aside, even if it deems the case "of sufficient importance to merit its attention." The Court *En Banc* is not an appellate court to which decisions or resolutions rendered by a Division are appealed. Hence, when a decision or resolution of a Division is already final, the matter of referring the case to the Court *En Banc* must be favorably voted by at least three (3) Members of the Division who actually took part in the deliberations on the issues in the case.

3. LABOR AND SOCIAL LEGISLATION; EMPLOYMENT; RETRENCHMENT; THE EMPLOYER IS DUTY-BOUND TO PROVE THE ELEMENTS OF A VALID RETRENCHMENT.— In contrast with the "just causes" for terminating employment brought about by an employee's acts, "authorized causes" such as retrenchment are undertaken by the employer. Retrenchment or "*lay-off*" is the cessation of employment commenced by the

employer, devoid of any fault on the part of the workers and without prejudice to them. It is "resorted to by management during periods of business recession, industrial depression, or seasonal fluctuations or during lulls occasioned by lack of orders, shortage of materials, conversion of the plant for a new production program or the introduction of new methods or more efficient machinery, or of automation." Since retrenchment is commenced by the employer, the burden of proving that the termination was founded on an authorized cause necessarily rests with the employer. The employer has the duty to clearly and satisfactorily prove the elements of a valid retrenchment as established in *Lopez Sugar Corp. v. Federation of Free Workers.* x x x These "four standards of retrenchment"—that the losses be substantial and not *de minimis*; that the substantial loss be imminent; that the retrenchment be reasonably necessary and would likely and effectively prevent the substantial loss; and that the loss, if already incurred, be proved by sufficient and convincing evidence—are reiterated in [a number of cases].

4. ID.; ID.; ID.; ID.; SUBSTANTIAL FINANCIAL LOSSES TO BE ESTABLISHED BY THE AUDITED FINANCIAL STATEMENTS.— It is doctrine that the employer proves substantial [financial] losses by offering in evidence audited financial statements showing that it has been operating at a loss for a period of time sufficient for the employer "to [have] perceived objectively and in good faith" that the business' financial standing is unlikely to improve in the future. "No evidence can best attest to a company['s] economic status other than its financial statement" because "[t]he audit of financial reports by independent external auditors are strictly governed by the national and international standards and regulations for the accounting profession." Auditing of financial statements prevents "manipulation of the figures . . . to suit the company's needs." x x x Although an employer may resort to retrenchment on the basis of *anticipated* losses, the employer must nevertheless present convincing evidence which, as jurisprudentially established, consists of the audited financial statements. x x x That Philippine Airlines was placed under receivership did not excuse it from submitting to the labor authorities copies of its audited financial statements to prove the urgency, necessity, and extent of its retrenchment program. x x x Considering that Philippine Airlines had the "heavy burden of proving the validity of retrenchment" and the immediate

access to its own documents, it should have presented the audited financial statements as to put to rest any doubt on the stated reason behind the disputed retrenchment.

5. ID.; ID.; ID.; RETRENCHMENT AS MANAGEMENT PREROGATIVE MUST BE DONE IN GOOD FAITH.— There is no question that employers have the management prerogative to resort to retrenchment in times of legitimate business reverses. However, the "*right to retrench*" must be differentiated from the "*actual retrenchment program*." The manner and exercise of this privilege "must be made without abuse of discretion" and must not be "oppressive and abusive since it affects one's person and property."

APPEARANCES OF COUNSEL

Soo Gutierrez Leogardo & Lee for petitioner.

Estelito P. Mendoza for Philippine Airlines, Inc. and Patria Chiong.

Kapunan Imperial Panaguiton & Bongolan, co-counsel for petitioner.

Kapunan Garcia & Castillo Law Offices for Melody Yap, *et al.*

Sycip Salazar Hernandez And Gatmaitan for respondents.

R E S O L U T I O N

BERSAMIN, *J.*:

In determining the validity of a retrenchment, judicial notice may be taken of the financial losses incurred by an employer undergoing corporate rehabilitation. In such a case, the presentation of audited financial statements may not be necessary to establish that the employer is suffering from severe financial losses.

Before the Court are the following matters for resolution, namely:

(a) *Motion for Reconsideration of the Resolution of October 2, 2009 and Second Motion for Reconsideration of*

the Decision of July 22, 2008 filed by respondents Philippine Airlines, Inc. (PAL) and Patria Chiong;[1] and

(b) *Motion for Reconsideration [Re: The Honorable Court's Resolution dated 13 March 2012]*[2] of petitioner Flight Attendants and Stewards Association of the Philippines (FASAP).

Antecedents

To provide a fitting backgrounder for this resolution, we first lay down the procedural antecedents.

Resolving the appeal of FASAP, the Third Division of the Court[3] promulgated its decision on July 22, 2008 reversing the decision promulgated on August 23, 2006 by the Court of Appeals (CA) and entering a new one finding PAL guilty of unlawful retrenchment,[4] disposing:

> **WHEREFORE**, the instant petition is **GRANTED**. The assailed Decision of the Court of Appeals in CA-G.R. SP No. 87956 dated August 23, 2006, which affirmed the Decision of the NLRC setting aside the Labor Arbiter's findings of illegal retrenchment and its Resolution of May 29, 2007 denying the motion for reconsideration, are **REVERSED and SET ASIDE** and a new one is rendered:
>
> 1. **FINDING** respondent Philippine Airlines, Inc. **GUILTY** of illegal dismissal;
>
> 2. **ORDERING** Philippine Airlines, Inc. to reinstate the cabin crew personnel who were covered by the retrenchment and demotion scheme of June 15, 1998 made effective on July 15, 1998, without loss of seniority rights and other privileges, and

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[1] *Rollo* (G.R. No. 178083), Vol. III, pp. 2239-2294.

[2] *Rollo* (A.M. No. 11-10-1-SC), pp. 165-173.

[3] Then composed of Associate Justice Consuelo Ynares-Santiago (*ponente*), Associate Justice Ma. Alicia Austria-Martinez, Associate Justice Minita V. Chico-Nazario, Associate Justice Antonio Eduardo B. Nachura, and Associate Justice Teresita J. Leonardo-De Castro (designated in lieu of Associate Justice Ruben T. Reyes).

[4] *Rollo* (A.M. 11-10-1-SC), pp. 1517-1547.

to pay them full backwages, inclusive of allowances and other monetary benefits computed from the time of their separation up to the time of their actual reinstatement, provided that with respect to those who had received their respective separation pay, the amounts of payments shall be deducted from their backwages. Where reinstatement is no longer feasible because the positions previously held no longer exist, respondent Corporation shall pay backwages plus, in lieu of reinstatement, separation pay equal to one (1) month pay for every year of service;

3. **ORDERING** Philippine Airlines, Inc. to pay attorney's fees equivalent to ten percent (10%) of the total monetary award.

Costs against respondent PAL.

SO ORDERED.[5]

The Third Division thereby differed from the decision of the Court of Appeals (CA), which had pronounced in its appealed decision promulgated on August 23, 2006[6] that the remaining issue between the parties concerned the manner by which PAL had carried out the retrenchment program.[7] Instead, the Third Division disbelieved the veracity of PAL's claim of severe financial losses, and concluded that PAL had not established its severe financial losses because of its non-presentation of audited financial statements. It further concluded that PAL had implemented the retrenchment program in bad faith, and had not used fair and reasonable criteria in selecting the employees to be retrenched.

After PAL filed its *Motion for Reconsideration*,[8] the Court, upon motion,[9] held oral arguments on the following issues:

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[5] *Rollo* (G.R. No. 178083), Vol. II, pp. 1546-1547.

[6] *Rollo* (G.R. No. 178083), Vol. I, pp. 59-83; penned by Associate Justice Ruben T. Reyes and concurred in by Associate Justice Juan Q. Enriquez, Jr. and Associate Justice Vicente S.E. Veloso.

[7] *Rollo* (G.R. No. 178083), Vol. I, p. 73.

[8] *Rollo* (G.R. No. 178083), Vol. II, pp. 1549-1585.

[9] *Rollo* (G.R. No. 178083), Vol. III, pp. 1805-1806.

I

WHETHER THE GROUNDS FOR RETRENCHMENT WERE ESTABLISHED

II

WHETHER PAL RESORTED TO OTHER COST-CUTTING MEASURES BEFORE IMPLEMENTING ITS RETRENCHMENT PROGRAM

III

WHETHER FAIR AND REASONABLE CRITERIA WERE FOLLOWED IN IMPLEMENTING THE RETRENCHMENT PROGRAM

IV

WHETHER THE QUITCLAIMS WERE VALIDLY AND VOLUNTARILY EXECUTED

Upon conclusion of the oral arguments, the Court directed the parties to explore a possible settlement and to submit their respective memoranda.[10] Unfortunately, the parties did not reach any settlement; hence, the Court, through the Special Third Division,[11] resolved the issues on the merits through the resolution of October 2, 2009 denying PAL's motion for reconsideration,[12] thus:

WHEREFORE, for lack of merit, the Motion for Reconsideration is hereby **DENIED** with **FINALITY**. The assailed Decision dated July 22, 2008 is **AFFIRMED** with **MODIFICATION** in that the award of attorney's fees and expenses of litigation is reduced to ₱2,000,000.00. The case is hereby **REMANDED** to the Labor Arbiter solely for the purpose of computing the exact amount of the award pursuant to the guidelines herein stated.

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[10] *Rollo* (G.R. No. 178083), Vol. III, pp. 1816-1817.

[11] Then composed of Justice Consuelo Ynares-Santiago (*ponente*), Justice Minita V. Chico-Nazario, Justice Eduardo B. Nachura, Justice Diosdado M. Peralta (replacing Justice Alicia Austria-Martinez who retired on April 30, 2009), and Justice Lucas P. Bersamin (in lieu of Justice Teresita J. Leonardo-de Castro who inhibited from the case due to personal reasons).

[12] See *Flight Attendants and Stewards Association of the Philippines (FASAP) v. Philippine Airlines, Inc.*, G.R. No. 178083, October 2, 2009, 602 SCRA 473.

No further pleadings will be entertained.

SO ORDERED.[13]

The Special Third Division was unconvinced by PAL's change of theory in urging the June 1998 Association of Airline Pilots of the Philippines (ALPAP) pilots' strike as the reason behind the immediate retrenchment; and observed that the strike was a temporary occurrence that did not require the immediate and sweeping retrenchment of around 1,400 cabin crew.

Not satisfied, PAL filed the *Motion for Reconsideration of the Resolution of October 2, 2009 and Second Motion for Reconsideration of the Decision of July 22, 2008*.[14]

On October 5, 2009, the writer of the resolution of October 2, 2009, Justice Consuelo Ynares-Santiago, compulsorily retired from the Judiciary. Pursuant to A.M. No. 99-8-09-SC,[15] G.R. No. 178083 was then raffled to Justice Presbitero J. Velasco, Jr., a Member of the newly-constituted regular Third Division.[16] Upon the Court's subsequent reorganization,[17] G.R. No. 178083 was transferred to the First Division where Justice Velasco, Jr. was meanwhile re-assigned. Justice Velasco, Jr. subsequently inhibited himself from the case due to personal reasons.[18] Pursuant to SC Administrative Circular No. 84-2007, G.R. No. 178083 was again re-raffled to Justice Arturo D. Brion, whose membership

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[13] *Id*. at 506-507.

[14] *Supra* note 1.

[15] *Amended Rules on Who Shall Resolve Motion for Reconsideration of Decisions or Signed Resolutions in Cases Assigned to the Division of the Cour*t (Novemebr 17, 2009).

[16] Then composed of Justice Antonio T. Carpio (in lieu of then Chief Justice Renato Corona† who inhibited from the case), Justice Velasco, Jr., Justice Nachura , Justice Peralta, and Justice Bersamin, See *In Re: Letters of Atty. Estelito Mendoza Re: G.R. No. 178083 — Flight Attendants and Stewards Association of the Philippines v. Philippine Airlines, Inc. (PAL),* A.M. No. 11-10-1-SC March 13, 2012, 668 SCRA 11, 27.

[17] Special Order No. 839 dated May 17, 2010.

[18] *In Re: Letters of Atty. Estelito P. Mendoza*, *supra*, note 16, at 32.

in the Second Division resulted in the transfer of G.R. No. 178083 to said Division.[19]

On September 7, 2011, the Second Division denied with finality PAL's *Second Motion for Reconsideration of the Decision of July 22, 2008*.[20]

Thereafter, PAL, through Atty. Estelito P. Mendoza, its collaborating counsel, sent a series of letters inquiring into the propriety of the successive transfers of G.R. No. 178083.[21] His letters were docketed as A.M. No. 11-10-1-SC.

On October 4, 2011, the Court *En Banc* issued a resolution:[22] (*a*) assuming jurisdiction over G.R. No. 178083; (*b*) recalling the September 7, 2011 resolution of the Second Division; and (*c*) ordering the re-raffle of G.R. No. 178083 to a new Member-in-Charge.

Resolving the issues raised by Atty. Mendoza in behalf of PAL, as well as the issues raised against the recall of the resolution of September 7, 2011, the Court *En Banc* promulgated its resolution in A.M. No. 11-10-1-SC on March 13, 2012,[23] in which it summarized the intricate developments involving G.R. No. 178083, *viz.*:

> To summarize all the developments that brought about the present dispute — expressed in a format that can more readily be appreciated in terms of the Court *en banc's* ruling to recall the September 7, 2011 ruling — the FASAP case, as it developed, was attended by special and unusual circumstances that saw:

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[19] Special Order No. 1025 dated June 21, 2011.

[20] Comprised of Justice Brion (*ponente*), with Justice Peralta (in lieu of Justice Carpio who also inhibited from the case), Justice Bersamin (temporarily replacing Justice Maria Lourdes P.A. Sereno who was on leave), Justice Jose Perez (now retired), and Justice Jose C. Mendoza (temporarily replacing Justice Bienvenido Reyes who was on leave).

[21] Dated September 13, 16, 20, and 22, 2011.

[22] *Rollo* (G.R. No. 178083), Vol. IV, p. 3568.

[23] *In Re: Letters of Atty. Estelito P. Mendoza*, *supra*, note 16.

(a) the confluence of the successive retirement of three Justices (in a Division of five Justices) who actually participated in the assailed Decision and Resolution;

(b) the change in the governing rules-from the A.M.s to the IRSC regime-which transpired during the pendency of the case;

(c) the occurrence of a series of inhibitions in the course of the case (Justices Ruben Reyes, Leonardo-De Castro, Corona, Velasco, and Carpio), and the absences of Justices Sereno and Reyes at the critical time, requiring their replacement; notably, Justices Corona, Carpio, Velasco and Leonardo-De Castro are the four most senior Members of the Court;

(d) the three re-organizations of the divisions, which all took place during the pendency of the case, necessitating the transfer of the case from the Third Division, to the First, then to the Second Division;

(e) the unusual timing of Atty. Mendoza's letters, made after the ruling Division had issued its Resolution of September 7, 2011, but before the parties received their copies of the said Resolution; and

(f) finally, the time constraint that intervened, brought about by the parties' receipt on September 19, 2011 of the Special Division's Resolution of September 7, 2011, and the consequent running of the period for finality computed from this latter date; and the Resolution would have lapsed to finality after October 4, 2011, had it not been recalled by that date.

All these developments, in no small measure, contributed in their own peculiar way to the confusing situations that attended the September 7, 2011 Resolution, resulting in the recall of this Resolution by the Court *en banc*.[24]

In the same resolution of March 13, 2012, the Court *En Banc* directed the re-raffle of G.R. No. 178083 to the remaining Justices of the former Special Third Division who participated in resolving the issues pursuant to Section 7, Rule 2 of the *Internal Rules of the Supreme Court*, explaining:

On deeper consideration, the majority now firmly holds the view that Section 7, Rule 2 of the IRSC should have prevailed in considering

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

the raffle and assignment of cases after the 2nd MR was accepted, as advocated by some Members within the ruling Division, as against the general rule on inhibition under Section 3, Rule 8. The underlying constitutional reason, of course, is the requirement of Section 4(3), Article VIII of the Constitution already referred to above.

The general rule on statutory interpretation is that apparently conflicting provisions should be reconciled and harmonized, as a statute must be so construed as to harmonize and give effect to all its provisions whenever possible. Only after the failure at this attempt at reconciliation should one provision be considered the applicable provision as against the other.

Applying these rules by reconciling the two provisions under consideration, **Section 3, Rule 8 of the IRSC should be read as the general rule applicable to the inhibition of a Member-in-Charge.This general rule should, however, yield where the inhibition occurs at the late stage of the case when a decision or signed resolution is assailed through an MR**. At that point, when the situation calls for the ***review of the merits*** of the decision or the signed resolution made by a *ponente* (or writer of the assailed ruling), Section 3, Rule 8 no longer applies and must yield to **Section 7, Rule 2 of the IRSC which contemplates a situation when the *ponente* is no longer available, and calls for the referral of the case for raffle among the remaining Members of the Division who acted on the decision or on the signed resolution**. This latter provision should rightly apply as it gives those who intimately know the facts and merits of the case, through their previous participation and deliberations, the chance to take a look at the decision or resolution produced with their participation.

To reiterate, Section 3, Rule 8 of the IRSC is the general rule on inhibition, but it must yield to the more specific Section 7, Rule 2 of the IRSC where the obtaining situation is for the review *on the merits* of an already issued decision or resolution and the *ponente* or writer is no longer available to act on the matter. On this basis, the *ponente*, on the merits of the case on review, should be chosen from the remaining participating Justices, namely, Justices Peralta and Bersamin.[25]

This last resolution impelled FASAP to file the *Motion for Reconsideration [Re: The Honorable Court's Resolution*

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[25] *In Re: Letters of Atty. Estelito P. Mendoza*, *supra*, note 16, at 47-48.

dated 13 March 2012], praying that the September 7, 2011 resolution in G.R. No. 178083 be reinstated.[26]

We directed the consolidation of G.R. No. 178083 and A.M. No. 11-10-1-SC on April 17, 2012.[27]

Issues

PAL manifests that the *Motion for Reconsideration of the Resolution of October 2, 2009 and Second Motion for Reconsideration of the Decision of July 22, 2008* is its first motion for reconsideration vis-a-vis the October 2, 2009 resolution, and its second as to the July 22, 2008 decision. It states therein that because the Court did not address the issues raised in its previous motion for reconsideration, it is re-submitting the same, *viz.*:

I

xxx THE HONORABLE COURT ERRED IN NOT GIVING CREDENCE TO THE FOLLOWING COMPELLING EVIDENCE AND CIRCUMSTANCES CLEARLY SHOWING PALS; DIRE FINANCIAL CONDITION AT THE TIME OF THE RETRENCHMENT: (A) PETITIONER'S ADMISSIONS OF PAL'S FINANCIAL LOSSES; (B) THE UNANIMOUS FINDINGS OF THE SECURITIES AND EXCHANGE COMMISSION (SEC), THE LABOR ARBITER, THE NATIONAL LABOR RELATIONS COMMISSION (NLRC) AND THE COURT OF APPEALS CONFIRMING PAL'S FINANCIAL CRISIS; (C) PREVIOUS CASES DECIDED BY THE HONORABLE COURT RECOGNIZING PAL'S DIRE FINANCIAL STATE; AND (D) PAL BEING PLACED BY THE SEC UNDER SUSPENSION OF PAYMENTS AND CORPORATE REHABILITATION AND RECEIVERSHIP

II

xxx THERE IS NO SUFFICIENT BASIS FOR THE HONORABLE COURT'S CONCLUSION THAT PAL DID NOT EXERCISE GOOD FAITH [IN] ITS PREROGATIVE TO RETRENCH EMPLOYEES

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[26] *Supra* note 2.

[27] *Rollo* (A.M. No. 11-10-1-SC), p. 157.

III

THE HONORABLE COURT'S RULING THAT PAL DID NOT USE FAIR AND REASONABLE CRITERIA IN ASCERTAINING WHO WOULD BE RETRENCHED IS CONTRARY TO ESTABLISHED FACTS, EVIDENCE ON RECORD AND THE FINDINGS OF THE NLRC AND THE COURT OF APPEALS[28]

PAL insists that FASAP, while admitting PAL's serious financial condition, only questioned before the Labor Arbiter the alleged unfair and unreasonable measures in retrenching the employees;[29] that FASAP categorically manifested before the NLRC, the CA and this Court that PAL's financial situation was not the issue but rather the manner of terminating the 1,400 cabin crew; that the Court's disregard of FASAP's categorical admissions was contrary to the dictates of fair play;[30] that considering that the Labor Arbiter, the NLRC and the CA unanimously found PAL to have experienced financial losses, the Court should have accorded such unanimous findings with respect and finality;[31] that its being placed under suspension of payments and corporate rehabilitation and receivership already sufficiently indicated its grave financial condition;[32] and that the Court should have also taken judicial notice of the suspension of payments and monetary claims filed against PAL that had reached and had been consequently resolved by the Court.[33]

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[28] *Rollo* (G.R. No. 178083). Vol. III, p. 2299.

[29] *Rollo* (G.R. No. 178083), Vol. II, p. 1551.

[30] *Id*. at 1551-1554.

[31] *Id*. at 1555.

[32] *Id*. at 1556-1557.

[33] *Id*. at 1564-1567 (PAL claims that the Court had suspended the claims in view of the pending rehabilitation in *Philippine Airlines v. Kurangking*, G.R. No. 146698, September 24, 2002, 389 SCRA 588; *Philippine Airlines v. Zamora*, G.R. No. 166966, February 6, 2007, 514 SCRA 584; *Garcia v. Philippine Airlines, Inc.*, G.R. No. 164856, August 29, 2007, G.R. No. 164856, 531 SCRA 574; *Philippine Airlines v. Philippine Airlines Employee Association (PALEA)*, G.R. No. 142399, June 19, 2007, 526 SCRA 29; *Philippine Airlines v. National Labor Relations Commission*, G.R. No. 123294, September 4, 2000, 634 SCRA 18.

PAL describes the Court's conclusion that it was not suffering from tremendous financial losses because it was on the road to recovery a year after the retrenchment as a mere *obiter dictum* that was relevant only in rehabilitation proceedings; that whether or not its supposed "stand-alone" rehabilitation indicated its ability to recover on its own was a technical issue that the SEC was tasked to determine in the rehabilitation proceedings; that at any rate, the supposed track to recovery in 1999 and the capital infusion of $200,000,000.00 did not disprove the enormous losses it was sustaining; that, on the contrary, the capital infusion accented the severe financial losses suffered because the capital infusion was a condition precedent to the approval of the amended and restated rehabilitation plan by the Securities and Exchange Commission (SEC) with the conformity of PAL's creditors; and that PAL took nine years to exit from rehabilitation.[34]

As regards the implementation of the retrenchment program in good faith, PAL argues that it exercised sound management prerogatives and business judgment despite its critical financial condition; that it did not act in due haste in terminating the services of the affected employees considering that FASAP was being consulted thereon as early as February 17, 1998; that it abandoned "Plan 14" due to intervening events, and instead proceeded to implement "Plan 22" which led to the recall/rehire of some of the retrenched employees;[35] and that in selecting the employees to be retrenched, it adopted a fair and reasonable criteria pursuant to the collective bargaining agreement (CBA) where performance efficiency ratings and inverse seniority were basic considerations.[36]

With reference to the Court's resolution of October 2, 2009, PAL maintains that:

I

PAL HAS NOT CHANGED ITS POSITION THAT THE REDUCTION OF PAL'S LABOR FORCE OF ABOUT 5,000 EMPLOYEES,

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[34] *Id*. at 1567-1568.

[35] *Id*. at 1569-1576.

[36] *Id*. at 1577-1582.

INCLUDING THE 1,423 FASAP MEMBERS, WAS THE RESULT OF A CONFLUENCE OF EVENTS, THE EXPANSION OF PAL'S FLEET, THE ASIAN FINANCIAL CRISIS OF 1997, AND ITS CONSEQUENCES ON PAL'S OPERATIONS, AND THE PILOT'S STRIKE OF JUNE 1998, AND THAT PAL SURVIVED BECAUSE OF THE IMPLEMENTATION OF ITS REHABILITATION PLAN (LATER "AMENDED AND RESTATED REHABILITATION PLAN") WHICH INCLUDED AMONG ITS COMPONENT ELEMENTS, THE REDUCTION OF LABOR FORCE

II

THE HONORABLE COURT SHOULD HAVE UPHELD PAL'S REDUCTION OF THE NUMBER OF CABIN CREW IN ACCORD WITH ITS ENTRY INTO REHABILITATION AND THE CONSEQUENT TERMINATION OF EMPLOYMENT OF CABIN CREW PERSONNEL AS A VALID EXERCISE OF MANAGEMENT PREROGATIVE

III

PAL HAS SUFFICIENTLY ESTABLISHED THE SEVERITY OF ITS FINANCIAL LOSSES, SO AS TO JUSTIFY THE ENTRY INTO REHABILITATION AND THE CONSEQUENT REDUCTION OF CABIN CREW PERSONNEL

IV

THE HONORABLE COURT ERRED IN HOLDING THAT THERE WAS NO SUFFICIENT BASIS FOR PAL TO IMPLEMENT THE RETRENCHMENT OF CABIN CREW PERSONNEL

V

UNDER THE CIRCUMSTANCES, THE PRIOR IMPLEMENTATION OF LESS DRASTIC COST-CUTTING MEASURES WAS NO LONGER POSSIBLE AND SHOULD NOT BE REQUIRED FOR A VALID RETRENCHMENT; IN ANY EVENT, PAL HAD IMPLEMENTED LESS DRASTIC COST-CUTTING MEASURES BEFORE IMPLEMENTING THE DOWNSIZING PROGRAM

VI

QUITCLAIMS WERE VALIDLY EXECUTED[37]

PAL contends that the October 2, 2009 resolution focused on an entirely new basis — that of PAL's supposed change in

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[37] *Rollo* (G.R. No. 178083), Vol. III, pp. 2250-2251.

theory. It denies having changed its theory, however, and maintains that the reduction of its workforce had resulted from a confluence of several events, like the flight expansion; the 1997 Asian financial crisis; and the ALPAP pilots' strike.[38] PAL explains that when the pilots struck in June 1998, it had to decide quickly as it was then facing closure in 18 days due to serious financial hemorrhage; hence, the strike came as the final blow.

PAL posits that its business decision to downsize was far from being a hasty, knee-jerk reaction; that the reduction of cabin crew personnel was an integral part of its corporate rehabilitation, and, such being a management decision, the Court could not supplant the decision with its own judgment' and that the inaccurate depiction of the strike as a temporary disturbance was lamentable in light of its imminent financial collapse due to the concerted action.[39]

PAL submits that the Court's declaration that PAL failed to prove its financial losses and to explore less drastic cost-cutting measures did not at all jibe with the totality of the circumstances and evidence presented; that the consistent findings of the Labor Arbiter, the NLRC, the CA and even the SEC, acknowledging its serious financial difficulties could not be ignored or disregarded; and that the challenged rulings of the Court conflicted with the pronouncements made in *Garcia v. Philippine Airlines, Inc.*[40] and related cases[41] that acknowledged PAL's grave financial distress.

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[38] *Id*. at 2251-2252.

[39] *Rollo* (G.R. No. 178083), Vol. III, pp. 2276-2277.

[40] G.R. No. 164856, August 29, 2007, 531 SCRA 574.

[41] *E.g., Philippine Airlines v. Kurangking*, G.R. No. 146698, September 24, 2002, 389 SCRA 588; *Philippine Airlines, Incorporated v. Zamora*, G.R. No. 166966, February 6, 2007, 514 SCRA 584; *Philippine Airlines, Incorporated v. Philippine Airlines Employees Association (PALEA)*, G.R. No. 142399, June 19, 2007, 525 SCRA 29; and *Philippine Airlines v. National Labor Relations Commission*, G.R. No. 123294, September 4, 2000, 634 SCRA 18.

In its comment,[42] FASAP counters that a second motion for reconsideration was a prohibited pleading; that PAL failed to prove that it had complied with the requirements for a valid retrenchment by not submitting its audited financial statements; that PAL had immediately terminated the employees without prior resort to less drastic measures; and that PAL did not observe any criteria in selecting the employees to be retrenched.

FASAP stresses that the October 4, 2011 resolution recalling the September 7, 2011 decision was void for failure to comply with Section 14, Article VIII of the 1987 Constitution; that the participation of Chief Justice Renato C. Corona who later on inhibited from G.R. No. 178083 had further voided the proceedings; that the 1987 Constitution did not require that a case should be raffled to the Members of the Division who had previously decided it; and that there was no error in raffling the case to Justice Brion, or, even granting that there was error, such error was merely procedural.

The issues are restated as follows:

Procedural

I

IS THE RESOLUTION DATED OCTOBER 4, 2011 IN A.M. NO. 11-10-1-SC (RECALLING THE SEPTEMBER 7, 2011 RESOLUTION) VOID FOR FAILURE TO COMPLY WITH SECTION 14, RULE VIII OF THE 1987 CONSTITUTION?

II

MAY THE COURT ENTERTAIN THE SECOND MOTION FOR RECONSIDERATION FILED BY THE RESPONDENT PAL?

Substantive

I

DID PAL LAWFULLY RETRENCH THE 1,400 CABIN CREW PERSONNEL?

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[42] *Rollo* (G.R. No. 178083), Vol. III, pp. 2444-2496.

A

DID PAL PRESENT SUFFICIENT EVIDENCE TO PROVE THAT IT INCURRED SERIOUS FINANCIAL LOSSES WHICH JUSTIFIED THE DOWNSIZING OF ITS CABIN CREW?

B

DID PAL OBSERVE GOOD FAITH IN IMPLEMENTING THE RETRENCHMENT PROGRAM?

C

DID PAL COMPLY WITH SECTION 112 OF THE PAL-FASAP CBA IN SELECTING THE EMPLOYEES TO BE RETRENCHED?

III

ASSUMING THAT PAL VALIDLY IMPLEMENTED ITS RETRENCHMENT PROGRAM, DID THE RETRENCHED EMPLOYEES SIGN VALID QUITCLAIMS?

Ruling of the Court

After a thorough review of the records and all previous dispositions, we **GRANT** the *Motion for Reconsideration of the Resolution of October 2, 2009 and Second Motion for Reconsideration of the Decision of July 22, 2008* filed by PAL and Chiong; and **DENY** the *Motion for Reconsideration [Re: The Honorable Court's Resolution dated 13 March 2012]*[43] of FASAP.

Accordingly, we **REVERSE** the July 22, 2008 decision and the October 2, 2009 resolution; and **AFFIRM** the decision promulgated on August 23, 2006 by the CA.

I
The resolution of October 4, 2011 was a valid issuance of the Court

The petitioner urges the Court to declare as void the October 4, 2011 resolution promulgated in A.M. No. 11-10-1-SC for not citing any legal basis in recalling the September 7, 2011 resolution of the Second Division.

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[43] *Rollo* (A.M. No. 11-10-1-SC), pp. 165-173.

The urging of the petitioner is gravely flawed and mistaken.

The requirement for the Court to state the legal and factual basis for its decisions is found in Section 14, Article VIII of the 1987 Constitution, which reads:

> Section 14. **No decision** shall be rendered by any court without expressing therein clearly and distinctly the facts and the law on which it is based.

The constitutional provision clearly indicates that it contemplates only a *decision*, which is the judgment or order that *adjudicates on the merits of a case*. This is clear from the text and tenor of Section 1, Rule 36 of the *Rules of Court*, the rule that implements the constitutional provision, to wit:

> Section 1. *Rendition of judgments and final orders*. **A judgment or final order determining the merits of the case** shall be in writing personally and directly prepared by the judge, **stating clearly and distinctly the facts and the law on which it is based**, signed by him, and filed with the clerk of court.

The October 4, 2011 resolution did not adjudicate on the merits of G.R. No. 178083. We explicitly stated so in the resolution of March 13, 2012. What we thereby did was instead to exercise the Court's inherent power to recall orders and resolutions before they attain finality. In so doing, the Court only exercised prudence in order to ensure that the Second Division was vested with the appropriate legal competence in accordance with and under the Court's prevailing internal rules to review and resolve the pending motion for reconsideration. We rationalized the exercise thusly:

> As the narration in this Resolution shows, **the Court acted on its own pursuant to its power to recall its own orders and resolutions before their finality. The October 4, 2011 Resolution was issued to determine the propriety of the September 7, 2011 Resolution given the facts that came to light after the ruling Division's examination of the records. To point out the obvious, the recall was not a ruling on the merits and did not constitute the reversal of the substantive issues already decided upon by the Court in the FASAP case in its previously issued Decision (of July 22, 2008) and Resolution (of**

October 2, 2009). In short, the October 4, 2011 Resolution was not meant and was never intended to favor either party, but to simply remove any doubt about the validity of the ruling Division's action on the case. The case, in the ruling Division's view, could be brought to the Court *en banc* since it is one of "sufficient importance"; at the very least, it involves the interpretation of conflicting provisions of the IRSC with potential jurisdictional implications.

At the time the Members of the ruling Division went to the Chief Justice to recommend a recall, there was no clear indication of how they would definitively settle the unresolved legal questions among themselves. The only matter legally certain was the looming finality of the September 7, 2011 Resolution if it would not be immediately recalled by the Court *en banc* by October 4, 2011. No unanimity among the Members of the ruling Division could be gathered on the unresolved legal questions; thus, they concluded that the matter is best determined by the Court *en banc* as it potentially involved questions of jurisdiction and interpretation of conflicting provisions of the IRSC. To the extent of the recommended recall, the ruling Division was unanimous and the Members communicated this intent to the Chief Justice in clear and unequivocal terms.[44] (Bold underscoring for emphasis)

It should further be clear from the same March 13, 2012 resolution that the factual considerations for issuing the recall order were intentionally omitted therefrom in obeisance to the prohibition against public disclosure of the internal deliberations of the Court.[45]

Still, FASAP assails the impropriety of the recall of the September 7, 2011 resolution. It contends that the raffle of G.R. No. 178083 to the Second Division had not been erroneous but in "*full and complete consonance with Section 4(3) Article VIII of the Constitution*;"[46] and that any error thereby committed was only procedural, and thus a mere "*harmless error*" that did not invalidate the prior rulings made in G.R. No. 178083.[47]

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[44] 668 SCRA 11, 43-44.

[45] *Id*. at 50.

[46] *Rollo* (A.M. No. 11-10-1-SC), p. 169.

[47] *Id*. at 169-170.

The contention of FASAP lacks substance and persuasion.

The Court carefully expounded in the March 13, 2012 resolution on the resulting jurisdictional conflict that arose from the raffling of G.R. No. 178083 resulting from the successive retirements and inhibitions by several Justices who at one time or another had been assigned to take part in the case. The Court likewise highlighted the importance of referring the case to the *remaining* Members who had actually participated in the deliberations, for not only did such participating Justices intimately know the facts and merits of the parties' arguments but doing so would give to such Justices the opportunity to review their decision or resolution in which they had taken part. As it turned out, only Justice Diosdado M. Peralta and Justice Lucas P. Bersamin were the *remaining* Members of the Special Third Division, and the task of being in charge procedurally fell on either of them.[48] As such, it is fallacious for FASAP to still insist that the previous raffle had complied with Section 4(3), Article VIII of the 1987 Constitution just because the Members of the Division actually took part in the deliberations.

