PHILIPPINE REPORTS

VOL. 838

AUGUST 1, 2018 TO AUGUST 15, 2018

VOLUME 838

REPORTS OF CASES

DETERMINED IN THE

SUPREME COURT

OF THE

PHILIPPINES

FROM

AUGUST 1, 2018 TO AUGUST 15, 2018

SUPREME COURT
MANILA
2020

Prepared
by

The Office of the Reporter
Supreme Court
Manila
2020

EDNA BILOG-CAMBA
DEPUTY CLERK OF COURT & REPORTER

FE CRESCENCIA QUIMSON-BABOR
ASSISTANT CHIEF OF OFFICE

MA. VICTORIA JAVIER-IGNACIO
COURT ATTORNEY VI & CHIEF, LAW REPORTS DIVISION

FLOYD JONATHAN LIGOT TELAN
COURT ATTORNEY VI & CHIEF, EDITORIAL DIVISION

JOSE ANTONIO CANCINO BELLO
COURT ATTORNEY V & CHIEF, RECORDS DIVISION

LEUWELYN TECSON-LAT
COURT ATTORNEY V

ROSALYN ORDINARIO GUMANGAN
COURT ATTORNEY V

FLORDELIZA DELA CRUZ-EVANGELISTA
COURT ATTORNEY IV

FREDERICK INTE ANCIANO
COURT ATTORNEY IV

MA. CHRISTINA GUZMAN CASTILLO
COURT ATTORNEY IV

LORELEI SANTOS BAUTISTA
COURT ATTORNEY III

SUPREME COURT OF THE PHILIPPINES

HON. MARIA LOURDES P.A. SERENO, Chief Justice
HON. ANTONIO T. CARPIO, Senior Associate Justice
HON. PRESBITERO J. VELASCO, JR., Associate Justice
HON. TERESITA J. LEONARDO-DE CASTRO, Associate Justice
HON. DIOSDADO M. PERALTA, Associate Justice
HON. LUCAS P. BERSAMIN, Associate Justice
HON. MARIANO C. DEL CASTILLO, Associate Justice
HON. ESTELA M. PERLAS-BERNABE, Associate Justice
HON. MARVIC MARIO VICTOR F. LEONEN, Associate Justice
HON. FRANCIS H. JARDELEZA, Associate Justice
HON. ALFREDO BENJAMIN S. CAGUIOA, Associate Justice
HON. SAMUEL R. MARTIRES, Associate Justice
HON. NOEL G. TIJAM, Associate Justice
HON. ANDRES B. REYES, JR., Associate Justice
HON. ALEXANDER G. GESMUNDO, Associate Justice

ATTY. EDGAR O. ARICHETA, Clerk of Court En Banc
ATTY. ANNA-LI R. PAPA-GOMBIO, Deputy Clerk of Court En Banc

FIRST DIVISION

Chairperson

Hon. Maria Lourdes P.A. Sereno

Members

Hon. Teresita J. Leonardo-De Castro
Hon. Mariano C. Del Castillo
Hon. Francis H. Jardeleza
Hon. Noel G. Tijam

Division Clerk of Court

Atty. Librada C. Buena

SECOND DIVISION

Chairperson

Hon. Antonio T. Carpio

Members

Hon. Diosdado M. Peralta
Hon. Estela M. Perlas-Bernabe
Hon. Alfredo Benjamin S. Caguioa
Hon. Andres B. Reyes, Jr.

Division Clerk of Court

Atty. Ma. Lourdes C. Perfecto

THIRD DIVISION

Chairperson

Hon. Presbitero J. Velasco, Jr.

Members

Hon. Lucas P. Bersamin
Hon. Marvic Mario Victor F. Leonen
Hon. Samuel R. Martires
Hon. Alexander G. Gesmundo

Division Clerk of Court

Atty. Wilfredo Y. Lapitan

PHILIPPINE REPORTS
CONTENTS

PHILIPPINE REPORTS

Page

Page

Page

Page

Page

Page

Page

REPORT OF CASES

DETERMINED IN THE

SUPREME COURT OF THE PHILIPPINES

THIRD DIVISION

[G.R. No. 163959. August 1, 2018]

MARCELINO E. LOPEZ, FELIZA LOPEZ, ZOILO LOPEZ, LEONARDO LOPEZ, and SERGIO F. ANGELES, *petitioners, vs.* **THE HON. COURT OF APPEALS and PRIMEX CORPORATION,** *respondents.*

[G.R. No. 177855. August 1, 2018]

MARCELINO E. LOPEZ, FELIZA LOPEZ, HEIRS OF ZOILO LOPEZ, LEONARDO LOPEZ, and SERGIO F. ANGELES, *petitioners, vs.* **THE HONORABLE COURT OF APPEALS and PRIMEX CORPORATION,** *respondents.*

SYLLABUS

1. CIVIL LAW; OBLIGATIONS AND CONTRACTS; CONTRACT OF AGENCY; REQUISITES.— By the contract of agency, a person binds himself to render some service or to do something in representation or on behalf of another with the consent or authority of the latter. For a contract of agency to exist, therefore, the following requisites must concur, namely: (1) there must be consent coming from persons or entities having the juridical capacity and capacity to act to enter into such contract; (2) there must exist an object in the form of services

to be undertaken by the agent in favor of the principal; and (3) there must be a cause or consideration for the agency.

2. ID.; ID.; ID.; THE DEATH OF THE PRINCIPAL EXTINGUISHES THE AGENCY; THUS, ANY ACT OF THE AGENT AFTER THE DEATH OF HIS PRINCIPAL SHALL BE VOID *AB INITIO* UNLESS THE ACT FELL UNDER THE EXCEPTIONS ESTABLISHED UNDER ARTICLE 1930 AND ARTICLE 1931 OF THE CIVIL CODE.— One of the modes of extinguishing a contract of agency is by the death of either the principal or the agent. In *Rallos v. Felix Go Chan & Sons Realty Corporation*, the Court declared that because death of the principal extinguished the agency, it should follow *a fortiori* that any act of the agent *after* the death of his principal should be held *void ab initio* unless the act fell under the exceptions established under Article 1930 and Article 1931 of the *Civil Code*. The exceptions should be strictly construed. In other words, the general rule is that the death of the principal or, by analogy, the agent extinguishes the contract of agency, unless any of the circumstances provided for under Article 1930 or Article 1931 obtains; in which case, notwithstanding the death of either principal or agent, the contract of agency continues to exist. Atty. Angeles asserted that he had been authorized by the Lopezes to enter into the *Compromise Agreement*; and that his authority had formed part of the original pre-trial records of the RTC. Marcelino Lopez died on December 3, 2009, as borne out by the Certificate of Death submitted by his heirs. As such, the *Compromise Agreement*, which was filed on February 2, 2012, was entered into more than two years after the death of Marcelino Lopez. Considering that Atty. Angeles had ceased to be the agent upon the death of Marcelino Lopez, Atty. Angeles' execution and submission of the *Compromise Agreement* in behalf of the Lopezes by virtue of the special power of attorney executed in his favor by Marcelino Lopez were void *ab initio* and of no effect. The special power of attorney executed by Marcelino Lopez in favor of Atty. Angeles had by then become *functus officio*. For the same reason, Atty. Angeles had no authority to withdraw the petition for review on *certiorari* as far as the interest in the suit of the now-deceased principal and his successors-in-interest was concerned.

3. REMEDIAL LAW; CIVIL PROCEDURE; PLEADINGS AND PRACTICE; FILING AND SERVICE; IF A PARTY HAS ENGAGED THE SERVICES OF TWO COUNSELS, NOTICE TO EITHER OF THEM IS EFFECTIVE NOTICE TO THE PARTY.— Section 2, Rule 13 of the *Rules of Court* expressly states that if a party has appeared by counsel, service shall be made upon his counsel or one of them. Considering that there is no question that the petitioners had engaged the services of two counsels, namely: Atty. Angeles and Atty. Pantaleon, notice to either of them was effective notice to the petitioners. Considering that there was no notice of withdrawal or substitution of counsel shown to have been made, the notice of the decision to either Atty. Angeles and Atty. Pantaleon was, for all purposes, notice to the petitioners. This is because the CA could not be expected to itself ascertain whether the counsel of record had been changed.

4. ID.; ID.; APPEALS; IF A PARTY HAS ENGAGED THE SERVICES OF TWO COUNSELS, THE SERVICE OF THE DECISION ON EITHER OF THE LATTER STARTS THE RUNNING OF THE PERIOD FOR SEEKING THE RECONSIDERATION OF THE DECISION OR FOR PERFECTING AN APPEAL NOTWITHSTANDING THAT THE OTHER COUNSEL HAD YET TO RECEIVE THE COPY OF THE DECISION; THUS, THE FAILURE OF THE PARTY'S COUNSEL TO TIMELY FILE THE *MOTION FOR RECONSIDERATION* OR TO APPEAL RENDERED THE JUDGMENT OF THE COURT OF APPEALS FINAL AND EXECUTORY.— Atty. Pantaleon received the CA's decision on January 30, 2007, while Atty. Angeles received it on February 23, 2007. The service of the decision on Atty. Pantaleon started the running of the period for seeking the reconsideration of the decision or for perfecting an appeal notwithstanding that Atty. Angeles had yet to receive the copy of the decision. Under the circumstances, the petitioners effectively had until February 14, 2007 within which to seek the reconsideration or to perfect their appeal, but they failed to do either. They appear to have filed their *Motion for Reconsideration* only on March 6, 2007, which was too late for being already 35 days from notice of the decision. It is axiomatic that a party who fails to assail an adverse decision through the proper remedy within the period prescribed by law

for the purpose loses the right to do so; hence, the decision becomes final and binding as to such party. Similarly, where the motion for reconsideration is filed out of time, the order or decision sought to be thereby reconsidered attains finality. The failure of the petitioners' counsel to timely file the *Motion for Reconsideration* or to appeal rendered the judgment of the CA final and executory.

5. ID.; ID.; ID.; THE PERFECTION OF APPEAL IN THE MANNER AND WITHIN THE PERIOD SET BY LAW IS NOT ONLY MANDATORY BUT JURISDICTIONAL, AND THE FAILURE TO PERFECT THE SAME RENDERS THE JUDGMENT FINAL AND EXECUTORY.— We reiterate that the right to appeal is neither a natural nor a constitutional right, but is a mere statutory right. The party seeking to avail himself of the right to appeal must comply with the procedures and rules governing appeals set by law; otherwise, the right may be lost or squandered. In other words, the perfection of appeal in the manner and within the period set by law is not only mandatory but jurisdictional, and the failure to perfect the same renders the judgment final and executory. Execution of the judgment then follows, for just as a losing party has the privilege to appeal within the prescribed period, so does the winner have the correlative right to enjoy the finality of the decision.

APPEARANCES OF COUNSEL

Pantaleon Law Office and *Henry R. Rosantina* for petitioners.

Sergio F. Angeles for petitioners. (deceased)

Benitez Parlade Africa Herrera Parlade & Panga Law Office (PABLAW), collaborating counsel for petitioners.

Jose Ma. Q. Austria and Ericson O. Ang for private respondent Primex Corporation.

R E S O L U T I O N

BERSAMIN, *J.*:

An agency is extinguished by the death of the principal. Any act by the agent subsequent to the principal's death is *void ab initio*, unless any of the exceptions expressly recognized in Article 1930 and Article 1931 of the *Civil Code* is applicable.

On March 7, 2012, the Court definitively decided this case by promulgating the resolution:[1] (1) noting the *Compromise Agreement* entered into by the parties; (2) granting the *Joint Motion to Dismiss and Withdraw* the petition for review on *certiorari*; and (3) denying the petitions for review on *certiorari* in these consolidated appeals on the ground of mootness.

Before Us now is the so-called *Urgent Motion to Recall or Reconsider the March 7, 2012 Resolution Giving Effect to the so-called "Compromise Agreement" submitted by Atty. Sergio Angeles and Primex President Ang and to Cite Them in Contempt of Court*[2] filed by the heirs of deceased Marcelino E. Lopez, one of the original petitioners herein, in order to oppose and object to the *Compromise Agreement* on the ground that Atty. Sergio Angeles, a counsel of the petitioners and also a petitioner himself, had entered into the same without valid authority.

Antecedents

Involved herein is the sale of the 14-hectare property situated in Antipolo City between the petitioners (Lopez, *et al*.) and respondent Primex Corporation (Primex).

The Court of Appeals (CA) summarized the antecedents thusly:

> On 29 April 1991, plaintiff-appellant Primex Corporation, hereinafter referred to as PRIMEX, filed against the herein defendants-appellees a complaint for injunction, specific performance and damages before the Regional Trial Court of Pasig.

---

[1] *Rollo* (G.R. No. 177855), pp. 360-361.

[2] *Id*. at 427-430.

In its complaint, PRIMEX alleged that it had, on 12 September 1989, as vendee, entered into a Deed of Conditional Sale (DCS) relative to a portion of land particularly designated as Lot 15 of subdivision plan, PSD-328610, containing more or less ONE HUNDRED FORTY THOUSAND and TWENTY NINE square meters (140,029 m^2) from a mother parcel of land comprising an area of more or less 198,888 square meters located along Sumilong Highway, Barrio La Paz, Antipolo, Rizal, covered by an approved **Homestead Patent under Survey No. H-138612** and **Tax Declaration No. 04-04804**, with the herein defendants-appellees as vendors.

The parties agreed at a purchase price of TWO HUNDRED EIGHTY PESOS (₱280.00) per square meter, translating into a total land purchase value of THIRTY NINE MILLION TWO HUNDRED EIGHT THOUSAND AND ONE HUNDRED TWENTY PESOS (₱39,208,120.00).

PRIMEX claimed that from the time of the execution of the DCS with the defendants-appellees, the company had dutifully complied with all its monetary obligations under the said contract and was again ready to pay another ₱2,000,000.00 upon presentation by the defendants-appellees, among others, of a valid certificate of title in the name of one or all of the vendors as sanctioned under paragraph II(d) of the DCS.

However, instead of delivering a valid title to PRIMEX, the defendants-appellees delivered to the former Transfer Certificate of Title **[TCT] No. 196256** of the Register of Deeds of Rizal. The problem with this certificate according to PRIMEX was that while it was indeed registered under the name of one of the vendors – Marcelino Lopez, among several others, the title was nonetheless derived from Original Certificate of Title **[OCT] No. 537**, which had been declared by the Supreme Court in G.R. No. 90380 dated 13 September 1990 as null and void together with all the other TCTs emanating from the said OCT.

Consequently, PRIMEX refused to accept delivery of **[TCT] No. 196256** as a valid and sufficient compliance with the terms of the DCS which would warrant the release of another ₱2,000,000.00 in accordance with the schedule of payments stipulated by the parties in their written covenant.

Despite its failure to deliver a valid title to PRIMEX, the latter averred that the defendants-appellees in their letter dated 06 March

1991, as well as verbal statements, threatened to sell or mortgage the subject property to other parties on account of PRIMEX's ostensible refusal to pay part of the purchase price as scheduled.

Hence, PRIMEX's a complaint for specific performance and preliminary injunction.

On 15 May 1991, instead of filling an answer, defendants-appellees filed a Motion to Dismiss PRIMEX's complaint on the ground of improper venue and *litis pendencia*. As it turned out, the defendants-appellees had on 18 April 1991 earlier filed a complaint for Rescission of Conditional Sale and Damages against PRIMEX. The motion to dismiss was, however, subsequently denied by the trial court on 09 December 1991.

Defendants-appellees thereafter filed their Answer with Compulsory Counterclaim on 07 February 1992.

Defendants-appellees countered that they have fully complied with paragraph II (d) of the DCS. That contrary to PRIMEX's allegations, it was actually the latter who violated the terms of the DCS by obstinately refusing to pay the amount of one (1) million pesos pursuant to paragraph II (b) of the DCS despite fulfillment of the defendants-appellees of the conditions thereof. The defendants-appellees aver that PRIMEX's concern over the validity of **TCT No. 196256** was merely an imagined defect and a deliberate ploy to delay payments.

As compulsory counterclaim, the defendants-appellees on the basis of PRIMEX's allegedly serious and wanton breach of the terms of the DCS, sought for the rescission of the contract. The defendants-appellees also asked for damages and the dismissal of PRIMEX's complaint.

Meanwhile, during the pendency of the afore-mentioned case, the defendants-appellees delivered to PRIMEX **TCT No. 208538**. This certificate of title now contained the exact portion and area of the subject property sold to PRIMEX, and had already been allegedly acceptable to the latter, so much so that on 30 March 1992, the parties finally executed a Deed of Absolute Sale over the piece of property.

The defendants-appellees further acknowledged that in the interim, and as of 07 March 1993, PRIMEX already released several payments amounting to ₱24,892,805.85 for the subject property, excluding a separate ₱4,150,000.00 loan covered by a real estate mortgage it

extended to the defendants-appellee, Rogelio Amurao for the purpose of funding additional expenses incurred in relation to the fulfillment of the defendants-appellees obligations under the DCS.

In light of these developments, defendants-appellees on 06 June 1993 again asked the court for the dismissal of the case.

On 14 June 1993, PRIMEX filed an Opposition to the afore-stated motion to dismiss and claimed that **TCT No. 208358** submitted by the defendants-appellees was insufficient to comply with their obligations considering that there were still pending claims against the defendants-appellees and the subject property.

In its Supplemental Opposition dated 18 February 1994, PRIMEX emphasized that despite the delivery of **TCT No. 208358**, and its subsequent transfer in the name of two of the defendants-appellees, Rogelio Amurao and Sergio Angeles under **TCT No. 216875**, which in turn had been thereafter successively and finally transferred in the name of PRIMEX under new **TCT No. 216876**, still, the defendants-appellees failed to comply with their obligation to deliver the title to the property free from any lien and encumbrance.

As a matter of fact, PRIMEX divulged that there were still two (2) pending cases involving the subject property – one before the Court of Appeals which arose from Civil Case No. 677-A in the Regional Trial Court of Antipolo, Rizal, and another one with the Bureau of Lands docketed as PLAN H-138612. In fact, the *lis pendens* evidencing the pendency of the court case was carried over to **TCT No. 216876** now under PRIMEX's name. The inscription of *lis pendens* had been annotated on **TCT No. 196256** (the precursor of PRIMEX's TCT No. 216876) as early as 08 February 1992.

On 17 May 1995, the trial court declared PRIMEX non-suited for failing to appear during the scheduled pre-trial hearing on even date. The defendants-appellees were therefore allowed to present their evidence *ex parte*.

On 11 August 1995, the trial court rendered a Decision in favor of the defendants-appellees and ordered PRIMEX to pay the balance of the purchase price of the subject property, plus interests, damages and costs of suit.

Aggrieved by the decision, PRIMEX timely appealed to the Court of Appeals.

On 08 April 1999, this Court through its then Special Sixth Division promulgated a Decision setting aside, among others, the trial court's appealed decision dated 11 August 1995, and remanding the case for trial *de novo*.

After trial, the court *a quo* rendered anew a decision in favor of the herein defendants-appellees, which in gist, dismissed the herein plaintiff-appellant's complaint, declared the parties' Deed of Conditional Sale and Deed of Sale covering the subject property rescinded, and ordered the mutual restitution between the parties and the payment of damages and interests to the winning party.[3]

After the Regional Trial Court (RTC) rendered judgment on January 30, 2004,[4] the petitioners as the plaintiffs filed a *Motion for Execution of Judgment Pending Appeal on Possession and Compensatory Damages.*[5] The RTC granted their motion through the special order dated March 15, 2004.[6]

Aggrieved, the respondents assailed the special order in the CA through a petition for *certiorari*, prohibition and *mandamus* with prayer for the issuance of a temporary restraining order (TRO) and writ of preliminary injunction on the ground of the RTC thereby gravely abusing its discretion amounting to lack or excess of jurisdiction (G.R. No. 163959). Nonetheless, on May 31, 2004, the CA granted the petition, and annulled the special order.[7]

The petitioners then brought their own petition for *certiorari* in this Court to annul the resolution issued by the CA in G.R. No. 163959.

Meanwhile, on January 23, 2007, the CA promulgated its assailed decision resolving the appeal of the judgment of the RTC in Pasig City (G.R. No. 177855) by reversing and setting

---

[3] *Id*. at 18-26.

[4] *Rollo* (G.R. No. 163959), pp. 88-112; penned by Judge Celso D. Laviña.

[5] *Id*. at 113-119.

[6] *Id*. at 133-140.

[7] *Id*. at 38-39.

aside the judgment, and ordering the respondent to pay the petitioners the full balance of the purchase price of the property with legal interest of 6% *per annum*.[8]

It is noted at this juncture that because the petitioners had engaged the services of two different attorneys, Atty. Sergio Angeles and Atty. Martin Pantaleon, another issue concerning the timeliness of the *Motion for Reconsideration* filed by the petitioners arose. Atty. Pantaleon received a copy of the CA decision in G.R. No. 177855 on January 30, 2007, while Atty. Angeles received it on February 23, 2007. Atty. Pantaleon would have had until February 14, 2007 within which to file the petitioners' *Motion for Reconsideration* but failed to do so. On his part, Atty. Angeles had until March 10, 2007, and filed a *Motion for Reconsideration* on March 6, 2007.

The CA denied the *Motion for Reconsideration* for having been filed out of time, and declared its decision dated January 23, 2007 final and executory as of February 14, 2007.[9]

The respondent moved to declare the decision of January 23, 2007 as final and executory, and to remand the case to the RTC for execution.

The petitioners appealed to the Court for the review of the adverse decision dated January 23, 2007. In its resolution promulgated on April 16, 2008, the Court gave due course to the appeal, and required the parties to submit their memoranda.

On February 21, 2012, the parties submitted the *Compromise Agreement* with *Joint Motion to Dismiss and Withdrawal of Petition*.[10]

On March 7, 2012, the Court issued the resolution being challenged by the heirs of the late Marcelino Lopez: (1) noting

---

[8] *Rollo* (G.R. No. 177855), pp. 88-114; penned by Associate Justice Andres B. Reyes, Jr. (now a Member of the Court), with the concurrence of Associate Justice Noel G. Tijam (now a Member of the Court) and Associate Justice Sesinando E. Villon.