FASAP is further wrong to insist on the application of the *harmless error* rule. The rule is embodied in Section 6, Rule 51 of the *Rules of Court*, which states:

> Section 6. *Harmless error*. No error in either the admission or the exclusion of evidence and no error or defect in any ruling or order or in anything done or omitted by the trial court or by any of the parties is ground for granting a new trial or for setting aside, modifying, or otherwise disturbing a judgment or order, unless refusal to take such action appears to the court inconsistent with substantial justice. The court at every stage of the proceedings must disregard any error or defect which does not affect the substantial rights of the parties.

The *harmless error* rule obtains during review of the things done by either the trial court or by any of the parties themselves in the course of trial, and any error thereby found does not affect the substantial rights or even the merits of the case. The Court has had occasions to apply the rule in the correction

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[48] *Id*. at 85.

of a misspelled name due to clerical error;[49] the signing of the decedents' names in the notice of appeal by the heirs;[50] the trial court's treatment of the testimony of the party as an adverse witness during cross-examination by his own counsel;[51] and the failure of the trial court to give the plaintiffs the opportunity to orally argue against a motion.[52] All of the errors extant in the mentioned situations did not have the effect of altering the dispositions rendered by the respective trial courts. Evidently, therefore, the rule had no appropriate application herein.

The Court sees no justification for the urging of FASAP that the participation of the late Chief Justice Corona voided the recall order. The urging derives from FASAP's failure to distinguish the role of the Chief Justice as the Presiding Officer of the *Banc*. In this regard, we advert to the March 13, 2012 resolution, where the Court made the following observation:

> A final point that needs to be fully clarified at this juncture, in light of the allegations of the Dissent is the role of the Chief Justice in the recall of the September 7, 2011 Resolution. **As can be seen from the x x x narration, the Chief Justice acted only on the recommendation of the ruling Division, since he had inhibited himself from participation in the case long before. The confusion on this matter could have been brought about by the Chief Justice's role as the Presiding Officer of the Court *en banc* (particularly in its meeting of October 4, 2011), and the fact that the four most senior Justices of the Court (namely, Justices Corona, Carpio, Velasco and Leonardo-De Castro) inhibited from participating in the case. In the absence of any clear personal malicious participation, it is neither correct nor proper to hold the Chief Justice personally accountable for the collegial ruling of the Court en banc.**[53] (Bold underscoring supplied for emphasis)

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[49] See *Republic v. Mercadera*, G.R. No. 186027, December 8, 2010, 637 SCRA 654.

[50] *Regional Agrarian Reform Adjudication Board v. Court of Appeals*, G.R. No. 165155, April 13, 2010, 618 SCRA 181, 202-203.

[51] *Gaw v. Chua*, G.R. No. 160855, April 16, 2008, 551 SCRA 506, 516.

[52] *Remonte v. Bonto*, No. L-19900, February 28, 1966, 16 SCRA 257, 261.

[53] 668 SCRA 11, 48-49.

To reiterate, the Court, whether sitting *En Banc* or in Division, acts as a collegial body. By virtue of the collegiality, the Chief Justice alone cannot promulgate or issue any decisions or orders. In *Complaint of Mr. Aurelio Indencia Arrienda Against SC Justices Puno, Kapunan, Pardo, Ynares-Santiago*,[54] the Court has elucidated on the collegial nature of the Court in relation to the role of the Chief Justice, *viz.*:

> The complainant's vituperation against the Chief Justice on account of what he perceived was the latter's refusal "to take a direct positive and favorable action" on his letters of appeal overstepped the limits of proper conduct. It betrayed his lack of understanding of a fundamental principle in our system of laws. Although the Chief Justice is *primus inter pares*, he cannot legally decide a case on his own because of the Court's nature as a collegial body. Neither can the Chief Justice, by himself, overturn the decision of the Court, whether of a division or the *en banc*.
>
> There is only one Supreme Court from whose decisions all other courts are required to take their bearings. While most of the Court's work is performed by its three divisions, the Court remains one court–single, unitary, complete and supreme. Flowing from this is the fact that, while individual justices may dissent or only partially concur, when the Court states what the law is, it speaks with only one voice. Any doctrine or principle of law laid down by the court may be modified or reversed only by the Court *en banc*.[55]

Lastly, any lingering doubt on the validity of the recall order should be dispelled by the fact that the Court upheld its issuance of the order through the March 13, 2012 resolution, whereby the Court disposed:

> **WHEREFORE**, premises considered, **we hereby confirm that the Court *en banc* has assumed jurisdiction over the resolution of the merits of the motions for reconsideration of Philippine Airlines, Inc., addressing our July 22, 2008 Decision and October 2, 2009 Resolution; and that the September 7, 2011 ruling of the Second Division has been effectively recalled**. This case should now be raffled

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[54] A.M. No. 03-11-30-SC, June 9, 2005, 460 SCRA 1.

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

either to Justice Lucas P. Bersamin or Justice Diosdado M. Peralta (the remaining members of the case) as Member-in-Charge in resolving the merits of these motions.

x x x x x x x x x

The Flight Attendants and Stewards Association of the Philippines' Motion for Reconsideration of October 17, 2011 is hereby denied; the recall of the September 7, 2011 Resolution was made by the Court on its own before the ruling's finality pursuant to the Court's power of control over its orders and resolutions. Thus, no due process issue ever arose.

SO ORDERED.

II

PAL's *Second Motion for Reconsideration of the Decision of July 22, 2008* could be allowed in the higher interest of justice

FASAP asserts that PAL's *Second Motion for Reconsideration of the Decision of July 22, 2008* was a prohibited pleading; and that the July 22, 2008 decision was not anymore subject to reconsideration due to its having already attained finality.

FASAP's assertions are unwarranted.

With the Court's resolution of January 20, 2010 granting PAL's motion for leave to file a second motion for reconsideration,[56] PAL's *Second Motion for Reconsideration of the Decision of July 22, 2008* could no longer be challenged as a prohibited pleading. It is already settled that the granting of the motion for leave to file and admit a second motion for reconsideration authorizes the filing of the second motion for reconsideration.[57] Thereby, the second motion for reconsideration is no longer a prohibited pleading, and the Court cannot deny it on such basis alone.[58]

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[56] *Rollo* (G.R. No. 178083), Vol. III, pp. 2435-2436.

[57] *League of Cities of the Philippines (LCP) v. Commission on Elections*, G.R. No. 176951, February 15, 2011, 643 SCRA 149.

[58] *McBurnie v. Ganzon*, G.R. Nos. 178034 & 178117 & G.R. Nos. 186984-85, October 17, 2013, 707 SCRA 646, 668-669.

Nonetheless, we should stress that the rule prohibiting the filing of a second motion for reconsideration is by no means absolute. Although Section 2, Rule 52 of the *Rules of Court* disallows the filing of a second motion for reconsideration,[59] the *Internal Rules of the Supreme Court* (IRSC) allows an exception, to wit:

> 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.**
>
> In the Division, a vote of three Members shall be required to elevate a second motion for reconsideration to the Court en banc.

The conditions that must concur in order for the Court to entertain a second motion for reconsideration are the following, namely:

1. The motion should satisfactorily explain why granting the same would be in the higher interest of justice;
2. The motion must be made before the ruling sought to be reconsidered attains finality;
3. If the ruling sought to be reconsidered was rendered by the Court through one of its Divisions, at least three members of the Division should vote to elevate the case to the Court *En Banc*; and

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[59] Sec. 2. *Second motion for reconsideration.* — No second motion for reconsideration of a judgment or final resolution by the same party shall be entertained.

4. The favorable vote of at least two-thirds of the Court *En Banc*'s actual membership must be mustered for the second motion for reconsideration to be granted.[60]

Under the IRSC, a second motion for reconsideration may be allowed to prosper upon a showing by the movant that a reconsideration of the previous ruling is necessary in the higher interest of justice. There is 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.[61]

PAL maintains that the July 22, 2008 decision contravened prevailing jurisprudence[62] that had recognized its precarious financial condition;[63] that the decision focused on PAL's inability to prove its financial losses due to its failure to submit audited financial statements; that the decision ignored the common findings on the serious financial losses suffered by PAL made by the Labor Arbiter, the NLRC, the CA and even the SEC;[64] and that the decision and the subsequent resolution denying PAL's motion for reconsideration would negate whatever financial progress it had achieved during its rehabilitation.[65]

These arguments of PAL sufficed to show that the assailed decision contravened settled jurisprudence on PAL's precarious financial condition. It cannot be gainsaid that there were other businesses undergoing rehabilitation that would also be bound or negatively affected by the July 22, 2008 decision. This was the higher interest of justice that the Court sought to address, which the dissent by Justice Leonen is adamant not to accept.[66]

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[60] *SM Land, Inc. v. Bases Conversion and Development Authority,* G.R. No. 203655, September 7, 2015, 769 SCRA 310, 317.

[61] Section 3, Rule 15 of the IRSC.

[62] *Supra* note 41.

[63] *Rollo* (G.R. No. 178083), Vol. III, pp. 2239-2240.

[64] *Id*. at 2242-2244.

[65] *Id*. at 2244-2245.

[66] Dissenting Opinion, p. 21.

Hence, we deemed it just and prudent to allow PAL's *Second Motion for Reconsideration of the Decision of July 22, 2008*.

It is timely to note, too, that the July 22, 2008 decision did not yet attain finality. The October 4, 2011 resolution *recalled* the September 7, 2011 resolution denying PAL's first motion for reconsideration. Consequently, the July 22, 2008 decision did not attain finality.

The dissent by Justice Leonen nonetheless proposes a contrary view — that both the July 22, 2008 decision and the October 2, 2009 resolution had become final on November 4, 2009 upon the lapse of 15 days following PAL's receipt of a copy of the resolution. To him, the grant of leave to PAL to file the second motion for reconsideration only meant that the motion was no longer prohibited but it did not stay the running of the reglementary period of 15 days. He submits that the Court's grant of the motion for leave to file the second motion for reconsideration did not stop the October 2, 2009 resolution from becoming final because a judgment becomes final by operation of law, not by judicial declaration.[67]

The proposition of the dissent is unacceptable.

In granting the motion for leave to file the second motion for reconsideration, the Court could not have intended to deceive the movants by allowing them to revel in some hollow victory. The proposition manifestly contravened the basic tenets of justice and fairness.

As we see it, the dissent must have inadvertently ignored the procedural effect that a second motion for reconsideration based on an allowable ground *suspended* the running of the period for appeal from the date of the filing of the motion until such time that the same was acted upon and granted.[68]

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[67] *Id*. at 7.

[68] *Belviz v. Buenaventura*, 83 Phil. 337-340 (1949). In *Guilambo v. Court of Appeals*, 65 Phil. 183-189 1937), the Court explained: "Within what time should a second motion for reconsideration or a second motion for new trial, be filed? Nothing is provided in our rules; but considering,

Correspondingly, granting the motion for leave to file a second motion for reconsideration has the effect of *preventing* the challenged decision from attaining finality. This is the reason *why* the second motion for reconsideration should present extraordinarily persuasive reasons. Indeed, allowing *pro forma* motions would indefinitely avoid the assailed judgment from attaining finality.[69]

By granting PAL's motion for leave to file a second motion for reconsideration, the Court effectively averted the July 22, 2008 decision and the October 2, 2009 resolution from attaining finality. Worthy of reiteration, too, is that the March 13, 2012 resolution expressly recalled the September 7, 2011 resolution.

Given the foregoing, the conclusion stated in the dissent that the *Banc* was divested of the jurisdiction to entertain the second motion for reconsideration for being a "third motion for reconsideration;"[70] and the unfair remark in the dissent that "*[t]he basis of the supposed residual power of the Court En Banc to, take on its own, take cognizance of Division cases is therefore suspect*"[71] are immediately rejected as absolutely legally and factually unfounded.

To start with, there was no "third motion for reconsideration" to speak of. The September 11, 2011 resolution denying PAL's

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on the one hand, that, under the provisions of Rule 37, judgment should be entered fifteen days after the promulgation of the decision of the court, and, on the other hand, that the previous leave of court is necessary to file a second motion for reconsideration or a second motion for new trial, it is inferable from all this that the second motion should be filed within the time granted by the court, and as the rules are likewise silent on the period within which application for leave of court to file a second motion for new trial or a second motion for reconsideration should be made, a reasonable and logical interpretation of Rule 39 seems to authorize the opinion that the said leave should be applied for immediately after receipt of notice denying the first motion, or as soon as possible."

[69] *Ortigas & Company Limited Partnership v. Velasco*, G.R. Nos. 109645, 112564 (Resolution), March 4, 1996, 324 Phil. 483-498.

[70] Dissenting Opinion, p. 1.

[71] *Id.* at 17.

second motion for reconsideration had been recalled by the October 4, 2011 resolution. Hence, PAL's motion for reconsideration remained unresolved, negating the assertion of the dissent that the Court was resolving the second motion for reconsideration "for the second time."[72]

Also, the dissent takes issue against our having assumed jurisdiction over G.R. No. 178083 despite the clear reference made in the October 4, 2011 resolution to Sections 3(m) and (n), Rule 2 of the IRSC. Relying largely on the Court's construction of Section 4(3), Article VIII of the 1987 Constitution in *Fortich v. Corona*,[73] the dissent opines that the *Banc* could not act as an appellate court in relation to the decisions of the Division;[74] and that the *Banc* could not take cognizance of any case in the Divisions except upon a prior *consulta* from the ruling Division pursuant to Section 3(m), in relation to Section 3(1), Rule 2 of the IRSC.[75]

The Court disagrees with the dissent's narrow view respecting the residual powers of the *Banc*.

Fortich v. Corona, which has expounded on the authority of the *Banc* to accept cases from the Divisions, is still the prevailing jurisprudence regarding the construction of Section 4(3), Article VIII of the 1987 Constitution. However, *Fortich v. Corona* does not apply herein. It is notable that *Fortich v. Corona* sprung from the results of the voting on the motion for reconsideration filed by the Sumilao Farmers. The vote ended in an equally divided Division ("two-two"). From there, the Sumilao Farmers sought to elevate the matter to the *Banc* based on Section 4(3), Article VIII because the required three-member majority vote was not reached. However, the factual milieu in *Fortich v. Corona* is not on all fours with that in this case.

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[72] *Id*. at 8.

[73] 352 Phil. 461 (1998).

[74] Dissenting Opinion, p. 12.

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

In the March 13, 2012 resolution, the Court recounted the exigencies that had prompted the *Banc* to take cognizance of the matter, to wit:

On September 28, 2011, the Letters dated September 13 and 20, 2011 of Atty. Mendoza to Atty. Vidal (asking that his inquiry be referred to the relevant Division Members who took part on the September 7, 2011 Resolution) were "NOTED" by the regular Second Division. The Members of the ruling Division also met to consider the queries posed by Atty. Mendoza. Justice Brion met with the Members of the ruling Division (composed of Justices Brion, Peralta, Perez, Bersamin, and Mendoza), rather than with the regular Second Division (composed of Justices Carpio, Brion, Perez, and Sereno), as the former were the active participants in the September 7, 2011 Resolution.

In these meetings, some of the Members of the ruling Division saw the problems pointed out above, some of which indicated that the ruling Division might have had no authority to rule on the case. Specifically, their discussions centered on the application of A.M. No. 99-8-09-SC for the incidents that transpired prior to the effectivity of the IRSC, and on the conflicting rules under the IRSC — Section 3, Rule 8 on the effects of inhibition and Section 7, Rule 2 on the resolution of MRs.

A.M. No. 99-8-09-SC indicated the general rule that the re-raffle shall be made among the other Members of the same Division who participated in rendering the decision or resolution and who concurred therein, which should now apply because the ruling on the case is no longer final after the cast had been opened for review on the merits. In other words, after acceptance by the Third Division, through Justice Velasco, of the 2nd MR, there should have been a referral to raffle because the excepting qualification that the Clerk of Court cited no longer applied; what was being reviewed were the merits of the case and the review should be by the same Justices who had originally issued the original Decision and the subsequent Resolution, or by whoever of these Justices are still left in the Court, pursuant to the same A.M. No. 99-8-09-SC.

On the other hand, the raffle to Justice Brion was made by applying AC No. 84-2007 that had been superseded by Section 3, Rule 8 of the IRSC. Even the use of this IRSC provision, however, would not solve the problem, as its use still raised the question of the provision that should really apply in the resolution of the MR: should it be

Section 3, Rule 8 on the inhibition of a Member-in-Charge, or Section 7, Rule 2 of the IRSC on the inhibition of the *ponente* when an MR of a decision and a signed resolution was filed. x x x

x x x x x x x x x

A comparison of these two provisions shows the semantic sources of the seeming conflict: Section 7, Rule 2 refers to a situation where the *ponente* has retired, is no longer a Member of the Court, is disqualified, or has inhibited himself from acting on the case; while Section 3, Rule 8 generally refers to the inhibition of a Member-in-Charge who does not need to be the writer of the decision or resolution under review.

Significantly, Section 7, Rule 2 expressly uses the word *ponente* (not Member-in-Charge) and refers to a specific situation where the *ponente* (or the writer of the Decision or the Resolution) is no longer with the Court or is otherwise unavailable to review the decision or resolution he or she wrote. Section 3, Rule 8, on the other hand, expressly uses the term Member-in-Charge and generally refers to his or her inhibition, without reference to the stage of the proceeding when the inhibition is made.

Under Section 7, Rule 2, the case should have been re-raffled and assigned to anyone of Justices Nachura (who did not retire until June 13, 2011), Peralta, or Bersamin, either (1) after the acceptance of the 2nd MR (because the original rulings were no longer final); or (2) after Justice Velasco's inhibition because the same condition existed, *i.e.*, the need for a review by the same Justices who rendered the decision or resolution. As previously mentioned, Justice Nachura participated in both the original Decision and the subsequent Resolution, and all three Justices were the remaining Members who voted on the October 2, 2009 Resolution. On the other hand, if Section 3, Rule 8 were to be solely applied after Justice Velasco's inhibition, the Clerk of Court would be correct in her assessment and the raffle to Justice Brion, as a Member outside of Justice Velasco's Division, was correct.

These were the legal considerations that largely confronted the ruling Division in late September 2011 when it deliberated on what to do with Atty. Mendoza's letters.

The propriety of and grounds for the recall of the September 7, 2011 Resolution

Most unfortunately, the above unresolved questions were even further compounded in the course of the deliberations of the Members of the ruling Division when they were informed that the parties received the ruling on September 19, 2011, and this ruling would lapse to finality after the 15th day, or after October 4, 2011.

Thus, on September 30, 2011 (a Friday), the Members went to Chief Justice Corona and recommended, as a prudent move, that the September 7, 2011 Resolution be recalled at the very latest on October 4, 2011, and that the case be referred to the Court *en banc* for a ruling on the questions Atty. Mendoza asked. The consequence, of course, of a failure to recall their ruling was for that Resolution to lapse to finality. After finality, any recall for lack of jurisdiction of the ruling Division might not be understood by the parties and could lead to a charge of flip-flopping against the Court. The basis for the referral is Section 3(n), Rule 2 of the IRSC, which provides:

> RULE 2.
> OPERATING STRUCTURES
>
> Section 3. *Court en banc matters and cases.* — The Court *en banc* shall act on the following matters and cases:
>
> x x x x x x x x x
>
> (n) cases that the Court *en banc* deems of sufficient importance to merit its attention[.]"

Ruling positively, the Court en banc duly issued its disputed October 4, 2011 Resolution recalling the September 7, 2011 Resolution and ordering the re-raffle of the case to a new Member-in-Charge. Later in the day, the Court received PAL's Motion to Vacate (the September 7, 2011 ruling) dated October 3, 2011. This was followed by FASAP's MR dated October 17, 2011 addressing the Court Resolution of October 4, 2011. The FASAP MR mainly invoked the violation of its right to due process as the recall arose from the Court's *ex parte* consideration of mere letters from one of the counsels of the parties.

As the narration in this Resolution shows, the Court acted on its own pursuant to its power to recall its own orders and resolutions before their finality. The October 4, 2011 Resolution was issued to determine the propriety of the September 7, 2011 Resolution given the facts that came to light after the ruling Division's examination of the records. To point out the obvious, the recall was not a ruling

on the merits and did not constitute the reversal of the substantive issues already decided upon by the Court in the FASAP case in its previously issued Decision (of July 22, 2008) and Resolution (of October 2, 2009). In short, the October 4, 2011 Resolution was not meant and was never intended to favor either party, but to simply remove any doubt about the validity of the ruling Division's action on the case. The case, in the ruling Division's view, could be brought to the Court *en banc* since it is one of "sufficient importance"; at the very least, it involves the interpretation of conflicting provisions of the IRSC with potential jurisdictional implications.

At the time the Members of the ruling Division went to the Chief Justice to recommend a recall, there was no clear indication of how they would definitively settle the unresolved legal questions among themselves. The only matter legally certain was the looming finality of the September 7, 2011 Resolution if it would not be immediately recalled by the Court *en banc* by October 4, 2011. No unanimity among the Members of the ruling Division could be gathered on the unresolved legal questions; thus, they concluded that the matter is best determined by the Court *en banc* as it potentially involved questions of jurisdiction and interpretation of conflicting provisions of the IRSC. To the extent of the recommended recall, the ruling Division was unanimous and the Members communicated this intent to the Chief Justice in clear and unequivocal terms.[76] (Bold scoring supplied for emphasis)

It is well to stress that the *Banc* could not have assumed jurisdiction were it not for the initiative of Justice Arturo V. Brion who consulted the Members of the ruling Division as well as Chief Justice Corona regarding the jurisdictional implications of the successive retirements, transfers, and inhibitions by the Members of the ruling Division. This move by Justice Brion led to the referral of the case to the *Banc* in accordance with Section 3(1), Rule 2 of the IRSC that provided, among others, that *any Member* of the Division could request the Court *En Banc* to take cognizance of cases that fell under paragraph (m). This referral by the ruling Division became the basis for the *Banc* to issue its October 4, 2011 resolution.

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[76] *In Re: Letters of Atty. Estelito P. Mendoza*, *supra*, note 16, at 38-44.

For sure, the *Banc*, by assuming jurisdiction over the case, did not seek to act as appellate body in relation to the acts of the ruling Division, contrary to the dissent's position.[77] The Banc's recall of the resolution of September 7, 2011 should not be so characterized, considering that the *Banc* did not thereby rule on the merits of the case, and did not thereby reverse the July 22, 2008 decision and the October 2, 2009 resolution. The referral of the case to the *Banc* was done to address the conflict among the provisions of the IRSC that had potential jurisdictional implications on the ruling made by the Second Division.

At any rate, PAL constantly raised in its motions for reconsideration that the ruling Division had seriously erred not only in ignoring the consistent findings about its precarious financial situation by the Labor Arbiter, the NLRC, the CA and the SEC, but also in disregarding the pronouncements by the Court of its serious fiscal condition. To be clear, because the serious challenge by PAL against the ruling of the Third Division was anchored on the Third Division's having ignored or reversed settled doctrines or principles of law, only the *Banc* could assume jurisdiction and decide to either affirm, reverse or modify the earlier decision. The rationale for this arrangement has been expressed in *Lu v. Lu Ym*[78] thuswise:

> It is argued that the assailed Resolutions in the present cases have already become final, since a *second* motion for reconsideration is prohibited except for extraordinarily persuasive reasons and only upon express leave first obtained; and that once a judgment attains finality, it thereby becomes immutable and unalterable, however unjust the result of error may appear.
>
> The contention, however, misses an important point. The doctrine of *immutability of decisions* applies only to final and executory decisions. Since the present cases may involve a modification or reversal of a Court-ordained doctrine or principle, the judgment rendered by the Special Third Division may be considered unconstitutional, hence, it can never become final. It finds mooring in the deliberations of the framers of the Constitution:

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[77] Dissenting Opinion, p. 18.

[78] G.R. No. 153690, February 15, 2011, 643 SCRA 23.

> On proposed Section 3(4), Commissioner Natividad asked what the effect would be of a decision that violates the proviso that "no doctrine or principle of law laid down by the court in a decision rendered *en banc* or in division may be modified or reversed except by the court *en banc*." The answer given was that **such a decision would be invalid**. Following up, Father Bernas asked whether the decision, if not challenged, could become final and binding at least on the parties. Romulo answered that, **since such a decision would be in excess of jurisdiction, the decision on the case could be reopened anytime**. (emphasis and underscoring supplied)

A decision rendered by a Division of this Court in violation of this constitutional provision would be in excess of jurisdiction and, therefore, invalid. Any entry of judgment may thus be said to be "inefficacious" since the decision is void for being unconstitutional.

While it is true that the Court *en banc* exercises no appellate jurisdiction over its Divisions, Justice Minerva Gonzaga-Reyes opined in *Firestone* and concededly recognized that "[t]he only constraint is that any doctrine or principle of law laid down by the Court, either rendered *en banc* or in division, may be overturned or reversed only by the Court sitting *en banc*."

That a judgment must become final at some definite point at the risk of occasional error cannot be appreciated in a case that embroils not only a general allegation of "occasional error" but also a serious accusation of a violation of the Constitution, *viz.*, that doctrines or principles of law were modified or reversed by the Court's Special Third Division August 4, 2009 Resolution.

The law allows a determination at first impression that a doctrine or principle laid down by the court *en banc* or in division **may be** modified or reversed in a case which would warrant a referral to the Court *En Banc*. The use of the word "may" instead of "shall" connotes probability, not certainty, of modification or reversal of a doctrine, as may be deemed by the Court. Ultimately, it is the entire Court which shall decide on the acceptance of the referral and, if so, "to reconcile any seeming conflict, to reverse or modify an earlier decision, and to declare the Court's doctrine."

The Court has the power and prerogative to suspend its own rules and to exempt a case from their operation if and when justice requires it, as in the present circumstance where movant filed a motion for

leave after the prompt submission of a second motion for reconsideration but, nonetheless, still within 15 days from receipt of the last assailed resolution.[79]

Lastly, the dissent proposes that a unanimous vote is required to grant PAL's *Second Motion for Reconsideration of the Decision of July 22, 2008*.[80] The dissent justifies the proposal by stating that "*[a] unanimous court would debate and deliberate more fully compared with a non-unanimous court*."[81]

The radical proposal of the dissent is bereft of legal moorings. Neither the 1987 Constitution nor the IRSC demands such unanimous vote. Under Section 4(2), Article VIII of the 1987 Constitution, decisions by the *Banc* shall be attained by a "concurrence of a majority of the Members who actually took part in the deliberations on the issues in the case and voted thereon." As a collegial body, therefore, the Court votes after deliberating on the case, and only a *majority* vote is required,[82] unless the 1987 Constitution specifies otherwise. In all the deliberations by the Court, dissenting and concurring opinions are welcome, they being seen as sound manifestations of "the license of individual Justices or groups of Justices to separate themselves from "the Court's" adjudication of the case before them,"[83] thus:

[C]oncurring and dissenting opinions serve functions quite consistent with a collegial understanding of the Court. Internally within the Court itself-dissent promotes and improves deliberation and

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[79] *Id*. at 40-42; emphasis and underscoring are part of the original text.

[80] To correct the statement in the Dissenting Opinion (p. 19) that the motion was PAL's "*third* motion for reconsideration."

[81] Dissenting Opinion, p. 19.

[82] *Consing v. Court of Appeals*, G.R. No. 78272, 29 August 1989, 177 SCRA 14, 21.

[83] Kornhauser and Sager, *The One and the Many: Adjudication in Collegial Courts*, 81 Cal. L. Rev. 1, p. 7 (1993). Available at:http://scholarship.law.berkeley.edu/californialawreview/vol81/iss1/1 (last accessed January 14, 2018).

judgment. Arguments on either side of a disagreement test the strength of their rivals and demand attention and response. The opportunity for challenge and response afforded by the publication of dissenting and concurring opinions is a close and sympathetic neighbor of the obligation of reasoned justification.

Externally for lower courts, the parties, and interested bystanders-concurring and dissenting opinions are important guides to the dynamic "meaning" of a decision by the Court. From a collegial perspective, dissenting and concurring opinions offer grounds for understanding how individual Justices, entirely faithful to their Court's product, will interpret that product. The meaning each Justice brings to the product of her Court will inevitably be shaped by elements of value and judgment she brings to the interpretive endeavor; her dissent from the Court's conclusions in the case in question is likely to be dense with insight into these aspects of her judicial persona.[84]

III
PAL implemented a valid retrenchment program

Retrenchment or downsizing is a mode of terminating employment initiated by the employer through no fault of the employee and without prejudice to the latter, resorted to by management during periods of business recession, industrial depression or seasonal fluctuations or during lulls over shortage of materials. It is a reduction in manpower, a measure utilized by an employer to minimize business losses incurred in the operation of its business.[85]

Anent retrenchment, Article 298[86] of the *Labor Code* provides as follows:

Article 298. *Closure of Establishment and Reduction of Personnel.* — **The employer may also terminate the employment of any employee**

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[84] *Id.* at 9.

[85] *Pepsi-Cola Products Philippines, Inc. v. Molon*, G.R. No. 175002, February 18, 2013, 691 SCRA 113, 126; *Philippine Carpet Employees Association (PHILCEA) v. Sto. Tomas*, G.R. No. 168719, February 22, 2006, 483 SCRA 128, 143.

[86] Formerly Article 283; See DOLE Department Advisory No. 01 series of 2015.

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 closure 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 to 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.

Accordingly, the employer may resort to retrenchment in order to avert serious business losses. To justify such retrenchment, the following conditions must be present, namely:

1. The retrenchment must be reasonably necessary and likely to prevent business losses;

2. The losses, if already incurred, are not merely *de minimis*, but substantial, serious, actual and real, or, if only expected, are reasonably imminent;

3. The expected or actual losses must be proved by sufficient and convincing evidence;

4. The retrenchment must be in good faith for the advancement of its interest and not to defeat or circumvent the employees' right to security of tenure; and

5. There must be fair and reasonable criteria in ascertaining who would be dismissed and who would be retained among the employees, such as status, efficiency, seniority, physical fitness, age, and financial hardship for certain workers.[87]

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[87] DOLE Department Order No. 147-15, series of 2015 (*Amending the Implementing Rules and Regulations of Book VI of the Labor Code of the Philippines, As Amended*).

Based on the July 22, 2008 decision, PAL failed to: (1) prove its financial losses because it did not submit its audited financial statements as evidence; (2) observe good faith in implementing the retrenchment program; and (3) apply a fair and reasonable criteria in selecting who would be terminated.

Upon a critical review of the records, we are convinced that PAL had met all the standards in effecting a valid retrenchment.

A

PAL's serious financial losses were duly established

PAL was discharged of the burden to prove serious financial losses in view of FASAP's admission

PAL laments the unfair and unjust conclusion reached in the July 22, 2008 decision to the effect that it had not proved its financial losses due to its non-submission of audited financial statements. It points out that the matter of financial losses had not been raised as an issue before the Labor Arbiter, the NLRC, the CA, and even in the petition in G.R. No. 178083 in view of FASAP's admission of PAL having sustained serious losses; and that PAL's having been placed under rehabilitation sufficiently indicated the financial distress that it was suffering.

It is quite notable that the matter of PAL's financial distress had originated from the complaint filed by FASAP whereby it raised the sole issue of "*Whether or not respondents committed Urifair Labor Practice*."[88] FASAP believed that PAL, in terminating the 1,400 cabin crew members, had violated Section 23, Article VII and Section 31, Article IX of the 1995-2000 PAL-FASAP CBA. Interestingly, FASAP averred in its position paper therein that it was not opposed to the retrenchment program because it understood PAL's financial troubles; and that it was only questioning the *manner and lack of standard* in carrying out the retrenchment, thus:

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[88] *Rollo* (G.R. No. 178083), Vol. I, p. 491.

At the outset, it must be pointed out that complainant was never opposed to the retrenchment program itself, as it understands respondent PAL's financial troubles. In fact, complainant religiously cooperated with respondents in their quest for a workable solution to the company-threatening problem. Attached herewith as Annexes "A" to "D" are the minutes of its meetings with respondent PAL's representatives showing complainant's active participation in the deliberations on the issue.

What complainant vehemently objects to are the manner and the lack of criteria or standard by which the retrenchment program was implemented or carried out, despite the fact that there are available criteria or standard that respondents could have utilized or relied on in reducing its workforce. In adopting a retrenchment program that was fashioned after the evil prejudices and personal biases of respondent Patria Chiong, respondent PAL grossly violated at least two important provisions of its CBA with complainant — Article VII, Section 23 and Article IX, Sections 31 and 32.[89]

These foregoing averments of FASAP were echoed in its reply[90] and memorandum[91] submitted to the Labor Arbiter.

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[89] *Id*. at 113-114.

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

Paragraphs 3 and 4 of the Reply reads:

3. It must be stressed that complainant was never opposed to respondents['] retrenchment program as it truly understands respondent PAL's financial position. As a matter of fact, when it became apparent that the company was already in the brink of bankruptcy, complainant actively participated in fashioning out some workable solutions to the problem. Respondents have personal knowledge of such fact;

4. What complainant vigorously objects to was the capricious and whimsical implementation of the retrenchment program which, as circumstances would prove, intended not only to save respondent PAL from business and financial collapse but also to get rid of employees who were actively engaging in union activities and also those who are relatively of age already. In other words, such retrenchment program was taken advantage of to cleanse complainant's ranks of vigilant and active union members as well as older and senior cabin attendants.

[91] *Id*. at 175-176.

FASAP averred:

This is a case of unfair labor practice, plain and simple. Respondents, finding an opportunity in its financial predicament due to the Asian economic crisis

Evidently, FASAP's express recognition of PAL's grave financial situation meant that such situation no longer needed to be proved, the same having become a judicial admission[92] in the context of the issues between the parties. As a rule, indeed, admissions made by parties in the pleadings, or in the course of the trial or other proceedings in the same case are conclusive, and do not require further evidence to prove them.[93] By FASAP's admission of PAL's severe financial woes, PAL was relieved of its burden to prove its dire financial condition to justify the retrenchment. Thusly, PAL should not be taken to task for the non-submission of its audited financial statements in the early part of the proceedings inasmuch as the non-submission had been rendered irrelevant.

Yet, the July 22, 2008 decision ignored the judicial admission and unfairly focused on the lack of evidence of PAL's financial losses. The Special Third Division should have realized that PAL had been discharged of its duty to prove its precarious fiscal situation in the face of FASAP's admission of such situation. Indeed, PAL did not have to submit the audited financial statements because its being in financial distress was not in issue at all.

Nonetheless, the dissent still insists that PAL should be faulted for failing to prove its substantial business losses, and even referred to several decisions of the Court[94] wherein the employers

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that gravely affected most industries in the far east, and specifically Respondents herein, retrenched around Five Thousand employees, including One Thousand Four Hundred flight attendants and stewards as well as pursers. While Complainant does not question the financial setback of respondent airline due to the Asian economic crisis, it doubts the manner and sincerity by which respondents effected the termination. It challenges respondents to show in this suit that they followed a set of rules and norms in coming up with the list of employees to be retrenched, more specifically those members and officers of Complainant union.