[9] *Id*. at 116-124.

[10] *Rollo* (G.R. No. 163959), pp. 294-297.

the *Compromise Agreement* with *Joint Motion to Dismiss and Withdrawal of Petition*; (2) granting the *Joint Motion to Dismiss and Withdrawal of Petition*; and (3) denying the petitions for review on *certiorari* on the ground of mootness.

Thereafter, the heirs of Marcelino Lopez filed their oppositions arguing that Atty. Angeles no longer had the authority to enter into and submit the *Compromise Agreement* because the special power of attorney in his favor had ceased to have force and effect upon the death of Marcelino Lopez.[11]

Ruling of the Court

1.

The authority of Atty. Angeles was terminated upon the death of Marcelino Lopez

By the contract of agency, a person binds himself to render some service or to do something in representation or on behalf of another with the consent or authority of the latter.[12] For a contract of agency to exist, therefore, the following requisites must concur, namely: (1) there must be consent coming from persons or entities having the juridical capacity and capacity to act to enter into such contract; (2) there must exist an object in the form of services to be undertaken by the agent in favor of the principal; and (3) there must be a cause or consideration for the agency.[13]

One of the modes of extinguishing a contract of agency is by the death of either the principal or the agent.[14] In *Rallos v.*

---

[11] *Rollo* (G.R. No. 177855), pp. 362-365.

[12] Article 1868, *Civil Code*.

[13] Vitug, *Civil Law*, Vol. IV, Rex Printing Co., Inc., Quezon City, 2006, pp. 182-184.

[14] Article 1919 of the *Civil Code* provides:

> Art. 1919. Agency is extinguished:
>
> (1) By its revocation;
>
> (2) By the withdrawal of the agent;

Felix Go Chan & Sons Realty Corporation,[15] the Court declared that because death of the principal extinguished the agency, it should follow *a fortiori* that any act of the agent *after* the death of his principal should be held *void ab initio* unless the act fell under the exceptions established under Article 1930[16] and Article 1931[17] of the *Civil Code*. The exceptions should be strictly construed. In other words, the general rule is that the death of the principal or, by analogy, the agent extinguishes the contract of agency, unless any of the circumstances provided for under Article 1930 or Article 1931 obtains; in which case, notwithstanding the death of either principal or agent, the contract of agency continues to exist.

Atty. Angeles asserted that he had been authorized by the Lopezes to enter into the *Compromise Agreement*; and that his authority had formed part of the original pre-trial records of the RTC.

Marcelino Lopez died on December 3, 2009, as borne out by the Certificate of Death[18] submitted by his heirs. As such, the *Compromise Agreement*, which was filed on February 2,

---

(3) By the death, civil interdiction, insanity or insolvency of the principal or of the agent;

(4) By the dissolution of the firm or corporation which entrusted or accepted the agency;

(5) By the accomplishment of the object or purpose of the agency;

(6) By the expiration of the period for which the agency was constituted. (1732a)

[15] G.R. No. L-24332, January 31, 1978, 81 SCRA 251.

[16] Art. 1930. The agency shall remain in full force and effect even after the death of the principal, if it has been constituted in the common interest of the latter and of the agent, or in the interest of a third person who has accepted the stipulation in his favor. (n)

[17] Art. 1931. Anything done by the agent, without knowledge of the death of the principal or of any other cause which extinguishes the agency, is valid and shall be fully effective with respect to third persons who may have contracted with him in good faith. (1738).

[18] *Rollo* (G.R. No. 177855), p. 368.

2012, was entered into more than two years after the death of Marcelino Lopez. Considering that Atty. Angeles had ceased to be the agent upon the death of Marcelino Lopez, Atty. Angeles' execution and submission of the *Compromise Agreement* in behalf of the Lopezes by virtue of the special power of attorney executed in his favor by Marcelino Lopez were void *ab initio* and of no effect. The special power of attorney executed by Marcelino Lopez in favor of Atty. Angeles had by then become *functus officio*. For the same reason, Atty. Angeles had no authority to withdraw the petition for review on *certiorari* as far as the interest in the suit of the now-deceased principal and his successors-in-interest was concerned.

The want of authority in favor of Atty. Angeles was aggravated by the fact that he did not disclose the death of the late Marcelino Lopez to the Court. His omission reflected the height of unprofessionalism on his part, for it engendered the suspicion that he thereby tried to pass off the *Compromise Agreement* as genuine and valid despite his authority under the special power of attorney having terminated for all legal purposes.

Accordingly, the March 7, 2012 resolution granting the *Joint Motion to Dismiss and Withdrawal of Petition* is set aside, and, consequently, the appeal of the petitioners is reinstated.

2.

The CA did not err in declaring its decision final and executory on the ground of non-appeal

By their petition for review on *certiorari* dated June 25, 2007,[19] the Lopezes seek the review and reversal of the decision of the CA promulgated on January 23, 2007 in CA-G.R. CV No. 83159, and the nullification of the resolution promulgated on May 17, 2007.[20]

We note that the CA thereby reversed and set aside the judgment of the RTC rescinding the parties' *Deed of Conditional*

---

[19] *Rollo* (G.R. No. 177855), pp. 56-84.

[20] *Id*. at 116-124.

Sale and *Deed of Sale* covering the property *in litis* and ordering mutual restitution between the parties; and instead directed Primex to pay the petitioners the full balance of the purchase price of the property plus legal interest of 6% *per annum*.

In the assailed resolution, the CA denied the petitioners' *Motion for Reconsideration* for having been filed out of time; and declared its decision dated January 23, 2007 final and executory as of February 14, 2007.

The petitioners submit that the CA thereby erred considering that Atty. Angeles had until March 10, 2007 within which to file the *Motion for Reconsideration*, which he did on March 6, 2007.

We find and hold that the CA correctly acted in issuing the assailed decision and resolution.

Section 2, Rule 13 of the *Rules of Court* expressly states that if a party has appeared by counsel, service shall be made upon his counsel or one of them. Considering that there is no question that the petitioners had engaged the services of two counsels, namely: Atty. Angeles and Atty. Pantaleon, notice to either of them was effective notice to the petitioners.[21] Considering that there was no notice of withdrawal or substitution of counsel shown to have been made, the notice of the decision to either Atty. Angeles and Atty. Pantaleon was, for all purposes, notice to the petitioners.[22] This is because the CA could not be expected to itself ascertain whether the counsel of record had been changed.[23]

---

[21] *Damasco v. Arrieta*, No. L-18879, January 31, 1963, 7 SCRA 224, 226.

[22] *Arambulo v. Court of Appeals*, G.R. No. 105818, September 17, 1993, 226 SCRA 589, 597; *Rinconada Telephone Company, Inc. v. Buenviaje,* G.R. Nos. L-49241-42, April 27, 1990, 184 SCRA 701, 704-705; *UERM Employees Union-FFW v. Minister of Labor and Employment*, G.R. No. 75838, August 21, 1989, 177 SCRA 165, 177; *Tumbagahan v. Court of Appeals*, G.R. No. L-32684, September 20, 1988, 165 SCRA 485, 488-489; *Lee v. Romillo, Jr.,* G.R. No. 60937, May 28, 1988, 161 SCRA 589, 599-600.

[23] *Lee v. Romillo, Jr.,* G.R. No. 60937, May 28, 1988, 161 SCRA 589, 600.

Atty. Pantaleon received the CA's decision on January 30, 2007, while Atty. Angeles received it on February 23, 2007. The service of the decision on Atty. Pantaleon started the running of the period for seeking the reconsideration of the decision or for perfecting an appeal notwithstanding that Atty. Angeles had yet to receive the copy of the decision. Under the circumstances, the petitioners effectively had until February 14, 2007 within which to seek the reconsideration or to perfect their appeal, but they failed to do either. They appear to have filed their *Motion for Reconsideration* only on March 6, 2007, which was too late for being already 35 days from notice of the decision.

It is axiomatic that a party who fails to assail an adverse decision through the proper remedy within the period prescribed by law for the purpose loses the right to do so; hence, the decision becomes final and binding as to such party.[24] Similarly, where the motion for reconsideration is filed out of time, the order or decision sought to be thereby reconsidered attains finality.[25] The failure of the petitioners' counsel to timely file the *Motion for Reconsideration* or to appeal rendered the judgment of the CA final and executory.

We reiterate that the right to appeal is neither a natural nor a constitutional right, but is a mere statutory right. The party seeking to avail himself of the right to appeal must comply with the procedures and rules governing appeals set by law; otherwise, the right may be lost or squandered.[26] In other words, the perfection of appeal in the manner and within the period set by law is not only mandatory but jurisdictional, and the

---

[24] *Building Care Corporation/Leopard Security & Investigation Agency v. Macaraeg*, G.R. No. 198357, December 10, 2012, 687 SCRA 643, 650, citing *Ocampo v. Court of Appeals (Former Second Division)*, G.R. No. 150334, March 20, 2009, 582 SCRA 43, 49.

[25] *Pangasinan Employees, Laborers and Tenants Assn. and Tuliao v. Hon. Martinez, etc., et al.,* 108 Phil. 89, 92 (1960).

[26] *Lebin v. Mirasol*, G.R. No. 164255, September 7, 2011, 657 SCRA 35, 44.

failure to perfect the same renders the judgment final and executory.[27] Execution of the judgment then follows, for just as a losing party has the privilege to appeal within the prescribed period, so does the winner have the correlative right to enjoy the finality of the decision.[28]

In view of the foregoing, the CA did not err in denying the *Motion for Reconsideration* and in declaring its decision as final and executory.

WHEREFORE, the **COURT:**

(1) DECLARES the *Compromise Agreement* **VOID**;

(2) SETS ASIDE the resolution granting the *Joint Motion to Dismiss and Withdrawal of Petition* promulgated on March 7, 2012; and

(3) AFFIRMS the decision of the Court of Appeals promulgated on January 23, 2007.

The petitioners shall pay the costs of suit.

SO ORDERED.

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

Martires, J., on leave.

---

[27] *Prieto v. Court of Appeals*, G.R. No. 158597, June 18, 2012, 673 SCRA 371, 377.

[28] *Accessories Specialist, Inc. v. Alabanza*, G.R. No. 168985, July 23, 2008, 559 SCRA 550, 563.

SECOND DIVISION

[G.R. No. 185303. August 1, 2018]

EDITHA S. MEDINA, RAYMOND A. DALANDAN, and CLEMENTE A. DALANDAN, AS THEIR attorney-in-fact, *petitioners, vs.* **SPS. NICOMEDES and BRIGIDA LOZADA,** *respondents.*

SYLLABUS

REMEDIAL LAW; SPECIAL CIVIL ACTIONS; C*ERTIORARI*; UNAVAILABLE IF THERE IS APPEAL, OR ANY PLAIN, SPEEDY AND ADEQUATE REMEDY IN THE ORDINARY COURSE OF LAW; AN ORDER OF DISMISSAL OF THE COMPLAINT IS A FINAL ORDER WHICH IS SUBJECT TO APPEAL. — Indeed, Section 1, Rule 41 of the Rules of Court (Rules) mandates that appeal is the remedy with respect to a judgment or final order that completely disposes of the case; and a petition for *certiorari* is unavailable if there is appeal, or any plain, speedy and adequate remedy in the ordinary course of law pursuant to Section 1, Rule 65 of the Rules. The petitioners filed their Rule 65 *certiorari* petition before the CA on April 8, 2008 after they received a copy of the RTC Order dated December 28, 2007 denying their Motion for Reconsideration thereof on February 7, 2008. By the time they filed their CA petition for *certiorari*, the reglementary period to appeal the RTC Order of dismissal of the petitioners' Complaint to the CA had already lapsed. In fact, their CA petition for *certiorari* was even filed a day late, bearing in mind that 2008 was a leap year and the period to file a Rule 65 *certiorari* petition is not later than 60 days from notice of the judgment, order or resolution pursuant to Section 4, Rule 65 of the Rules. Also, it is basic in remedial law that an order of dismissal of the complaint is a final order which is subject to appeal.

APPEARANCES OF COUNSEL

Stephen Monsanto for respondents.

R E S O L U T I O N

CAGUIOA, *J.*:

Before the Court is a petition[1] for review on *certiorari* (Petition) under Rule 45 of the Rules of Court assailing the Decision[2] dated August 26, 2008 (Decision) of the Court of Appeals[3] (CA) in CA-G.R. SP No. 102990, dismissing the petition for *certiorari* filed by the petitioners and the Resolution[4] dated November 10, 2008 of the CA denying the motion for reconsideration filed by the petitioners.

The Facts and Antecedent Proceedings

The CA Decision narrates the factual antecedents as follows:

It appears that a Complaint was filed by the plaintiffs (herein petitioners) against the defendants (herein private respondents), docketed as *Civil Case No. 07-0041*.[5] Petitioners failed to append a copy thereof to their instant Petition.

---

[1] *Rollo*, pp. 3-23, excluding Annexes.

[2] *Id*. at 25-32. Penned by Associate Justice Celia C. Librea-Leagogo, with Associate Justices Mario L Guariña III and Teresita Dy-Liacco Flores concurring.

[3] Fourteenth Division.

[4] *Rollo*, pp. 34-36.

[5] Civil Case No. 07-0041 is a complaint for "Quieting of Title, Reconveyance with Damages with *Lis Pendens*". The Complaint alleges that the petitioners are heirs and successors-in-interest of the late Clemente Dalandan (Clemente), who during his lifetime owned several parcels of land, including several plots of salt beds (called "*banigan*" or "*irasan*") located at Balite, Ilaya, Las Piñas City. Those salt beds (property) are being claimed by the petitioners as having been inherited by Clemente's two children (Emiliano Dalandan and Maria Dalandan) and after the latter's death, the property passed to Carmencita Dalandan and petitioners Raymond Dalandan and Clemente Dalandan as the children of Emiliano Dalandan and Clara A. Dalandan as well as to petitioner Editha Medina being the heir of Maria Dalandan Silverio and Julian Silverio. On July 10, 1997, the respondents were able to obtain an Original Certificate of Title No. (OCT) 0-78 covering an area of 31,535 square meters of land located at Balite, Ilaya, Las Piñas

A Motion to Dismiss with Motion to Punish for Contempt dated 10 May 2007 was filed by the defendants on the grounds that the cause of action is barred by prior judgment; plaintiffs have absolutely no cause of action; the court has no more jurisdiction over the subject matter of the action; plaintiffs and their counsel are guilty of blatant forum shopping; and the action has prescribed. Plaintiffs filed their Vehement Opposition dated 11 June 2007.

Respondent Judge [Lorna Navarro Domingo, as presiding judge of the Regional Trial Court of Las Piñas City, Branch 201 (RTC)] issued the first assailed Order dated 27 July 2007 dismissing the case on the ground of *res judicata*, which reads:

> *"Under consideration is the Motion to Dismiss with Motion to Punish for Contempt filed by defendants through counsel on the ground that the cause of action is barred by prior judgment and this court has no more jurisdiction over the subject matter of this action.*
>
> *"Opposition was filed by plaintiffs through counsel and alleged therein that res judicata does not apply since the Order dated January 29, 2004, the dismissal for failure of plaintiffs*

City which was covered by a Tax Declaration in the name of respondent Nicomedes Lozada after the cancellation of Clemente's Tax Declaration. The OCT of the respondents was obtained pursuant to a Decision dated February 23, 1989 of the Regional Trial Court of Makati, Metro Manila, Branch 134. The petitioners also alleged that notwithstanding the said Decision and OCT, they were "bequeathed with a parcel of land x x x measuring 10,929 square meters covered by Tax Declaration No. 005-37120." On January 11, 2001, the heirs of Clemente Dalandan filed a Complaint against Spouses Lozada entitled "*Heirs of the Late Clemente Dalandan vs. Nicomedes and Brigida Lozada*" for quieting of title and reconveyance and docketed as Civil Case No. LP-0010. However, because of plaintiffs' non-appearance during the pre-trial conference on January 29, 2004, the said case was dismissed. The said dismissal was appealed to the CA and the Supreme Court, which affirmed the dismissal by the lower court. In Civil Case No. 07-0041, the petitioners prayed that a judgment be rendered in their favor, decreeing that they are the only ones entitled to the ownership and possession of the 10,929 squares meters lot covered by Tax Declaration No. 005-37120 in the name of Clemente, and for reconveyance to them of the excess of the two hectares covered by OCT 0-78 as corresponding to the 10,929 square meters property or so much thereof that the respondents had fraudulently encroached belonging to the petitioners. See Complaint, *id*. at 49-54.

and counsel to attend the hearing is not a judgment on the merits.

"As pointed out by the plaintiffs through counsel, res judicata or bar by prior judgment is a doctrine which holds a matter adjudicated by a court of competent jurisdiction must be deemed to have been finally and conclusively settled if it arises in any subsequent litigation between the same parties and for the same cause.

"For the doctrine to apply four (4) requirements must be met:

(1.) the former judgment or order must be final;

'(2.) it must be a judgment, or an order on the merits;

'(3.) it must have been rendered by a court having jurisdiction over the subject matter and the parties; and

'(4.) there must be between the first and second actions identity of parties, of subject matter and of cause of action.

"The Court finds that when the defendants alleged as one of the grounds barred by a prior judgment, they were referring to decision of LRC No. M-24 rendered by the Regional Trial Court, Branch 134 of Makati Metro Manila on February 23, 1989 confirming the title of applicant Nicomedes J. Lozada, the defendants [sic] in this case.

"The Court can safely conclude that the four (4) requisites of res judicata have been complied with in this case.

"WHEREFORE, premises considered, the Court hereby order (sic) for the Dismissal of this case on the ground of res judicata.

"As to the Motion for Contempt, the Court hereby DENIES the said Motion for lack of merit.

"SO ORDERED."

Plaintiffs filed a Motion for Reconsideration dated 26 September 2007. The same was denied, for lack of merit, by the respondent Judge in the second assailed Order dated 28 December 2007.[6]

---

[6] *Rollo*, pp. 26-28.

The petitioners filed a petition for *certiorari* before the CA.

Ruling of the CA.

The CA in its Decision dismissed the petition. The CA reasoned out:

> In the case at bar, the assailed Orders dismissing the Complaint in *Civil Case No. 07-0041* on the ground of *res judicata* and denying the Motion for Reconsideration are final orders and completely dispose of the case. Appeal, and not a special civil action for *certiorari*, is the correct remedy to elevate said final orders. The manner of appealing said final orders is provided under Rule 41 of the 1997 Rules of Civil Procedure, as amended. The instant Petition for *Certiorari* cannot be used by petitioners as a substitute for a lost appeal. Accordingly, when a party adopts an improper remedy, the petition may be dismissed outright.[7]

The dispositive portion of the CA Decision states:

> **WHEREFORE**, premises considered, the Petition is **DISMISSED**. Costs against petitioners.
>
> **SO ORDERED.**[8]

The petitioners filed a Motion for Reconsideration dated September 12, 2008, which was denied by the CA in its Resolution[9] dated November 10, 2008.

Hence, the instant Petition. The respondents filed their "Comments"[10] dated February 19, 2009. The petitioners filed a Reply[11] dated March 23, 2009. The parties filed their respective Memorandum dated October 10, 2009[12] for the respondents and dated October 17, 2009[13] for the petitioners.

---

[7] *Id*. at 30. Citations omitted.

[8] *Id*.

[9] *Id*. at 34-36.

[10] *Id*. at 92-104.

[11] *Id*. at 114-124.

[12] *Id*. at 128-145.

[13] *Id*. at 146-164.

The Issue

The Petition raises the sole issue of whether the CA erred in dismissing the petition for review by *certiorari* under Rule 65.

The Court's Ruling

The Petition lacks merit.

The petitioners argue that the Order[14] dated July 27, 2007 of the RTC, dismissing their action for Quieting of Title and Reconveyance docketed as Civil Case No. 07-0041 on the ground of *res judicata*, and the Order[15] dated December 28, 2007, denying the motion for reconsideration of the earlier Order, are mere interlocutory Orders and are not final Orders because their action was not adjudged on its merits and an Order denying a motion for reconsideration is not appealable.[16]

On the other hand, the respondents argue that an Order granting a motion to dismiss is final, being an adjudication on the merits, so that the proper remedy is appeal; and the Order granting a motion to dismiss becomes final 15 days from receipt thereof with prejudice to the re-filing of the same case once such Order achieves finality.[17] They further argue that *certiorari* proceedings cannot be used as substitute for a lost appeal.[18]

The CA ruled:

An order or a judgment is deemed final when it finally disposes of a pending action, so that nothing more can be done with it in the trial court. In other words, the order or judgment ends the litigation in the lower court.[19] An order of dismissal, whether correct or not, is a final order. It is not interlocutory because the proceedings are

---

[14] *Id*. at 88-89. Penned by Judge Lorna Navarro Domingo.

[15] *Id*. at 90.

[16] Petition, *id*. at 15-17.

[17] Comments, *id*. at 101; citations omitted.

[18] *Id*., citing *Congressional Commercial Corporation v. CA*, 230 Phil. 188, 201 (1986) and *Dela Cruz v. IAC*, 219 Phil. 382, 385 (1985).