[92] Sec. 4, Rule 129 of the *Rules of Court.*

[93] *Josefa v. Manila Electric Company*, G.R. No. 182705, July 18, 2014, 730 SCRA 126, 144; *Philippine Long Distance Telephone Company (PLDT) v. Pingol*, G.R. No. 182622, September 8, 2010, 630 SCRA 413, 421.

[94] Namely: *Central Azucarera de La Carlota v. National Labor Relations Commission, Polymart Paper Industries, Inc. v. National Labor Relations*

had purportedly established their serious business losses as a requirement for a valid retrenchment.

Unfortunately, the cases cited by the dissent obviously had no application herein because they originated from either simple complaints of illegal retrenchment, or unfair labor practice, or additional separation pay.[95]

LVN Pictures originated from a complaint for unfair labor practice (ULP) based on Republic Act No. 874 (*Industrial Peace Act*). The allegations in the complaint concerned interference, discrimination and refusal to bargain collectively. The Court pronounced therein that the employer (LVN Pictures) did not resort to ULP because it was able to justify its termination, closure and eventual refusal to bargain collectively through the financial statements showing that it continually incurred serious financial losses. Notably, the Court did not interfere with the closure and instead recognized LVN's management prerogative to close its business and dismiss its employees.

North Davao Mining was a peculiar case, arising from a complaint for additional separation pay, among others. The Court therein held that separation pay was not required if the reason

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Commission, F.F. Marine Corp. v. National Labor Relations Commission, Philippine Airlines, Inc. v. Dawal, LVN Pictures Employees and Workers Association (NLU) v. LVN Pictures, Inc., North Davao Mining Corporation v. NLRC, and *Manatad v. Philippine Telegraph and Telephone Corporation* (Dissenting Opinion, pp. 23-24).

[95] *Central Azucarera de la Carlota* originated from a complaint for reinstatement, alleging that the implemented retrenchment program was not based on valid grounds. In *Polymart*, the employees alleged that their employer resorted to illegal dismissal on the pretext of incurring serious business losses and the officers and members of the labor union were the first to be retrenched because of their previous misdemeanors. *F.F. Marine Corp.* arose from a complaint for illegal dismissal, with the employee alleging that he was beguiled to accept the separation pay on the pretext that the machine he was working on was transferred to the province. The employer however countered that the employee was validly retrenched. In *PAL v. Dawal*, the complaint before the Labor Arbiter was that of illegal dismissal and unfair labor practice, with PAL claiming that the termination was a valid retrenchment due to the Asian Financial Crisis.

for the termination was due to serious business losses. It clarified that Article 283 (now Art. 298) governed payment of separation benefits in case of closure of business not due to serious business losses. When the reason for the closure was serious business losses, the employer shall not be required to grant separation pay to the terminated employees.

In *Manatad*, the complaint for illegal dismissal was based on the allegation that the retrenchment program was illegal because the employer was gaining profits. Hence, the core issue revolved around the existence (or absence) of grave financial losses that would justify retrenchment.

In the cited cases, the employers had to establish that they were incurring serious business losses because it was the very issue, if not intricately related to the main issue presented in the original complaints. In contrast, the sole issue herein as presented by FASAP to the Labor Arbiter was the "manner of retrenchment," not the basis for retrenchment. FASAP itself, in representation of the retrenched employees, had admitted in its position paper, as well as in its reply and memorandum submitted to the Labor Arbiter the fact of serious financial losses hounding PAL. In reality, PAL was not remiss by not proving serious business losses. FASAP's admission of PAL's financial distress already established the latter's precarious financial state.

Judicial notice could be taken of the financial losses incurred; the presentation of audited financial statements was not required in such circumstances

The July 22, 2008 decision recognized that PAL underwent corporate rehabilitation. In seeming inconsistency, however, the Special Third Division refused to accept that PAL had incurred serious financial losses, observing thusly:

The audited financial statements should be presented before the Labor Arbiter who is in the position to evaluate evidence. They may not be submitted belatedly with the Court of Appeals, because the

admission of evidence is outside the sphere of the appellate court's certiorari jurisdiction. Neither can this Court admit in evidence audited financial statements, or make a ruling on the question of whether the employer incurred substantial losses justifying retrenchment on the basis thereof, as this Court is not a trier of facts. Even so, this Court may not be compelled to accept the contents of said documents blindly and without thinking.

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In the instant case, PAL failed to substantiate its claim of actual and imminent substantial losses which would justify the retrenchment of more than 1,400 of its cabin crew personnel. **Although the Philippine economy was gravely affected by the Asian financial crisis, however, it cannot be assumed that it has likewise brought PAL to the brink of bankruptcy. Likewise, the fact that PAL underwent corporate rehabilitation does not automatically justify the retrenchment of its cabin crew personnel.**[96] (Emphasis supplied)

Indeed, that a company undergoes rehabilitation sufficiently indicates its fragile financial condition. It is rather unfortunate that when PAL petitioned for rehabilitation the term "corporate rehabilitation" still had no clear definition. Presidential Decree No. 902-A,[97] the law then applicable, only set the remedy.[98] Section 6(c) and (d) of P.D. No. 902-A gave an insight into the precarious state of a distressed corporation requiring the appointment of a receiver or the creation of a management committee, *viz.*:

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c) To appoint one or more receivers of the property, real and personal, which is the subject of the action pending before the

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[96] *Flight Attendants and Stewards Association of the Philippines v. Philippine Airlines, Inc.*, G.R. No. 178083, July 22, 2008, 559 SCRA 252, 278-279.

[97] *Reorganization of the Securities and Exchange Commission with Additional Power and Placing Said Agency under the Administrative Supervision of the Office of the President*, as amended by P.D. No. 1799.

[98] Concepcion, *Corporate Rehabilitation: The Philippine Experience*. Economic Policy Agenda Series No. 9. Foundation for Economic Freedom, Inc., p. 3, available at http://dirp3.pids.gov.ph/ris/taps/tapspp9916.pdf last accessed on April 8, 2017.

Commission in accordance with the pertinent provisions of the Rules of Court in such other cases whenever necessary in order **to preserve the rights of the parties-litigants and/or protect the interest of the investing public and creditors**: Provided, however, That the Commission may, in appropriate cases, appoint a rehabilitation receiver of corporations, partnerships or other associations not supervised or regulated by other government agencies who shall have, in addition to the powers of a regular receiver under the provisions of the Rules of Court, such functions and powers as are provided for in the succeeding paragraph d) hereof:*Provided*, further, That the Commission may appoint a rehabilitation receiver of corporations, partnerships or other associations supervised or regulated by other government agencies, such as banks and insurance companies, upon request of the government agency concerned: *Provided*, finally, That **upon appointment of a management committee, rehabilitation receiver, board or body, pursuant to this Decree, all actions for claims against corporations, partnerships or associations under management or receivership pending before any court, tribunal, board or body shall be suspended accordingly**.

d) To create and appoint a management committee, board, or body upon petition or motu propio to undertake the management of corporations, partnerships or other associations not supervised or regulated by other government agencies in appropriate cases **when there is imminent danger of dissipation, loss, wastage or destruction of assets or other properties of paralyzation of business operations of such corporations or entities which may be prejudicial to the interest of minority stockholders, parties-litigants or the general public**: Provided, further, That the Commission may create or appoint a management committee, board or body to undertake the management of corporations, partnerships or other associations supervised or regulated by other government agencies, such as banks and insurance companies, upon request of the government agency concerned.

The management committee or rehabilitation receiver, board or body shall have the power to take custody of, and control over, all the existing assets and property of such entities under management; to evaluate the existing assets and liabilities, earnings and operations of such corporations, partnerships or other associations; **to determine the best way to salvage and protect the interest of the investors and creditors**; to study, review and evaluate the feasibility of continuing operations and restructure and rehabilitate such entities if determined to be feasible by the Commission. It shall report and be responsible

to the Commission until dissolved by order of the Commission: Provided, however, That the Commission may; on the basis of the findings and recommendation of the management committee, or rehabilitation receiver, board or body, or on its own findings; **determine that the continuance in business of such corporation or entity would not be feasible or profitable nor work to the best interest of the stockholders, parties-litigants, creditors, or the general public, order the dissolution of such corporation entity and its remaining assets liquidated accordingly**. The management committee or rehabilitation receiver, board or body may overrule or revoke the actions of the previous management and board of directors of the entity or entities under management notwithstanding any provision of law, articles of incorporation or by-laws to the contrary.

The management committee, or rehabilitation receiver, board or body shall not be subject to any action, claim or demand for, or in connection with, any act done or omitted to be done by it in good faith in the exercise of its functions, or in connection with the exercise of its power herein conferred. (Bold underscoring supplied for emphasis)

After having been placed under corporate rehabilitation and its rehabilitation plan having been approved by the SEC on June 23, 2008, PAL's dire financial predicament could not be doubted. Incidentally, the SEC's order of approval came a week after PAL had sent out notices of termination to the affected employees. It is thus difficult to ignore the fact that PAL had then been experiencing difficulty in meeting its financial obligations long before its rehabilitation.

Moreover, the fact that airline operations were capital intensive but earnings were volatile because of their vulnerability to economic recession, among others.[99] The Asian financial crisis in 1997 had wrought havoc among the Asian air carriers, PAL included.[100] The peculiarities existing in the airline business

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[99] International Air Transport Association (IATA). *Airline Disclosure Guide: Aircraft Acquisition Cost and Depreciation* available at https://www.iata.org/publications/Documents/Airline-Disclosure-Guide-aircraft-acquisition.pdf last accessed on April 8, 2017.

[100] These included Cathay Pacific, Garuda Airlines, Japan Airlines and Malaysian Airlines, all of which reviewed their operating costs and implemented

made it easier to believe that at the time of the Asian financial crisis, PAL incurred liabilities amounting to ₱90,642,933,919.00, which were way beyond the value of its assets that then only stood at ₱85,109,075,351.

Also, the Court cannot be blind and indifferent to current events affecting the society[101] and the country's economy,[102] but must take them into serious consideration in its adjudication of pending cases. In that regard, Section 2, Rule 129 of the *Rules of Court* recognizes that the courts have discretionary authority to take judicial notice of matters that are of public knowledge, or are capable of unquestionable demonstration, or ought to be known to judges because of their judicial functions.[103] The principle is based on convenience and expediency in securing and introducing evidence on matters that are not ordinarily capable of dispute and are not *bona fide* disputed.[104]

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cost cutting measures including employment lay-off. See World Tourism Organization. *Impacts of the Financial Crisis on Asia's Tourism Sector,* p. 22 available at http://sete.gr/files/Media/Ebook/110301_Impacts%20of%20the%20Financial%20Crisis%20on%20Asia%20Tourism%20Sector.pdf last accessed on April 8, 2017.

[101] In *Re: Request Radio-TV Coverage of the Trial in the Sandiganbayan of the Plunder Cases Against the Former President Joseph E. Estrada, Secretary of Justice Hernando Perez, Kapisanan ng mga Brodkaster ng Pilipinas, Cesar Sarino, Renato Cayetano and Atty. Ricardo Romulo v. Estrada*, A.M. No. 01-4-03-SC, June 29, 2001, 360 SCRA 248, the Court took judicial notice of the effect of the media in stirring public sentiments during an impeachment trial.

[102] In *Marcos v. Manglapus*, G.R. No. 88211, September 15, 1989, 177 SCRA 668, the Court took judicial notice of the resulting precarious state of the economy in connection with the return of former President Ferdinand E. Marcos to the country; In *Candelaria v. People*, G.R. No. 209386, December 8, 2014, 744 SCRA 178, the Court also took judicial notice of the value of diesel fuel as a matter of public knowledge.

[103] Section 2, Rule 129 of the *Rules of Court*.

[104] *Republic v. Sandiganbayan (Fourth Division)*, G.R. No. 152375, December 13, 2011, 662 SCRA 152, 212; *Habagat Grill v. DMC-Urban Property Developer, Inc.*, G.R. No. 155110, March 31, 2005, 454 SCRA 653, 668, 669.

Indeed, the Labor Arbiter properly took cognizance of PAL's substantial financial losses during the Asian financial crisis of 1997.[105] On its part, the NLRC recognized the grave financial distress of PAL based on its ongoing rehabilitation/receivership.[106] The CA likewise found that PAL had implemented a retrenchment program to counter its tremendous business losses that the strikes of the pilot's union had aggravated.[107] Such recognitions could not be justly ignored or denied, especially after PAL's financial and operational difficulties had attracted so much public attention that even President Estrada had to intervene in order to save PAL as the country's flag carrier.[108]

The Special Third Division also observed that PAL had submitted a "stand-alone" rehabilitation program that was viewed as an acknowledgment that it could "undertake recovery on its

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[105] *Rollo* (G.R. No. 178083), Vol. I, pp. 491-492.

The Labor Arbiter stated in its decision:

"[I]t is not disputed that PAL suffered business reverses which almost brought it to total bankruptcy. PAL's precarious financial position immediately before it embarked on the controversial retrenchment program was not only directly attribute[d] to the crisis that plague the Asian economies which started in the middle of 1997 that continuous to be felt until today, but also partly due to the strike staged by the Airline Pilots Association of the Philippines (ALPAP) and by the Philippine Airlines Employees (PALEA), which crippled its operation for a considerable period of time.

The combination of the economic predicament in the Asian region and the crippling strike proved too much for PAL. Its assets almost levelled with its liabilities. Under tremendous pressure, PAL was placed under Rehabilitation Receiver and its Rehabilitation Plan was approved, as evidenced by the Order of the Securities and Exchange Commission, dated 23 June 1998 in SEC Case No. 06-98-6004 entitled: [I]n the Matter of the Petition for the Approval of Rehabilitation Plan and for Appointment of a Rehabilitation Receiver." There is, therefore, no doubt with respect to respondent's financial distress."

[106] *Id*. at 673; the NLRC also noted that the complainants did not dispute the financial reverses suffered by PAL (*Rollo*, *Id*. at 685).

[107] *Id*. at 60.

[108] See *Rivera v. Espiritu*, G.R. No. 135547, January 23, 2002, 374 SCRA 351.

own and that it possessed enough resources to weather the financial storm." The observation was unfounded considering that PAL had been constrained to submit the "stand-alone" rehabilitation plan on December 7, 1998 because of the lack of a strategic partner.[109]

We emphasize, too, that the presentation of the audited financial statements should not the sole means by which to establish the employer's serious financial losses. The presentation of audited financial statements, although convenient in proving the unilateral claim of financial losses, is not required for all cases of retrenchment. The evidence required for each case of retrenchment really depends on the particular circumstances obtaining. The Court has cogently opined in that regard:

> That petitioners were not able to present financial statements for years prior to 2005 should not be automatically taken against them. Petitioner BEMI was organized and registered as a corporation in 2004 and started business operations in 2005 only. **While financial statements for previous years may be material in establishing the financial trend for an employer, these are not indispensable in all cases of retrenchment. The evidence required for each case of retrenchment will still depend on its particular circumstances.** In fact, in *Revidad v. National Labor Relations Commission*, the Court declared that **"proof of actual financial losses incurred by the company is not a condition *sine qua non* for retrenchment," and retrenchment may be undertaken by the employer to prevent even future losses**:
>
> > In its ordinary connotation, the phrase "to prevent losses" means that retrenchment or termination of the services of some employees is authorized to be undertaken by the employer sometime before the anticipated losses are actually sustained or realized. It is not, in other words, the intention of the lawmaker to compel the employer to stay his hand and keep all his employees until after losses shall have in fact materialized. If such an intent were expressly written into the law, that law may well be vulnerable to constitutional attack as unduly taking

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[109] Antes, *Brightening Philippine Airlines (PAL): Strategizing for the Future of Asia's Pioneer and Sunniest Air Transporter*. Case Studies in Asian Management, Haghirian, P. (Ed.), World Scientific Publishing Co, Pte. Ltd. (2014), p. 189.

> property from one man to be given to another.[110] (Bold underscoring supplied for emphasis)

In short, to require a distressed corporation placed under rehabilitation or receivership to still submit its audited financial statements may become unnecessary or superfluous.

Under P.D. No. 902-A, the SEC was empowered during rehabilitation proceedings to thoroughly review the corporate and financial documents submitted by PAL. Hence, by the time when the SEC ordered PAL's rehabilitation, suspension of payments and receivership, the SEC had already ascertained PAL's serious financial condition, and the clear and imminent danger of its losing its corporate assets. To require PAL in the proceedings below to still prove its financial losses would only trivialize the SEC's order and proceedings. That would be unfortunate because we should not ignore that the SEC was then the competent authority to determine whether or not a corporation experienced serious financial losses. Hence, the SEC's order – presented as evidence in the proceedings below — sufficiently established PAL's grave financial status.

Finally, PAL argues that the Special Third Division should not have deviated from the pronouncements made in *Garcia v. Philippine Airlines, Inc., Philippine Airlines, Inc. v. Kurangking, Philippine Airlines v. Court of Appeals, Philippine Airlines v. Zamora, Philippine Airlines v. PALEA,* and *Philippine Airlines v. National Labor Relations Commission*, all of which judicially recognized PAL's dire financial condition.

The argument of PAL is valid and tenable.

Garcia v. Philippine Airlines, Inc. discussed the unlikelihood of reinstatement pending appeal because PAL had been placed under corporate rehabilitation, explaining that unlike the ground of substantial losses contemplated in a retrenchment case, the state of corporate rehabilitation was judicially pre-determined

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[110] *Blue Eagle Management. Inc. v. Bonoan*, G.R. No. 192488, April 19, 2016, 790 SCRA 328, 355.

by a competent court and not formulated for the first time by the employer, *viz.*:

> While reinstatement pending appeal aims to avert the continuing threat or danger to the survival or even the life of the dismissed employee and his family, it does not contemplate the period when the employer-corporation itself is similarly in a *judicially monitored* state of being resuscitated in order to survive.
>
> The parallelism between a judicial order of corporation rehabilitation as a justification for the non-exercise of its options, on the one hand, and a claim of actual and imminent substantial losses as ground for retrenchment, on the other hand, stops at the red line on the financial statements. Beyond the analogous condition of financial gloom, as discussed by Justice Leonardo Quisumbing in his Separate Opinion, are more salient distinctions. Unlike the ground of substantial losses contemplated in a retrenchment case, the state of corporate rehabilitation was judicially pre-determined by a competent court and not formulated for the first time in this case by respondent.
>
> More importantly, there are legal effects arising from a judicial order placing a corporation under rehabilitation. Respondent was, during the period material to the case, effectively deprived of the alternative choices under Article 223 of the Labor Code, not only by virtue of the statutory injunction but also in view of the interim relinquishment of management control to give way to the full exercise of the powers of the rehabilitation receiver. Had there been no need to rehabilitate, respondent may have opted for actual physical reinstatement pending appeal to optimize the utilization of resources. Then again, though the management may think this wise, the rehabilitation receiver may decide otherwise, not to mention the subsistence of the injunction on claims.[111]

In *Philippine Airlines v. Kurangking, Philippine Airlines v. Court of Appeals, Philippine Airlines v. PALEA* and *Philippine Airlines v. National Labor Relations Commission*, the Court uniformly upheld the suspension of monetary claims against PAL because of the SEC's order placing it under receivership. The Court emphasized the need to suspend the payment of the claims pending the rehabilitation proceedings

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[111] G.R. No. 164856, January 20, 2009, 576 SCRA 479, 496-497.

in order to enable the management committee/receiver to channel the efforts towards restructuring and rehabilitation. *Philippine Airlines v. Zamora* reiterated this rule and deferred to the prior judicial notice taken by the Court in suspending the monetary claims of illegally dismissed employees.[112]

Through these rulings, the Court consistently recognized PAL's financial troubles while undergoing rehabilitation and suspension of payments. Considering that the ruling related to conditions and circumstances that had occurred during the same period as those obtaining in G.R. No. 178083, the Court cannot take a different view.

It is also proper to indicate that the Court decided the other cases long before the promulgation of the assailed July 22, 2008 decision. Hence, the Special Third Division should not have regarded the financial losses as an issue that still required determination. Instead, it should have just simply taken judicial notice of the serious financial losses being suffered by PAL.[113] To still rule that PAL still did not prove such losses certainly conflicted with the antecedent judicial pronouncements about PAL's dire financial state.

As such, we cannot fathom the insistence by the dissent that the Court had not taken judicial notice but merely "recognized" that PAL was under corporate rehabilitation. Judicial notice is the cognizance of certain facts that judges may properly take and act on without proof because they already know them. It is the manner of recognizing and acknowledging facts that no longer need to be proved in court. In other words, when the Court "recognizes" a fact, it inevitably takes judicial notice of it.

For sure, it would not have been the first time that the Court would have taken judicial notice of the findings of the SEC and of antecedent jurisprudence recognizing the fact of rehabilitation

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[112] In an earlier resolution in *Philippine Airlines v. Zamora*, G.R. No. 166996, February 6, 2007, 514 SCRA 584.

[113] Sec. 1, Rule 129 of the *Rules of Court*.

by the employer. The Court did so in the 2002 case of *Clarion Printing House, Inc. v. National Labor Relations Commission*,[114] to wit:

Sections 5 and 6 of Presidential Decree No. 902-A (P.D. 902-A) ("REORGANIZATION OF THE SECURITIES AND EXCHANGE COMMISSION WITH ADDITIONAL POWERS AND PLACING SAID AGENCY UNDER THE ADMINISTRATIVE SUPERVISION OF THE OFFICE OF THE PRESIDENT"), as amended, read:

> SEC. 5. In addition to the regulatory and adjudicative functions of THE SECURITIES AND EXCHANGE COMMISSION over corporations, partnerships and other forms of associations registered with it as expressly granted under existing laws and decrees, *it shall have original and exclusive jurisdiction to hear and decide cases involving*:
>
> x x x x x x x x x
>
> (d) **Petitions of corporations, partnerships or associations declared *in the state of suspension of payments* in cases where the corporation, partnership or association possesses sufficient property to cover all debts but foresees the impossibility of meeting them when they respectively fall due or in cases where the corporation, partnership, association has no sufficient assets to cover its liabilities, but is under the management of a Rehabilitation Receiver or Management Committee created pursuant to this Decree.**
>
> SEC. 6. In order to effectively exercise such jurisdiction, the Commission shall possess the following powers:
>
> x x x x x x x x x
>
> (c) **To appoint one or more receivers** of the property, real and personal, which is the subject of the action pending before the Commission in accordance with the provisions of the Rules of Court in such other cases whenever necessary in order to preserve the rights of the parties-litigants and/or **protect the interest of the investing public and creditors: Provided, however, That *the Commission***

[114] G.R. No. 148372, June 27, 2005, 461 SCRA 272.

> ***may in appropriate cases, appoint a rehabilitation receiver*** **of corporations, partnerships or other associations not supervised or regulated by other government agencies who shall have, in addition to powers of the regular receiver under the provisions of the Rules of Court, such functions and powers as are provided for in the succeeding paragraph (d) hereof: ...**
>
> **(d)** To create and appoint a management committee, board or body upon petition or *motupropio* to undertake the management of corporations, partnership or other associations not supervised or regulated by other government agencies in appropriate cases ***when there is imminent danger of dissipation, loss, wastage or destruction of assets or other properties or paralization of business operations of such corporations or entities*** **which may be prejudicial to the interest of minority stockholders, parties-litigants of the general public: ...** (Emphasis and underscoring supplied).

From the above-quoted provisions of P.D. No. 902-A, as amended, the appointment of a receiver or management committee by the SEC presupposes a finding that, *inter alia*, a company possesses sufficient property to cover all its debts but "foresees the impossibility of meeting them when they respectively fall due" and "there is imminent danger of dissipation, loss, wastage or destruction of assets of other properties or paralization of business operations."

That the SEC, mandated by law to have regulatory functions over corporations, partnerships or associations, appointed *an interim* receiver for the EYCO Group of Companies on its petition in light of, as quoted above, the therein enumerated "factors beyond the control and anticipation of the management" rendering it unable to meet its obligation as they fall due, and thus resulting to "complications and problems ... to arise that would impair and affect [its] operations ..." shows that CLARION, together with the other member-companies of the EYCO Group of Companies, was suffering business reverses justifying, among other things, the retrenchment of its employees.

This Court in fact takes judicial notice of the Decision of the Court of Appeals dated June 11, 2000 in CA-G.R. SP No. 55208, "*Nikon Industrial Corp., Nikolite Industrial Corp., et al. [including*

CLARION), otherwise known as the EYCO Group of Companies v. Philippine National Bank, Solidbank Corporation, et al., collectively known and referred as the 'Consortium of Creditor Banks,'" which was elevated to this Court via Petition for *Certiorari* and docketed as *G.R. No. 145977,* but which petition this Court dismissed by Resolution dated May 3, 2005:

> Considering the *joint manifestation and motion to dismiss* of petitioners and respondents dated February 24, 2003, stating that *the parties have reached a final and comprehensive settlement* of all the claims and counterclaims subject matter of the case and accordingly, agreed to the dismissal of the petition for *certiorari*, the Court Resolved to DISMISS the petition for *certiorari* (Underscoring supplied).

The parties in *G.R. No. 145977* having sought, and this Court having granted, the dismissal of the appeal of the therein petitioners including CLARION, the *CA decision which affirmed in toto the September 14, 1999 Order* of the SEC, the dispositive portion of which SEC Order reads:

> WHEREFORE, premises considered, the appeal is as it is hereby, granted and the Order dated 18 December 1998 is set aside. The Petition to be Declared in State of Suspension of payments is hereby ***disapproved*** and the SAC Plan terminated. Consequently, all committee, conservator/receivers created pursuant to said Order are dissolved and discharged and all acts and orders issued therein are vacated.
>
> **The Commission, likewise, orders *the liquidation and dissolution of the appellee corporations*.** The case is hereby remanded to the hearing panel below for that purpose.
>
> x x x x x x x x x

(Emphasis and underscoring supplied).

has now become final and executory. *Ergo*, the SEC's disapproval of the EYCO Group of Companies' "Petition for the Declaration of Suspension of Payment ..." and the order for the liquidation and dissolution of these companies including CLARION, must be deemed to have been unassailed.

That judicial notice can be taken of the above-said case of *Nikon Industrial Corp. et al. v. PNB et al.*, there should be no doubt.

As provided in Section 1, Rule 129 of the Rules of Court:

> SECTION 1. *Judicial notice, when mandatory*. — A court shall take judicial notice, without the introduction of evidence, of the existence and territorial extent of states, their political history, forms of government and symbols of nationality, the law of nations, the admiralty and maritime courts of the world and their seals, the political constitution and history of the Philippines, the **official acts of the** legislative, executive and **judicial** departments of the Philippines, the laws of nature, the measure of time, and the geographical divisions. (Emphasis and underscoring supplied)

which Mr. Justice Edgardo L. Paras interpreted as follows:

> ***A court will take judicial notice of*** its own acts and records in the same case, of facts established in prior proceedings in the same case, of the authenticity of its own records of another case between the same parties, of the ***files of related cases in the same court, and of public records on file in the same court***. In addition judicial notice will be taken of the record, pleadings or judgment of a case in another court between the same parties or involving one of the same parties, as well as of the record of another case between different parties in the same court. Judicial notice will also be taken of court personnel. (Emphasis and underscoring supplied)

In fine, CLARION's claim that at the time it terminated Miclat it was experiencing business reverses gains more light from the SEC's disapproval of the EYCO Group of Companies' petition to be declared in state of suspension of payment, **filed before Miclat's termination**, and of the SEC's consequent order for the group of companies' dissolution and liquidation.[115]

At any rate, *even assuming that serious business losses had not been proved by PAL*, it would still be justified under Article 298 of the *Labor Code* to retrench employees *to prevent the occurrence of losses or its closing of the business*, provided that the projected losses were not merely *de minimis*, but substantial, serious, actual, and real, or, if only expected, were reasonably imminent as perceived objectively and in good faith

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[115] *Id*. at 290-294.

by the employer.[116] In the latter case, proof of actual financial losses incurred by the employer would not be a condition *sine qua non* for retrenchment,[117] *viz.*:

Third, contrary to petitioner's asseverations, proof of actual financial losses incurred by the company is not a condition *sine qua non* for retrenchment. Retrenchment is one of the economic grounds to dismiss employees, which is resorted to by an employer primarily to avoid or minimize business losses. The law recognize this under Article 283 of the Labor Code x x x

x x x x x x x x x

In its ordinary connotation, the phrase "to prevent losses" means that retrenchment or termination of the services of some employees is authorized to be undertaken by the employer sometime before the anticipated losses are, actually sustained or realized. It is not, in other words, the intention of the lawmaker to compel the employer to stay his hand and keep all his employees until after losses shall have in fact materialized. If such an intent were expressly written into the law, that law may well be vulnerable to constitutional attack as unduly taking property from one man to be given to another.

At the other end of the spectrum, it seems equally clear that not every asserted possibility of loss is sufficient legal warrant for the reduction of personnel. In the nature of things, the possibility of incurring the losses is constantly present, in greater or lesser degree, in the carrying on of business operations, since some, indeed many, of the factors which impact upon the profitability or viability of such operations may be substantially outside the control of the employer.

On the bases of these consideration, it follows that the employer bears the burden to prove his allegation of economic or business reverses with clear and satisfactory evidence, it being in the nature of an affirmative defense. As earlier discussed, we are fully persuaded that the private respondent has been and is besieged by a continuing downtrend in both its business operations and financial resources,

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[116] *Beralde v. Lapanday Agricultural and Development Corporation (Guihing Plantation Operations)*, G.R. Nos. 205685-86, June 22, 2015, 760 SCRA 158, 175-176.

[117] *Revidad v. National Labor Relations Commission*, G.R. No. 111105, June 27, 1995, 245 SCRA 356.

thus amply justifying its resort to drastic cuts in personnel and costs.[118]

B
PAL retrenched in good faith

The employer is burdened to observe good faith in implementing a retrenchment program. Good faith on its part exists when the retrenchment is intended for the advancement of its interest and is not for the purpose of defeating or circumventing the rights of the employee under special laws or under valid agreements.[119]

The July 22, 2008 decision branded the recall of the retrenched employees and the implementation of "Plan 22" instead of "Plan 14" as badges of bad faith on the part of PAL. On the other hand, the October 2, 2009 resolution condemned PAL for changing its theory by attributing the cause of the retrenchment to the ALPAP pilots' strike.

PAL refutes the adverse observations, and maintains that its position was clear and consistent – that the reduction of its labor force was an act of survival and a less drastic measure as compared to total closure and liquidation that would have otherwise resulted; that downsizing had been an option to address its financial losses since 1997;[120] that the reduction of personnel was necessary as an integral part of the means to ensure the success of its corporate rehabilitation plan to restructure its business;[121] and that the downsizing of its labor force was a

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[118] *Id.* at 367-368.

[119] *Pasig Agricultural Development and Industrial Supply Corporation v. Nievarez*, G.R. No. 197852, October 19, 2015, 773 SCRA 52, 64.

[120] *Rollo* (G.R. No. 178083), Vol. III, pp. 2261-2264.

[121] *Id.* at 2266-2267, PAL reasoned that the primary component of the Rehabilitation Plan and Amended Rehabilitation Plan approved by the PAL creditors and the SEC, was the downsizing of the labor force by at least 5,000, which included the 1,400 flight attendants. The cutting-down of operations and consequent reduction of labor force together with the debt restructuring and capital infusion of US$200 million, were the key components in the rehabilitation.

sound business decision undertaken after an assessment of its financial situation and the remedies available to it.[122]

A hard look at the records now impels the reconsideration of the July 22, 2008 decision and the resolution of October 2, 2009.

PAL could not have been motivated by ill will or bad faith when it decided to terminate FASAP's affected members. On the contrary, good faith could be justly inferred from PAL's conduct before, during and after the implementation of the retrenchment plan.

Notable in this respect was PALs candor towards FASAP regarding its plan to implement the retrenchment program. This impression is gathered from PAL's letter dated February 11, 1998 inviting FASAP to a meeting to discuss the matter, thus:

Roberto D. Anduiza
President
Flight Attendants' and Stewards' Association of the Philippines (FASAP)

x x x x x x x x x

Mr. Anduiza:

Due to critical business losses and in view of severe financial reverses, Philippine Airlines must undertake drastic measures to strive at survival. In order to meet maturing obligations amidst the present regional crisis, the Company will implement major cost-cutting measures in its fleet plan, operating budget, routes and frequencies. These moves include the closure of stations, downsizing of operations and reducing the workforce through layoff/retrenchment or retirement.

In this connection, the Company would like to meet with the Flight Attendants' and Stewards' Association of the Philippines (FASAP) to discuss the implementation of the lay-off/retrenchment or retirement of FASAP-covered employees. The meeting shall be at the Allied Bank Center (8th Floor-Board Room) on February 12, 1998 at 4:00 p.m.

This letter serves as notice in compliance with Article 283 of the Labor Code, as amended and DOLE Orders Nos[.] 9 and 10, Series of 1997.

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[122] *Id*. at 2268.

Very truly yours,

(Sgd.)
JOSE ANTONIO GARCIA
President & Chief Operating Officer[123]

The records also show that the parties met on several occasions[124] to explore cost-cutting measures, including the implementation of the retrenchment program. PAL likewise manifested that the retrenchment plan was temporarily shelved while it implemented other measures (like termination of probationary cabin attendant, and work-rotations).[125] Obviously, the dissent missed this part as it stuck to the belief that PAL did not implement other cost-cutting measures prior to retrenchment.[126]

Given PAL's dire financial predicament, it becomes understandable that PAL was constrained to finally implement the retrenchment program when the ALPAP pilots strike crippled a major part of PAL's operations.[127] In *Rivera v. Espiritu*,[128] we observed that said strike wrought "*serious losses to the financially beleaguered flag carrier*;" that "*PAL's financial situation went from bad to worse*;" and that "*[f]aced with bankruptcy, PAL adopted a rehabilitation plan and downsized its labor force by more than one-third*." Such observations

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[123] *Rollo* (G.R. No. 178083), Vol. II, p. 1419.

[124] *Rollo* (G.R. No. 178083), Vol. I, pp. 127-132; the meetings were held on February 17, February 20, March 6, March 10, and March 17, 1998.

[125] *Rollo* (G.R. No. 178083), Vol. III, p. 2274.

[126] Dissenting Opinion, pp. 25-26.

[127] *Rollo* (G.R. No. 178083), Vol. III, pp. 2252-2253; PAL manifested that the strike had crippled almost 90% of its operations wherein the striking pilots abandoned the planes wherever they were; that with only 60 pilots and lesser planes in operation, PAL's daily revenue losses reached ₱100 million while its fixed cost required ₱50 million daily to operate; that given the situation, it only had approximately eighteen (18) days to operate since it had no access to any further credit or other liquidity facilities.

[128] G.R. No. 135547, January 23, 2002, 374 SCRA 351, 355.

sufficed to show that retrenchment became a last resort, and was not the rash and impulsive decision that FASAP would make it out to be now.

As between maintaining the number of its flight crew and PAL's survival, it was reasonable for PAL to choose the latter alternative. This Court cannot legitimately force PAL as a distressed employer to maintain its manpower despite its dire financial condition. To be sure, the right of PAL as the employer to reasonable returns on its investments and to expansion and growth is also enshrined in the 1987 Constitution.[129] Thus, although labor is entitled to the right to security of tenure, the State will not interfere with the employer's valid exercise of its management prerogative.

Moreover, PAL filed its Petition for Appointment of Interim Rehabilitation Receiver and Approval of a Rehabilitation Plan with the SEC on June 19, 1998, before the retrenchment became effective.[130] PAL likewise manifested that:

> x x x The Rehabilitation Plan and Amended Rehabilitation Plan submitted by PAL in pursuance of its corporate rehabilitation, and which obtained the joint approval of PAL's creditors and the SEC, had **as a primary component, the downsizing of PAL's labor force by at least 5,000, including the 1,400 flight attendants. As conceptualized by a team of industry experts, the cutting down of operations and the consequent reduction of work force, along with the restructuring of debts with significant "haircuts" and the capital infusion of Mr. Lucio Tan amounting to US$200 million, were the key components of PAL's rehabilitation**. The Interim Rehabilitation Receiver was replaced by a Permanent Rehabilitation Receiver on June 7, 1999.[131] (Bold underscoring supplies for emphasis)

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[129] The last paragraph of Section 3, Article XIII states: "The State shall regulate the relations between workers and employers, recognizing the right of labor to its just share in the fruits of production and the right of enterprises to reasonable returns to investments, and to expansion and growth."

[130] *Rollo* (G.R. No. 178083), Vol. III, pp. 2255-2257.

[131] *Id*. at 2267.

Being under a rehabilitation program, PAL had no choice but to implement the measures contained in the program, including that of reducing its manpower. Far from being an impulsive decision to defeat its employees' right to security of tenure, retrenchment resulted from a meticulous plan primarily aimed to resuscitate PAL's operations.

Good faith could also be inferred from. PAL's compliance with the basic requirements under Article 298 of the *Labor Code* prior to laying-off its affected employees. Notably, the notice of termination addressed to the Department of Labor and Employment (DOLE) identified the reasons behind the massive termination, as well as the measures PAL had undertaken to prevent the situation, to wit:

June 15, 1998

HON. MAXIMO B. LIM
THE REGIONAL DIRECTOR
Department of Labor and Employment
Regional Office No. NCR

Dear Sir:

This is to inform you that Philippine Air Lines, Inc. (PAL) will be implementing a retrenchment program one (1) month from notice hereof in order to prevent bankruptcy.

PAL is forced to take this action **because of continuous losses it has suffered over the years which losses were aggravated by the PALEA strike in October 1996, peso depreciation, Asian currency crisis, causing a serious drop in our yield and the collapse of passenger traffic in the region. Specifically, PAL suffered a net loss of ₱2.18 Billion during the fiscal year 1995-1996, ₱2.50 Billion during the fiscal year 1996-1997 and ₱8.08 Billion for the period starting April 1, 1997 to March 31, 1998**.

These uncontrolled heavy losses have left PAL with no recourse but to reduce its fleet and its flight frequencies both in the domestic and international sectors to ensure its survival.

In an effort to avoid a reduction of personnel, **PAL has resorted to other measures, such as freeze on all hiring, no salary increase for managerial and confidential staff (even for promotions), reduction**

of salaries of senior management personnel, freeze on staff movements, pre-termination of temporary staff contracts and negotiations with foreign investors. But all these measures failed to avert the continued losses.

Finally, **all the efforts of PAL to preserve the employment of its personnel were shattered by the illegal strike of its pilots which has cause irreparable damage to the company's cash flow. Consequently, the company is now no longer able to meet its maturing obligations and is not about to go into default in all its major loans. It is presently under threat of receiving a barrage of suits from its creditors who will go after the assets of the corporation**.

Under the circumstances, PAL is left with no recourse but to reduce its fleet and its flight frequencies both in the domestic and international sectors to ensure its survival. Consequently, a reduction of personnel is inevitable.

All affected employees in the attached list will be given the corresponding benefits which they may be entitled to.

Very truly yours,
(Sgd)
JOSE ANTONIO GARCIA
President & Chief Operating Officer[132]

As regards the observation made in the decision of July 22, 2008 to the effect that the recall of the flight crew members indicated bad faith, we hold to the contrary.

PAL explained how the recall process had materialized, as follows:

During this time, the Company was slowly but steadily recovering. Its finances were improving and additional planes were flying. Because of the Company's steady recovery, necessity dictated more employees to man and service the additional planes and flights. Thus, instead of taking in new hires, the Company first offered employment to employees who were previously retrenched. A recall/rehire plan was initiated.

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[132] *Rollo* (G.R. No. 178083), Vol. II, p. 1421 (bold underscoring supplied for emphasis).

The recall/rehire plan was a success. A majority of retrenched employees were recalled/rehired and went back to work including the members of petitioner union. In the process of recall/rehire, many employees who could not be recalled for various reasons (such as, among others, being unfit for the job or the employee simply did not want to work for the Company anymore) decided to accept separation benefits and executed, willingly and voluntarily, valid quitclaims. Those who received separation packages included a good number of the members of the petitioner union.[133]

Contrary to the statement in the dissent that the implementation of Plan 22 instead of Plan 14 indicated bad faith,[134] PAL reasonably demonstrated that the recall was devoid of bad faith or of an attempt on its part to circumvent its affected employees' right to security of tenure. Far from being tainted with bad faith, the recall signified PAL's reluctance to part with the retrenched employees. Indeed, the prevailing unfavorable conditions had only compelled it to implement the retrenchment.

The rehiring of previously retrenched employees should not invalidate a retrenchment program, the rehiring being an exercise of the employer's right to continue its business. Thus, we pointed out in one case:

We likewise cannot sustain petitioners' argument that their dismissal was illegal on the basis that Lapanday did not actually cease its operation, or that they have rehired some of the dismissed employees and even hired new set of employees to replace the retrenched employees.

The law acknowledges the right of every business entity to reduce its workforce if such measure is made necessary or compelled by economic factors that would otherwise endanger its stability or existence. In exercising its right to retrench employees, the firm may choose to close all, or a part of, its business to avoid further losses or mitigate expenses. In *Caffco International Limited v. Office of the Minister-Ministry of Labor and Employment*, the Court has aptly observed that —

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[133] *Id.* at 1395.

[134] Dissenting Opinion, pp. 27-28.

> Business enterprises today are faced with the pressures of economic recession, stiff competition, and labor unrest. Thus, businessmen are always pressured to adopt certain changes and programs in order to enhance their profits and protect their investments. Such changes may take various forms. Management may even choose to close a branch, a department, a plant, or a shop.

In the same manner, when Lapanday continued its business operation and eventually hired some of its retrenched employees and new employees, it was merely exercising its right to continue its business. The fact that Lapanday chose to continue its business does not automatically make the retrenchment illegal. We reiterate that in retrenchment, the goal is to prevent impending losses or further business reversals — it therefore does not require that there is an actual closure of the business. Thus, when the employer satisfactorily proved economic or business losses with sufficient supporting evidence and have complied with the requirements mandated under the law to justify retrenchment, as in this case, it cannot be said that the subsequent acts of the employer to rehire the retrenched employees or to hire new employees constitute bad faith. It could have been different if from the beginning the retrenchment was illegal and the employer subsequently hired new employees or rehired some of the previously dismissed employees because that would have constituted bad faith. Consequently, when Lapanday continued its operation, it was merely exercising its prerogative to streamline its operations, and to rehire or hire only those who are qualified to replace the services rendered by the retrenched employees in order to effect more economic and efficient methods of production and to forestall business losses. The rehiring or reemployment of retrenched employees does not necessarily negate the presence or imminence of losses which prompted Lapanday to retrench.

In spite of overwhelming support granted by the social justice provisions of our Constitution in favor of labor, the fundamental law itself guarantees, even during the process of tilting the scales of social justice towards workers and employees, "the right of enterprises to reasonable returns of investment and to expansion and growth." To hold otherwise would not only be oppressive and inhuman, but also counter-productive and ultimately subversive of the nation's thrust towards a resurgence in our economy which would ultimately benefit the majority of our people. Where appropriate and where conditions are in accord with law and jurisprudence, the Court has authorized valid reductions in the workforce to forestall business

losses, the hemorrhaging of capital, or even to recognize an obvious reduction in the volume of business which has rendered certain employees redundant.[135]

Consequently, we cannot pass judgment on the motive behind PAL's initiative to implement "Plan 22" instead of "Plan 14." The prerogative thereon belonged to the management alone due to its being in the best position to assess its own financial situation and operate its own business. Even the Court has no power to interfere with such exercise of the prerogative.

C

PAL used fair and reasonable criteria in selecting the employees to be retrenched pursuant to the CBA

The July 22, 2008 decision agreed with the holding by the CA that PAL was not obligated to consult with FASAP on the standards to be used in evaluating the performance of its employees. Nonetheless, PAL was found to be unfair and unreasonable in selecting the employees to be retrenched by doing away with the concept of seniority, loyalty, and past efficiency by solely relying on the employees' 1997 performance rating; and that the retrenchment of employees due to "other reasons," without any details or specifications, was not allowed and had no basis in fact and in law.[136]

PAL contends that it used fair and reasonable criteria in accord with Sections 23, 30 and 112 of the 1995-2000 CBA;[137] that the NLRC's use of the phrase "other reasons" referred to the varied grounds (*i.e.* excess sick leaves, previous service of suspension orders, passenger complains, tardiness, etc.) employed in conjunction with seniority in selecting the employees to be terminated;[138] that the CBA did not require reference to performance rating of the previous years, but to the use of an

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[135] *Beralde v. Lapanday Agricultural and Development Corporation (Guihing Plantation Operations)*, *supra*, note 116, at 177-178.

[136] 559 SCRA, 252, 291-292.

[137] *Rollo* (G.R. No. 178083), Vol. III, pp. 2401-2405.

[138] *Id*. at 2407.

efficiency rating for a single year;[139] and that it adopted both efficiency rating and inverse seniority as criteria in the selection pursuant to Section 112 of the CBA.[140]

PAL's contentions are meritorious.

In selecting the employees to be dismissed, the employer is required to adopt fair and reasonable criteria, taking into consideration factors like: (*a*) preferred status; (*b*) efficiency; and (*c*) seniority, among others.[141] The requirement of fair and reasonable criteria is imposed on the employer to preclude the occurrence of arbitrary selection of employees to be retrenched. Absent any showing of bad faith, the choice of who should be retrenched must be conceded to the employer for as long as a basis for the retrenchment exists.[142]

We have found arbitrariness in terminating the employee under the guise of a retrenchment program wherein the employer discarded the criteria it adopted in terminating a particular employee;[143] when the termination discriminated the employees on account of their union membership without regard to their years of service;[144] the timing of the retrenchment was made a day before the employee may be regularized;[145] when the employer disregarded altogether the factor of seniority and choosing to retain the newly hired employees;[146] that termination

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[139] *Id*. at 2408-2409.

[140] *Id*. at 2412.

[141] *Caltex (Phils.), Inc. v. National Labor Relations Commission*, G.R. No. 159641, October 15, 2007, 536 SCRA 175, 188.

[142] *Talam v. National Labor Relations Commission*, G.R. No. 175040, April 6, 2010, 617 SCRA 408, 422.

[143] *Saballa v. National Labor Relations Commission*, G.R. Nos. 102472-84, August 22, 1996, 260 SCRA 697, 711.

[144] *Bogo-Medellin Sugarcane Planters Association, Inc. v. NLRC*, G.R. No. 97846, September 25, 1998, 296 SCRA 108, 123.

[145] *Manila Hotel Corporation v. NLRC*, G.R. No. 53453, January 22, 1986, 141 SCRA 169, 177.

[146] *Philippine Tuberculosis Society, Inc. v. National Labor Union*, G.R. No. 115414, August 25, 1998, 294 SCRA 567, 576, 578.

only followed the previous retrenchment of two non-regular employees;[147] and when there is no appraisal or criteria applied in the selection.[148]

On the other hand, we have considered as valid the retrenchment of the employee based on work efficiency,[149] or poor performance;[150] or the margins of contribution of the consultants to the income of the company;[151] or absenteeism, or record of disciplinary action, or efficiency and work attitude;[152] or when the employer exerted efforts to solicit the employees' participation in reviewing the criteria to be used in selecting the workers to be laid off.[153]

In fine, the Court will only strike down the retrenchment of an employee as capricious, whimsical, arbitrary, and prejudicial in the absence of a clear-cut and uniform guideline followed by the employer in selecting him or her from the work pool. Following this standard, PAL validly implemented its retrenchment program.

PAL resorted to both efficiency rating and inverse seniority in selecting the employees to be subject of termination. As the NLRC keenly pointed out, the "ICCD Masterank 1997 Ratings — Seniority Listing" submitted by PAL sufficiently established the criteria for the selection of the employees to be laid off. To insist on seniority as the sole basis for the selection would

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[147] *Oriental Petroleum and Minerals Corporation v. Fuentes*, G.R. No. 151818, October 14, 2005, 473 SCRA 106, 118.

[148] *Caltex (Phils.), Inc. v. National Labor Relations Commission*, G.R. No. 159641, October 15, 2007, 536 SCRA 175, 190.

[149] *Shimizu Phils. Contractors, Inc. v. Callanta*, G.R. No. 165923, September 29, 2010, 631 SCRA 529, 542.

[150] *Morales v. Metropolitan Bank and Trust Company*, G.R. No. 182475, November 21, 2012, 686 SCRA 132, 146.

[151] *Talam v. National Labor Relations Commission*, *supra*, note 142.

[152] *Coats Manila Bay, Inc. v. Ortega*, G.R. No. 172628, February 13, 2009, 579 SCRA 300, 309.

[153] *Pepsi-Cola Products Philippines, Inc. v. Molon*, G.R. No. 175002, February 18, 2013, 691 SCRA 113, 134.

be unwarranted, it appearing that the applicable CBA did not establish such limitation. This counters the statement in the dissent that the retrenchment program was based on unreasonable standards without regard to service, seniority, loyalty and performance.[154]

In this connection, we adopt the following cogent observations by the CA on the matter for being fully in accord with law and jurisprudence:

> FASAP insists that several CBA provisions have been violated by the retrenchment. They are the provisions on seniority, performance appraisal, reduction in personnel and downgrading and permanent OCARs. Seniority and performance stand out because these were the main considerations of PAL in selecting workers to be retrenched. Under the CBA, seniority is defined "*to mean a measure of a regular Cabin Attendant's claim in relation to other regular Cabin Attendants holding similar positions, to preferential consideration whatever the Company exercises its right to promote to a higher paying position of lay-off of any Cabin Attendant*." **Seniority, however, is not the sole determinant of retention. This is clear under Article XIII on performance appraisal of the CBA provisions.**
>
> **Under the CBA, several factors are likewise taken into consideration like performance and professionalism in addition to the seniority factor. However, the criteria for performance and professionalism are not indicated in the CBA but are to be formulated by PAL in consultation with FASAP. Where there is retrenchment, cabin attendants who fail to attain at least 85% of the established criteria shall be demoted progressively. Domestic cabin attendants, the occupants of lowest rung of the organizational hierarchy, are to be retrenched once they fail to meet the required percentage.**
>
> **We have painstakingly examined the records and We find no indication that these provisions have been grossly disregarded as to taint the retrenchment with illegality. PAL relied on specific categories of criteria, such as merit awards, physical appearance, attendance and *checkrides*, to guide its selection of employees to be removed. We do not find anything legally objectionable in the adoption of the foregoing norms. On the contrary, these norms are most relevant to the nature of a cabin attendant's work.**

[154] Dissenting Opinion, p. 41.

However, the contention of FASAP that these criteria required its prior conformity before adoption is not supported by Section 30, Article VIII of the CBA. Note should be taken that this provision only mandates PAL to "*meet and consult*" the Association (FASAP) in the formulation of the Performance and Professionalism Appraisal System." By the ordinary import of this provision, PAL is only required to confer with FASAP; it is not at all required to forge an addendum to the CBA, which will concretize the appraisal system as basis for retrenchment or retention.[155]

To require PAL to further limit its criteria would be inconsistent with jurisprudence and the principle of fairness. Instead, we hold that for as long as PAL followed a rational criteria defined or set by the CBA and existing laws and jurisprudence in determining who should be included in the retrenchment program, it sufficiently met the standards of fairness and reason in its implementation of its retrenchment program.

D

The retrenched employees signed valid quitclaims

The July 22, 2008 decision struck down as illegal the quitclaims executed by the retrenched employees because of the mistaken conclusion that the retrenchment had been unlawfully executed.

We reverse.

In *EDI Staffbuilders International, Inc. v. National Labor Relations Commission*,[156] we laid down the basic contents of valid and effective quitclaims and waivers, to wit:

> In order to prevent disputes on the validity and enforceability of quitclaims and waivers of employees under Philippine laws, said agreements should contain the following:
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> 1. A **fixed amount** as full and final compromise settlement;
>
> 2. The **benefits** of the employees if possible with the corresponding amounts, **which the employees are giving up in consideration of the fixed compromise amount**;

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[155] *Rollo* (G.R. No. 178083), Vol. I, pp. 78-79 (bold underscoring supplied for emphasis).

[156] G.R. No. 145587, October 26, 2007, 537 SCRA 409.

3. A **statement that the employer has clearly explained to the employee in English, Filipino, or in the dialect known to the employees** — that by signing the waiver or quitclaim, they are forfeiting or relinquishing their right to receive the benefits which are due them under the law; and

4. A statement that the **employees signed and executed the document voluntarily, and had fully understood the contents of the document and that their consent was freely given** without any threat, violence, duress, intimidation, or undue influence exerted on their person.[157] (Bold supplied for emphasis)

The release and quitclaim signed by the affected employees substantially satisfied the aforestated requirements. The consideration was clearly indicated in the document in the English language, including the benefits that the employees would be relinquishing in exchange for the amounts to be received. There is no question that the employees who had occupied the position of flight crew knew and understood the English language. Hence, they fully comprehended the terms used in the release and quitclaim that they signed.

Indeed, not all quitclaims are *per se* invalid or against public policy. A quitclaim is invalid or contrary to public policy only: (1) where there is clear proof that the waiver was wrangled from an unsuspecting or gullible person; or (2) where the terms of settlement are unconscionable on their face.[158] Based on these standards, we uphold the release and quitclaims signed by the retrenched employees herein.

WHEREFORE, the Court:

(a) **GRANTS** the *Motion for Reconsideration of the Resolution of October 2, 2009 and Second Motion for Reconsideration of the Decision of July 22, 2008* filed by the respondents Philippine Airlines, Inc. and Patria Chiong;

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[157] *Id.* at 442.

[158] *Sara Lee Philippines v. Macatlang*, G.R. No. 180147, January 14, 2015 (Resolution); *Radio Mindanao Network, Inc. v. Amurao III*, G.R. No. 167225, October 22, 2014, 739 SCRA 64, 72.

(b) **DENIES** the *Motion for Reconsideration (Re: The Honorable Court's Resolution dated March 13, 2012)* filed by the petitioner Flight Attendants and Stewards Association of the Philippines;

(c) **SETS ASIDE** the decision dated July 22, 2008 and resolution dated October 2, 2009; and

(d) **AFFIRMS** the decision of the Court of Appeals dated August 23, 2006.

No pronouncement on costs of suit.

SO ORDERED.

Martires and *Tijam, JJ.*, concur.

Caguioa, J., see separate concurring opinion.

Peralta, Perlas-Bernabe, and *Gesmundo, JJ.*, join the opinion of *J. Caguioa.*

Leonen, J., dissents, see separate opinion.

Reyes, Jr., J., joins *J. Leonen's* dissenting opinion.

Carpio, Velasco, Jr., Leonardo-de Castro, del Castillo, and *Jardeleza, JJ.,* no part.

Sereno, C.J., on indefinite leave effective March 1, 2018.

CONCURRING OPINION

CAGUIOA, *J.*:

I concur with the *ponencia*.

More often than not, judicial decisions, in determining compliance with legal requirements, fall prey to the technicalities created by statutory text and jurisprudential pronouncements, often denying recognition to even the most reasonable and most commonplace of exceptions. This is precisely what the case at bar presents, as the Court is yet again faced with the dilemma of whether or not requirements historically perpetuated as

indispensable could reasonably be put aside in light of the factual circumstances surrounding the controversy.

Yet, before one delves into the factual circumstances and the merit of the Second Motion for Reconsideration (2nd MR) filed by Philippine Airlines, Inc. (PAL), it is but necessary that the procedural issues raised by the Petitioner and J. Leonen's dissent be sufficiently addressed.

Procedural Issues

As summarized by the *ponencia*, Petitioner argues that the October 4, 2011 Resolution of the Court is void for failure to comply with Section 14, Article VIII of the 1987 Constitution. More importantly, Petitioner submits that PAL's 2nd MR is a prohibited pleading considering that the July 22, 2008 Decision (2008 Decision) of the Court has already attained finality.

In a similar vein, the dissent posits that (a) the judgment in this case has become final and executory as early as November 4, 2009;[1] (b) "[t]he judgment here having attained finality, the Court *En Banc* — as if an appellate court reviewing a case that the Supreme Court has already reviewed three (3) times — cannot now take cognizance of the case and review it for the fourth time because, suddenly, the case became of sufficient importance to merit the Banc's attention[;]"[2] and (c) the Court *en banc* effectively admitted a third motion for reconsideration from the same party and hence a unanimous vote of this Court sitting *en banc* must be required to grant PAL's third motion for reconsideration.[3]

At the outset, and to address Petitioner's preliminary procedural issue, I express my concurrence with the conclusion of the *ponencia* that the October 4, 2011 Resolution of the Court is a valid issuance and is not violative of Section 14, Article VIII of the 1987 Constitution. As the *ponencia* explained "***any doubt***

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[1] *J.* Leonen, Dissenting Opinion, p. 5.

[2] *Id*. at 18.

[3] *Id*. at 19.

on the validity of the recall order was removed because the Court upheld its issuance through the March 13, 2012 resolution"[4] of the Court *en banc*.

a. Timeline

The specific dates and incidents that led to the Court *en banc* assuming jurisdiction over this case are narrated and clarified in the Resolution[5] dated March 13, 2012 (March 2012 Resolution) of the Court *en banc* in A.M. No. 11-10-1-SC. **These dates and incidents are no longer in dispute as they have already been settled and discussed by the Court *en banc* through its March 2012 Resolution**, which highlighted the following incidents:

(1) On July 22, 2008, the Court's Third Division ruled to grant the petition for review on *certiorari* filed by the Flight Attendants and Stewards Association of the Philippines (FASAP), finding PAL guilty of illegal dismissal (July 2008 Decision). PAL subsequently filed a Motion for Reconsideration (MR) seeking to reverse the July 2008 Decision rendered by the Court's Third Division.[6]

(2) Due to the inhibition and retirement of several justices, PAL's MR was handled by the Court's Special Third Division which, in turn, denied the MR with finality in a Resolution dated October 2, 2009 (October 2009 Resolution).[7]

(3) On November 3, 2009, PAL filed a *Motion for Leave to File and Admit Motion for Reconsideration of the Resolution dated 2 October 2009 and 2nd Motion for Reconsideration of Decision dated 22 July 2008* (*Motion for Leave*).[8]

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[4] Resolution, p. 16. Emphasis and underscoring supplied.

[5] *In re: Letters of Atty. Mendoza re: G.R. No. 178083 - FASAP v. PAL, Inc., et al.*, 684 Phil. 55 (2012).

[6] *Id*. at 74-75.

[7] *Id*. at 76-77.

[8] *Id*. at 77, 79.

(4) On January 20, 2010, PAL's *Motion for Leave* was granted by a newly constituted regular Third Division.[9] As noted by the Court's March 2012 Resolution, "[t]his grant [by the regular Third Division] opened both the [July 2008] Decision and the [October 2009] Resolution x x x for review [and] effectively opened the whole case for review on the merits."[10]

(5) After the inhibition of Justice Velasco on January 17, 2011, the case was raffled to the Second Division. As narrated in the March 2012 Resolution, "[o]n September 7, 2011, the Court — through its Second Division as then constituted— resolved to deny with finality PAL's 2nd MR through an unsigned resolution."[11]

(6) Because of the series of changes and movement from one division to the other, PAL's counsel, Atty. Estelito Mendoza, wrote four letters addressed to the Clerk of Court specifically inquiring about which division acted on PAL's 2nd MR, the identity of the *ponente* and the rationale/basis for the designation of the *ponente* and the handling division — in view of the retirement of the previous *ponente* and the members of the Second Division and Special Second Division.[12]

(7) The legal considerations and issues raised as a result of Atty. Mendoza's letter are, to reiterate, extensively discussed in the March 2012 Resolution. As the Court *en banc* noted therein, the "unresolved questions were even further compounded in the course of the deliberations of the Members of the ruling Division when they were informed that the parties received the ruling on September 19, 2011, and this ruling would lapse to finality after the 15th day, or after October 4, 2011."[13] Thus,

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[9] For a detailed explanation regarding the changes in the membership of the Third Division that rendered the relevant Decision and Resolution, please refer to the Court *en banc*'s March 2012 Resolution in A.M. No. 11-10-1-SC. See *id*. at 74-85.

[10] *Id*. at 79.

[11] *Id*. at 85. Emphasis omitted.

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

[13] *Id*. at 91. Emphasis omitted.

out of prudence, the Members of the ruling Division on September 30, 2011 recommended to the Chief Justice that (a) the September 7, 2011 Resolution (September 2011 Resolution) be recalled; and (b) the case be referred to the Court *en banc*.[14]

(8) On October 4, 2011, the Court *en banc* issued a Resolution (October 2011 Resolution) recalling the September 2011 Resolution and ordering the re-raffle of the case. As explained by the Court *en banc* in the March 2012 Resolution:

> As the narration in this Resolution shows, the Court acted on its own pursuant to its power to recall its own orders and resolutions before their finality. The October 4, 2011 Resolution was issued to determine the propriety of the September 7, 2011 Resolution given the facts that came to light after the ruling Division's examination of the records. x x x[15]

With the foregoing narration serving as the backdrop and context, it is easier now to see that the procedural issues raised by J. Leonen in his dissent have all been amply addressed by the March 2012 Resolution of the Court *en banc*.

b. Nature of the March 2012 Resolution in A.M No. 11-10-1-SC

One of the preliminary objections that has been raised with respect to the March 2012 Resolution is that this was docketed as an administrative matter. Being an administrative matter, it is somewhat argued that such cannot affect and override whatever disposition the Court may have in a regular case. This argument, however, is belied by the March 2012 Resolution itself.

To be sure, while the March 2012 Resolution was docketed as an administrative matter, the whole intent behind it — as established through its narration and discussion — was precisely to extensively explain the circumstances under which the Court *en banc* (a) recalled the September 2011 Resolution; and (b) assumed jurisdiction over the case through the issuance of

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[14] *Id*. at 91-92.

[15] *Id*. at 92. Emphasis omitted.

the October 2011 Resolution. And, in connection with the latter, it should be emphasized that this October 2011 Resolution was promulgated in relation to this present case or under G.R. No. 178083 — and not through a resolution of an administrative matter.

Stated otherwise, it is inaccurate to assert that the Court *en banc* assumed jurisdiction over the case via a disposition made in an administrative matter. To the contrary, the Court *en banc* already assumed jurisdiction through the October 2011 Resolution that was promulgated in G.R. No. 178083 and which recalled the September 2011 Resolution denying PAL's 2nd MR. **Thus, there is no mystery nor was it anomalous for the Court *en banc* to issue its March 2012 Resolution as this administrative matter was but an avenue to explain the Court *en banc*'s actions in the present case.** This is patently evident from the dispositive portion of the March 2012 Resolution, which provides:

> WHEREFORE, premises considered, ***we hereby confirm*** that the Court *en banc* has assumed jurisdiction over the resolution of the merits of the motions for reconsideration of Philippine Airlines, Inc., addressing our July 22, 2008 Decision and October 2, 2009 Resolution; and that the September 7, 2011 ruling of the Second Division has been effectively recalled. x x x[16]

Clearly, based on the March 2012 Resolution and its detailed narration of the events that transpired within the Court, the Court's disposition in A.M. No. 11-10-1-SC did not override, but merely clarified, the Court *en banc's* actions and issuances in the present case (*i.e.*, G.R. No. 178083).

c. Finality of the 2008 Decision and 2009 Resolution

The primordial procedural concern, however, appears to be whether or not PAL's 2nd MR should be entertained considering that the Court's 2008 Decision and 2009 Resolution already attained finality (as insisted by the Petitioner and the dissent)

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[16] *Id*. at 99. Emphasis in the original omitted; emphasis and underscoring supplied.

and hence can no longer be entertained, modified, annulled or vacated by the Court *en banc*. This concern has been clearly addressed by the foregoing Timeline — meaning, that the Court *en banc* had already unequivocally declared and confirmed in the March 2012 Resolution that it had "assumed jurisdiction over the resolution of the merits of the motions for reconsideration of Philippine Airlines, Inc., addressing our July 22, 2008 Decision and October 2, 2009 Resolution; and that the September 7, 2011 ruling of the Second Division has been effectively recalled."[17]

As admitted by the dissenting opinion, "[a]s an exception, by leave of court, a party may file a second motion for reconsideration of the decision. The second motion for reconsideration may be subsequently granted 'in the higher interest of justice'"[18] This has long been affirmed by the Supreme Court in a long line of cases as exemplified by the Court *en banc's* pronouncement in *McBurnie v. Ganzon*[19]:

> At the outset, the Court emphasizes that second and subsequent motions for reconsideration are, as a general rule, prohibited. Section 2, Rule 52 of the Rules of Court provides that "[n]o second motion for reconsideration of a judgment or final resolution by the same party shall be entertained." The rule rests on the basic tenet of immutability of judgments. "At some point, a decision becomes final and executory and, consequently, all litigations must come to an end."
>
> The general rule, however, against second and subsequent motions for reconsideration admits of settled exceptions. For one, the present Internal Rules of the Supreme Court, particularly Section 3, Rule 15 thereof, provides:
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> > **Sec. 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

[17] *Id.* Emphasis omitted.

[18] *J.* Leonen, Dissenting Opinion, p. 6.

[19] 719 Phil. 680 (2013).

"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.

x x x x x x x x x

(Emphasis ours)

In a line of cases, the Court has then entertained and granted second motions for reconsideration "in the higher interest of substantial justice," as allowed under the Internal Rules when the assailed decision is "legally erroneous," "patently unjust" and "potentially capable of causing unwarranted and irremediable injury or damage to the parties." In *Tirazona v. Philippine EDS Techno-Service, Inc. (PET, Inc.)*, we also explained that a second motion for reconsideration may be allowed in instances of "extraordinarily persuasive reasons and only after an express leave shall have been obtained." In *Apo Fruits Corporation v. Land Bank of the Philippines*, we allowed a second motion for reconsideration as the issue involved therein was a matter of public interest, as it pertained to the proper application of a basic constitutionally-guaranteed right in the government's implementation of its agrarian reform program. In *San Miguel Corporation v. NLRC*, the Court set aside the decisions of the LA and the NLRC that favored claimants-security guards upon the Court's review of San Miguel Corporation's second motion for reconsideration. In *Vir-Jen Shipping and Marine Services, Inc. v. NLRC, et al.*, the Court *en banc* reversed on a third motion for reconsideration the ruling of the Court's Division on therein private respondents' claim for wages and monetary benefits.[20]

In this instance, PAL received a copy of the October 2009 Resolution denying its Motion for Reconsideration of the 2008 Decision on October 20, 2009. On November 3, 2009, PAL asked for leave of court to file (a) an MR of the October 2009 Resolution; and (b) a 2nd MR of the 2008 Decision. On January 20, 2010, the Court, through the Third Division, granted PAL's *Motion for Leave*.

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[20] *Id.* at 700-702.

The fact that the Court granted PAL's motion for leave to file its 2nd MR means exactly that — that the 2nd MR is no longer prohibited and may be granted "in the higher interest of substantial justice" and for "extraordinarily persuasive reasons." Thus, with the Court admitting the 2nd MR, this meant that the 2008 Decision and the 2009 Resolution were **not** rendered executory and could not have been implemented. **To hold otherwise would be to render nugatory and illusory the Court *en banc's* action of allowing and accepting the 2nd MR.**

I am not unaware that there has been an instance where the Court has declared that the "grant of leave to file the Supplemental Motion for Reconsideration x x x did not prevent [a] Resolution from becoming final and executory."[21] I do not share the same view and believe that this declaration runs counter to the logic and very rationale of the Court's action of allowing the filing of a 2nd MR. Nevertheless, it should be noted that the Court in the same case admits that a second motion for reconsideration may still be granted and an entry of judgment lifted notwithstanding that the resolution has been deemed final and executory.[22] Thus, the lone fact that a decision and/or a resolution has attained finality does not negate the Court's power, in the higher interest of substantial justice, to entertain and grant subsequent motions for reconsideration filed by the parties. In fact, as this Court, in an *en banc* Resolution, lengthily explained:

> As a rule, a final judgment may no longer be altered, amended or modified, even if the alteration, amendment or modification is meant to correct what is perceived to be an erroneous conclusion of fact or law and regardless of what court, be it the highest Court of the land, rendered it. In the past, however, we have recognized exceptions to this rule by reversing judgments and recalling their entries in the interest of substantial justice and where special and compelling reasons called for such actions.
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> Notably, in *San Miguel Corporation v. National Labor Relations Commission, Galman v. Sandiganbayan, Philippine Consumers*

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[21] *Club Filipino, Inc. v. Bautista*, 750 Phil. 599, 616 (2015); penned by *J.* Leonen.

[22] See *id.* at 616.

Foundation v. National Telecommunications Commission, and *Republic v. de los Angeles*, we reversed our judgment on the **second** motion for reconsideration, while in *Vir-Jen Shipping and Marine Services v. National Labor Relations Commission*, we did so on a **third** motion for reconsideration. In *Cathay Pacific v. Romillo* and *Cosio v. de Rama*, we modified or amended our ruling on the second motion for reconsideration. More recently, in the cases of *Munoz v. Court of Appeals, Tan Tiac Chiong v. Hon. Cosico, Manotok IV v. Barque*, and *Barnes v. Padilla*, we **recalled entries of judgment** after finding that doing so was in the interest of substantial justice. In *Barnes*, we said:

> x x x Phrased elsewise, a final and executory judgment can no longer be attacked by any of the parties or be modified, directly or indirectly, even by the highest court of the land.
>
> However, this Court has relaxed this rule in order to serve substantial justice considering (a) **matters of life, liberty, honor or property**, (b)**the existence of special or compelling circumstances**, (c) **the merits of the case**, (d) a cause not entirely attributable to the fault or negligence of the party favored by the suspension of the rules, (e) a lack of any showing that the review sought is merely frivolous and dilatory, and (f) the other party will not be unjustly prejudiced thereby.
>
> Invariably, rules of procedure should be viewed as mere tools designed to facilitate the attainment of justice. Their strict and rigid application, which would result in technicalities that tend to frustrate rather than promote substantial justice, must always be eschewed. Even the Rules of Court reflects this principle. The power to suspend or even disregard rules can be so pervasive and compelling as to alter even that which this Court itself had already declared to be final. [Emphasis supplied.]