[19] *Rollo*, p. 29, citing *Madrigal Transport, Inc. v. Lapanday Holdings Corporation*, 479 Phil. 768, 778 (2004).

terminated; it leaves nothing more to be done by the lower court. Therefore, the remedy of the plaintiff is to appeal the order.[20]

Where appeal is available to the aggrieved party, the action for *certiorari* will not be entertained. Remedies of appeal (including petitions for review) and *certiorari* are mutually exclusive, not alternative or successive. Hence, *certiorari* is not and cannot be a substitute for an appeal, especially if one's own negligence or error in one's choice of remedy occasioned such loss or lapse. One of the requisites of *certiorari* is that there be no available appeal or any plain, speedy and adequate remedy.[21] The special civil action for *certiorari* is a limited form of review and is a remedy of last recourse. Where an appeal is available, *certiorari* will not prosper, even if the ground therefor is grave abuse of discretion.[22]

It bears emphasis that the general rule is that a writ of *certiorari* will not issue where the remedy of appeal is available to the aggrieved party. The remedies of appeal in the ordinary course of law and that of *certiorari* under Rule 65 are mutually exclusive and not alternative or cumulative.[23] Time and again, the High Court has reminded members of the bench and bar that the special civil action of *Certiorari* cannot be used as a substitute for a lost appeal.[24]

In the case at bar, the assailed Orders dismissing the Complaint in *Civil Case No. 07-0041* on the ground of *res judicata* and denying the Motion for Reconsideration are final orders and completely dispose of the case. Appeal, and not a special civil action for *certiorari*, is the correct remedy to elevate said final orders. The manner of appealing said final orders is provided under Rule 41 of the 1997 Rules of Civil Procedure, as amended. The instant Petition for *Certiorari* cannot be used by petitioners as a substitute for a lost appeal. Accordingly, when a party adopts an improper remedy, the petition may be dismissed outright.[25]

---

[20] *Id*., citing *Madrigal Transport, Inc. v. Lapanday Holdings Corporation*, *id*. at 784.

[21] *Id*., citing *Madrigal Transport, Inc. v. Lapanday Holdings Corporation*, *id*. at 782-783.

[22] *Id*., citing *Balayan v. Acorda*, 523 Phil. 305, 309 (2006).

[23] *Id*. at 29-30, citing *Young v. Spouses Sy*, 534 Phil. 246, 266 (2006).

[24] *Id*. at 30, citing *Cathay Pacific Steel Corporation v. Court of Appeals*, 531 Phil. 620, 631 (2006).

[25] *Id*., citing *Mercado v. Court of Appeals*, 484 Phil. 438, 444 (2004) and *Nagkahiusang Mamumuo sa Picop Resources, Inc. - Southern Phils.*

The Court totally agrees with the CA. Indeed, Section 1, Rule 41 of the Rules of Court (Rules) mandates that appeal is the remedy with respect to a judgment or final order that completely disposes of the case; and a petition for *certiorari* is unavailable if there is appeal, or any plain, speedy and adequate remedy in the ordinary course of law pursuant to Section 1, Rule 65 of the Rules. The petitioners filed their Rule 65 *certiorari* petition before the CA on April 8, 2008[26] after they received a copy of the RTC Order dated December 28, 2007 denying their Motion for Reconsideration thereof on February 7, 2008.[27] By the time they filed their CA petition for *certiorari*, the reglementary period to appeal the RTC Order of dismissal of the petitioners' Complaint to the CA had already lapsed. In fact, their CA petition for *certiorari* was even filed a day late, bearing in mind that 2008 was a leap year and the period to file a Rule 65 *certiorari* petition is not later than 60 days from notice of the judgment, order or resolution pursuant to Section 4, Rule 65 of the Rules.

Also, it is basic in remedial law that an order of dismissal of the complaint is a final order which is subject to appeal.

Consequently, the CA committed no reversible error.

WHEREFORE, the Petition is hereby **DENIED**. The Decision dated August 26, 2008 and Resolution dated November 10, 2008 of the Court of Appeals in CA-G.R. SP No. 102990 are **AFFIRMED.**

SO ORDERED.

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

Federation of Labor (NAMAPRI-SPFL) v. CA (5th Division), 537 Phil. 35, 44 (2006).

[26] Petition, *rollo*, p. 11.

[27] CA Petition for Review, *id.* at 72.

FIRST DIVISION

[G.R. No. 193782. August 1, 2018]

DALE STRICKLAND, *petitioner, vs.* **ERNST & YOUNG LLP,** *respondent.*

[G.R. No. 210695. August 1, 2018]

DALE STRICKLAND, *petitioner, vs.* **PUNONGBAYAN & ARAULLO,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; ACTION OR DEFENSE BASED ON DOCUMENT; THE SETTING FORTH OF THE PROVISIONS OF THE PARTNERSHIP AGREEMENT ON DISPUTE RESOLUTION, INCLUDING A SECTION ON ARBITRATION, IN THE PLEADINGS AND THE ACTUAL SUBMISSION OF THE PARTNERSHIP AGREEMENT, CONSTITUTE SUBSTANTIAL COMPLIANCE WITH THE REQUIREMENTS ON ACTIONABLE DOCUMENTS.— We do not find reversible error in the Decision of the CA in CA-G.R. SP No. 102805. Section 7, Rule 8 of the Rules of Court provides: Sec. 7. *Action or defense based on document*. Whenever an action or defense is based upon a written instrument or document, the substance of such instrument or document shall be set forth in the pleading, and the original or a copy thereof shall be attached to the pleading as an exhibit, which shall be deemed to be a part of the pleading, or said copy may with like effect be set forth in the pleading. In this case, EYLLP initially only quoted the provision of the Partnership Agreement on Dispute Resolution, including a section on Arbitration, in its answer dated February 15, 2006. Eventually, it submitted a copy of the Partnership Agreement in a manifestation dated March 15, 2006. Thus, we agree with the holding of the CA that EYLLP substantially, and ultimately, complied with the provision given that Strickland himself did, and does not even deny, the Partnership Agreement nor the arbitration clause.

2. CIVIL LAW; OBLIGATIONS AND CONTRACTS; ARBITRATION; NATURE OF AN ARBITRATION CLAUSE AS A CONTRACT IN ITSELF, DISCUSSED; THE ARBITRATION AGREEMENT IS TO BE TREATED AS A SEPARATE AGREEMENT AND IT DOES NOT AUTOMATICALLY TERMINATE WHEN THE CONTRACT OF WHICH IT IS A PART COMES TO AN END; THUS, THE INVALIDITY OF THE MAIN CONTRACT DOES NOT AFFECT THE VALIDITY OF THE ARBITRATION AGREEMENT; SEPARABILITY DOCTRINE, DISCUSSED.— In *Cargill Philippines, Inc. v. San Fernando Regala Trading, Inc.*, we discussed at length the nature of an arbitration clause as a contract in itself and the continued referral of a dispute to arbitration despite a party's repudiation of the main contract: x x x. A contract is required for arbitration to take place and to be binding. Submission to arbitration is a contract and a clause in a contract providing that all matters in dispute between the parties shall be referred to arbitration is a contract. The provision to submit to arbitration any dispute arising therefrom and the relationship of the parties is part of the contract and is itself a contract. x x x. x x x However, the *Gonzales* case, which the CA relied upon for not ordering arbitration, had been modified upon a motion for reconsideration in this wise: " x x x. **Hence, we now hold that the validity of the contract containing the agreement to submit to arbitration does not affect the applicability of the arbitration clause itself. A contrary ruling would suggest that a party's mere repudiation of the main contract is sufficient to avoid arbitration. That is exactly the situation that the separability doctrine, as well as jurisprudence applying it, seeks to avoid.** x x x. In so ruling that the validity of the contract containing the arbitration agreement does not affect the applicability of the arbitration clause itself, we then applied the doctrine of separability, thus: "The doctrine of separability, or severability as other writers call it, enunciates that an arbitration agreement is independent of the main contract. The arbitration agreement is to be treated as a separate agreement and the arbitration agreement does not automatically terminate when the contract of which it is a part comes to an end. The separability of the arbitration agreement is especially significant to the determination of whether the invalidity of the main contract also nullifies the arbitration clause. Indeed, the doctrine denotes

that the invalidity of the main contract, also referred to as the "container" contract, does not affect the validity of the arbitration agreement. Irrespective of the fact that the main contract is invalid, the arbitration clause/agreement still remains valid and enforceable."

3. **ID.; ID.; ID.; APPLICATION OF THE INTERNATIONAL COMMERCIAL ARBITRATION LAWS TO THE DISPUTE BETWEEN THE PARTIES IN CASE AT BAR, AFFIRMED.—** We have consistently affirmed that commercial relationships covered by our arbitration laws are purely private and contractual in nature. Article 1306 of the Civil Code provides for autonomy of contracts where the parties are free to stipulate on such terms and conditions except for those which go against law, morals, and public policy. In our jurisdiction, commercial arbitration is a *purely private system* of adjudication facilitated by *private citizens* which we have consistently recognized as valid, binding, and enforceable. Thus, we agree with the CA's ruling on the nature of the contract between Strickland and EYLLP, and its application of our commercial arbitration laws to this case: x x x. To determine the applicable law here, the nature of the arbitration sought to be undertaken must be looked at. The ADR Act defines domestic arbitration negatively by stating that it is one that is not international as defined in the Model Law[]. In turn, Article 1 (3) of the Model Law provides that an arbitration is international if: x x x. (b) **one of the following places is situated outside the State in which the parties have their places of business:** x x x . (ii) any place where a substantial part of the obligations of the commercial relationship is to be performed or **the place with which the subject-matter of the dispute is most closely connected**; x x x. **It is obvious then that the arbitration sought in the instant case is international for falling under Article 1(3)(b)(ii) quoted above. The place of business of EYLLP is in the United States of America. x x x It is here [the Philippines] that the services for which [Strickland] seeks remuneration were rendered.** For the Model Law to apply, however, the arbitration should also be commercial.

4. **ID.; ID.; ID.; DISPUTE BETWEEN THE PARTIES IN CASE AT BAR PROPERLY REFERRED TO COMMERCIAL ARBITRATION.—** The following factors further militate against Strickland's insistence on Philippine courts to primarily

adjudicate his claims of tortious conduct, and not commercial arbitration, as stipulated in the Partnership Agreement: 1. From his complaint and amended complaint, Strickland's causes of action against EYLLP and PA hinge primarily on contract, *i.e.*, the Partnership Agreement, and the resulting transactions and working relationship among the parties, where Strickland seeks to be paid. 2. The Partnership Agreement is bolstered by the assignment letter of EYLLP to Strickland confirming his assignment to Manila as partner and which assignment letter contains a choice of law provision x x x. **This assignment letter will be governed by, and construed in accordance with, the laws of the U.S., under which the firm and you agree to the exclusive jurisdiction of the U.S. courts. In addition, all terms and conditions of your Partnership Agreement with Ernst & Young LLP, which are not consistent with this letter, shall remain in full force and effect.** 3. The allegations in Strickland's complaint, specifically his narration of facts, admit that the entire controversy stems from his working relationship with EYLLP as a partner x x x. On the whole, the dispute between Strickland and EYLLP, even considering the former's allegations of tortious conduct, were properly referred by the CA to arbitration.

5. ID.; ID.; AGENCY; PUNONG BAYAN & ARAULLO IS AN AGENT OF RESPONDENT ERNST & YOUNG LLP.— [P]A was unequivocally an agent of EYLLP at the time it executed, as Philippine Member of the EYLLP global company, the FASA with NHMFC for the UHLP Project. The records bear out in at least two documents that PA represented EYLLP/EYAPFS in the FASA with NHMFC for the UHLP Project, to wit: 1. The April 15, 2002 letter of PA to Strickland: x x x **P&A/ ERNST & YOUNG acted as the contracting party, on behalf of EY/APFS, and signed the contract with NHMFC to officially kick-off the engagement**. 2. The March 26, 2002 letter covering the FASA between NHMFC and PA, where PA, as one of the parties, was designated in all references as "P&A/ ERNST & YOUNG" or "P&A/E&Y." This fact of agency relationship between PA and EYLLP cannot be denied and avoided by Strickland, given Articles 1868 and 1873 of the Civil Code x x x. Clearly, with the foregoing documents, PA is considered an agent of EYLLP.