That the issues posed by this case are of transcendental importance is not hard to discern from these discussions. A constitutional limitation, guaranteed under no less than the all-important Bill of Rights, is at stake in this case: how can compensation in an eminent domain be "just" when the payment for the compensation for property already taken has been unreasonably delayed? To claim, as the assailed Resolution does, that only private interest is involved in this case is to forget that an expropriation involves the government as a necessary actor. It forgets, too, that under eminent domain, the constitutional limits or standards apply to government who carries

the burden of showing that these standards have been met. Thus, to simply dismiss this case as a private interest matter is an extremely shortsighted view that this Court should not leave uncorrected.[23]

Thus, the power of the Court to entertain PAL's 2nd MR (and even a Third Motion for Reconsideration) and to grant such motion should the interest of substantial justice so warrant is undoubtedly clear and unequivocal. Accordingly, even on the assumption that this is PAL's Third Motion for Reconsideration (which, as explained, it is not), the power of the Court to grant PAL's motion is not negated.

d. Jurisdiction of the Court en banc to assume jurisdiction of the case

The next crucial issue that needs to be addressed is whether or not the Court *en banc* has the jurisdiction to resolve PAL's 2nd MR. Again, the answer has already been answered and explained in the March 2012 Resolution to be in the affirmative.

In this case, the dissent questions the transfer of this case to the Court *en banc* considering that no formal resolution was issued by the Second Division referring PAL's 2nd MR to the Court *en banc* pursuant to the Internal Rules of the Supreme Court (IRSC). However, as already stated, this issue regarding the Court *en banc's* jurisdiction was already directly traversed by the Court *en banc* in its March 2012 Resolution in A.M. No. 11-10-1-SC.

First, as highlighted in the March 2012 Resolution, the Court *en banc* may act on matters and cases that it deems of sufficient importance to merit its attention as provided in Section 3(m), Rule 2 of the IRSC. PAL's 2nd MR and the interpretation of the conflicting provisions of the IRSC appears to have been considered by the Court *en banc* to be of sufficient importance — such that the Court *en banc* assumed jurisdiction over the case.

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[23] *Apo Fruits Corporation v. Land Bank of the Phils.*, 647 Phil. 251, 288-290 (2010).

In assailing Section 3(m), Rule 2 of the IRSC, the dissent relies on the dissenting opinion of J. Gonzaga-Reyes in *Firestone Ceramics v. Court of Appeals*,[24] in concluding that the residual power of the Court *en banc* to, on its own, take cognizance of Division cases is suspect. However, and with all due respect to J. Leonen, the dissenting opinion of J. Gonzaga-Reyes finds no application here. In *Firestone*, the Court *en banc* relied on a Resolution dated November 18, 1993 which, as pointed out by J. Gonzaga-Reyes, is an amendment to Sections 15 and 16, Rule 136 of the Rules of Court which deals with the form ("unglazed paper," margins, number of copies, etc.) of unprinted and printed papers to be filed with this Court. Thus, as concluded by J. Gonzaga-Reyes, the Resolution dated November 18, 1993 was clearly not intended to lay down new guidelines or rules for referral to the court *en banc* of cases assigned to a Division.[25]

However, in the case at hand, **Section 3, Rule 2 of the IRSC was clearly meant to lay down and establish the instances when a Court en banc may act on any case or matter** — unlike in *Firestone* where the Resolution relied upon essentially deals with the format of the pleadings filed before the Supreme Court. As explicitly provided in Section 3(m), Rule 2, the Court *en banc* may act on cases that it deems of sufficient importance to merit its attention. And at the risk of belaboring the point, the March 2012 Resolution — rendered six (6) years ago — clearly established that the Court *en banc* had made a judicious determination at that time that PAL and FASAP's case was of sufficient importance for it to assume jurisdiction.

More importantly, the March 2012 Resolution likewise establishes that it was the members of the Division (which rendered the recalled September 7, 2011 Resolution[26]) that referred the matter to the Court *en banc* — *albeit* no formal resolution was issued. As explicitly narrated in the March 2012

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[24] 389 Phil. 810 (2000).

[25] *Id.* at 825.

[26] The September 7, 2011 Resolution denied with finality PAL's second motion for reconsideration.

Resolution, since there was "[n]o unanimity among the Members of the ruling Division x x x on the unresolved legal questions[,] they concluded that the matter is best determined by the Court *en banc*."[27] It should be noted that the members of the Second Division, which issued the recalled September 7, 2011 ruling, unanimously concurred in the March 2012 Resolution and did not dispute the categorical declaration that they referred the matter on hand to the Court *en banc*. **Such referral by the members of the Ruling Division coupled with the Court *en banc's* decision to exercise its power to assume jurisdiction of a case with sufficient importance should be sufficient legal basis for the Court *en banc* of today to decide the merits of the case now.**

Finally, it should be stressed anew that the Court *en banc* already assumed jurisdiction through the October 2011 Resolution that was promulgated in G.R. No. 178083 (*i.e.*, recalling the September 2011 Resolution denying PAL's 2nd MR). This was "confirmed" by the Court *en banc's* March 2012 Resolution, the dispositive portion of which is again quoted below:

> WHEREFORE, premises considered, ***we hereby confirm*** that the Court *en banc* has assumed jurisdiction over the resolution of the merits of the motions for reconsideration of Philippine Airlines, Inc., addressing our July 22, 2008 Decision and October 2, 2009 Resolution; and that the September 7, 2011 ruling of the Second Division has been effectively recalled. x x x[28] (Emphasis in the original omitted; emphasis and underscoring supplied)

Thus, for the Court of today, or more specifically, the dissent, to question what has clearly and already been resolved at least six (6) years ago, is to second guess the wisdom of what, for all intents and purposes, is already a final disposition of this issue. In this sense, it can be rightly said that the October 2011 Resolution and March 2012 Resolution have become immutable.

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[27] *In re: Letters of Atty. Mendoza re: G.R. No. 178083 - FASAP v. PAL, Inc., et al.*, *supra* note 5, at 93. Emphasis omitted.

[28] *Id.* at 99.

e. Unanimous vote of the Court en banc

Anent the assertion that the unanimous vote of the Court sitting *en banc* must be required to grant PAL's motion for reconsideration (whether second or third), there is absolutely no legal or jurisprudential basis for such. Moreover, even applying *Fortich v. Corona*[29] by analogy as the dissent suggests[30] will not lead one to the conclusion that a unanimous vote is required. As the dissent itself narrated, it was only because the voting for the motion for reconsideration amounted to a tie (two-two) that the Decision of the Division was deemed upheld. Nowhere in *Fortich* did the Court even allude to requiring a unanimous vote.

Considering the foregoing, I agree with the *ponencia* that PAL's 2nd MR is not a prohibited pleading. Moreover, and as underscored by him, PAL's arguments in its 2nd MR sufficiently show that the assailed decision might have contravened established jurisprudence — clearly highlighting that the higher interests of substantial justice will be served if the 2008 Decision and the 2009 Resolution were to be revisited.

Substantial Issue: PAL's financial losses

There appears to be a question on the sufficiency of PAL's compliance with the substantiation requirements imposed by law for a valid retrenchment. To recall, PAL invoked substantial business losses as the reason behind its decision to downsize. To this end, it presented its petition for suspension of payments, as well as the June 23, 1998 Order of the Securities and Exchange Commission (SEC) approving the said petition for suspension of payments as proof of the same.

I agree with the *ponencia* when he points out that Petitioner's categorical admission of PAL's dire financial condition had discharged the burden to prove financial losses. As has been consistently held by this Court, a judicial admission no longer

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[29] 352 Phil. 461 (1998); 359 Phil. 210 (1998); 371 Phil. 672 (1999).

[30] *J.* Leonen, Dissenting Opinion, p. 21.

requires proof. An admission made in a pleading cannot be controverted by the party making such admission, and is conclusive as to such party. As succinctly explained by the Court in *Alfelor v. Halasan*[31]:

> x x x To the Court's mind, this admission constitutes a "deliberate, clear and unequivocal" statement; made as it was in the course of judicial proceedings, such statement qualifies as a judicial admission. A party who judicially admits a fact cannot later challenge that fact as judicial admissions are a waiver of proof; production of evidence is dispensed with. A judicial admission also removes an admitted fact from the field of controversy. Consequently, an admission made in the pleadings cannot be controverted by the party making such admission and are conclusive as to such party, and all proofs to the contrary or inconsistent therewith should be ignored, whether objection is interposed by the party or not. The allegations, statements or admissions contained in a pleading are conclusive as against the pleader. A party cannot subsequently take a position contrary of or inconsistent with what was pleaded.[32] (Underscoring supplied)

The records amply show that Petitioner had categorically admitted PAL's grave financial condition during this time, as follows:

> [A.] At the outset, it must be pointed out that complainant was never opposed to the retrenchment program itself, as it understands respondent PAL's financial troubles. In fact, complainant religiously cooperated with respondents in their quest for a workable solution to the company-threatening problem. x x x[33]
>
> [B.] It must be stressed that complainant was never opposed to respondent['s] retrenchment program as it truly understands respondent PAL's financial position. As a matter of fact, when it became apparent that the company was already in the brink of bankruptcy, complainant actively participated in fashioning out some workable solutions to the problem. x x x[34]

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[31] 520 Phil. 982 (2006).

[32] *Id.* at 990-991.

[33] *Rollo*, Vol. I, pp. 113-114.

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

[C.] x x x The Philippines likewise incurred immense business misfortune affecting a multitude of industries, including respondent airline. Losses aggravated when concerted activities of the other unions, namely the Airline Pilots Association of the Philippines (ALPAP) and the Philippine Airlines Employees Association (PALEA), were held xxx FASAP did not believe that a strike would be beneficial to both parties and was of the opinion that the same would cause further losses on the part of the respondent airline to the detriment of both parties. x x x[35]

[D.] x x x It is worthy to note that complainant is not questioning the reason for adopting retrenchment. Complainant knows the financial woes of respondent airline. x x x[36]

[E.] PAL encountered massive losses. This is beyond question. FASAP, in fact, is not questioning the business reverses PAL met. x x x[37]

[F.] In 1997, a severe massive economic crisis hit the whole of Asia and the Pacific region. Philippine businesses incurred immense losses. PAL was not spared from the harsh effects of the crisis as it too fell prey to financial reverses, x x x.[38]

The foregoing express, positive and categorical statements of Petitioner in its pleadings as regards the severe losses incurred by PAL qualify as judicial admissions, which dispense with proof or evidence.

In any event, I submit that PAL has sufficiently shown and established the financial losses that it incurred which resulted in the implementation of the retrenchment program.

I am aware of decisions which state that in cases where retrenchment is premised on substantial business losses, proof of such losses becomes the determining factor in proving the

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[35] *Id.* at 176.

[36] *Id.* at 196.

[37] *Id.* at 549.

[38] *Id.* at 550.

legitimacy of retrenchment;[39] and that the presentation of financial statements audited by independent auditors is required, as they best attest to a company's economic status and stand as the most authentic proof of losses.[40] However, I submit that these financial statements cannot be recognized as the sole proof of financial distress. This has been amply discussed in the case of *Blue Eagle Management, Inc. v. Naval*,[41] citing *Revidad v. National Labor Relations Commission*,[42] where it was declared that "proof of actual financial losses incurred by the company is not a condition *sine qua non* for retrenchment," and retrenchment may be undertaken by the employer to prevent even future losses. Said the Court:

> **In its ordinary connotation, the phrase "to prevent losses" means that retrenchment or termination of the services of some employees is authorized to be undertaken by the employer sometime before the anticipated losses are actually sustained or realized. It is not, in other words, the intention of the lawmaker to compel the employer to stay his hand and keep all his employees until after losses shall have in fact materialized.** If such an intent were expressly written into the law, that law may well be vulnerable to constitutional attack as unduly taking property from one man to be given to another.[43] (Emphasis supplied)

Given the foregoing, it would truly be derisive of this Court to maintain the necessity of presenting financial statements showing actual loss prior to a valid exercise of retrenchment.

Inasmuch as financial statements paint a clear picture of a company's finances, other clear indicators of substantial losses — if not more compelling evidence thereof — exist. Verily, **as**

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[39] See *Precision Electronics Corporation v. NLRC*, 258-A Phil. 449, 451-452 (1989).

[40] See *Lambert Pawnbrokers and Jewelry Corporation v. Binamira*, 639 Phil. 1, 12 (2010). See also *Manatad v. Philippine Telegraph and Telephone Corporation*, 571 Phil. 494, 508-509 (2008).

[41] 785 Phil. 133, 156 (2016).

[42] 315 Phil. 372, 390 (1995).

[43] *Blue Eagle Management, Inc. v. Naval*, *supra* note 41, at 156.

clearly as financial statements demonstrate financial distress, a company's submission to corporate rehabilitation and receivership equally attests to, if not represents a more tangible manifestation of, financial reverses.

The Court has, in fact, recognized corporate receivership and rehabilitation as a veritable indicator of substantial business losses that justifies retrenchment of employees. In *Clarion Printing House Inc. v. National Labor Relations Commission,*[44] for instance, the Petitioners therein argued that when a company is under receivership and a receiver is appointed to take control of its management and corporate affairs, one of the evident reasons is to prevent further losses of said company and protect its remaining assets from being dissipated; and that the submission of financial reports/statements prepared by independent auditors had been rendered moot and academic, the company having shut down its operations and having been placed under receivership by the SEC due to its inability to pay or comply with its obligations.[45]

The Court, in deciding the issue of whether undergoing receivership suffices as acceptable proof of financial losses, ruled as follows:

From the above-quoted provisions of P.D. No. 902-A, as amended, **the appointment of a receiver or management committee by the SEC presupposes a finding that, *inter alia*, a company possesses sufficient property to cover all its debts but "foresees the impossibility of meeting them when they respectively fall due" and "there is imminent danger of dissipation, loss, wastage or destruction of assets of other properties or paralization of business operations."**

That the SEC, mandated by law to have regulatory functions over corporations, partnerships or associations, **appointed *an interim* receiver for the EYCO Group of Companies on its petition in light of, as quoted above, the therein enumerated "factors beyond the control and anticipation of the management" rendering it unable to meet its obligation as they fall due, and thus resulting to "complications**

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[44] 500 Phil. 61 (2005).

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

and problems . . . to arise that would impair and affect [its] operations . . ." shows that CLARION, together with the other member-companies of the EYCO Group of Companies, was suffering business reverses justifying, among other things, the retrenchment of its employees.[46] (Emphasis and underscoring supplied)

In finding that receivership suffices as proof of severe financial reverses, it was therefore decided that retrenchment was justified and that there was no illegal dismissal despite Clarion's failure to present the necessary financial statements before the Labor Arbiter.

Given the foregoing, it is therefore clear that proof of losses is not exclusively limited to the presentation of financial statements, as equally compelling evidence such as having undergone rehabilitation is similarly acceptable. In this light, it should be noted that, in the current case, PAL has proffered similar evidence on its behalf, as it has more than once asserted and proved that the SEC has approved its petition for rehabilitation and has in fact appointed a receiver on two occasions by virtue of its financial condition, not to mention that Petitioner has similarly judicially admitted and recognized PAL's financial losses at that time. All these show that PAL had indeed been besieged by and suffered severe financial losses, which justify its resort to drastic cuts in personnel.

In addition, the Court has, in fact, recognized PAL's financial conditions on various occasions, and it has consequently ruled in the latter's favor, as it recognized that PAL was undergoing receivership. Consequently, claims filed against it were either rejected or shelved in view thereof, as in the cases of *Philippine Airlines, Inc. v. Philippine Airlines Employees Association*,[47] *Philippine Airlines, Inc. v. National Labor Relations Commission*,[48] *Philippine Airlines, Inc. v. Court of Appeals*,[49]

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[46] *Id*. at 79.

[47] 552 Phil. 118 (2007).

[48] 648 Phil. 238 (2010).

[49] G.R. No. 123238, July 11, 2005 (Unsigned Resolution).

Philippine Airlines v. Court of Appeals and Koschinger,[50] *Philippine Airlines, Inc. v. Sps. Kurangking*,[51] *Garcia v. Philippine Airlines, Inc.*[52] and *Philippine Airlines, Inc. v. Zamora*.[53]

The Court likewise recognized the urgency and gravity of PAL's financial distress in *Rivera v. Espiritu*[54] where it recognized that the carrier was financially beleaguered and faced with bankruptcy, as a result of its pilots' three-week strike and the subsequent four-day employee-wide strike involving 1,899 union members, requiring it to resort to downsizing and to seek rehabilitation.

Premises considered, PAL's substantial business losses therefore stand amply substantiated, despite the failure to timely present its financial statements. Disregarding such facts and blindly insisting on the timely presentation of financial statements would only be a superfluity given the confluence of all the above. This Court should not be so unreasonable as to turn a blind eye to the factual circumstances surrounding the controversy, if only to uphold the "general rule." With all these, PAL's claims of substantial financial losses should be upheld — and PAL's 2nd MR should be granted.

On the basis of the foregoing, I vote to **GRANT** the Motion for Reconsideration of the Resolution of October 2, 2009 and Second Motion for Reconsideration of the Decision of July 22, 2008 filed by respondents Philippine Airlines, Inc. and Patria Chiong. Accordingly, I concur with the *ponencia* in denying the *Motion for Reconsideration* (*Re: The Honorable Court's Resolution dated March 13, 2012*) filed by the Petitioner Flight Attendants and Stewards Association of the Philippines,

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[50] 596 Phil. 500 (2009).

[51] 438 Phil. 375 (2002).

[52] 558 Phil. 328 (2007).

[53] 543 Phil. 546 (2007).

[54] 425 Phil. 169 (2002).

setting aside the Decision dated July 22, 2008 and Resolution dated October 2, 2009, and affirming the Decision of the Court of Appeals dated August 23, 2006.

DISSENTING OPINION

LEONEN, *J.*:

I dissent.

This is an extraordinary case. Like in the Book of Revelation,[1] it involves the miraculous resurrection of the dead: in this case, a dead case.

The *ponencia* recommends acting for respondent Philippine Airlines, Inc. (Philippine Airlines) on what amounts to a third motion for reconsideration. This is notwithstanding a unanimous decision of a Division in favor of petitioner, another unanimous decision of the same Division denying the motion for reconsideration and, again, another unanimous decision of another Division denying the second motion for reconsideration.

The reopening of a final case was done through a back door: an administrative matter docketed separately from this case.

The July 22, 2008 Decision[2] and the October 2, 2009 Resolution[3] denying Philippine Airlines' Motion for Reconsideration attained finality on November 4, 2009. They may not be set aside, even by this Court sitting *en banc*. The July 22, 2008 Decision and the October 2, 2009 Resolution have become immutable, and all proceedings subsequent to their issuance—the grant of leave to file a Second Motion for Reconsideration to Philippine Airlines; the September 7, 2011 Resolution denying Philippine Airlines' Second Motion for Reconsideration; the filing of mere letters questioning the internal procedures of this Court; the October 4, 2011 *En Banc* Resolution recalling

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[1] See Revelation 20, Revised Standard Version of the Bible.

[2] *Rollo* (G.R. No. 178083), pp. 10-58.

[3] 617 Phil. 687 (2009) [Per *J.* Ynares-Santiago, Special Third Division].

the September 7, 2011 Resolution; and the March 13, 2012 Resolution of the Court *En Banc* confirming the recall of the September 7, 2011 Resolution, assuming jurisdiction over this case, and ordering the re-raffle to either Justices Peralta or Bersamin—did not prevent the judgment in this case from becoming final.

I

To recall, the Flight Attendants and Stewards Association of the Philippines (FASAP) filed its Petition for Review on Certiorari questioning the legality of Philippine Airlines' retrenchment program implemented in 1998. The Petition was docketed as G.R. No. 178083.

In the Decision[4] dated July 22, 2008, the Third Division of this Court granted FASAP's Petition and declared the retrenchment program of Philippine Airlines illegal. The dispositive portion of the July 22, 2008 Decision read:

> WHEREFORE, the instant petition is GRANTED. The assailed Decision of the Court of Appeals in CA-G.R. SP No. 87956 dated August 23, 2006, which affirmed the Decision of the NLRC setting aside the Labor Arbiter's findings of illegal retrenchment and its Resolution of May 29, 2007 denying the motion for reconsideration, are REVERSED and SET ASIDE and a new one is rendered:
>
> 1. FINDING respondent Philippine Airlines, Inc. GUILTY of illegal dismissal;
>
> 2. ORDERING Philippine Airlines, Inc. to reinstate the cabin crew personnel who were covered by the retrenchment and demotion scheme of June 15, 1998 made effective on July 15, 1998, without loss of seniority rights and other privileges, and to pay them full backwages, inclusive of allowances and other monetary benefits computed from the time of their separation up to the time of their actual reinstatement, provided that with respect to those who had received their respective separation pay, the amounts of payments shall be deducted from their backwages. Where reinstatement is no longer feasible because the positions previously held no longer exist, respondent Corporation shall pay backwages plus, in lieu of reinstatement, separation pay equal to one (1) month pay for every year of service;

[4] 581 Phil. 228 (2008) [Per *J.* Ynares-Santiago, Third Division].

3. ORDERING Philippine Airlines, Inc. to pay attorney's fees equivalent to ten percent (10%) of the total monetary award.

Costs against respondent PAL.

SO ORDERED.[5]

The Decision, penned by Justice Consuelo Ynares-Santiago, was concurred in by all the Members of the Third Division: Justices Ma. Alicia Austria-Martinez, Minita Chico-Nazario, Antonio Eduardo Nachura, and Teresita Leonardo-De Castro.

Philippine Airlines filed a Motion for Reconsideration of the July 22, 2008 Decision, which the Special Third Division denied with finality in the Resolution[6] dated October 2, 2009:

WHEREFORE, for lack of merit, the Motion for Reconsideration is hereby **DENIED with FINALITY**. The assailed Decision dated July 22, 2008 is **AFFIRMED with MODIFICATION** in that the award of attorney's fees and expenses of litigation is reduced to ₱2,000,000.00. The case is hereby **REMANDED** to the Labor Arbiter solely for the purpose of computing the exact amount of the award pursuant to the guidelines herein stated.

No further pleadings will be entertained.

SO ORDERED.[7]

Justice Ynares-Santiago remained the *ponente*, and the October 2, 2009 Resolution was concurred in by Justices Chico-Nazario, Nachura, Peralta, and Bersamin. Justice Peralta replaced Justice Austria-Martinez who had already retired, and Justice Bersamin replaced Justice Leonardo-De Castro who had inhibited herself from participating in the deliberations of Philippine Airlines' Motion for Reconsideration.

Philippine Airlines, through counsel, received a copy of the October 2, 2009 Resolution on October 20, 2009.[8] On November

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[5] *Id*. at 271-272.

[6] 617 Phil. 687 (2009) [Per *J*. Ynares-Santiago, Special Third Division].

[7] *Id*. at 723.

[8] *Rollo* (G.R. No. 178083), p. 2220, Philippine Airlines' Second Motion for Reconsideration.

3, 2009, Philippine Airlines filed a Second Motion for Reconsideration of the July 22, 2008 Decision, contending that the Court did not resolve all of the issues it raised in its First Motion for Reconsideration.

This Second Motion for Reconsideration was denied with finality by the Second Division in the Resolution[9] dated September 7, 2011:

> To conclude, the rights and privileges that PAL unlawfully withheld from its employees have been in dispute for a decade and a half. Many of these employees have since then moved on, but the arbitrariness and illegality of PAL's actions have yet to be rectified. This case has dragged on for so long and we are now more than duty-bound to finally put an end to the illegality that took place; otherwise, the illegally retrenched employees can rightfully claim that the Court has denied them justice.
>
> **WHEREFORE**, the Court resolves to deny with finality respondent PAL's second motion for reconsideration. No further pleadings shall be entertained. Costs against the respondents. Let entry of judgment be made in due course.
>
> **SO ORDERED.**[10]

A series of letters dated September 13, 16, 20, and 22, 2011 were then filed by Atty. Estelito P. Mendoza, counsel for Philippine Airlines. The letters were all addressed to the Clerk of Court *En Banc*, not to the Justices of this Court, and questioned the transfer of the case among the Divisions. Instead of being filed under G.R. No. 178083, the letters were docketed as a separate administrative matter, A.M. No. 11-10-1-SC.

Still in A.M. No. 11-10-1-SC, the Court *En Banc* assumed jurisdiction over G.R. No. 178083 on October 4, 2011 and resolved[11] to recall the September 7, 2011 Resolution of the Second Division. FASAP assailed this October 4, 2011 Resolution

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[9] *Id*. at 3568-3571.

[10] *Id*. at 3569-3570.

[11] *Rollo* (A.M. No. 11-10-1-SC), pp. 16-17.

in a Motion for Reconsideration, arguing immutability of final judgments.

The Court *En Banc* then issued a Resolution[12] dated March 13, 2012. It confirmed its recall of the Second Division's September 7, 2011 Resolution and re-raffled G.R. No. 178083 to a new Justice.

II

The present *ponencia* resolves Philippine Airlines' Second Motion for Reconsideration of the July 22, 2008 Decision and FASAP's Motion for Reconsideration of the March 13, 2012 Resolution confirming the recall of the September 7, 2011 Resolution that initially denied Philippine Airlines' Second Motion for Reconsideration. The present *ponencia* exists on the premise that the grant of leave to file the Second Motion for Reconsideration and the recall of the September 7, 2011 Resolution prevented the July 22, 2008 Decision and the October 2, 2009 Resolution denying Philippine Airlines' First Motion for Reconsideration from becoming final and executory.[13]

This premise is false. The judgment in this case became final and executory as early as November 4, 2009.

"A judgment becomes final and executory *by operation of law*,"[14] "not by judicial declaration."[15] A decision or resolution denying a motion for reconsideration of a decision becomes final and executory upon the lapse of 15 days[16] from the party's receipt of a copy of the decision or resolution.[17] After the lapse

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[12] 684 Phil. 55 (2012) [Per *J.* Brion, *En Banc*].

[13] *Ponencia* as of July 28, 2017, p. 13.

[14] *City of Manila v. Court of Appeals*, 281 Phil. 408, 413 (1991) [Per *J.* Cruz, *En Banc*].

[15] *Commissioner on Internal Revenue v. Visayan Electric Company*, 125 Phil. 1125, 1127 (1967) [Per *J.* Sanchez, *En Banc*].

[16] RULES OF COURT, Rule 52, Sec. 1.

[17] S. CT. INT. RULES, Rule 15, Secs. 1 and 2.

of the 15-day reglementary period, the finality of judgment becomes *a matter of fact*.[18]

Therefore, no motion for reconsideration of a resolution denying a motion for reconsideration of a decision may be filed *by the same party*. Allowing second and subsequent motions for reconsideration of the same decision prevents the resolution of judicial controversies. Rule 52, Section 2 of the Rules of Court explicitly prohibits second motions for reconsideration:

> Section 2. *Second motion for reconsideration*. — No second motion for reconsideration of a judgment or final resolution by the same party shall be entertained.

The rationale of the prohibition is further explained in *Ortigas and Company Limited Partnership v. Judge Velasco*:[19]

> A second motion for reconsideration is forbidden except for extraordinarily persuasive reasons, and only upon express leave first obtained. The propriety or acceptability of such a second motion for reconsideration is not contingent upon the averment of "new" grounds to assail the judgment, i.e., grounds other than those theretofore presented and rejected. Otherwise, attainment of finality of a judgment might be staved off indefinitely, depending on the party's ingeniousness or cleverness in conceiving and formulating "additional flaws" or "newly discovered errors" therein, or thinking up some injury or prejudice to the rights of the movant for reconsideration. "Piece-meal" impugnation of a judgment by successive motions for reconsideration is anathema, being precluded by the salutary axiom that a party seeking the setting aside of a judgment, act or proceeding must set out in his motion all the grounds therefor, and those not so included are deemed waived and cease to be available for subsequent motions.

For all litigation must come to an end at some point, in accordance with established rules of procedure and jurisprudence. As a matter of practice and policy, courts must dispose of every case as promptly as possible; and in fulfillment of their role in the administration of

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[18] *Commissioner on Internal Revenue v. Visayan Electric Company*, 125 Phil. 1125, 1127 (1967) [Per J. Sanchez, *En Banc*].

[19] 324 Phil. 483 (1996) [Per C.J. Narvasa, Third Division].

justice, they should brook no delay in the termination of cases by stratagems or maneuverings of parties or their lawyers.[20]

As an exception, by leave of court,[21] a party may file a second motion for reconsideration of the decision. The second motion for reconsideration may be subsequently granted "in the higher interest of justice." Rule 15, Section 3 of our Internal Rules provides:

> 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.
>
> In the Division, a vote of three Members shall be required to elevate a second motion for reconsideration to the Court *En Banc*.[22]

Nothing in Rule 15, Section 3 of the Internal Rules, however, states that the resolution denying the motion for reconsideration of a decision will not lapse into finality. The grant of leave to file a second motion for reconsideration only means that the second motion for reconsideration is no longer prohibited.[23] Regardless of the grant of leave to file a second motion for reconsideration, the resolution denying the motion for reconsideration of the decision becomes final and executory by operation of law. The grant of a second motion for

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[20] *Id*. at 489-490.

[21] *Ortigas and Company Limited Partnership v. Judge Velasco*, 324 Phil. 483, 489 (1996) [Per *C.J*. Narvasa, Third Division]; See *McBurnie v. Ganzon*, 719 Phil. 680 (2013) [Per *J*. Reyes, *En Banc*].

[22] S. CT. INT. RULES,, Rule 15, Sec. 3.

[23] See *McBurnie v. Ganzon*, 719 Phil. 680 (2013) [Per *J*. Reyes, *En Banc*].

reconsideration only means that the judgment, had it been entered in the book of entries of judgments, may be lifted.[24] In *Aliviado v. Procter and Gamble Philippines, Inc.*:[25]

> *[T]he issuance of the entry of judgment is reckoned from the time the parties received a copy of the resolution denying the first motion for reconsideration. The filing of . . . several pleadings after receipt of the resolution denying [the] first motion for reconsideration does not in any way bar the finality or entry of judgment.* Besides, to reckon the finality of a judgment from the receipt of the denial of the second motion for reconsideration would be absurd. First, the Rules of Court and the Internal Rules of the Supreme Court prohibit the filing of a second motion for reconsideration. Second, some crafty litigants may resort to filing prohibited pleadings just to delay entry of judgment.[26] (Underscoring in the original; emphasis supplied)

Philippine Airlines received a copy of the October 2, 2009 Resolution denying its Motion for Reconsideration of the July 22, 2008 Decision on October 20, 2009.[27] By operation of law, the October 2, 2009 Resolution became final and executory on November 4, 2009, 15 days after Philippine Airlines received a copy of the October 2, 2009 Resolution. Though leave to file a Second Motion for Reconsideration was granted on January 20, 2010, the grant of leave only means that the Second Motion for Reconsideration is no longer prohibited under the Rules of Court. *The grant of leave to file the Second Motion for Reconsideration did not, in any way, prevent the judgment on this case from becoming final and executory on November 4, 2009.*

Contrary to the majority opinion, the grant of leave to file a second motion for reconsideration does not "deceive the movants

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[24] See *Muñoz v. Court of Appeals*, 379 Phil. 809 (2000) [Per *J.* Ynares-Santiago, First Division].

[25] 665 Phil. 542 (2011) [Per *J.* Del Castillo, First Division].

[26] *Id.*

[27] *Rollo* (G.R. No. 178083), p. 2220, Philippine Airlines' Second Motion for Reconsideration.

by allowing them to revel in some hollow victory."[28] It does not follow that when leave to file is granted, the second motion for reconsideration shall likewise be granted. Litigants have no right to such expectation.

The Court's pronouncement in *Belviz v. Buenaventura*,[29] cited by the majority opinion, does not apply in this case. *Belviz* dealt with a second motion for reconsideration already granted by this court. Here, all that was granted was the leave to file. The second motion for reconsideration, however, was already denied on September 7, 2011. To contend "[t]hat a second motion for reconsideration based on an allowable ground suspends the running of the period for appeal from the date of the filing of the motion until such time that the same was acted upon and granted"[30] is unavailing.

Therefore, on January 20, 2010, the Court's action granting leave for the Second Motion for Reconsideration was irregular.

That the records of this case do not contain any notation that the October 2, 2009 Resolution had been entered in the book of entries of judgment is inconsequential. A judgment becomes final and executory by operation of law, with the date of finality of the judgment considered as the date of its entry.[31] The October 2, 2009 Resolution is already final, with November 4, 2009 being the date of its entry.

III

With the judgment having become final and executory as early as November 4, 2009, the validity of the October 4, 2011 *En Banc* Resolution recalling the Second Division's Resolution that denied Philippine Airlines' Second Motion for Reconsideration should no longer be at issue. Much issue has been made on who, under this Court's issuances on its internal procedures,

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[28] *Ponencia*, p. 19.

[29] 83 Phil. 337 (1949) [Per *J.* Paras, First Division].

[30] *Ponencia*, p. 19.

[31] RULES OF COURT, Rule 51, Sec. 10.

is the Justice to have properly taken charge of resolving Philippine Airlines' Second Motion for Reconsideration on the first instance when this issue is not even jurisdictional. Under the Constitution, this case has been long been decided with finality by the Supreme Court of the Philippines. The Court *En Banc*, as if an appellate court in relation to the Division that rendered judgment here, has no jurisdiction to resolve Philippine Airlines' Second Motion for Reconsideration *for the second time*.

Article VIII, Section 4 of the Constitution provides:

Section 4. (1) The Supreme Court shall be composed of a Chief Justice and fourteen Associate Justices. It may sit *en banc* or, in its discretion, in divisions of three, five, or seven Members. Any vacancy shall be filled within ninety days from the occurrence thereof.

(2) All cases involving the constitutionality of a treaty, international or executive agreement, or law, which shall be heard by the Supreme Court *en banc*, and all other cases which under the Rules of Court are required to be heard *en banc*, including those involving the constitutionality, application, or operation of presidential decrees, proclamations, orders, instructions, ordinances, and other regulations, shall be decided with the concurrence of a majority of the Members who actually took part in the deliberations on the issues in the case and voted thereon.

(3) Cases or matters heard by a division shall be decided or resolved with the concurrence of a majority of the Members who actually took part in the deliberations on the issues in the case and voted thereon, and in no case, without the concurrence of at least three of such Members. When the required number is not obtained, the case shall be decided *en banc*: *Provided*, that no doctrine or principle of law laid down by the court in a decision rendered *en banc* or in division may be modified or reversed except by the court sitting *en banc*.

Article VIII, Section 4 was especially relevant in *Fortich v. Corona*.[32] The case involved the Sumilao farmers who staged a hunger strike in protest of the Office of the President's March

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[32] 352 Phil. 461 (1998) [Per *J*. Martinez, Second Division]; 359 Phil. 210 (1998) [Per *J*. Martinez, Second Division]; 371 Phil. 672 (1999) [Per *J*. Ynares-Santiago, Special Second Division].

29, 1996 Decision that converted 144 hectares of land in Bukidnon from agricultural to agro-industrial/institutional area. In its Order dated June 23, 1997, the Office of the President declared its March 29, 1996 Decision final and executory because none of the parties seasonably filed a motion for reconsideration of the decision.

However, in a November 7, 1997 Resolution or the so-called "Win/Win" Resolution, the Office of the President modified its March 29, 1996 Decision. Forty-four hectares of the former 144 were declared converted to agro-industrial/institutional area and the remaining 100 hectares were, instead, ordered distributed to the farmer-beneficiaries. This prompted petitioners, led by then Bukidnon Governor Carlos O. Fortich, to file a petition for certiorari before this Court.

In the Decision[33] dated April 24, 1998, this Court granted Governor Fortich, et al.'s petition for certiorari and voided the "Win/Win" Resolution.[34] This Court held that the Office of the President had already lost jurisdiction to modify its March 29, 1996 Decision because it was already final and executory.[35]

The April 24, 1998 Decision in *Fortich* was unanimously voted by Members of the Second Division of the Court. Justice Antonio M. Martinez wrote[36] the Decision in which Justices Florenz D. Regalado, Jose A.R. Melo, Reynato S. Puno, and Vicente V. Mendoza concurred.[37]

The farmer-beneficiaries filed motions for reconsideration of the April 24, 1998 Decision, arguing that the "Win/Win" Resolution was correctly issued so as to modify the erroneous March 29, 1996 Decision of the Office of the President. In addition, they prayed that their motions for reconsideration be

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[33] 352 Phil. 461 (1998) [Per *J.* Martinez, Second Division].

[34] *Id.* at 486.

[35] *Id.* at 485.

[36] *Id.* at 464.

[37] *Id.* at 487.

elevated to the Court *En Banc* because of the supposedly novel issue involved in the case.

In the November 17, 1998 Opinion[38] still penned by Justice Martinez,[39] the Court's Second Division denied the motions for reconsideration with finality.[40] The Court maintained that the March 29, 1996 Decision of the Office of the President was already final and executory, hence, unalterable even by this Court.[41]

Concurring in the November 17, 1998 Opinion was Justice Mendoza.[42] Justice Puno dissented and was joined by Justice Melo.[43] When the Second Division resolved the farmer-beneficiaries' first motions for reconsideration of the April 24, 1998 Decision, Justice Regalado had already retired.[44] Thus, only four (4) of the five (5) Justices who deliberated on the issues in the case and voted on the April 24, 1998 Decision voted on the first motions for reconsideration. The vote was two-two.

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[38] 359 Phil. 210 (1998) [Per *J.* Martinez, Second Division].

[39] *Id.* at 214.

[40] *Id.* at 230.

[41] *Id.* at 221-222.

[42] *Id.* at 230.

[43] *Id.* at pp. 230-238. Reviewing the records of the case, Justice Puno found that six (6) months past the issuance of the March 29, 1996 Decision of the Office of the President, then President Fidel V. Ramos constituted a Presidential Fact-Finding Task Force "to conduct a comprehensive review of the proper land use of the 144-hectare Sumilao property." President Ramos, according to Justice Puno, continued to treat the farmer-beneficiaries' case before the Office of the President as "still open," a power allegedly subsumed in the President's power of control over the executive branch. In effect, Justice Puno was of the opinion that the Office of the President may still resolve the motion for reconsideration filed by the farmer-beneficiaries, this despite the Office of the President's Order dated June 23, 1997 declaring its own March 29, 1996 Decision final and executory.

[44] Justice Regalado retired on October 13, 1998. The Resolution denying the first motions for reconsideration was issued on November 17, 1998.

The farmer-beneficiaries filed motions for reconsideration of the November 17, 1998 Opinion, effectively the second motions for reconsideration filed in *Fortich*. Citing Article VIII, Section 4(3) of the Constitution, the farmer-beneficiaries argued that the two-two vote in the first motions for reconsideration fell short of the minimum of three (3) votes required to carry a decision or resolution of the Court. Since the required number of votes was not obtained, the case, insisted by the farmer-beneficiaries, should be elevated to the *en banc*.

In the Resolution[45] dated August 19, 1999, the Court in *Fortich* rejected the farmer-beneficiaries' argument and denied the second motions for reconsideration. Examining the word choices in and syntax of Article VIII, Section 4(3) of the Constitution, the Court held that only "cases" that have not obtained the required number of votes may be elevated to and "decided" by the Court *en banc*. Using the statutory construction rule of *reddendo singula singulis*,[46] the Court said that "decided" in the first sentence of Section 4(3), Article VIII corresponded to "cases," and "resolved" corresponded to "matters." The word "matters," however, no longer appeared in the second sentence of Article VIII, Section 4(3). According to the Court, this omission was expressly made so that only a "case" that has not obtained the required number of votes in the Division, not "matters" such as motions for reconsideration, may be elevated to and "decided" by the Court *En Banc*. When a "matter" such as a motion for reconsideration does not obtain the required number of votes, it means that the motion for reconsideration must be denied for lack of the necessary votes,

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[45] 371 Phil. 672 (1999) [Per *J*. Ynares-Santiago, Special Second Division].

[46] *Reddenda singula singulis* is Latin for "referring each for each" and, as a rule of statutory construction, means that "words in different parts of statute must be referred to their appropriate connection, giving to each in its place, its proper force and effect, and, if possible, rendering none of them useless or superfluous, even if strict grammatical construction demands otherwise." See *People v. Tamani*, 154 Phil. 142, 147 (1974) [Per *J*. Aquino, Second Division] and *City of Manila v. Laguio, Jr.*, 495 Phil. 289, 336 (2005) [Per *J*. Tinga, *En Banc*].

not elevated to the Court *En Banc* for resolution. The assailed decision previously rendered by the Division must, therefore, stand. In this Court's own words:

> A careful reading of [Section 4(3), Article VIII of the Constitution], however, reveals the intention of the framers to draw a distinction between cases, on the one hand, and matters, on the other hand, such that *cases* are "decided" while *matters*, which include motions, are "resolved". Otherwise put, the word "decided" must refer to "cases"; while the word "resolved" must refer to "matters", applying the rule *reddendo singula singulis*. This is true not only in the interpretation of the above-quoted [Section 4(3), Article VIII], but also of the other provisions of the Constitution where these words appear.
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> With the aforesaid rule of construction in mind, it is clear that only cases are referred to the Court *en banc* for decision whenever the required number of votes is not obtained. Conversely, the rule does not apply where, as in this case, the required three votes is not obtained in the resolution of a motion for reconsideration. Hence, the second sentence of the aforequoted provision speaks only of "case" and not "matter".[47]

The reason for the rule, said this Court, is "simple."[48] Continued this Court:

> The above-quoted [Article VIII, Section 4(3)] pertains to disposition of cases by a division. If there is a tie in the voting, there is no decision. The only way to dispose of the case is then refer it to the Court *en banc*. On the other hand, if a case has already been decided by the decision and the losing party files a motion for reconsideration, the failure of the division to resolve the motion because of a tie in the voting does not leave the case undecided. There is still the decision which must stand in view of the failure of the members of the division to muster the necessary vote for its reconsideration. Quite plainly, if the voting results in a tie, the motion for reconsideration is lost. The assailed decision is not reconsidered and must therefore be deemed affirmed.[49]

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[47] *Fortich v. Corona*, 371 Phil. 672, 679 (1999) [Per *J.* Ynares-Santiago, Special Second Division].

[48] *Id.*

[49] *Id.* at 679-680.

Voting two-two on the first motion for reconsideration, the Members of the Second Division failed to muster the minimum number of votes required to reconsider the April 24, 1998 Decision in *Fortich*. Therefore, the first motions for reconsideration were deemed denied for failure to obtain the required number of votes, and the case was not elevated *en banc*.[50] The April 24, 1998 Decision in *Fortich*, unanimously voted by the Members of the Second Division, was deemed affirmed.[51]

Fortich highlighted how a decision by any of the Divisions of this Court is a decision of *the* Supreme Court of the Philippines. The Court *En Banc* is not an appellate court to which decisions of a Division of this Court may be appealed.[52] *Fortich*, thus, affirmed Supreme Court Circular No. 2-89 on the Guidelines and Rules in the Referral to the Court *En Banc* of Cases Assigned to a Division, the relevant portions of which provide:

SUPREME COURT CIRCULAR NO. 2-89

SUBJECT : *Guidelines and Rules in the Referral to the Court En Banc of Cases Assigned to a Division*

TO : *Court of Appeals, Sandiganbayan, Court of Tax Appeals, Regional Trial Courts, Metropolitan Trial Courts, Municipal Trial Courts, Municipal Circuit Trial Courts, Shari'A District Courts and Shari'A Circuit Courts, All Members of the Government Prosecution Service, and All Members of the Integrated Bar of the Philippines*

1. The Supreme Court sits either *en banc* or in Divisions of three, five or seven Members (Sec. 4[1] Article VIII, 1987 Constitution). At present the Court has three Divisions of five Members each.

2. A decision or resolution of a Division of the Court, when concurred in by a majority of its Members who actually took part in

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[50] *Id.* at 683.

[51] *Id.* at 680.

[52] See *Aboitiz Shipping Corporation v. New India Assurance Company, Ltd.*, 557 Phil. 679, 683 (2007) [Per *J.* Quisumbing, Second Division].

the deliberations on the issues in a case and voted thereon, and in no case without the concurrence of at least three of such Members, is a decision or resolution of *the* Supreme Court (Section 4[3], Article VIII, 1987 Constitution).

3. The Court *en banc* is not an Appellate Court to which decisions or resolutions of a Division may be appealed.[53]

Supreme Court Circular No. 2-89 would continue outlining the guidelines for *referring* a Division case to the Court *En Banc*:

4. At any time after a Division takes cognizance of a case and before a judgment or resolution therein rendered becomes final and executory, the Division may refer the case en consulta to the Court en banc which, after consideration of the reasons of the Division for such referral, may return the case to the Division or accept the case for decision or resolution.

> 4a. Paragraph [f] of the Resolution of this Court of 23 February 1984 in Bar Matter No. 209 [formerly item 6, en banc Resolution dated 29 September 1977], enumerating the cases considered as en banc cases, states:
>
> > "f. Cases assigned to a division including motions for reconsideration which in the opinion of at least three (3) members merit the attention of the Court *en banc* and are acceptable by a majority vote of the actual membership of the Court *en banc*."

5. A resolution of the Division denying a party's motion for referral to the Court *en banc* of any Division case, shall be final and not appealable to the Court *en banc*.

6. When a decision or resolution is referred by a Division to the Court *en banc*, the latter may, in the absence of sufficiently important reasons, decline to take cognizance of the same, in which case, the decision or resolution shall be returned to the referring Division.

7. No motion for reconsideration of the action of the Court *en banc* declining to take cognizance of a referral by a Division, shall be entertained.[54]

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[53] SC Circ. No. 2-89 (1989).

[54] *Id*.

At present, Rule 2, Section 3[55] of the Internal Rules enumerates the cases and matters cognizable by Court *En Banc*:

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

(a) cases in which the constitutionality of any treaty, international or executive agreement, law, executive order, presidential decree, proclamation, order, instruction, ordinance, or regulation is in question;

(b) cases raising novel questions of law;

(c) cases affecting ambassadors, other public ministers, and consuls;

(d) cases involving decisions, resolutions, and resolutions, and orders of the Commission on Elections and the Commission on Audit;

(e) cases where the penalty recommended or to be imposed is the dismissal of a judge, official or personnel of the Judiciary, the disbarment of a lawyer, the suspension of any of them for a period of more than one year, or a fine exceeding forty thousand pesos;

(f) cases covered by the preceding paragraph involving the reinstatement in the judiciary of a dismissed judge, the reinstatement of a lawyer in the roll of attorneys, or the lifting of a judge's suspension or a lawyer's suspension from the practice of law;

(g) cases involving the discipline of a Member of the Court, or a Presiding Justice, or any Associate Justice of the collegial appellate courts;

(h) cases where a doctrine or principle laid down by the Court *en banc* or by a Division may be modified or reversed;

(i) cases involving conflicting decisions of two or more divisions;

(j) cases where three votes in a Division cannot be obtained;

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

[55] S. CT. INT. RULES, Rule 2, Sec. 3 as amended.

(l) subject to Section 11(b) of this rule, other division cases that, in the opinion of at least three Members of the Division who are voting and present, are appropriate for transfer to the Court *en banc*;

(m) cases that the Court *en banc* deems of sufficient importance to merit its attention; and

(n) all matters involving policy decisions in the administrative supervision of all courts and their personnel.[56]

The Court *En Banc* assumed jurisdiction over this case based on Section 3(m), then Rule 2, Section 3(n) of the Internal Rules.

The enumeration in Rule 2, Section 3 of the Internal Rules on Court *en banc* matters and cases is an "amalgamation of,"[57] hence based, on Supreme Court Circular No. 2-89 as amended by the Resolution dated November 18, 1993[58] and Resolution dated January 18, 2000 in A.M. No. 99-12-08-SC.[59] The Resolution dated November 18, 1993 is cited as basis for adding "all other cases as the Court *en banc* by a majority of its actual membership may deem of sufficient importance to merit its attention," now found in Rule 2, Section 3(m) of the Internal Rules, in the enumeration of cases cognizable by the *en banc*.[60] The Resolution dated November 18, 1993 wholly provide:

B.M. No. 209[61]

AMENDMENTS TO SECTIONS 15 AND 16, RULE 136 OF THE RULES OF COURT AND OTHER RESOLUTIONS

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[56] *Id*.

[57] *Lu v. Lu Ym, Sr., et al.*, 658 Phil. 156, 175 (2011) [Per *J*. Carpio Morales, *En Banc*].

[58] *Firestone Ceramics, Inc. v. Court of Appeals*, 389 Phil. 810, 816 (2000) [Per *J*. Purisima, *En Banc*].

[59] *Lu v. Lu Ym, Sr., et al.*, 658 Phil. 156, 175 (2011) [Per *J*. Carpio Morales, *En Banc*].

[60] *Firestone Ceramics, Inc. v. Court of Appeals*, 389 Phil. 810, 816 (2000) [Per *J*. Purisima, *En Banc*].

[61] SC Bar Matter No. 209 (1993).

Gentlemen:

Quoted hereunder, for your information, is a resolution of the Court En Banc dated *November 18, 1993*

"Bar Matter No. 209 – In the Matter of the Amendment and/or Clarification of Various Supreme Court Rules and Resolutions. —

The Court *motu proprio* Resolved to further amend Sections 15 and 16, Rule 136 of the Rules of Court, as well as its Resolution of September 17, 1974 as amended by a Resolution dated February 11, 1975, its Resolution of February 23, 1984, and its Resolution of February 9, 1993, as follows:

Effective immediately and until further action of the Court, all pleadings, briefs, memoranda, motions, and other papers to be filed before the Supreme Court and the Court of Appeals shall either be typewritten on good quality unglazed paper, or mimeographed or printed on newsprint or mimeograph paper, 11 inches in length by 8-1/2 inches in width (commonly known as letter size) or 13 inches in length by 8-1/2 inches in width (commonly known as legal size). There shall be a margin at the top and at the left-hand side of each page not less than 1-1/2 inches in width. The contents shall be written double-spaced and only one side of the page shall be used.

In the Supreme Court, eighteen (18) legible copies of the petition shall be initially be filed, and eighteen (18) copies of subsequent pleadings, briefs, memoranda, motions and other papers shall be filed in cases for consideration of the Court *en banc* and nine (9) copies in cases to be heard before a division.

One (1) copy thereof shall be served upon each of the adverse parties in either case.

For said purpose, the following are considered *en banc* cases:

1. Cases in which the constitutionality or validity of any treaty, international or executive agreement, law, executive order, or presidential decree, proclamation, order, instruction, ordinance, or regulation is in question;

2. Criminal cases in which the appealed decision imposes the death penalty;

3. Cases raising novel questions of law;

4. Cases affecting ambassadors, other public ministers and consuls;

5. Cases involving decisions, resolutions or orders of the Civil Service Commission, Commission on Elections, and Commission on Audit;

6. Cases where the penalty to be imposed is the dismissal of a judge, officer or employee of the Judiciary, disbarment of a lawyer, or either the suspension of any of them for a period of more than one (1) year or a fine exceeding ₱10,000.00, or both;

7. Cases where a doctrine or principle laid down by the Court *en banc* or in division may be modified or reversed;

8. Cases assigned to a division which in the opinion of at least three (3) members thereof merit the attention of the Court *en banc* and are acceptable to a majority of the actual membership of the Court *en banc*; and

9. All other cases as the Court *en banc* by a majority of its actual membership may deem of sufficient importance to merit its attention.

In the Court of Appeals, seven (7) legible copies of pleadings, briefs, memoranda, motions and other papers shall be filed and one (1) copy thereof shall be served on each of the adverse parties." (Internal Resolution - Not for release)

Very truly yours,

LUZVIMINDA D. PUNO
Clerk of Court
Supreme Court of the Philippines

By:

(SGD.) MA. LUISA D. VILLARAMA
Assistant Clerk of Court
Supreme Court of the Philippines

As reflected above, the Resolution dated November 18, 1993 amended Bar Matter No. 209 which further amended Rule

136, Sections 15 and 16 of the Rules of Court then in effect, i.e., the 1964 Rules of Court. Rule 136 was entitled "Court Record and General Duties of Clerks and Stenographer" and Sections 15 and 16 dealt with "unprinted papers" and "printed papers." As the Resolution dated November 18, 1993 expressly stated, it amended the Resolution dated February 9, 1993 still on the form of unprinted papers and printed papers.

In issuing the Resolution dated November 18, 1993 to amend a bar matter that dealt with the form of unprinted and printed papers, the Court could not have intended to "lay down new guidelines or rules for referral to the court *en banc* of cases assigned to a Division."[62] The Resolution dated November 18, 1993 explicitly stated that the enumeration of en banc cases is only "for [the] said purpose" of determining the number of copies to file in the Court.

The basis of the supposed residual power[63] of the Court *En Banc* to, *on its own*, take cognizance of Division cases is, therefore, suspect.

Even assuming that the Court intended to amend Supreme Court Circular No. 2-89 through the Resolution dated November 18, 1993, there must be, at the very least, a *consulta* from the Division to which the case was assigned before the Court *En Banc* assumes jurisdiction over the Division case. This is consistent with Article VIII, Section 4(1) of the Constitution: *a decision of the Division is a decision of the Supreme Court*.

Therefore, the current Rule 2, Section 3(m) of the Internal Rules must be read with Section 3(l). The Court *En Banc*, on its own, *cannot* take cognizance of a Division case unless at least three (3) Members of the Division to which the case is assigned vote to refer the case to the Court *En Banc*. The Court *En Banc* has no residual power to assume jurisdiction

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[62] *J.* Gonzaga-Reyes' Dissenting Opinion in *Firestone Ceramics, Inc. v. Court of Appeals*, 389 Phil. 810, 825 (2000) [Per *J.* Purisima, *En Banc*].

[63] *Firestone Ceramics, Inc. v. Court of Appeals*, 389 Phil. 810, 818 (2000) [Per *J.* Purisima, *En Banc*].

over a Division case just because it deems it "of sufficient importance or interest."

To summarize, a case is considered decided and a decision rendered by the Supreme Court of the Philippines when a majority of the Members of the Division who actually took part in the deliberations on the issues in the case voted to concur in the decision. In no case shall the concurrence be less than three (3). When a Division already rendered a final decision or resolution in a case, the Court *En Banc* cannot set this final decision or resolution aside, even if it deems the case "of sufficient importance to merit its attention." The Court *En Banc* is not an appellate court to which decisions or resolutions rendered by a Division are appealed. Hence, when a decision or resolution of a Division is already final, the matter of referring the case to the Court *En Banc* must be favorably voted by at least three (3) Members of the Division who actually took part in the deliberations on the issues in the case.

Applying the foregoing here, the Court *En Banc* has no jurisdiction to take cognizance of the present case.

The July 22, 2008 Decision of the Third Division, unanimously voted by the Members of the Third Division, is a Decision of the Supreme Court of the Philippines. The October 2, 2009 Resolution was likewise unanimously voted by the Members of the Special Third Division. The judgment in this case attained finality on November 4, 2009, 15 days from Philippine Airlines' receipt of the October 2, 2009 Resolution denying the motion for reconsideration of the July 22, 2008 Decision.

Philippine Airlines' Second Motion for Reconsideration, the filing of which did not prevent the judgment in this case from attaining finality on November 4, 2009, was likewise unanimously denied by the Members of the Second Division in its September 7, 2011 Resolution. The judgment here having attained finality, the Court *En Banc*—as if an appellate court reviewing a case that the Supreme Court has already reviewed three (3) times-cannot now take cognizance of the case and review it for the fourth time because, suddenly, the case became of sufficient importance to merit the *En Banc*'s attention.

In the October 4, 2011 Resolution issued in A.M. No. 11-10-1-SC, the Court *En Banc* took cognizance of the case supposedly on the ground that the Members of the Second Division that resolved Philippine Airlines' Second Motion for Reconsideration deemed the case appropriate for transfer to the Court *En Banc*.[64] However, despite the meetings called to discuss "the implications of the successive retirements, transfers, and inhibitions"[65] affecting the membership of the Division to resolve Philippine Airlines' Motion to Vacate the September 7, 2011 Resolution that denied the Second Motion for Reconsideration, still, the required mode of referral to the *En Banc* is through a resolution.[66] No resolution by the Second Division can be found in the records of this case. As further declared by the Court *En Banc* in A.M. No. 11-10-1-SC, it

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[64] *Rollo*, p. 16. The Court cited as bases Sections 3(m) and (n), now 3(l) and (m) of the Internal Rules of the Supreme Court.

[65] *Ponencia*, pp. 24-25.

[66] See Sections 3(l) and (m) in relation to Section 11 of the Internal Rules of the Supreme Court, thus:

Section 3. *Court En banc Matters and Cases*. — The Court *en banc* shall act on the following matters and cases:

x x x x x x x x x

(l) subject to Section 11(b) of this rule, other division cases that, in the opinion of at least three Members of the Division who are voting and present, are appropriate for transfer to the Court *en banc;*

(m) cases that the Court *en banc* deems of sufficient important to merit its attention[.]

x x x x x x x x x

Section 11. *Actions on Cases Referred to the Court En Banc* — The referral of a Division case to the Court *en banc* shall be subject to the following rules:

(a) the resolution of a Division denying a motion for referral to the Court *en banc* shall be final and shall not be appealable to the Court *en banc;*

(b) the Court *en banc* may, in the absence of sufficiently important reasons, decline to take cognizance of a case referred to it and return the case to the Division; and

(c) No motion for reconsideration of a resolution of the Court *en banc* declining cognizance of a referral by a Division shall be entertained.

"acted on its own"[67] and assumed jurisdiction over this case by recalling the September 7, 2011 Resolution issued by the Second Division. This cannot be done.

To reiterate, the judgment assailed in this case is already final and executory by operation of law. The First Motion for Reconsideration was already denied with finality with the concurrence of all the Members of the Special Third Division of this Court. The Second Motion for Reconsideration, despite the grant of leave to file, was likewise denied by the Second Division. Not being an appellate court in relation to the Divisions, the Court *En Banc* has no authority to recall the Division's September 7, 2011 Resolution, assume jurisdiction over this case, then resolve *anew* Philippine Airlines' Second Motion for Reconsideration.

A.M. No. 11-10-1-SC was a matter docketed as an administrative matter. It could not be another means to resurrect a case. To do so is highly irregular, suspect, and violative of due process of law. To mask this as being in the interest of justice is to mask its intention to rob labor of a case decided three (3) times in its favor.

IV

Further, with the current *ponencia*, this Court will be resolving Philippine Airlines' Second Motion for Reconsideration *for the second time*. The Court *En Banc* effectively admitted a *third* motion for reconsideration *from the same party*, in violation of its own Rules.

In my view, a unanimous vote of this Court sitting *en banc* must be required to grant Philippine Airlines' third motion for reconsideration. Any vote less than unanimous must lead to a denial with finality of Philippines Airlines' motion.

A third motion for reconsideration is a disrespect to us and our rules of procedure. A third motion for reconsideration stifles the execution of a final and executory judgment of this Court.

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[67] *In Re: Letters of Atty. Mendoza re: G.R. No. 178083-FASAP v. PAL, Inc., et al.*, 684 Phil. 55, 92 (2012) [Per J. Brion, *En Banc*].

To truly prohibit the filing of further pleadings after the finality of our judgments, second and subsequent motions for reconsideration must be denied outright or, if they must be acted upon, they should be resolved with a standard stricter than that required in resolving first motions for reconsideration.

It is in this Court's interest to grant third and subsequent motions for reconsideration *only* with a unanimous vote. A unanimous court would debate and deliberate more fully compared with a non-unanimous court because unanimity makes the grant of third and subsequent motions for reconsideration more difficult. Greater debate must be required to allow a motion not sanctioned by our Rules.[68] Unanimity prevents flip-flopping. It will shield this Court from parties who perceive themselves above the justice system.

There is no violation of due process[69] in requiring a unanimous vote instead of the majority vote required under the Constitution[70]

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[68] See *J.* Douglas' Dissenting Opinion in *Johnson v. Louisiana*, 406 U.S. 356, 383 (1972) [Per J. White, United States Supreme Court]. The issue in *Johnson* was whether a less than unanimous vote of the jury is sufficient to convict an accused under the Sixth Amendment. The United States Supreme Court ruled in the affirmative with Justice Douglas, among other Justices, dissenting. Justice Douglas was of the view that unanimity should be required for convictions because they involve the right to liberty the deprivation of which should be based on the same strict standard required for depriving the right to property, i.e., unanimous vote of a jury. Justice Douglas explained the reasons why a mere plurality vote "diminishes the reliability of a jury":

> The plurality approves a procedure which diminishes the reliability of a jury. First, it eliminates the circumstances in which a minority of jurors (a) could have rationally persuaded the entire jury to acquit, or (b) while unable to persuade the majority to acquit, nonetheless could have convinced them to convict only a lesser included offense. Second, it permits

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

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

[70] CONST., Art. VIII, Sec. 4(2) provides:

> Section 4.
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or the two-thirds (2/3) vote required under our Internal Rules.[71] A third motion for reconsideration is not a remedy under our existing rules of procedure. Under law or equity, a party has no vested right to file, much more, to a grant of a third or any subsequent motion for reconsideration by a mere majority vote.[72] Then, applying *Fortich* by analogy, a third motion for reconsideration that fails to muster a unanimous vote must be deemed denied. The decision, the resolution on the first motion for reconsideration, and the resolution on the second motion for reconsideration must be deemed affirmed.

The Chief Justice is on leave while Justices Carpio, Velasco, Jr., Leonardo-de Castro, and Del Castillo inhibited themselves from participating in the deliberations and voting in this case. This leaves ten (10) Justices to deliberate and vote *anew* on Philippine Airlines' Second Motion for Reconsideration. It is in this Court's interest to require ten (10) votes to grant Philippine Airlines' second, *effectively its third*, motion for reconsideration. Any less than a unanimous vote will erode the reliability and credibility of this Court.

V

Even on the merits, this case is not of sufficient importance to have merited the Court *En Banc*'s attention. There is no "higher interest of justice" to be satisfied in resolving Philippine Airlines' Second Motion for Reconsideration *for the second time*.

The then Article 283[73] of the Labor Code on retrenchment provides:

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(2) All cases involving the constitutionality of a treaty, international or executive agreement, or law, which shall be heard by the Supreme Court *en banc*, and all other cases which under the Rules of Court are required to be heard *en banc*, including those involving the constitutionality, application, or operation of presidential decrees, proclamations, orders, instructions, ordinances, and other regulations, shall be decided with the concurrence of a majority of the Members who actually took part in the deliberations on the issues in the case and voted thereon.

[71] INTERNAL RULES OF THE SUPREME COURT, Rule 15, Sec. 3.

[72] *Concepcion v. Garcia*, 54 Phil. 81, 83 (1929) [Per *J*. Street, *En Banc*].

[73] Now Article 289 of the Labor Code pursuant to Presidential Decree No. 442 (2015).

Article 283. *Closure of Establishment and Reduction of Personnel.* — The employer may also terminate the employment of any employee due to the installation of labor-saving devices, redundancy, retrenchment to prevent losses or the closing or cessation of operation of the establishment or undertaking unless the closing is for the purpose of circumventing the provisions of this Title, by serving a written notice on the workers and the Ministry of Labor and Employment at least one (1) month before the intended date thereof. In case of termination due to the installation of labor-saving devices or redundancy, the worker affected thereby shall be entitled to a separation pay equivalent to at least his one (1) month pay or to at least one (1) month pay for every year of service, whichever is higher. In case of retrenchment to prevent losses and in cases of closures or cessation of operations of establishment or undertaking not due to serious business losses or financial reverses, the separation pay shall be equivalent to one (1) month pay or at least one-half (½) month pay for every year of service, whichever is higher. A fraction of at least six (6) months shall be considered one (1) whole year.

In contrast with the "just causes" for terminating employment brought about by an employee's acts, "authorized causes" such as retrenchment are undertaken by the employer. Retrenchment or "*lay-off*" is the cessation of employment commenced by the employer, devoid of any fault on the part of the workers and without prejudice to them.[74] It is "resorted to by management during periods of business recession, industrial depression, or seasonal fluctuations or during lulls occasioned by lack of orders, shortage of materials, conversion of the plant for a new production program or the introduction of new methods or more efficient machinery, or of automation."[75]

Since retrenchment is commenced by the employer, the burden of proving that the termination was founded on an authorized cause necessarily rests with the employer.[76] The employer has

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[74] *Polymart Paper Industries, Inc. v. National Labor Relations Commission*, 355 Phil. 592, 599 (1998) [Per *J.* Martinez, Second Division].

[75] *Id.*

[76] See *Sanoh Fulton Phils., Inc. v. Bernardo*, 716 Phil. 378 (2013) [Per *J.* Perez, Second Division].

the duty to clearly and satisfactorily prove the elements of a valid retrenchment, which, as established in *Lopez Sugar Corp. v. Federation of Free Workers*,[77] are the following:

Firstly, the losses expected should be substantial and not merely *de minimis* in extent. If the loss purportedly sought to be forestalled by retrenchment is clearly shown to be insubstantial and inconsequential in character, the *bonafide* nature of the retrenchment would appear to be seriously in question.Secondly, the substantial loss apprehended must be reasonably imminent, as such imminence can be perceived objectively and in good faith by the employer. There should, in other words, be a certain degree of urgency for the retrenchment, which is after all a drastic recourse with serious consequences for the livelihood of the employees retired or otherwise laid-off. Because of the consequential nature of retrenchment, it must, thirdly, be reasonably necessary and likely to effectively prevent the expected losses. The employer should have taken other measures prior or parallel to retrenchment to forestall losses, i.e., cut other costs than labor costs. An employer who, for instance, lays off substantial numbers of workers while continuing to dispense fat executive bonuses and perquisites or so-called "golden parachutes," can scarcely claim to be retrenching in good faith to avoid losses. To impart operational meaning to the constitutional policy of providing "full protection" to labor, the employer's prerogative to bring down labor costs by retrenching must be exercised essentially as a measure of last resort, after less drastic means — e.g., reduction of both management and rank-and-file bonuses and salaries, going on reduced time, improving manufacturing efficiencies, trimming of marketing and advertising costs, etc. — have been tried and found wanting.

Lastly, but certainly not the least important, alleged losses if already realized, and the expected imminent losses sought to be forestalled, must be proved by sufficient and convincing evidence. The reason for requiring this quantum of proof is readily apparent: any less exacting standard of proof would render too easy the abuse of this ground for termination of services of employees.[78] (Underscoring provided)

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[77] 267 Phil. 212 (1990) [Per *J*. Feliciano, Third Division].

[78] *Id*. at 221-222.

These "four standards of retrenchment"[79]— that the losses be substantial and not *de minimis;* that the substantial loss be imminent; that the retrenchment be reasonably necessary and would likely and effectively prevent the substantial loss; and that the loss, if already incurred, be proved by sufficient and convincing evidence—are reiterated in *Central Azucarera De La Carlota v. National Labor Relations Commission*,[80] *Polymart Paper Industries, Inc. v. National Labor Relations Commission*,[81] *F.F. Marine Corp. v. National Labor Relations Commission*,[82] and *Philippine Airlines, Inc. v. Dawal*.[83]

It is doctrine that the employer proves substantial losses by offering in evidence audited financial statements showing that it has been operating at a loss for a period of time sufficient for the employer "to [have] perceived objectively and in good faith"[84] that the business' financial standing is unlikely to improve in the future. "No evidence can best attest to a company['s] economic status other than its financial statement"[85] because "[t]he audit of financial reports by independent external auditors are strictly governed by the national and international standards and regulations for the accounting profession."[86] Auditing of

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[79] *Central Azucarera De La Carlota v. National Labor Relations Commission*, 321 Phil. 989, 995 (1995) [Per *J*. Kapunan, First Division].

[80] 321 Phil. 989, 996 (1995) [Per *J*. Kapunan, First Division].

[81] 355 Phil. 592, 600-601 (1998) [Per *J*. Martinez, Second Division].

[82] 495 Phil. 140, 152-153 (2005) [Per *J*. Tinga, Second Division].

[83] G.R. Nos. 173921 & 173952, February 24, 2016 [Per *J*. Leonen, Second Division].

[84] *Philippine Tobacco Flue-Curing & Redrying Corp. v. NLRC*, 360 Phil. 218, 236-237 (1998) [Per *J*. Panganiban, First Division], citing *Somerville Stainless Steel Corporation v. NLRC*, 350 Phil. 859, 869 (1998) [Per *J*. Panganiban, First Division].

[85] *Manatad v. Philippine Telegraph and Telephone Corp.*, 571 Phil. 494, 508 (2008) [Per *J*. Chico-Nazario, Third Division].

[86] *Hyatt Enterprises of the Philippines, Inc. v. Samahan ng Mga Manggagawa sa Hyatt*, 606 Phil. 490, 507 (2009) [Per *J*. Nachura, Third Division].

financial statements prevents "manipulation of the figures . . . to suit the company's needs."[87]

In *LVN Pictures Employees and Workers Association (NLU) v. LVN Pictures, Inc.*,[88] decided in 1970, respondent corporation presented financial statements to prove a progressive pattern of loss from 1957 to 1961. By the time the corporation ceased from doing business, it incurred an aggregate loss of ₱1,560,985.14. This Court held that LVN had suffered serious business losses.[89]

In *North Davao Mining Corporation v. NLRC*,[90] decided in 1996, petitioner corporation presented financial statements to prove a progressive pattern of loss from 1988 until its closure in 1992. The company suffered net losses averaging ₱3,000,000,000.00 a year, with an aggregate loss of ₱20,000,000,000.00 by the time of its closure. This Court held that North Davao experienced serious business losses.[91]

In *Manatad v. Philippine Telegraph and Telephone Corporation*,[92] decided in 2008, respondent corporation presented financial statements proving a progressive pattern of loss from 1995 to 1999. By the year 2000, the corporation had already incurred an aggregate loss of ₱2,169,000,000.00, constraining it to retrench some of its workers. This Court held that the employer was "fully justified in implementing a retrenchment program since it was undergoing business reverses, not only for a single fiscal year, but for several years prior to and even after the program."[93]

Unlike the employers in *LVN Pictures Employees and Workers Association, North Davao Mining Corporation*,

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[87] *Id.* at 510.

[88] 146 Phil. 153 (1970) [Per *J.* Ruiz Castro, *En Banc*].

[89] *Id.* at 157 and 166.

[90] 325 Phil. 202 (1996) [Per *J.* Panganiban, *En Banc*].

[91] *Id.* at 212.

[92] 571 Phil. 494 (2008) [Per *J.* Chico-Nazario, Third Division].