6. ID.; ID.; ARBITRATION; THE PENDENCY OF THE ARBITRATION PROCEEDINGS BETWEEN THE PARTIES IN CASE AT BAR EFFECTIVELY STAYS THE TRIAL COURT'S PROCEEDINGS; A CONTRACT MAY BE ENCOMPASSED IN SEVERAL INSTRUMENTS EVEN THOUGH EVERY INSTRUMENT IS NOT SIGNED BY THE PARTIES, SINCE IT IS SUFFICIENT IF THE UNSIGNED INSTRUMENTS ARE CLEARLY IDENTIFIED OR REFERRED TO AND MADE PART OF THE SIGNED INSTRUMENT OR INSTRUMENTS.— [T]hat PA is not a signatory to the Partnership Agreement containing the arbitration clause is of no moment. The arbitration clause is applicable to PA and effectively stays the proceedings against it. In *BF Corporation v. Court of Appeals*, we ruled thus: Petitioner's contention that there was no arbitration clause because the contract incorporating said provision is part of a "hodge-podge" document, is therefore untenable. A contract need not be contained in a single writing. It may be collected from several different writings which do not conflict with each other and which, when connected, show the parties, subject matter, terms and consideration, as in contracts entered into by correspondence. A contract may be encompassed in several instruments even though every instrument is not signed by the parties, since it is sufficient if the unsigned instruments are clearly identified or referred to and made part of the signed instrument or instruments. Similarly, a written agreement of which there are two copies, one signed by each of the parties, is binding on both to the same extent as though there had been only one copy of the agreement and both had signed it.

7. ID.; ID.; ID.; THE DESIGNATION OF STRICKLAND IN THE ENGAGEMENT TEAM OF THE FINANCIAL ADVISORY SERVICES AGREEMENT (FASA) IS NOT A STIPULATION *POUR ATRUI;* SUSPENSION OF THE PROCEEDINGS PENDING ARBITRATION, UPHELD.— We do not find the designation of Strickland in the Engagement Team of the FASA as a stipulation *pour atrui*. Article 1311, paragraph 2 of the Civil Code reads: Art. 1311. x x x If a contract should contain some stipulation in favor of a third person, he may demand its fulfillment provided he communicated his acceptance to the obligor before its revocation. A mere incidental benefit or interest of a person is not sufficient. The

contracting parties must have clearly and deliberately conferred a favor upon a third person. Considering the clear applicability of the Partnership Agreement and the terms of the arbitration clause, and absent a clear right-duty correlative which supports Strickland's causes of action, the CA certainly did not err in suspending the proceedings in CA-G.R. SP No. 120897.

8. ID.; ID.; ID.; ARBITRATION; THE PHILIPPINES IS NOT AUTOMATICALLY THE LAW OF THE PLACE OF PERFORMANCE OF THE CONTRACT NOR THE ONLY FACTOR TO BE CONSIDERED IN THE CHOICE OF LAW ANALYSIS; REFERRAL OF THE PARTIES' DISPUTE TO ARBITRATION AND SUSPENSION OF THE PROCEEDINGS BEFORE THE REGIONAL TRIAL COURT, UPHELD.— The following circumstances underscore the high probability of an expeditious resolution of the conflict with the referral to arbitration of the dispute between EYLLP and Strickland and the succeeding suspension of the proceedings before the RTC in Civil Case No. 05-692: 1. x x x [T]hese cases comprise of a foreign element, involving foreign parties and international transactions. While the parties have not questioned the jurisdiction of our courts, the RTC may still refuse to assume jurisdiction. 2. x x x [T]he causes of action cited by Strickland in his complaint (and amended complaint) all undoubtedly relate to his Partnership Agreement with EYLLP which is subject to arbitration. This very same Partnership Agreement is even reiterated in the November 15, 2002 Assignment Letter assigning Strickland to Manila. 3. Strickland himself admits that as Partner of EYLLP, he was assigned to various parts of Asia. He has also not denied that he was seconded to EYAPFS because of certain tax consequences of his different assignments. In fact, in his additional cause of action against EYLLP, Strickland alleged, among others, that EYLLP did not pay his correct taxes making him liable for these. Evidently, the real dispute between Strickland and EYLLP falls within its Partnership Agreement involving its own choice of law provision. x x x. [W]hile we do not preclude Strickland from pursuing all remedies available to him, we point out that the factual circumstances obtaining here, given that Strickland was then partner of the global company EYLLP, the Philippines is not automatically the law of the place of performance of the contract nor is it the only factor to be considered in the ultimate choice-of- law final analysis.

APPEARANCES OF COUNSEL

Bernas Law Offices for Dale Strickland.

Sycip Salazar Hernandez & Gatmaitan for Ernst & Young LLP.

Picazo Buyco Tan Fider & Santos for Punongbayan & Araullo.

D E C I S I O N

JARDELEZA, *J.*:

These are consolidated petitions for review on *certiorari*[1] under Rule 45 of the Rules of Court both filed by petitioner Dale Strickland (Strickland): (1) G.R. No. 193782 is against respondent Ernst & Young LLP (EYLLP) assailing the Decision[2] dated June 17, 2010 of the Court of Appeals (CA) in CA-G.R. SP No. 102805 which annulled and set aside the Orders[3] of the Regional Trial Court, Branch 150, Makati City, ordered EYLLP to be dropped as defendant in Civil Case No. 05-692, and referred the dispute between Strickland and EYLLP to arbitration;[4] and (2) G.R. No. 210695, which is against respondent Punongbayan & Araullo (PA), and assails the Decision[5] dated August 5, 2013 of the CA in CA-G.R. SP No. 120897 which declared null and void the Orders[6] of the RTC and directed it to suspend proceedings in the same Civil Case No. 05-692.[7]

---

[1] *Rollo* (G.R. No. 193782), pp. 9-48; *rollo* (G.R. No. 210695), pp. 34-91.

[2] *Rollo* (G.R. No. 193782), pp. 54-67. Penned by Associate Justice Florito S. Macalino with Associate Justices Juan Q. Enriquez, Jr. and Ramon M. Bato, Jr. concurring.

[3] Dated January 2, 2007 and January 16, 2008, respectively, *id.* at 54.

[4] *Id.* at 64.

[5] *Rollo* (G.R. No. 210695), pp. 9-21. Penned by Associate Justice Agnes Reyes-Carpio with Associate Justices Rosalinda Asuncion-Vicente and Priscilla J. Baltazar-Padilla concurring.

[6] Dated March 11, 2011 and May 19, 2011, respectively, *id.* at 9.

[7] *Id.* at 20.

Civil Case No. 05-692 is a complaint[8] filed by Strickland against, among others, respondents PA and EYLLP praying for collection of sum of money.

On March 26, 2002, National Home Mortgage Finance Corporation (NHMFC) and PA entered into a Financial Advisory Services Agreement (FASA) for the liquidation of the NHMFC's Unified Home Lending Program (UHLP). At the time of the engagement, PA was the Philippine member of respondent global company, EYLLP. In the March 26, 2002 letter[9] of PA to NHMFC confirming their engagement as exclusive Financial Advisor for the UHLP Project, PA is designated as P&A/Ernst & Young.[10]

During this period, Strickland was a partner of EYLLP seconded to respondent Ernst & Young Asia Pacific Financial Solutions (EYAPFS),[11] who was listed in the FASA as member of the Engagement Team, in pertinent part:

> Our Engagement Team is highly experienced and qualified in planning, managing and executing similar transactions. Our Team will be lead by cross-border professionals supplied by both Ernst & Young Asia Pacific Financial Solutions LLC ("EY/APFS") and P&A [/] ERNST & YOUNG. P&A ERNST & YOUNG has assembled a group of Financial Consultants with the specific individual expertise to address the requirements for this engagement. The key members of the Team include:
>
> ***Due Diligence & Transaction Support***
>
> *Lead Due Diligence Partner* — Dale Strickland, EY/APFS[12]

---

[8] *Id.* at 127-136.

[9] *Id.* at 107-126.

[10] Several of the correspondences between the parties refers to the Engagement Letter and the FASA as NHMFC Agreement. The designations are used interchangeably throughout this Decision.

[11] Subsidiary of EYLLP authorized to do business within the Asia Pacific Region. *Rollo* (G.R. No. 193782), pp. 54-55; *rollo* (G.R. No. 210695), p. 128.

[12] *Rollo* (G.R. No. 210695), p. 110.

Significantly, Strickland played a role in negotiating the FASA between PA and NHMFC. In a letter dated April 15, 2002, PA wrote Strickland to formalize the working relationship between PA/EYLLP and EY/APFS for the FASA with NHMFC:

Dear Dale,

Ernst & Young, as represented by Punongbayan & Araullo, the Ernst & Young member firm in the Philippines (P&A/ERNST & YOUNG) and Ernst & Young Asia Pacific Solutions LLC (EY/APFS) was chosen as the exclusive Financial Advisor for National Home Mortgage Finance Corporation (NHMFC) with respect to the liquidation of its Php40 Billion Unified Home Lending Program (UHLP) portfolio (or the "Transaction"). P&A/ERNST & YOUNG acted as the contracting party, on behalf of EY/APFS, and signed the contract with NHMFC to officially kick-off the engagement.

In line with this, we would like to underscore several issues, which would formalize the working relationship between P&A/ERNST & YOUNG and EY/APFS.

1) P&A/ERNST & YOUNG will be the contracting party to the NHMFC engagement and will sub- contract to EY/APFS key aspects of the engagement as well as source the technical expertise of EY/APFS staff, as outlined in the Technical Proposal submitted to the Pre-qualification, Bids and Awards Committee (PBAC).

2) EY/APFS will provide a list of its staff members with individual expertise, who will be seconded to P&A/ERNST & YOUNG, including Marisa Liu or other EY/APFS Managers such as Hye Soo Shim or Beaux Pontac.

3) P&A/ERNST & YOUNG will bill and receive payments directly from NHMFC and shall forward the balance due EY/APFS in U.S. Dollars at an exchange rate of 51 Philippine Pesos to One (1) U.S. Dollar.

4) Based on the initial Technical Proposal, Total Fees for this engagement will be U.S.$2.25 Million broken into a Fixed Fee of U.S.$1.5 Million for the Due Diligence portion and a Success Fee of U.S.$750 Thousand. The Fixed Fee sharing will be U.S.$690 Thousand for P&A/ERNST & YOUNG and U.S.$810 Thousand for EY/APFS or 46% and 54%, respectively, in accordance with the terms of the initial

> Technical Proposal. However, we wish to point out that due to modifications made on the Success Fee portion of the Technical Proposal, any fee above U.S $2.25 Million shall be split equally (50%-50%) between P&A/ERNST & YOUNG and EY/APFS.
>
> 5) EY/APFS and P&A/ERNST & YOUNG will guarantee the success of this project.
>
> Once again, we wish to express our appreciation for the opportunity you have accorded us to undertake this pursuit with you. We look forward to working with you in this engagement.
>
> Thank you very much.[13]

By June 6, 2002, EYLLP wrote PA of the termination of its membership in EYLLP.[14] Despite the termination, the working relationship among the parties continued. In an assignment letter[15] dated November 15, 2002, EYLLP confirmed Strickland's assignment to Manila as a partner and summarized the working arrangement, specifying the following provisions: (1) assignment and the terms; (2) compensation and benefits; (3) tax; (4) change of circumstances; (5) repatriation; and (6) acceptance.