[93] *Id.* at 509.

and *Manatad*, Philippine Airlines plainly and miserably failed to discharge its burden of proving that it had suffered substantial losses for a period of time sufficient for it to have perceived objectively and in good faith that its business standing would unlikely improve in the future. Philippine Airlines did not submit any audited financial statements before the Labor Arbiter.[94] The belatedly[95] submitted audited financial statements for the years 2002 to 2004, copies of which were annexed to Philippine Airlines' Comment on FASAP's Petition for Certiorari before the Court of Appeals, are irrelevant because they do not cover the years leading to Philippine Airlines' supposedly dire financial situation in 1998. The financial statement for the year ending March 1998 attached to Philippine Airlines' First Motion for Reconsideration before this Court was, again, belatedly filed and cannot be accepted on appeal.[96]

That FASAP failed to question Philippine Airlines' financial status during the retrenchment and in its pleadings before the Labor Arbiter, National Labor Relations Commission, and the Court of Appeals[97] does not excuse Philippine Airlines' failure to present the relevant financial statements. Regardless of FASAP's supposed recognition of Philippine Airlines' grave financial condition as Justice Caguioa outlined in his Concurring Opinion,[98] the members of FASAP have no professional training to determine their employer's financial standing. *The burden is not on them to prove that Philippine Airlines was suffering from legitimate business reverses warranting retrenchment.*

Further, contrary to Philippine Airlines'[99] and Justice Caguioa's[100] points of view, this Court did not take judicial

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[94] *Rollo* (G.R. No. 178083), p. 1534, Decision dated July 22, 2008.

[95] *Id*. at 1537.

[96] *Id*. at 2046, Resolution dated October 2, 2009.

[97] *Id*. at 1552-1553, Motion for Reconsideration of July 22, 2008 Decision.

[98] *J*. Caguioa's *Concurring Opinion*, p. 10, citing *Alfelor v. Halasan*, 520 Phil. 982 (2006) [Per *J*. Callejo, Sr., First Division].

[99] See *Rollo* (G.R. No. 178083), p. 2240, PAL's Second MR.

[100] Justice Caguioa's *Concurring Opinion*, p. 13.

notice of Philippine Airlines' supposedly dire financial status in *Garcia v. Philippine Airlines, Inc.*,[101] *Philippine Airlines v. Kurangking*,[102] *Philippine Airlines v. PALEA*,[103] *Philippine Airlines v. NLRC*[104] and *Philippine Airlines, Inc. v. Zamora*.[105] In these cases, the courts merely recognized that Philippine Airlines was under corporate rehabilitation leading to the suspension of proceedings involving money claims against it.

Justice Caguioa cites *Clarion Printing House, Inc. v. National Labor Relations Commission*[106] where this Court considered the company's receivership status as proof of losses. The present case, however, is different from *Clarion*. For one, the employer in *Clarion* presented evidence before the Labor Arbiter and National Labor Relations Commission that it was placed under receivership, further proving its sustained business losses.[107] The company in *Clarion* was even liquidated and dissolved.[108] The employer in *Clarion* did not engage in any

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[101] 558 Phil. 328 (2007) [Per *J*. Quisumbing, Second Division]. This Court ruled that Philippine Airlines was justified in not reinstating the employees pending the appeal before the NLRC due to the fact that it was under corporate rehabilitation.

[102] 438 Phil. 375 (2002) [Per *J*. Vitug, First Division]. The money claims for the missing luggage of respondent Spouses Kurangking and Spouses Dianalan were held to be "a financial demand that the law requires to be suspended during rehabilitation proceedings."

[103] 552 Phil. 118 (2007) [Per *J*. Chico-Nazario, Third Division]. This Court suspended the proceedings involving the award of 13th month pay to PALEA members because PAL was under corporate rehabilitation.

[104] 648 Phil. 238 (2010) [Per *J*. Leonardo-De Castro, First Division]. The proceedings involving the dismissal of respondent Quijano and her claim for separation pay was suspended because PAL was under corporate rehabilitation.

[105] 543 Phil. 546 (2007) [Per *J*. Chico-Nazario, Third Division]. The proceedings involving the dismissal of respondent Zamora and his money claims was suspended because PAL was under corporate rehabilitation.

[106] 500 Phil. 61 (2005) [Per *J*. Carpio Morales, Third Division.

[107] *Id*. at 69.

[108] *Id.* at 80.

act that negated its claim of serious business losses as a ground for retrenchment. Therefore, the fact that it was on receivership sufficed to substantiate its claim of business reverses.

In this case, however, Philippine Airlines only made a "litany of woes"[109] before the Labor Arbiter and National Labor Relations Commission "without offering any evidence to show that [those woes] translated into specific and substantial losses."[110] Philippine Airlines even submitted a "stand-alone" rehabilitation plan to the Securities and Exchange Commission, undertaking recovery on its own, and thus, belying its claim of dire financial condition.[111] Philippine Airlines eventually exited rehabilitation.[112] *Clarion*, therefore, has no application in this case.

Contrary to *Emco Plywood Corp. v. Abelgas*,[113] Philippine Airlines did not even prove that retrenching its employees was the only remaining way to lessen its purported business losses. Though not explicitly required under the Labor Code as pointed out by Philippines Airlines,[114] retrenchment must and should remain a means of *last resort* of terminating employment,[115] consistent with the constitutional policy of full protection to labor.[116] An employee dismissed, even for an authorized cause,

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[109] *FASAP v. PAL*, 581 Phil. 228, 258 (2008) [Per *J*. Carpio Morales, Third Division].

[110] *Id*.

[111] *Id.* at 262.

[112] *Id.* at 245.

[113] 471 Phil. 460, 476 (2004) [Per *J*. Panganiban, First Division].

[114] *Rollo* (G.R. No. 178083), p. 2281.

[115] *Emco Plywood Corp. v. Abelgas*, 471 Phil. 460, 476 (2004) [Per *J*. Panganiban, First Division].

[116] CONST., Art. XIII, Sec. 3 provides:

Section 3. The State shall afford full protection to labor, local and overseas, organized and unorganized, and promote full employment and equality of employment opportunities for all.

It shall guarantee the rights of all workers to self-organization, collective bargaining and negotiations, and peaceful concerted activities, including the

loses his or her means of livelihood.[117] Therefore, employers must show that they utilized other less drastic measures that proved ineffective for their business to financially recover.[118] The July 22, 2008 Decision underscored that there was no evidence on record confirming that Philippine Airlines resorted in cost-cutting measures apart from lessening its fleet and the retrenchment of its employees.[119] This Court said:

> The only manifestation of PAL's attempt at exhausting other possible measures besides retrenchment was when it conducted negotiations and consultations with FASAP which, however, ended nowhere. None of the plans and suggestions taken up during the meetings was implemented. On the other hand, PAL's September 4, 1998 offer of shares of stock to its employees was adopted belatedly, or only after its more than 1,4000 cabin crew personnel were retrenched. Besides, this offer can hardly be considered to be borne of good faith, considering that it was premised on the condition that, if accepted, all existing CBA's between PAL and its employees would have to be suspended for 10 years. When the offer was rejected by the employees, PAL ceased its operations on September 23, 1998. It only resumed business when the CBA's suspension clause was ratified by the employees in a referendum subsequently conducted. Moreover, this stock distribution scheme does not do away with PAL's

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right to strike in accordance with law. They shall be entitled to security of tenure, humane conditions of work, and a living wage. They shall also participate in policy and decision-making processes affecting their rights and benefits as may be provided by law.

The State shall promote the principle of shared responsibility between workers and employers and the preferential use of voluntary modes in settling disputes, including conciliation, and shall enforce their mutual compliance therewith to foster industrial peace.

The State shall regulate the relations between workers and employers, recognizing the right of labor to its just share in the fruits of production and the right of enterprises to reasonable returns on investments, and to expansion and growth.

[117] *Bataan Shipyard and Engineering Co., Inc. v. National Labor Relations Commission*, 244 Phil. 280, 284 (1988) [Per *J.* Gancayco, First Division].

[118] *Emco Plywood Corp. v. Abelgas*, 471 Phil. 460, 476 (2004) [Per *J.* Panganiban, First Division].

[119] *Rollo* (G.R. No. 178083), p. 1536, Decision dated July 22, 2008.

expenditures or liabilities, since it has for its sole consideration the commitment to suspend CBAs with its employees for 10 years. It did not improve the financial standing of PAL, nor did it result in corporate savings, *vis-a-vis* the financial difficulties it was suffering at that time.[120] (Emphasis provided)

Although, as pointed out by Justice Caguioa, an employer may resort to retrenchment on the basis of *anticipated* losses,[121] the employer must nevertheless present convincing evidence which, as jurisprudentially established, consists of the audited financial statements. Here, there was no basis for Philippine Airlines to claim that it was financially crippled by the 1997 Asian financial crisis and the massive strikes staged by its workers.[122] Assuming that Philippine Airlines sustained business losses due to the 1997 Asian financial crisis, it should have nevertheless corroborated its claim by showing how this occurrence affected its financial status. To readily accept this assertion, as stated in the *ponencia*,[123] provides a dangerous precedent. "Any employer desirous of ridding itself of its employees could . . . easily do so without need to adduce proof in support of its action."[124] Security of tenure is a constitutionally

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[120] *Id*.

[121] *J.* Caguioa's Concurring Opinion, p. 12, citing *Blue Eagle Management v. Naval,* G.R. No. 192488, April 19, 2016.http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2016/april2016/192488.pdf> [Per *J.* Leonardo-De Castro, First Division].

[122] *Rollo*, (G.R. No. 178083), p. 1557, Motion for Reconsideration of July 22, 2008 Decision.

[123] *Ponencia* as of July 28, 2017, p. 25 states:

Besides, we take notice of the fact that airline operations are capital intensive earnings are volatile because of their vulnerability to economic recession, among others. The Asian financial crisis in 1997 had wrought havoc among the Asian air carriers, PAL included. The peculiarities existing in the airlines business made it easier to believe that at the time of the Asian Financial crisis, PAL incurred liabilities amounting to ₱90,642,933,919.00, which were way beyond the value of its assets that only stood at ₱85,109,075,351.

[124] *Indino v. National Labor Relations Commission*, 258 Phil. 792, 800 (1989) [Per *J.* Sarmiento, Second Division].

mandated right. It should not be "denied on the basis of mere speculation."[125]

That Philippine Airlines was placed under receivership did not excuse it from submitting to the labor authorities copies of its audited financial statements to prove the urgency, necessity, and extent of its retrenchment program.[126] "Employees almost always have no possession of the company's financial statements."[127] Hence, it is the "companies such as [Philippine Airlines] [that] are required by law to file their audited financial statements before the Bureau of Internal Revenue or the Securities and Exchange Commission."[128] Considering that Philippine Airlines had the "heavy burden of proving the validity of retrenchment" and the immediate access to its own documents,[129] it should have presented the audited financial statements as to put to rest any doubt on the stated reason behind the disputed retrenchment.

I do not share the view that "to require a distressed corporation placed under rehabilitation or receivership to still submit its audited financial statements may become unnecessary or superfluous."[130] To dispense with the audited financial statements and immediately accept sheer assertions of business losses is far from the stringent substantiation requirement mandated to employers by law and jurisprudence.

It is undisputed that Philippine Airlines initially executed Plan 14 to lessen its operating losses "in the exercise of its management prerogative and sound business judgment."[131] From formerly

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[125] *Id*.

[126] *Rollo* (G.R. No. 178083), p. 1535, Decision dated July 22, 2008.

[127] *Philippine Airlines, Inc. v. Dawal*, G.R. Nos. 173921 & 173952, February 24, 2016, <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2016/february2016/173921.pdf> 21 [Per *J*. Leonen, Second Division].

[128] *Id*. at 22.

[129] *Id*. at 23.

[130] *Ponencia* as of July 28, 2017, p. 27.

[131] *Rollo*, (G.R. No. 178083), p. 1569, Motion for Reconsideration of July 22, 2008 Decision.

flying 54 planes in its fleet, it then operated with 14 planes to save itself from a total breakdown.[132] Consequently, it had to allegedly reduce its manpower causing the retrenchment of 5,000 employees which included the 1,400 cabin crews who were also members of FASAP.[133]

Subsequently, however, Philippine Airlines admittedly abandoned Plan 14 and implemented Plan 22 after it had experienced "a degree of relief as a result of the suspension of payment and rehabilitation proceedings in the [Securities and Exchange Commission] and the suspension of the [Collective Bargaining Agreement]."[134] Allegedly, the choice of abandoning Plan 14 was a "business judgment . . . made in good faith and upon the advice of foreign airline industry experts."[135]

I disagree.

Implementing and executing Plan 22, when Plan 14 was already made known to the employees of Philippine Airlines, constitutes bad faith retrenchment.[136] The illegal retrenchment program was founded on a *wrong premise*. The supposed implementation of Plan 14, which subsequently turned out to be Plan 22, caused the retrenchment of more workers than what was necessary.[137] As this Court observed:

[Philippine Airlines] offered no satisfactory explanation why it abandoned Plan 14; instead, it justified its actions of subsequently

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[132] *Id*.

[133] *Id*.

[134] *Id*. at 1571-1572.

When PAL ceased its operations on September 23, 1998, President Joseph Estrada intervened through the request of PAL employees. PALEA made another offer which was ratified by the employees on October 2, 1998 and consequently accepted by PAL. On October 7, 1998, PAL partially began with domestic operation hoping " that the beneficial terms of the suspension of the agreement could possibly redeem PAL.

[135] *Id*. at 1572.

[136] *Id*. at 1540, Decision dated July 22, 2008.

[137] *Id*. at 1544.

recalling to duty retrenched employees by making it appear that it was a show of good faith; that it was due to its good corporate nature, that the decision to consider recalling employees was made. The truth, however, is that it was unfair for PAL to have made such a move; it was capricious and arbitrary, considering that several thousand employees who had long been working with PAL had lost their jobs, only to be recalled but assigned to lower positions (i.e. demoted), and worse, some as new hires, without due regard for their long years of service with the airline.

The irregularity of PAL's implementation of Plan 14 becomes more apparent when it rehired 140 probationary cabin attendants whose services it had previously terminated, and yet groceeded to terminate the services of its permanent cabin crew personnel.[138] (Emphasis provided)

Additionally, the retrenchment program was based on *unreasonable standards* without any regard to each cabin crew's corresponding service record, thus discounting "seniority and loyalty in the evaluation of overall employee performance."[139]

There is no question that employers have the management prerogative to resort to retrenchment in times of legitimate business reverses. However, the "*right to retrench*" must be differentiated from the "*actual retrenchment program*."[140] The manner and exercise of this privilege "must be made without abuse of discretion" and must not be "oppressive and abusive since it affects one's person and property."[141]

Philippine Airlines' failure to strictly comply with the substantive requirements of a valid retrenchment casts doubt on the true reason behind it. "[T]hat a retrenchment is anchored on serious, actual, and real losses or reverses is to say that [it was] done in good faith and not merely as a veneer to disguise

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[138] *Id*. at 1540-1541.

[139] *Id*. at 513, Labor Arbiter's Decision.

[140] *Id*. at 1539, Decision dated July 22, 2008.

[141] *Remerco Garments Manufacturing v. Minister of Labor and Employment,* 219 Phil. 681, 689 (1985) [Per *J*. Cuevas, Second Division].

the illicit termination of employees. Equally significant is an employer's basis for determining who among its employees shall be retrenched."[142]

That the retrenchment affected ten (10) out of twelve (12) FASAP officers—seven (7) of them were dismissed while three (3) were demoted[143]—appears to be more than merely coincidental. As observed by the Labor Arbiter, the dismissal of the FASAP officers "virtually busted [FASAP] and rendered [it] ineffective to conduct its affairs."[144] This constitutes unfair labor practice by interfering with, restraining, or coercing employees in the exercise of their right to self-organization.[145]

Philippine Airlines having exercised its right to retrench in bad faith, the quitclaims executed by the retrenched employees should be set aside. The reason for retrenchment was not "sufficiently and convincingly established."[146] The quitclaims should be deemed involuntarily entered into, with the employees' consent obtained through fraud or mistake.[147]

This Court is aware of the corporate sector's important function in our "country's economic and social progress."[148] Embedded in its business success "is the ethos of business autonomy which allows freedom of business determination with minimal government intrusion to ensure economic independence and development in terms defined by businessmen."[149] Management

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[142] *Am-Phil Food Concepts, Inc. v. Padilla*, 744 Phil. 674, 690 (2014) [Per *J.* Leonen, Second Division]

[143] *Rollo*, G.R. No. 178083, p. 510, Labor Arbiter's Decision.

[144] *Id*.

[145] LABOR CODE ART. 248(a) renumbered as Art. 258. See *Lopez Sugar Corp. v. Franco,* 497 Phil. 806 (2005) [Per *J.* Callejo, Sr., Second Division]

[146] *F.F. Marine Corp. v. National Labor Relations Commission,* 495 Phil. 140, 158 (2005) [Per *J.* Tinga, Second Division].

[147] *Id*.

[148] *Id*. at 151.

[149] *Id.*

choices, however, cannot be an unrestrained privilege which can outweigh the constitutionally mandated protection given to labor.[150] Employment is one's way of livelihood.[151] One "cannot be deprived of his labor or work without due process of law."[152]

VI

Third motions for reconsideration must not be favored for they go against the public policy of immutability of final judgments. Final judgments must remain unalterable, regardless of perceived errors,[153] for reasons of economy and stability. Litigation must end at some point and prevailing parties should be allowed to enjoy the fruits of their victory.[154]

The actions of the majority of this Court *En Banc* in a separate administrative matter, reviving a second motion for reconsideration already decided upon and reversing a decision decided in favor of the union three (3) times, creates an ominous cloud that will besmirch our legitimacy. The majority has created an exception to our canonical rules on immutability of judgments.

It is certainly not justice that this Court has done.

For these reasons, I dissent.

ACCORDINGLY, I vote to:

(a) **DENY WITH FINALITY** Philippine Airlines, Inc.'s Motion for Reconsideration of the Resolution of October 2, 2009 and Second Motion for Reconsideration of the Decision of July 22, 2008;

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[150] *Id.*

[151] *Bataan Shipyard and Engineering Co., Inc. vs. National Labor Relations Commission,* 244 Phil. 280, 284 (1988) [Per *J.* Gancayco, First Divsion].

[152] *Id.*

[153] *Apo Fruits Corporation v. Land Bank of the Philippines,* 647 Phil. 251, 288 (2010) [Per *J.* Brion, *En Banc*].

[154] *See Sacdalan v. Court of Appeals,* 472 Phil. 472 Phil. 652 (2004) [Per *J.* Austria-Matinez, Second Division].

(b) **GRANT** the Flight Attendants and Stewards Association of the Philippines' Motion for Reconsideration dated October 17, 2011 and **REINSTATE** the Second Division's Resolution dated September 7, 2011; and

(c) **AFFIRM** this Court's Decision dated July 22, 2008 and Resolution dated October 2, 2009.

EN BANC

[G.R. No. 221706. March 13, 2018]

DEVELOPMENT BANK OF THE PHILIPPINES, *petitioner, vs.* **COMMISSION ON AUDIT**, *respondent.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; DEVELOPMENT BANK OF THE PHILIPPINES (DBP) CHARTER; BOARD OF DIRECTORS; THE LAW ONLY MENTIONS PER DIEM AS THE BOARD'S COMPENSATION.— Section 8 of the DBP Charter provides: **Board of Directors — Composition — Tenure — Per Diems. —** x x x **Unless otherwise set by the Board and approved by the President of the Philippines, members of the Board shall be paid a per diem of One Thousand Pesos (₱1,000.00) for each meeting of the Board of Directors actually attended:** Provided, That the total amount of per diems for every single month shall not exceed the sum of Seven Thousand Five Hundred Pesos (₱7,500.00). x x x Section 8 of the DBP Charter only mentions per diem as the compensation of the members of its Board. It does not declare any additional benefit, other than per diems, which the said members of the board may receive. x x x Accordingly, the phrase "[u]nless otherwise set by the Board and approved by the President of the Philippines," at the beginning of the 8th paragraph, Section 8 of the DBP Charter refers to the authority of the Board, with the approval

of the President, to increase the per diems of Board members only. The second sentence therein, which states that "[t]he total amount of per diems for every single month shall not exceed the sum of Seven thousand five hundred pesos (₱7,500.00)," bolsters the interpretation that the provision only refers to the per diem and not to the payment of any additional benefit of the Board. x x x DBM Circular Letter No. 2002-02 explains the non-entitlement of the Board to benefits other than those specifically provided by law, to wit: x x x **2.2 Members of the Board of Directors of agencies are not salaried officials of the government. As non-salaried officials, they are not entitled to PERA, ADCOM, YEB and retirement benefits unless expressly provided by law.** x x x To prevent the possibility of abuse in the grant of compensation, the law must be followed and it plainly states that the DBP Board is entitled solely to per diems. In the event that the Board believes the existing compensation of its members to be no longer reasonable under the present circumstances, the recourse is to lobby before Congress for the amendment of the DBP Charter and not the unilateral grant or increase of benefits.

2. ID.; ID.; ID.; ID.; ID.; DISALLOWED ADDITIONAL BENEFITS OF THE BOARD; GOOD FAITH ABSOLVES LIABLE OFFICERS FROM REFUND.— In *Zamboanga City Water District v. COA,* the Court held that approving officers could be absolved from refunding the disallowed amount if there was a showing of good faith, x x x Based on the [cited] cases, good faith may be appreciated in favor of the responsible officers under the Notice of Disallowance (ND) provided they comply with the following requisites: (**1**) **that they acted in good faith believing that they could disburse the disallowed amounts based on the provisions of the law; and (2) that they lacked knowledge of facts or circumstances which would render the disbursements illegal, such when there is no similar ruling by this Court prohibiting a particular disbursement or when there is no clear and unequivocal law or administrative order barring the same.** x x x In fine, the responsible officers of the DBP in this case have sufficiently established their defense of good faith, thus, they cannot be held liable to refund the additional benefits granted to the Board members.

APPEARANCES OF COUNSEL

The Solicitor General for respondent.
DBP Legal Services Group for petitioner.

D E C I S I O N

GESMUNDO, *J.*:

This is a petition for *certiorari* seeking to annul and set aside the December 17, 2014 Decision[1] and the August 18, 2015 Resolution[2] of the Commission on Audit *(COA)* in Decision No. 2014-396. The COA affirmed the March 18, 2011 Decision[3] of the COA-Corporate Government Sector *(CGS)* in CGS-A Decision No. 2011-002. The COA-CGS affirmed the May 18, 2007 Notice of Disallowance *(ND)* No. BOD-2006-007(06)[4] relative to the compensation and other benefits received by the Board of Directors *(Board)* of petitioner Development Bank of the Philippines *(DBP)*.

The Antecedents

On March 29, 2006, the DBP Board passed Resolution No. 0121[5] approving, among others, the entitlement of the DBP Chairman and Board, except for the DBP President and Chief Executive Officer, the following:

x x x x x x x x x

2. ₱1,000.00 per diem for every Board/ExCom meeting attended provided the total amount of per diems for every single month shall not exceed ₱7,500.00 (per Executive Order [EO] No. 81, DBP Charter). No per diem is given for attendance in Committee Meetings;

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[1] *Rollo,* pp. 35-43; concurred by Chairperson Ma. Gracia M. Pulido-Tan, Commissioner Heidi L. Mendoza and Commissioner Jose A. Fabia.

[2] *Id*. at 44.

[3] *Id*. at 123-128.

[4] *Id*. at 70-77.

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

3. Reimbursement of reasonable actual transportation and representation expenses such as the following:

a. Expenses for entertainment, promotions, gifts to corporate clients and donations and contributions to hospitals, foundations, hospices, civil and charitable organizations.

b. Expenses of the member for travel and other expenses related thereto including travel insurance.

c. Convention, workshop, seminar and conference fees and similar expenses relevant to the office and/or profession of the member.

d. Membership fee/s of the member concerned in not more than two (2) civic, professional organizations; monthly dues in not more than three (3) cultural, sports and recreation clubs.

e. Subscription/s of members to periodicals/publications on finance, banking, law, economics or other relevant subjects, x x x.

f. Member's personal medical, dental and optical expenses (including medicines, vitamins, physical therapy, not covered or beyond the limitations of the Health Care Plan) x x x.

4. Benefits under the Motor Vehicle Lease Purchase Plan (MVLPP).

5. Benefits under the DBP Health Care Plan.

x x x x x x x x x

7. Other benefits that may be allowed to be given pursuant to the Bank's Charter. (emphasis supplied)

On August 23, 2006, the DBP Board passed Resolution No. 0037[6] approving the following guidelines in determining the entitlement to per diems and other benefits of the Board:

1. [That] members of the Board shall continue to be entitled to ₱1,000.00 for each meeting of the Board actually attended:

2. That members of the Board shall be compensated at rates comparable to DBP consultants for work undertaken for

[6] *Id.* at 47-48.

the Bank including but not limited to Committee assignments, representation in DBP Branch and central office/international activities; client calls and consultations and provision of technical resource for DBP officers and staff;

3. That a record of such compensable hours shall be kept by the relevant bank officers which shall be the basis of any payments by the bank; [and]

4. **That costs to represent the Bank shall be reimbursed to members of the DBP Board.** (emphases supplied)

On September 20, 2006, the DBP Board sent a Memorandum[7] *(DBP Memorandum)* to the President of the Philippines requesting the approval of Resolution No. 0037. The DBP alleged that then President Gloria Macapagal Arroyo *(President Arroyo)* attached a Note[8] stating "No objection" on the said memorandum.

DBP paid its Board members benefits which were accounted as Representation and Entertainment — Others. It likewise paid the Board members rice subsidy and anniversary bonuses. Based on the DBP Schedule of Allowance granted to Chairman and Members of the Board,[9] as of December 31, 2006, DBP has paid the members of the Board rice subsidy, anniversary bonuses and representation and entertainment expenses in the total amount of ₱16,656,200.09.

Upon post-audit of the DBP accounts, the Supervising Auditor from the COA issued Audit Observation Memorandum[10] *(AOM)* No. HO-BODC-AOM-2006-001 dated March 20, 2007. It stated therein that the Board's compensations, which were charged under Representation and Entertainment – Others expense, were contrary to Section 8 of Executive Order *(E.O.)* No. 81,[11] as

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[7] *Id*. at 49-51.

[8] *Id*. at 52.

[9] *Id*. at 77.

[10] *Id*. at 53-59.

[11] Also known as "The 1986 Revised Charter of the Development Bank of the Philippines."

amended by Republic Act *(R.A.)* No. 8523 *(DBP Charter)*.[12] The AOM stated that pursuant to the law, the Board members are only entitled to per diem.

On April 23, 2007, DBP submitted its Comment[13] to the AOM arguing that there is no prohibition under the law in granting additional benefits to its Board members; and that it secured the approval of President Arroyo before granting the assailed benefits.

Notice of Disallowance

Not satisfied with its explanation, the Supervising Auditor issued a ND against the DBP, which stated: that pursuant to the DBP Charter, the Board members are only entitled to per diems; that the approval of the President under Section 8 of DBP Charter only refers to the increase of the per diem for each meeting attended; and that COA Decision No. 2001-026 dated January 25, 2001, provided that granting additional compensation to the Board members other than those prescribed requires legislative action and that it cannot be substituted by administrative authorization. It declared that the total amount disallowed of ₱16,565,200.09 must be returned by the Board members, Certify Payroll/HRM, Accountant, Cashier, and all payees per attached payrolls and schedules.

Aggrieved, the DBP appealed to the Director of COA-CGS.

The COA-CGS Ruling

In its decision, dated March 18, 2011, the COA-CGS affirmed the ND. It held that Section 8 of the DBP Charter mentions only of per diems and no other compensation. The COA-CGS observed the authority of the DBP Board with the approval of the President to "set" compensation is limited to the amount of per diem that may be granted to the Board. It also questioned the authenticity of the alleged approval of President Arroyo

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[12] Also known as "An Act Strengthening the Development Bank of the Philippines, Amending for the Purpose Executive Order No. 81."

[13] *Rollo,* pp. 60-69.

because her signature appeared in a separate note, and not in the DBP's memorandum.

Undaunted, DBP filed a petition for review before the COA.

The COA Ruling

In its decision dated December 17, 2014, the COA denied the petition and affirmed the COA-CGS ruling. It underscored that Section 8 of the DBP Charter only stated per diem and that the authority of the Board, with the approval of the President, is limited in setting the amount of the per diem. The COA reasoned that had Congress intended to allow the Board to receive other benefits, then it would have expressly stated so. It also cited Department and Budget and Management *(DBM)* Circular Letter No. 2002-02, which provides that Board members of agencies are non-salaried officials, thus, they are not entitled to benefits unless expressly provided by law. The COA further questioned the approval of the DBP Memorandum because the signature of the President was contained in a separate note and the said memorandum was not in the file of the Malacañang Records Office.

The DBP filed a motion for reconsideration but it was denied by the COA in its resolution dated August 18, 2015.

Hence, this petition.

ISSUES

I

THE AUTHORITY OF THE BOARD UNDER SECTION 8 OF THE DBP CHARTER, WITH THE APPROVAL OF THE PHILIPPINE PRESIDENT, IS NOT LIMITED TO THE AMOUNT OF THE PER DIEM THAT MAY BE GRANTED TO THE BOARD OF DIRECTORS (BOD).

II

THE NOTATION "NO OBJECTION" OF THEN PRESIDENT GLORIA MACAPAGAL ARROYO IN THE MEMORANDUM DATED SEPTEMBER 20, 2006 OF THE DBP BOD REQUESTING APPROVAL OF BOARD RESOLUTION NO. 0037 IS TANTAMOUNT

TO A STAMP OF APPROVAL AND SHOULD BE ACCORDED DUE RESPECT AND CREDENCE. IN FACT, THE SUPERVISING AUDITOR OF DBP DID NOT EVEN DISPUTE SAID APPROVAL.

III.

THE NOTICE OF DISALLOWANCE VIOLATED THE RIGHT OF DBP TO DUE PROCESS SINCE THE SUPERVISING AUDITOR ADDED AS A GROUND FOR DISALLOWANCE THE COA DECISION NO. 2001-026 DATED 25 JANUARY 2001 WHICH WAS NEVER MENTIONED IN AOM NO. HO-BODC-AOM-2006-001 DATED 20 MARCH 2007.

IV.

THE SUBJECT TRANSACTIONS WERE SUPPORTED BY THE FAVORABLE OPINION OF THE THEN COA GENERAL COUNSEL ON ISSUES SIMILAR TO THE INSTANT CASE.

V.

ASSUMING THAT THERE WAS A LEGAL BASIS IN DISALLOWING THE SUBJECT COMPENSATION AND OTHER BENEFITS, THE BOD AND ALL THE ACCOUNTABLE OFFICERS SHOULD NOT BE HELD LIABLE TO REFUND THE SAME SINCE THEY RELIED IN GOOD FAITH ON THE PERTINENT PROVISIONS OF THE DBP CHARTER AND THE PRESIDENTIAL APPROVAL.[14]

DBP argues that the authority of the Board under Section 8 of the DBP Charter is not limited to the amount of per diem that may be granted to the Board; that the President's note containing the words "No objection" is tantamount to her approval; that the President's approval of the DBP Memorandum, granting the Board members benefits other than per diems, should be accorded due respect, which was even recognized by the Supervising Auditor; and that the ND violated DBP's right to due process because it cited COA Decision No. 2001-026 even though it was not included in the AOM.

DBP avers that the COA General Counsel's opinion — that the affairs and properties of the DBP should be managed by the Board — renders COA estopped from assailing the Board's

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

benefits; and that assuming there was legal basis in disallowing the entitlements, the Board and its accountable officers should not be held liable for refund by reason of good faith. It prays for the issuance of a Temporary Restraining Order *(TRO)* against COA.

In its Comment,[15] the OSG counter that DBP failed to prove that there was grave abuse of discretion on the part of the COA. It contended that Section 8 of the DBP Charter indicates only per diem as compensation of the Board. The OSG emphasized that when a statute mentions one person, thing or consequence, it implies the exclusion of all others; and that the DBP Charter is similar to the Bases Conversion and Development Authority *(BCDA)* Charter, which limited the Board's benefits to per diem.

The OSG highlighted that the alleged approval of President Arroyo deserves scant consideration because it was written on a separate sheet of paper and its authenticity was unverified; that DBP's right to due process was not violated because it could still appeal the assailed ND; that the COA General Counsel's opinion is not applicable because it pertained to staff assistance and incidental expense of the Board; and that the Board and its officers cannot claim good faith because the DBP Charter states that the Board is only entitled to per diem.

In its Reply,[16] the DBP reiterated that there is no prohibition in granting additional benefits to the Board members and that President Arroyo approved the said benefits. It underscored that, even assuming that there is basis to disallow the said entitlements, the Board and the accountable officers should not be held liable to refund the same since they relied in good faith on the pertinent provisions of the DBP Charter and the President's approval.

The Court's Ruling

The petition is partially meritorious.

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[15] *Id*. at 213-243.

[16] *Id*. at 269-287.

Section 8 of the DBP Charter provides:

Board of Directors — Composition — Tenure — Per Diems. — The affairs and business of the Bank shall be directed and its properties managed and preserved and its corporate powers exercised, unless otherwise provided in this Charter, by a Board of Directors consisting of nine (9) members, to be appointed by the President of the Philippines. The term of office of the Chairman, President and the members of the Board of Directors shall be for a period of one year or until such time as their successors are appointed.

x x x x x x x x x

Unless otherwise set by the Board and approved by the President of the Philippines, members of the Board shall be paid a per diem of One Thousand Pesos (₱1,000.00) for each meeting of the Board of Directors actually attended: Provided, That the total amount of per diems for every single month shall not exceed the sum of Seven Thousand Five Hundred Pesos (₱7,500.00). (emphases supplied)

DBP essentially argues that Section 8 grants the Board authority to impart additional benefits other than per diem provided it has the approval of the President. It emphasizes on the phrase "[u]nless otherwise set by the Board and approved by the President of the Philippines." On the other hand, the OSG counters that the only compensation mentioned under Section 8 is per diem, hence, under the doctrine of *expressio unius est exclusio alterius,* all other benefits are excluded. It added that the authority of the Board, with the approval of the President, only refers to the increase of the per diem's amount, and not to the grant of additional benefits.

The Court finds that the COA did not commit grave abuse of discretion when it disallowed the amount of ₱16,565,200.09 from the benefits of the DBP Board members.

The law only mentions per diem as the Board's compensation

Section 8 of the DBP Charter only mentions per diem as the compensation of the members of its Board. It does not declare any additional benefit, other than per diems, which the said

members of the Board may receive. Conspicuously, the heading of the provision states that Section 8 only refers to the Board, their composition, tenure and **per diems.**

It is a settled rule of statutory construction that the express mention of one person, thing, act, or consequence excludes all others. This rule is expressed in the familiar maxim *expressio unius est exclusio alterius*. Where a statute, by its terms, is expressly limited to certain matters, it may not, by interpretation or construction, be extended to others. The rule proceeds from the premise that the legislature would not have made specified enumerations in a statute had the intention been not to restrict its meaning and to confine its terms to those expressly mentioned.[17]

Accordingly, the phrase "[u]nless otherwise set by the Board and approved by the President of the Philippines," at the beginning of the 8th paragraph, Section 8 of the DBP Charter refers to the authority of the Board, with the approval of the President, to increase the per diems of Board members only. The second sentence therein, which states that "[t]he total amount of per diems for every single month shall not exceed the sum of Seven thousand five hundred pesos (₱7,500.00)," bolsters the interpretation that the provision only refers to the per diem and not to the payment of any additional benefit of the Board.

The issue of whether Board members are entitled to benefits other than per diems has been settled in *Bases Conversion and Development Authority v. COA (BCDA v. COA).*[18] In said case, the BCDA alleged that the Board can grant the year-end benefit to its members because R.A. No. 7227, or the BCDA Charter, does not expressly prohibit it from doing so. In dismissing its argument, the Court ruled:

> The Court is not impressed. A careful reading of Section 9 of RA No. 7227 reveals that the Board is prohibited from granting its members other benefits. Section 9 states:

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[17] *Commissioner of Customs v. Court of Tax Appeals,* 296 Phil. 549 (1993); *San Pablo Manufacturing Corp. v. Commissioner of Internal Revenue,* 525 Phil. 281, 290 (2006).

[18] 599 Phil. 455 (2009).

> Members of the Board shall receive a *per diem* of not more than Five [T]housand [P]esos (₱5,000) for every board meeting: *Provided, however*, That the *per diem* collected per month does not exceed the equivalent of four (4) meetings: *Provided, further,* That the amount of *per diem* for every board meeting may be increased by the President but such amount shall not be increased within two (2) years after its last increase.

Section 9 specifies that Board members shall receive a *per diem* for every board meeting; limits the amount of *per diem* to not more than ₱5,000; limits the total amount of *per diem* for one month to not more than four meetings; and does not state that Board members may receive other benefits. In *Magno, Cabili, De Jesus, Molen, Jr.,* and *Baybay Water District,* the Court held that **the specification of compensation and limitation of the amount of compensation in a statute indicate that Board members are entitled only to the *per diem* authorized by law and no other.**

The specification that Board members shall receive a *per diem* of not more than ₱5,000 for every meeting and the omission of a provision allowing Board members to receive other benefits lead the Court to the inference that Congress intended to limit the compensation of Board members to the *per diem* authorized by law and no other. *Expressio unius est exclusio alterius.* **Had Congress intended to allow the Board members to receive other benefits, it would have expressly stated so.**[19] (citations omitted, emphases supplied)

BCDA v. COA declared that the BCDA Charter does not state that Board members may receive benefits other than per diems. Had its Charter intended the Board to receive other such benefits, then it would have expressly provided it. Similarly, in the present case, Section 8 of the DBP Charter only mentions per diem as the Board's compensation, hence, all other compensations are excluded.

DBM Circular Letter No. 2002-02 explains the non-entitlement of the Board to benefits other than those specifically provided by law, to wit:

> 2.0 To clarify and address issues/requests concerning the same, the following compensation policies are hereby reiterated:

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[19] *Id*. at 466-467.

2.1 PERA, ADCOM, YEB and retirement benefits are personnel benefits granted in addition to salaries. As fringe benefits, these shall be paid only when the basic salary is also paid.

2.2 Members of the Board of Directors of agencies are not salaried officials of the government. As non-salaried officials, they are not entitled to PERA, ADCOM, YEB and retirement benefits unless expressly provided by law. x x x.[20] (emphasis supplied)

In this case, the COA properly held that the DBP Board members are not salaried officials of the government, hence, they are not entitled to benefits unless specifically provided by law. Again, Section 8 of the DBP Chapter only mentions per diems as the compensation of the Board members; it does not expressly provide the grant of other benefits to the said members.

Interpretation that gives life to the law; avert arbitrary grant of benefits

In *BCDA v. COA,* the Court explained the rationale why the Board cannot grant its members benefits other than those expressly mentioned by law, to wit:

The Court cannot, in the guise of interpretation, enlarge the scope of a statute or insert into a statute what Congress omitted, whether intentionally or unintentionally.

When a statute is susceptible of two interpretations, the Court must "adopt the one in consonance with the presumed intention of the legislature to give its enactments the most reasonable and beneficial construction, the one that will render them operative and effective." The Court always presumes that Congress intended to enact sensible statutes. **If the Court were to rule that the Board could grant the year-end benefit to its members, Section 9 of RA No. 7227 would become inoperative and ineffective** — the specification that Board members shall receive a *per diem* of not more than ₱5,000 for every meeting; the specification that the *per diem* received per month shall not exceed the equivalent of four meetings; the vesting

[20] *Id*. at 461-462.

of the power to increase the amount of *per diem* in the President; and the limitation that the amount of *per diem* shall not be increased within two years from its last increase would all become useless because the Board could always grant its members other benefits.[21] (citations omitted, emphasis supplied)

Applying the rationale in this case, Section 8 of the DBP Charter, which expressly states that Board members will receive per diems, would be rendered inoperative if the Board, with the approval of the President, would grant additional benefits not cited under the law. Further, limitations on the increase of the per diems would also be rendered futile because the Board could disregard the same in allowing additional and higher benefits.

Likewise, to adopt the view of the DBP would result in unbridled grant of benefits to the Board members. There are no limitations in the law that would restrain the benefits which could be readily created by the Board. The grant of additional compensation of the Board members would rest solely in the hands of the executive branch, through the authority of the DBP and with the approval of the President; and the legislative branch would have no prerogative in determining the limits of such compensation.

Even DBP Resolution No. 0037,[22] which sought approval of the President with the DBP Memorandum, contains insufficient guidelines regarding the value, limitation and disbursement of additional compensation to the Board. It simply states that the Board shall be compensated at rates comparable to DBP consultants and that the costs to represent the DBP shall be reimbursed. Verily, the standpoint of the DBP will set a dangerous precedent regarding the grant of benefits to the Board not contemplated by law due to the lack of discernable safeguards.

To prevent the possibility of abuse in the grant of compensation, the law must be followed and it plainly states that the DBP Board is entitled solely to per diems. In the event that the Board believes the existing compensation of its members to be no

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[21] *Id.* at 468.

[22] *Rollo,* p. 47.

longer reasonable under the present circumstances, the recourse is to lobby before Congress for the amendment of the DBP Charter and not the unilateral grant or increase of benefits.[23]

The approval of the President is immaterial; the DBP was not deprived of due process; the General Counsel's opinion is inapplicable

The COA doubts the alleged approval of President Arroyo of the DBP Memorandum because it was placed in a separate note; in contrast, DBP insists on the said approval being authentic. Nevertheless, considering that the Board cannot grant additional benefits to its members, other than per diems, then the President's approval of the DBP Memorandum is **immaterial**. Again, under the DBP Charter, only the per diems of its members may be increased by the Board with the approval of the President. Notably, in *BCDA v. COA,* the compensation and benefit scheme was approved by then President Fidel V. Ramos[24] *(President Ramos),* but the Court affirmed the disallowance of additional benefits because the BCDA Charter only allowed per diems as compensation of the Board members.

DBP's argument — that it was deprived of due process because the ND mentioned COA Decision No. 2001-026 even though it was not included in the AOM — is specious. It is apparent from the assailed decision that COA Decision No. 2001-026 was not the sole basis in denying DBP's petition. Assuming *arguendo* that the decision was cited in the ND, it did not violate DBP's right to due process because it still had the opportunity to question the same through an appeal before the Director of the COA-CGS and, subsequently, to the COA *En Banc.*

In addition, DBP argues that the COA General Counsel's opinion renders the COA estopped from questioning the grant

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[23] See *Social Security System v. Commission on Audit,* G.R. No. 210940, September 6, 2016, where the Court held that the Social Security Commission cannot unilaterally increase its benefits without the amendment of its charter.

[24] *Supra* note 18 at 469.

of added benefits. The opinion, however, does not refer to the grant of additional compensation to the Board members other than per diem; rather, it involves the entitlement of qualified staff and other resources to the Board members. The compensation of the Board members is not the subject of the said opinion. Thus, it is evidently inapplicable.

Good faith absolves liable officers from refund

DBP argues that, even assuming that the additional benefits of the Board are disallowed, the responsible officers cited under the ND should not be held liable by reason of good faith.

The Court finds the argument impressed with merit.

Good faith is a state of mind denoting "honesty of intention, and freedom from knowledge of circumstances which ought to put the holder upon inquiry; an honest intention to abstain from taking any unconscientious advantage of another, even through technicalities of law, together with absence of all information, notice, or benefit or belief of facts which render transaction unconscientious."[25]

In *Zamboanga City Water District v. COA*,[26] the Court held that approving officers could be absolved from refunding the disallowed amount if there was a showing of good faith, to wit:

> Further, a thorough [reading] of Mendoza and the cases cited therein would lead to the conclusion that ZCWD officers who approved the increase of GM Bucoy's are also not obliged either to refund the same. In *de Jesus v. Commission on Audit*, the Court absolved the petitioner therein from refunding the disallowed amount on the basis of good faith, pursuant to *de Jesus and the Interim Board of Directors, Catbalogan Water District v. Commission on Audit*. In the latter case, the Court absolved the Board of Directors from refunding the allowances they received because at the time they

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[25] *PEZA v. COA*, 690 Phil. 104, 115 (2012), as cited in *Maritime Industry Authority v. COA*, 750 Phil. 288 (2015).

[26] 779 Phil. 225 (2016).

were disbursed, no ruling from the Court prohibiting the same had been made. Applying the ruling in *Blaquera v. Alcala (Blaquera)*, the Court reasoned that the Board of Directors need not make a refund on the basis of good faith, because they had no knowledge that the payment was without a legal basis.

In *Blaquera*, the Court did not require government officials who approved the disallowed disbursements to refund the same on the basis of good faith, to wit:

> Untenable is petitioners' contention that the herein respondents be held personally liable for the refund in question. Absent a showing of bad faith or malice, public officers are not personally liable for damages resulting from the performance of official duties.
>
> Every public official is entitled to the presumption of good faith in the discharge of official duties. Absent any showing of bad faith or malice, there is likewise a presumption of regularity in the performance of official duties.
>
> x x x x x x x x x
>
> Considering, however, that all the parties here acted in good faith, we cannot countenance the refund of subject incentive benefits for the year 1992, which amounts the petitioners have already received. Indeed, no *indicia* of bad faith can be detected under the attendant facts and circumstances. The officials and chiefs of offices concerned disbursed such incentive benefits in the honest belief that the amounts given were due to the recipients and the latter accepted the same with gratitude, confident that they richly deserve such benefits.

A careful reading of the above-cited jurisprudence shows that even approving officers may be excused from being personally liable to refund the amounts disallowed in a COA audit, provided that they had acted in good faith. Moreover, lack of knowledge of a similar ruling by this Court prohibiting a particular disbursement is a badge of good faith.[27] (citations and emphases omitted)

In *Mendoza v. COA*,[28] the Court held that the lack of a similar ruling disallowing a certain expenditure is a basis of good faith.

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[27] *Id*. at 248-249.

[28] 717 Phil. 491 (2013).

At the time that the disallowed disbursement was made, there was yet to be a jurisprudence or ruling that the benefits which may be received by members of the commission were limited to those enumerated under the law.

By the same token, in *SSS v. COA,*[29] the Court pronounced that good faith may be appreciated because the approving officers did not have knowledge of any circumstance or information which would render the disallowed expenditure illegal or unconscientious. The Board members therein could also not be deemed grossly negligent as they believed they could disburse the said amounts on the basis of the provisions of the R.A. No. 8282[30] to create their own budget.

On the other hand, in *Silang v. COA*,[31] the Court ordered the approving officers to refund the disbursed CNA incentives because they were found to be in bad faith as the disallowed incentives were negotiated by the collective bargaining representative in spite of non-accreditation with the CSC.

In *MWSS v. COA*,[32] the Court affirmed the disallowance of the grant of mid-year financial, *bigay-pala* bonus, productivity bonus and year-end financial assistance to MWSS officials and employees. It also ruled therein that the MWSS Board members did not act in good faith and may be held liable for refund because they approved the said benefits even though these patently contravened R.A. No. 6758, which clearly and unequivocally stated that governing boards of the GOCCs can no longer fix compensation and allowances of their officials or employees.

Based on the foregoing cases, good faith may be appreciated in favor of the responsible officers under the ND provided they comply with the following requisites: (**1) that they acted in**

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[29] G.R. No. 210940, September 6, 2016.

[30] Also known as the Social Security Law.

[31] 742 Phil. 327 (2015).

[32] G.R. Nos. 195105 & 220729, November 21, 2017.

good faith believing that they could disburse the disallowed amounts based on the provisions of the law; and (2) that they lacked knowledge of facts or circumstances which would render the disbursements illegal, such when there is no similar ruling by this Court prohibiting a particular disbursement or when there is no clear and unequivocal law or administrative order barring the same.

Here, the DBP believed in good faith that they could grant additional benefits to the Board members based on Section 8 of the DBP Charter. When the Board issued DBP Resolution Nos. 0121 and 0037, they honestly believed they were entitled to the said compensation. More so, the DBP claimed that the additional benefits had the *imprimatur* of President Arroyo.

Likewise, at the time of the issuance of the said DBP resolutions on March 29, 2006 and August 23, 2006, there was still no existing jurisprudence or administrative order or regulation expressly prohibiting the disbursement of benefits and compensation to the DBP Board members aside from per diems. It was only on February 26, 2009 that the Court promulgated *BCDA v. COA* prohibiting the grant of compensation other than per diems to Board members.

Certainly, it is only in the present case that the Court is given the opportunity to construe Section 8 of the DBP Charter. The said provision has to be categorically interpreted by Court in order to conclude that the Board members are not entitled to benefits other than per diems and that the phrase "[u]nless otherwise set by the Board and approved by the President of the Philippines" solely refers to per diems. Thus, the Board members and the accountable officers cannot be faulted for their flawed interpretation of the law.

The Court reached a similar conclusion in *BCDA v. COA* where it held that while the grant of benefits was disallowed, the Board members acted in good faith and were not required to refund the same due to the following reasons: the BCDA Charter authorized its Board to adopt their own compensation and benefit scheme; there was no express prohibition against

Board members from receiving benefits other than the per diem; and President Ramos approved the said benefits.

Further, in *DBP v. COA*,[33] the Court affirmed the disallowance of the subsidy granted by DBP to its officers who availed themselves of the Motor Vehicle Lease-Purchase Plan *(MVLPP)* benefits amounting to 50% of the acquisition cost of the motor vehicles. It found that the RR-MVLPP[34] did not permit the use of the car funds in granting multi-purpose loans or for investment instruments. Nonetheless, the officers of DBP, including its Board members, were absolved from liability in good faith because there was no specific provision in the RR-MVLPP that prohibited the manner in which DBP implemented the plan and there was no showing that the officers abused the MVLPP benefits.

In fine, the responsible officers of the DBP in this case have sufficiently established their defense of good faith, thus, they cannot be held liable to refund the additional benefits granted to the Board members. To reiterate, good faith may be appreciated because the approving officers were without knowledge of any circumstance or information which would render the transaction illegal or unconscientious.[35] Likewise, they had the belief that the President approved their expenditure. Neither could they be deemed grossly negligent as they also believed they could disburse the said amounts on the basis of the provisions of the DBP Charter.

WHEREFORE, the petition is **PARTIALLY GRANTED.** The December 17, 2014 Decision and the August 18, 2015 Resolution of the Commission on Audit in Decision No. 2014-396 are **AFFIRMED** with **MODIFICATION** that the persons identified as personally liable under the Notice of Disallowance No. BOD-2006-007(06) are not required to refund the disallowed amounts therein.

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[33] G.R. Nos. 216538 & 216954, April 18, 2017.

[34] Rules and Regulations for the Implementation of the Motor Vehicle Lease-Purchase Plan for Government Financial Institution.

[35] *Supra* note 28.

SO ORDERED.

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

Sereno, C.J., on leave.

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[*] Acting Chief Justice per Special Order No. 2539, dated February 28, 2018.

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—— Under Rule 42, Sec. 1 of the Rules of Court, the remedy from an adverse decision rendered by a Regional Trial Court exercising its appellate jurisdiction is to file a verified petition for review with the Court of Appeals. (*Id*.)

ATTORNEYS

Attorney-client relationship —— An attorney's duty to safeguard the client's interests commences from his retainer until his effective release from the case or the final disposition of the whole subject matter of the litigation; during that period, he is expected to take such reasonable steps and such ordinary care as his client's interests may require. (Segovia, Jr. *vs*. Atty. Javier, A.C. No. 10244 [Formerly CBD Case No. 07-2085], March 12, 2018) p. 522

Code of Professional Responsibility —— A lawyer shall represent his client with zeal within the bounds of the law; a lawyer shall employ only fair and honest means to attain the lawful objectives of his client and shall not present, participate in presenting or threaten to present unfounded criminal charges to obtain an improper advantage in any case or proceeding; a lawyer should not file or threaten to file any unfounded or baseless criminal case or cases against the adversaries of his client designed to secure a leverage to compel the adversaries to yield or withdraw their own cases against the lawyer's client. (Malvar *vs*. Atty. Feir, A.C. No. 11871 [Formerly CBD Case No. 154520], March 5, 2018) p. 8

Commission on Bar Discipline —— The orders of the CBD as the investigating arm of the Court in administrative cases against lawyers were not mere requests but directives which should have been complied with promptly and completely. (Segovia, Jr. *vs*. Atty. Javier, A.C. No. 10244 [Formerly CBD Case No. 07-2085], March 12, 2018) p. 522

Contingent fee contract —— A contingent fee arrangement is valid in this jurisdiction; it is generally recognized as valid and binding, but must be laid down in an express

whether respondent is still fit to continue to be an officer of the court in the dispensation of justice. (*Id*.)

Duties — As an officer of the court, it is a lawyer's duty to uphold the dignity and authority of the court; the highest form of respect for judicial authority is shown by a lawyer's obedience to court orders and processes. (Zarcilla *vs*. Atty. Quesada, Jr., A.C. No. 7186, March 13, 2018) p. 629

–– The lawyer has the duty to exert his best judgment in the prosecution or defense of the case entrusted to him and to exercise reasonable and ordinary care and diligence in the pursuit or defense of the case. (Segovia, Jr. *vs*. Atty. Javier, A.C. No. 10244 [Formerly CBD Case No. 07-2085], March 12, 2018) p. 522

Liability of –– Disciplinary proceedings should only revolve around the determination of the respondent-lawyer's administrative and not his civil liability, it must be clarified that this rule remains applicable only to claimed liabilities which are purely civil in nature; for instance, when the claim involves moneys received by the lawyer from his client in a transaction separate and distinct and not intrinsically linked to his professional engagement, such as the acceptance fee. (Segovia, Jr. *vs*. Atty. Javier, A.C. No. 10244 [Formerly CBD Case No. 07-2085], March 12, 2018) p. 522

–– When a lawyer receives money from the client for a particular purpose, the lawyer is bound to render an accounting to the client showing that the money was spent for the intended purpose; if the lawyer does not use the money for the intended purpose, he must immediately return the money to the client; respondent's failure to return the money to complainants despite failure to use the same for the intended purpose is conduct indicative of lack of integrity and propriety and a violation of the trust reposed on him. (*Id*.)

Practice of law — It is a calling that, unlike mercantile pursuits which enjoy a greater deal of freedom from governmental interference, is impressed with a public interest, for which

—— Under varied field conditions, strict compliance with the requirements of Sec. 21, Art. II of R.A. No. 9165 may not always be possible; the IRR of R.A. No. 9165 which is now crystallized into statutory law with the passage of R.A. No. 10640 provides that the said inventory and photography may be conducted at the nearest police station or office of the apprehending team in instances of warrantless seizure, and that non-compliance with the requirements of Sec. 21, Art. II of R.A. No. 9165, under justifiable grounds, will not render void and invalid the seizure and custody over the seized items so long as the integrity and evidentiary value of the seized items are properly preserved by the apprehending officer or team; the failure of the apprehending team to strictly comply with the procedure laid out in Sec. 21, Art. II of R.A. No. 9165 and its IRR does not *ipso facto* render the seizure and custody over the items as void and invalid, provided that the prosecution satisfactorily proves that: (a) there is justifiable ground for non-compliance; and (b) the integrity and evidentiary value of the seized items are properly preserved. (People *vs*. Lumaya, G.R. No. 231983, March 7, 2018) p. 473

(People *vs*. Sanchez *y* Licudine, G.R. No. 231383, March 7, 2018) p. 457

—— While ideally the procedure on the chain of custody should be perfect and unbroken, in reality, it is not as it is almost always impossible to obtain an unbroken chain; rigid obedience to procedure creates a scenario wherein the safeguards that we set to shield the innocent are likewise exploited by the guilty to escape rightful punishment. (People *vs*. Moner *y* Adam, G.R. No. 202206, March 5, 2018) p. 42

Illegal possession of dangerous drugs —— The prosecution must establish the following elements to warrant his conviction: (*a*) the accused was in possession of an item or object identified as a prohibited drug; (*b*) such possession was not authorized by law; and (*c*) the accused

of the employee and without prejudice to the latter, resorted to by management during periods of business recession, industrial depression or seasonal fluctuations or during lulls over shortage of materials; it is a reduction in manpower, a measure utilized by an employer to minimize business losses incurred in the operation of its business. (Flight Attendants and Stewards Assoc. of the Phils. (FASAP) *vs*. Phil. Airlines, Inc., G.R. No. 178083, March 13, 2018) p. 680

—— Employer may resort to retrenchment in order to avert serious business losses; to justify such retrenchment, the following conditions must be present, namely: 1) the retrenchment must be reasonably necessary and likely to prevent business losses; 2) the losses, if already incurred, are not merely *de minimis*, but substantial, serious, actual and real, or, if only expected, are reasonably imminent; 3) the expected or actual losses must be proved by sufficient and convincing evidence; 4) the retrenchment must be in good faith for the advancement of its interest and not to defeat or circumvent the employees' right to security of tenure; and 5) there must be fair and reasonable criteria in ascertaining who would be dismissed and who would be retained among the employees, such as status, efficiency, seniority, physical fitness, age, and financial hardship for certain workers. (*Id*.)

—— In selecting the employees to be dismissed, the employer is required to adopt fair and reasonable criteria, taking into consideration factors like: (*a*) preferred status; (*b*) efficiency; and (*c*) seniority, among others. (*Id*.)

—— Proof of actual financial losses incurred by the employer would not be a condition *sine qua non* for retrenchment. (*Id*.)

—— The employer is burdened to observe good faith in implementing a retrenchment program; good faith on its part exists when the retrenchment is intended for the advancement of its interest and is not for the purpose of defeating or circumventing the rights of the employee under special laws or under valid agreements. (*Id*.)

attach for ignorance of the law, the assailed order, decision or actuation of the judge in the performance of official duties must not only be found erroneous but, most importantly, it must also be established that he was moved by bad faith, dishonesty, hatred, or some other similar motive. (Office of the Court Administrator *vs*. Judge Dumayas, A.M. No. RTJ-15-2435[Formerly A.M. No. 15-08-306-RTC], March 6, 2018) p. 173

—— Complete disregard of the settled rules and jurisprudence on self-defense and of the events that transpired after the first fight, despite the existence of testimonial and physical evidence to the contrary, in the appreciation of the privileged mitigating circumstance of incomplete self-defense casts serious doubt on his impartiality and good faith; such doubt cannot simply be brushed aside despite his belated justification and explanation. (*Id*.)

—— Ignorance of the law is the mainspring of injustice; judges owe it to the public to be knowledgeable, hence, they are expected to have more than just a modicum of acquaintance with the statutes and procedural rules; they must know them by heart. (*Id*.)

—— Judges are expected to exhibit more than just cursory acquaintance with statutes and procedural laws; they must know the laws and apply them properly in all good faith; judicial competence requires no less; unfamiliarity with the rules is a sign of incompetence; basic rules must be at the palm of his hand; when a judge displays utter lack of familiarity with the rules, he betrays the confidence of the public in the courts. (*Id*.)

—— Not every error or mistake of a judge in the performance of his official duties renders him liable; for liability to attach for ignorance of the law, the assailed order, decision or actuation of the judge in the performance of official duties must not only be found erroneous but, most importantly, it must also be established that he was moved by bad faith, dishonesty, hatred, or some other like motive. (Atty. Causing *vs*. Judge Dela Rosa, OCA IPI No. 17-4663-RTJ. March 7, 2018) p. 261

JUDGES AND JUSTICES

monthly pension pay of a retired justice or judge as longevity pay is always divisible by five (5). (*Id.*)

–– The computation of the longevity pay to include the fractional percentage of the unexpired five-year period. (*Id.*)

–– The fractional portion of the unexpired five-year period immediately preceding retirement is the direct consequence of the tacking of leave credits to the judicial service of every retired justice or judge; however, we also recognize that Sec. 42 of B.P. Blg. 129 was crafted in such a way as to grant a full 5% adjustment of the longevity pay for every cycle of five years of judicial service; all attempts must be made in order to realize the granting of a full 5% as adjustment in the computation of the longevity pay. (*Id.*)

–– The idea that the tacking of leave credits, as authorized by A.C. No. 58-2003, is for compulsory retirees only is erroneous; the inference that A.C. No. 58-2003 may be applied to optional retirees *pro hac vice*, proceeding as it does from a wrong premise, must be rejected; the application of A.C. No. 58-2003 to justices and judges who optionally retire need not be on *pro hac vice* basis but on due consideration of the manifest intent of the law to make the longevity pay available to all types of retirees. (*Id.*)

–– The longevity pay is paid to justices or judges who had proven their loyalty to the judiciary, regardless of the manner by which they retire; for purposes of computing longevity pay, the tacking of leave credits to the length of judicial service rendered by qualified justices and judges should be applied to optional retirees as well. (*Id.*)

–– The reason for denying an incumbent member of the judiciary the inclusion of his or her service as bar examiner in the computation of the longevity pay is simple, at the time of his or her appointment as bar examiner, an incumbent justice or judge is already concurrently serving

LAND REGISTRATION

Certificate of title –– A fundamental principle in land registration is that the certificate of title serves as evidence of an indefeasible and incontrovertible title to the property in favor of the person whose name appears therein; it is conclusive evidence as regards ownership of the land therein described, and the titleholder is entitled to all the attributes of ownership of the property, including possession; the person who has a Torrens title over a parcel of land is entitled to possession thereof; when the property is registered under the Torrens system, the registered owner's title to the property is presumed legal and cannot be collaterally attacked, especially in a mere action for unlawful detainer. (Heirs of Jose Mariano *vs.* City of Naga, G.R. No. 197743, March 12, 2018) p. 531

LIBEL

Commission of — The Information must allege with particularity where the defamatory article was printed and first published, as evidenced or supported by, for instance, the address of their editorial or business offices in the case of newspapers. (People *vs.* Macasaet, G.R. No. 196094, March 5, 2018) p. 15

Venue — Rules on venue of criminal actions for libel: 1) whether the offended party is a public official or a private person, the criminal action may be filed in the Court of First Instance of the province or city where the libelous article is printed and first published; 2) if the offended party is a private individual, the criminal action may also be filed in the Court of First Instance of the province where he actually resided at the time of the commission of the offense; 3) if the offended party is a public officer whose office is in Manila at the time of the commission of the offense, the action may be filed in the Court of First Instance of Manila; and 4) if the offended party is a public officer holding office outside of Manila, the action may be filed in the Court of First Instance of the province or city where he held office at the time of the

even under P.D. No. 957, specifically Sec. 31, it was optional on the part of the owner or developer of the subdivision to donate the roads and open space found therein; under P.D. No. 1216, the transfer of ownership from the subdivision owner-developer to the local government is not automatic but requires a positive act from the owner-developer before the city or municipality can acquire dominion over the subdivision roads, such that until and unless the roads are donated, ownership remains with the owner-developer. (*Id.*)

PARTIES

Indispensable parties –– A party-in-interest without whom no final determination can be had of an action, and who shall be joined either as plaintiffs or defendants; it is a party whose interest will be affected by the court's action in the litigation. (Enriquez *Vda. De* Santiago *vs*. Vilar, G.R. No. 225309, March 6, 2018) p. 217

Locus standi –– Petitioners' averments in their Complaint taken together with such supporting documents are sufficient to establish petitioners' *locus standi* in instituting this action, as well as to bring petitioners' case within the purview of the court *a quo*'s jurisdiction as conferred by the law. (Heirs of Tunged *vs*. Sta. Lucia Realty and Dev't., Inc., G.R. No. 231737, March 6, 2018) p. 231

PRE-NEED CODE OF THE PHILIPPINES (R.A. NO. 9829)

Application of –– In respect of pre-need companies, the trust fund is set up from the planholders' payments to pay for the cost of benefits and services, termination values payable to the planholders and other costs necessary to ensure the delivery of benefits or services to the planholders as provided for in the contracts; the trust fund is to be treated as separate and distinct from the paid-up capital of the company, and is established with a trustee under a trust agreement approved by the Securities and Exchange Commission to pay the benefits as provided in the pre-

—— Treachery, whenever alleged in the information and competently and clearly proved, qualifies the killing and raises it to the category of murder; for the qualifying circumstance of treachery to be appreciated, the following elements must be shown: (1) the employment of means, method, or manner of execution would ensure the safety of the malefactor from the defensive or retaliatory acts of the victim, no opportunity being given to the latter to defend himself or to retaliate; and (2) the means, method, or manner of execution was deliberately or consciously adopted by the offender. (*Id*.)

RAPE

Commission of —— Being sweethearts does not negate the commission of rape because such fact does not give appellant the license to have sexual intercourse against her will and will not exonerate him from the criminal charge of rape; being sweethearts does not prove consent to the sexual act. (People *vs*. Nuyte *y* Asma, G.R. No. 219111, March 12, 2018) p. 592

—— Committed by a man who shall have carnal knowledge of a woman under any of the following circumstances: (a) through force, threat or intimidation; (b) when the offended party is deprived of reason or is otherwise unconscious; (c) by means of fraudulent machination or grave abuse of authority; and (d) when the offended party is under twelve (12) years of age or is demented, even though none of the circumstances mentioned above is present. (People *vs*. Vibar, G.R. No. 215790, March 12, 2018) p. 575

—— Considering that the Information failed to state that the accused-appellants knew of the mental condition of AAA, the accused-appellants should be held guilty of simple rape. (People *vs*. Martinez, G.R. No. 226394, March 7, 2018) p. 410

—— Did not matter that the penetration lasted only for a short period of time because carnal knowledge means sexual bodily connection between persons and the slightest

part of the victim necessary; rape through intimidation includes the moral kind such as the fear caused by threatening the girl with a knife or pistol. (*Id*.)

–– The RPC, as amended, punishes the rape of a mentally disabled person regardless of the perpetrator's awareness of his victim's mental condition; proof that the accused knew of the victim's mental disability is important only for purposes of qualifying the charge of rape, under Art. 266-B (paragraph 10) which imposes the death penalty if the offender knew of the victim's mental disability at the time of the commission of the rape. (People *vs*. Martinez, G.R. No. 226394, March 7, 2018) p. 410

Rape through sexual intercourse –– Carnal knowledge with a woman who is a mental retardate is rape; this stems from the fact that a mental condition of retardation deprives the complainant of that natural instinct to resist a bestial assault on her chastity and womanhood; sexual intercourse with one who is intellectually weak to the extent that she is incapable of giving consent to the carnal act already constitutes rape. (People *vs*. Martinez, G.R. No. 226394, March 7, 2018) p. 410

–– To sustain a conviction for rape through sexual intercourse, the prosecution must prove the following elements beyond reasonable doubt, namely: (i) that the accused had carnal knowledge of the victim; and (ii) that said act was accomplished (a) through the use of force or intimidation, or (b) when the victim is deprived of reason or otherwise unconscious, or (c) by means of fraudulent machination or grave abuse of authority, or (d) when the victim is under 12 years of age or is demented. (*Id*.)

Statutory rape –– Committed by sexual intercourse with a woman below 12 years of age regardless of her consent, or the lack of it, to the sexual act; the absence of free consent in cases of statutory rape is conclusively presumed and as such, proof of force, intimidation or consent is immaterial. (People *vs*. Ramirez *y* Tulunghari, G.R. No. 219863, March 6, 2018) p. 203

SALES

Contract of –– One who purchases a real property which is in possession of another should at least make some inquiry beyond the face of the title; a purchaser cannot close his eyes to facts which should put a reasonable man upon his guard, and then claim that he acted in good faith under the belief that there was no defect in the title of the vendor. (Solco *vs*. Megaworld Corp., G.R. No. 213669, March 5, 2018) p. 77

STATUTES

Construction of –– The whole and every part of the statute must be considered in fixing the meaning of any of its parts and in order to produce a harmonious whole; statute must be so construed as to harmonize and give effect to all its provisions whenever possible; every meaning to be given to each word or phrase must be ascertained from the context of the body of the statute since a word or phrase in a statute is always used in association with other words or phrases and its meaning may be modified or restricted by the latter. (Blay *vs*. Baña, G.R. No. 232189, March 7, 2018) p. 494

Interpretation of –– Any criminal law showing ambiguity will always be construed strictly against the state and in favor of the accused; these concepts signify that courts must not bring cases within the provision of law that are not clearly embraced by it; an act must be pronounced criminal clearly by the statute prior to its commission. (People *vs*. PO1 Sullano, G.R. No. 228373, March 12, 2018) p. 613

Procedural rules –– In rendering justice, courts have always been, as they ought to be, conscientiously guided by the norm that on the balance, technicalities take a backseat against substantive rights, and not the other way around; substantive law outweighs procedural technicalities. (De Roca *vs*. Dabuyan, G.R. No. 215281, March 5, 2018) p. 98

TAXATION

Income tax — Par. (c) of Sec. 228 of the NIRC contemplates a double recovery by the taxpayer of an overpaid income tax that arose from an over-withholding of creditable taxes; the refundable amount is the excess and unutilized creditable withholding tax; this paragraph envisages that the taxpayer had previously asked for and successfully recovered from the BIR its excess creditable withholding tax through refund or tax credit certificate; it could not be viewed any other way. (University Physicians Services Inc. – Mgt., Inc. *vs*. Commissioner of Internal Revenue, G.R. No. 205955, March 7, 2018) p. 376

—— There are two options available to the corporation whenever it overpays its income tax for the taxable year: (1) to carry over and apply the overpayment as tax credit against the estimated quarterly income tax liabilities of the succeeding taxable years (also known as automatic tax credit) until fully utilized (meaning, there is no prescriptive period); and (*2*) to apply for a cash refund or issuance of a tax credit certificate within the prescribed period; such overpayment of income tax is usually occasioned by the over-withholding of taxes on the income payments to the corporate taxpayer. (*Id*.)

THIRD-PARTY CLAIM

Rule on — Although courts can exercise their limited supervisory powers in determining whether the sheriff acted correctly in executing the judgment, they may only do so if the third-party claimant has *unmistakably* established his ownership or right of possession over the subject property; if the third-party claimant's evidence does not persuade the court of the validity of his title or right to possession thereto, the third-party claim will, and should be, denied. (Tee Ling Kiat *vs*. Ayala Corp., G.R. No. 192530, March 7, 2018) p. 288

UNLAWFUL DETAINER

Action for — A judgment directing a party to deliver possession of a property to another is *in personam*; any judgment therein is binding only upon the parties properly impleaded

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