In July 2004, the transactional relationship between the parties went awry. In an exchange of letters, notice was given to NHMFC of PA's intention to remove Strickland from the NHMFC Engagement Team as a result of Strickland's resignation from EYLLP and/or EYAPFS effective on July 2, 2004.[16] Responding to NHMFC's concerns on the removal of Strickland from the UHLP Project and his replacement by Mark Grinis (Grinis), EYAPFS' Managing Director, EYLLP reiterated Grinis' qualifications and affirmed its team of professionals' dedication

---

[13] *Id.* at 787-788. Also cited in the Decision of the Court of Appeals in CA G.R. SP No. 120897, *id.* at 10-11.

[14] *Id.* at 689; records, pp. 126-127.

[15] CA *rollo* (CA-G.R. SP No. 102805), pp. 263-266.

[16] See records, pp. 364-365.

of "all the time necessary to close this transaction and to make NHMFC [their team's, headed by Grinis,] first priority."[17]

Since NHMFC was intent on retaining Strickland's services despite his separation from EYLLP and/or EYAPFS, the parties entered into negotiations to define Strickland's possible continued participation in the UHLP Project. PA, NHMFC, and Strickland exchanged letters containing proposed amendments to cover the new engagement and Strickland's participation within the UHLP Project.[18] No actual written and final agreement among the parties amending the original engagement letter of March 26, 2002 materialized.

On August 20, 2004, PA wrote a letter,[19] signed by its President/Chairman & CEO, Benjamin R. Punongbayan, to NHMFC to initiate discussions on a "mutual voluntary termination of the NHMFC Agreement."[20]

On November 18, 2003, PA and NHMFC executed an addendum to the March 26, 2002 original engagement letter covering additional terms of the financial advisory services.[21]

Subsequently, conflict on Strickland's actual participation and concurrent designation on the project arose among PA, NHMFC, and Strickland as reflected in the proposed revisions to the "Draft Financial Advisory Services" initially prepared by PA.[22]

The timeline of specific occurrences is contained in the letter[23] of PA to NHMFC dated December 20, 2004:

---

[17] *Id.* at 366.

[18] *Id.* at 368-369; *rollo* (G.R. No. 193782), p. 55; *rollo* (G.R. No. 210695), pp. 38, 308.

[19] Records, pp. 371-374.

[20] *Id.* at 371.

[21] *Id.*

[22] See records, pp. 525-531.

[23] *Id.* at 1548-1550.

[PA] subsequently met on September 6, 2004 with Mr. Angelico T. Salud, then president of NHMFC. In that meeting, Mr. Salud asked that P&A and EYAPFS continue with the project and remain as financial advisors to NHMFC. But he also proposed that NHMFC will hire Mr. Strickland for a nominal compensation from NHMFC so that Mr. Strickland can continue to participate in the project and work together with us. Right after that meeting, P&A and EYAPFS x x x decided to accept its proposal in order to finally resolve this pending matter. However, before anything can be finalized, a change in the management of NHMFC occurred. We sought to meet with the new president, Mr. Celso delos Angeles, and were able to meet with him on October 20, 2004. In that meeting, it was confirmed by both parties that NHMFC will hire Mr. Strickland and this engagement will be the basis for moving forward. We then proceeded to conclude with Mr. Strickland the discussion about his compensation which was proposed to come out of the success fee for the engagement. We also drew up the draft agreement that was submitted on November 19, 2004 to both NHMFC and Mr. Strickland for their review.[24]

PA objected to Strickland's proposed amendments, specifically on the terms of compensation, which now contemplated PA's engagement of Strickland as subcontractor for the closing of the UHLP Project.[25]

By May 23, 2005, counsel for Strickland wrote PA asking for "equitable compensation for professional services" rendered to NHMFC on the UHLP Project from the time of his separation from EYLLP and/or EYAPFS in July 2004 "up and through the recent Signing and Closing Ceremony held on 22 April 2004 and his continued provision of services as the final closing approaches."[26]

On June 2, 2005, counsel for PA responded, categorically denying any contractual relationship with Strickland and his assertion that he effectively substituted EYLLP and/or EYAPFS for the portion of the work he carried out in the UHLP Project.[27]

---

[24] *Id.* at 1549.

[25] *Id.* at 1548.

[26] *Id.* at 1551-1553; *rollo* (G.R. No. 210695), pp. 12-13.

[27] Records, pp. 1554-1555; *rollo* (G.R. No. 210695), p. 13.

Succeeding events are fairly summarized by the CA in CA-G.R. SP No. 120897:

Thus, [Strickland] filed a Complaint, dated May 17, 2005, which included [EYAPFS], [PA] and NHMFC among the defendants, seeking the following reliefs:

> "*Based on the foregoing, [Strickland] respectfully prays for judgment directing defendants, either jointly or severally or solidarily, or one or some or all defendants as may be deemed appropriate after trial, to pay [Strickland] Eighteen Million Pesos (=P=18,000,000.00) as equitable compensation for services rendered or actual or nominal damages, moral damages, and attorney's fees as may be proved.*"

Subsequent to the complaint, [EYLLP and/or EYAPFS] filed a "Motion to Refer to Arbitration," dated February 27, 2006.

In the meantime, x x x Strickland filed an Amended Complaint, dated June 29, 2006, adding more causes of action and including Strickland's replacement Mark Grinis as a party-defendant while deleting several defendants but retaining [EYLLP and/or EYAPFSJ], NHMFC and [PA].

The trial court admitted the Amended Complaint in its Order, dated December 6, 2006. Subsequently, it also issued an Order, dated January 2, 2007, denying [EYAPFS'] Motion To Refer to Arbitration, thus:

> "*The dispute between the defendants and [Strickland] covers domestic arbitral proceedings and cannot be categorized as a commercial dispute of an international character since the dispute arose from their professional and service relationship and does not cover matters arising from a relationship of a commercial nature or commercial intercourse that would qualify as commercial. The agreement has also no reasonable relationship with one or more foreign states.*
>
> *It appearing therefore that the arbitral clause in question is inoperative or incapable of being performed in this jurisdiction referral to arbitration in the United States pursuant to the arbitration clause is uncalled for.*

Accordingly, the motion is denied.

SO ORDERED."

[EYLLP and/or EYAPFS] sought reconsideration of the aforequoted Order, which was also denied by the trial court, prompting it to file a Petition for Certiorari before this Court, docketed as CA-G.R. SP No. 102805. The same was resolved by the Seventh Division in a Decision, dated June 17, 2010, annulling the ruling of the trial court, *viz*:

"***WHEREFORE**, premises considered, the Petition is **GRANTED**. The Orders dated January 2, 2007 and January 16, 2008, and any further orders or actions after the filing of this Petition taken against x x x Ernst & Young LLP, issued or made by the Han. Elmo M. Alameda, Presiding Judge of the Regional Trial Court of Makati City, Branch 150, in Civil Case No. 05-692 are **ANNULLED** and **SET ASIDE**. Accordingly, [EYLLP] is ordered dropped from Civil Case No. 05-692 and the dispute between [EYLLP] and Dale Strickland is hereby referred to arbitration.*

SO ORDERED."

Pursuant to the said ruling, x x x [PA] filed a Motion to Suspend with Motion to Reset Pre-Trial Conference on the ground that any settlement during the arbitration between [EYLLP] and Strickland may cause prejudice to [PA] if the trial court proceedings are continued as Strickland's cause of action against [PA] was merely incidental to that against [EYLLP].

[PA's] Motion, however, was denied in the first assailed Order, dated March 11, 2011, the dispositive portion of which reads:

"*The decision of the Court of Appeals dated June 17, 2010 ordering the dispute between [Strickland] and [EYLLP] to be referred to in arbitration is clear. The aforesaid decision involves [Strickland] and [EYLLP] only. Since [PA] is not a party thereto, it cannot enforce the same or find relief thereto. Only [EYLLP] is benefited from the decision.*

WHEREFORE, in the light of the foregoing disquisition, the motion to suspend proceedings is DENIED.

Pre-trial will push through as scheduled on March 22, 2011 at 9:00 o'clock in the morning. [EYLLP] is excluded therefrom.

SO ORDERED."[28] (Citations omitted.)

PA filed a motion for reconsideration which the RTC denied in its May 19, 2011 Order.[29] Thus, PA filed a petition for *certiorari* before the CA docketed as CA-G.R. SP No. 120897, alleging grave abuse of discretion in the RTC's Orders denying its motion to suspend proceedings.[30]

As adverted to, the CA annulled the March 11 and May 19, 2011 Orders:

> **WHEREFORE**, in view of the foregoing, the Petition for Certiorari is **GRANTED**. The Orders, dated March 11, 2011 and May 19, 2011, issued by the Regional Trial Court of Makati City, Branch 150, in Civil Case No. 05-692, are **DECLARED NULL and VOID**. The Regional Trial Court of Makati City, Branch 150, is directed to **SUSPEND** its proceedings in the aforementioned case pending arbitration.[31] (Citations omitted.)

Hence, these consolidated petitions filed by Strickland.

In G.R. No. 193782, Strickland raises the following issues:

> WHETHER THE COURT OF APPEALS DEPARTED FROM THE ACCEPTED AND USUAL COURSE OF JUDICIAL PROCEEDINGS WHEN IT RELIED ON AN UNSIGNED AND UNAUTHENTICATED "PARTNERSHIP AGREEMENT" WHICH WAS NOT PROPERLY PRODUCED, PLEADED, AUTHENTICATED AND PROVED.
>
> WHETHER THE COURT OF APPEALS COMMITTED AN ERROR OF LAW WHEN IT EVEN CONSIDERED MR. STRICKLAND A PARTNER EVEN IF THIS ISSUE WAS NOT YET RULED ON BY THE TRIAL COURT VIOLATING THE RULE THAT THE COURT OF APPEALS CANNOT TAKE UP ISSUES IN THE FIRST INSTANCE ESPECIALLY WHEN THE ISSUE INVOLVED QUESTIONS OF FACT THAT HAVE NOT BEEN SUBJECTED TO EVIDENTIARY PROCEEDING.

---

[28] *Rollo* (G.R. No. 210695), pp. 13-15.

[29] *Id.* at 570.

[30] *Id.* at 16.

[31] *Id.* at 20.

WHETHER OR NOT THE COURT OF APPEALS DECIDED A QUESTION OF SUBSTANCE IN A WAY NOT IN ACCORD WITH LAW OR WITH THE APPLICABLE DECISIONS WHEN IT HELD THAT MR. STRICKLAND'S CLAIMS FOR DAMAGES FROM E&Y'S TORTIOUS CONDUCT IS ARBITRABLE.[32]

In G.R. No. 210695, Strickland posits the following issues:

WHETHER THE COURT OF APPEALS DEPARTED FROM THE ACCEPTED AND USUAL COURSE OF JUDICIAL PROCEEDINGS WHEN IT [PRECIPITATELY] CONCLUDED THAT P&A WAS AN AGENT OF E&Y WITHOUT THE COURT OF APPEALS OR THE RTC CONDUCTING AN EVIDENTIARY HEARING[.]

WHETHER THE COURT OF APPEALS COMMITTED AN ERROR OF LAW SUSPEND[ING] THE PROCEEDINGS IN THE RTC AGAINST P&A BECAUSE THE CAUSES OF ACTION AGAINST P&A AND E&Y ARE ALLEGEDLY "INTRICATELY INTERTWINED[,"] WITHOUT AN EVIDENTIARY HEARING HELD EITHER AT THE COURT OF APPEALS OR THE RTC[.]

WHETHER THE COURT OF APPEALS COMMITTED AN ERROR OF LAW WHEN IT SUSPENDED THE PROCEEDINGS IN THE RTC BECAUSE OF AN ALLEGED BINDING ARBITRATION CONTRACT BETWEEN E&Y AND STRICKLAND WHICH HAS NOT BEEN PROVED OR AUTHENTICATED[.]

WHETHER THE COURT OF APPEALS DEPARTED FROM THE ACCEPTED AND USUAL COURSE OF JUDICIAL PROCEEDINGS AND ALSO COMMITTED AN ERROR OF LAW WHEN IT CONCLUDED THAT THERE IS A PENDING ARBITRATION PROCEEDING, WITHOUT EVIDENCE THEREFOR, BETWEEN STRICKLAND AND [EYLLP], VIOLATING THE RULE THAT THE COURT OF APPEALS CANNOT TAKE UP FACTUAL ISSUES IN THE FIRST INSTANCE[.]

WHETHER THE COURT OF APPEALS COMMITTED AN ERROR OF LAW WHEN IT HELD THAT THE PRESIDING JUDGE COMMIT[T]ED GRAVE ABUSE OF DISCRETION WHEN HE REFUSED TO SUSPEND THE PROCEEDINGS AGAINST P&A AS A MATTER OF "JUDICIAL COURTESY" AND "PROPRIETY[."]

---

[32] *Rollo* (G.R. No. 193782), p. 25.

WHETHER THE COURT OF APPEALS COMMITTED AN ERROR OF LAW WHEN IT HELD THAT THE PRESIDING JUDGE COMMIT[T]ED GRAVE ABUSE OF DISCRETION IN REFUSING TO SUSPEND THE PROCEEDINGS AGAINST P&A IN ALLEGED VIOLATION OF THE RULE ON LITIS PENDENTIA[.]

WHETHER THE COURT OF APPEALS DEPARTED FROM THE ACCEPTED AND USUAL COURSE OF JUDICIAL PROCEEDINGS WHEN IT SUSPENDED THE ENTIRE PROCEEDINGS IN THE RTC AND NOT ONLY P&A BUT ALSO AS TO NHMFC EVEN IF P&A'S PETITION FOR CERTIORARI RAISED ARGUMENTS FOR THE SUSPENSION SOLELY RELEVANT TO P&A AND NOT TO NHMFC.

WHETHER OR NOT THE COURT OF APPEALS DECIDED A QUESTION OF SUBSTANCE IN A WAY NOT IN ACCORD WITH LAW OR WITH THE APPLICABLE DECISIONS WHEN IT HELD ARBITRATION PROCEEDINGS AMONG SOME PARTIES NECESSARILY SUSPENDS THE PROCEEDINGS BEFORE THE REGULAR COURTS.[33]

We simplify the issues for our resolution, to wit:

1. In G.R. No. 193782, whether the CA erred in referring the dispute between Strickland and EYLLP to arbitration and ordering that EYLLP be dropped as defendant in Civil Case No. 05-692.

1.1 Whether the Partnership Agreement[34] was properly alleged and proven according to Section 7, Rule 8 of the Rules of Court on actionable documents; and

1.2 Whether the dispute between Strickland and EYLLP based on Strickland's complaint is arbitrable.

2. In G.R. No. 210695, whether the CA erred anew when it suspended the proceedings in Civil Case No. 05-692 pending the arbitration between Strickland and EYLLP.

2.1 Whether PA is an agent of EYLLP; and

---

[33] *Rollo* (G.R. No. 210695), pp. 50-52.

[34] *Rollo* (G.R. No. 193782), pp. 189-193.

2.2 Whether Strickland's causes of action against all the defendants are intricately intertwined such that the separate causes of action against PA and the other impleaded defendants cannot independently proceed from the arbitration between Strickland and EYLLP.

We deny the petitions.

I

In annulling the January 2, 2007 and January 16, 2008 Orders of the RTC, the CA ruled that: (1) EYLLP substantially complied with Section 7, Rule 8 of the Rules of Court on setting forth actionable documents in a pleading; (2) the Partnership Agreement indeed contained a valid arbitration clause; and (3) applying processual presumption, albeit EYLLP failed to prove the applicable foreign law, the dispute between EYLLP and Strickland falls under the category of international commercial arbitration.[35]

Strickland contends that the CA's referral of the dispute between EYLLP and Strickland to arbitration is grave error since EYLLP failed to properly allege and prove the Partnership Agreement. Absent an actionable Partnership Agreement, there is no existing arbitration clause.[36]

We are not persuaded. We do not find reversible error in the Decision of the CA in CA-G.R. SP No. 102805.

Section 7, Rule 8 of the Rules of Court provides:

> Sec. 7. *Action or defense based on document.*— Whenever an action or defense is based upon a written instrument or document, the substance of such instrument or document shall be set forth in the pleading, and the original or a copy thereof shall be attached to the pleading as an exhibit, which shall be deemed to be a part of the pleading, or said copy may with like effect be set forth in the pleading.

In this case, EYLLP initially only quoted the provision of the Partnership Agreement on Dispute Resolution, including a section

---

[35] *Id.* at 58-64.

[36] *Id.* at 11.

on Arbitration, in its answer[37] dated February 15, 2006. Eventually, it submitted a copy of the Partnership Agreement in a manifestation[38] dated March 15, 2006. Thus, we agree with the holding of the CA that EYLLP substantially, and ultimately, complied with the provision given that Strickland himself did, and does not even deny, the Partnership Agreement nor the arbitration clause.

In *Cargill Philippines, Inc. v. San Fernando Regala Trading, Inc.*,[39] we discussed at length the nature of an arbitration clause as a contract in itself and the continued referral of a dispute to arbitration despite a party's repudiation of the main contract:

> Arbitration, as an alternative mode of settling disputes, has long been recognized and accepted in our jurisdiction. R.A. No. 876 authorizes arbitration of domestic disputes. Foreign arbitration, as a system of settling commercial disputes of an international character, is likewise recognized. The enactment of R.A. No. 9285 on April 2, 2004 further institutionalized the use of alternative dispute resolution systems, including arbitration, in the settlement of disputes.
>
> A contract is required for arbitration to take place and to be binding. Submission to arbitration is a contract and a clause in a contract providing that all matters in dispute between the parties shall be referred to arbitration is a contract. The provision to submit to arbitration any dispute arising therefrom and the relationship of the parties is part of the contract and is itself a contract.
>
> x x x x x x x x x
>
> The CA ruled that arbitration cannot be ordered in this case, since petitioner alleged that the contract between the parties did not exist or was invalid and arbitration is not proper when one of the parties repudiates the existence or validity of the contract. x x x
>
> x x x x x x x x x

However, the *Gonzales* case, which the CA relied upon for not ordering arbitration, had been modified upon a motion for reconsideration in this wise:

---

[37] CA *rollo* (CA-G.R. SP No. 102805), pp. 65-72.

[38] *Id.* at 90-91.

[39] G.R. No. 175404, January 31, 2011, 641 SCRA 31.

> "x x x **The adjudication of the petition in G.R. No. 167994 effectively modifies part of the Decision dated 28 February 2005 in G.R. No. 161957. Hence, we now hold that the validity of the contract containing the agreement to submit to arbitration does not affect the applicability of the arbitration clause itself. A contrary ruling would suggest that a party's mere repudiation of the main contract is sufficient to avoid arbitration. That is exactly the situation that the separability doctrine, as well as jurisprudence applying it, seeks to avoid.** We add that when it was declared in G.R. No. 161957 that the case should not be brought for arbitration, it should be clarified that the case referred to is the case actually filed by Gonzales before the DENR Panel of Arbitrators, which was for the nullification of the main contract on the ground of fraud, as it had already been determined that the case should have been brought before the regular courts involving as it did judicial issues."

In so ruling that the validity of the contract containing the arbitration agreement does not affect the applicability of the arbitration clause itself, we then applied the doctrine of separability, thus:

> "The doctrine of separability, or severability as other writers call it, enunciates that an arbitration agreement is independent of the main contract. The arbitration agreement is to be treated as a separate agreement and the arbitration agreement does not automatically terminate when the contract of which it is a part comes to an end.
>
> The separability of the arbitration agreement is especially significant to the determination of whether the invalidity of the main contract also nullifies the arbitration clause. Indeed, the doctrine denotes that the invalidity of the main contract, also referred to as the "container" contract, does not affect the validity of the arbitration agreement. Irrespective of the fact that the main contract is invalid, the arbitration clause/agreement still remains valid and enforceable."[40] (Citations omitted; emphasis supplied.)

Here, we consider the Partnership Agreement which explicitly provides for alternative dispute resolution:

---

[40] *Id.* at 43-46.

16. Dispute Resolution

(a) **Resolution of Disputes.** Any dispute, claim or controversy between (i) the Firm and any Partner or Former Partner or (ii) any Partner or any Former Partner and any other Partner or Former Partner (to the extent such dispute, claim or controversy relates to their association with the Firm and/or its business and affairs), whether arising or being asserted during or after the termination of any such individual's relationship with the Firm (a "Dispute"), shall be resolved as provided in this Section.

x x x x x x x x x

(b) **Procedure.** Except as otherwise provided herein, all Disputes shall be resolved by first submitting them to voluntary mediation in accordance with the procedures set forth in paragraph (c) of this Section and, if such mediation is not successful, then to binding arbitration in accordance with paragraphs (d) and (e) of this Section.

x x x x x x x x x

(d) **Arbitration.** Any arbitration hereunder will be conducted in accordance with the procedures set forth herein and the Rules for Non-Administered Arbitration of the CPR Institute for Dispute Resolution as in effect on the date hereof, or such other rules mutually agreed upon by the parties. x x x

(i) The arbitration will be held either in the County and State of New York or in the County and State where the Firm is organized as an LLP, or at another location if so ordered by a court in an action to compel arbitration. x x x

(ii) Any issue concerning the extent to which any Dispute is subject to arbitration, or the formation, applicability, interpretation or enforceability of the provisions of this Section, including any claim or contention that all or any part of this Agreement is void or voidable, will be governed by the Federal Arbitration Act and will be resolved by the arbitrators.[41]

---

[41] *Rollo* (G.R. No. 193782), pp. 190-192.

Plainly, considering that the arbitration clause is in itself a contract, the setting forth of its provisions in EYLLP's answer and in its motion to refer to arbitration,[42] coupled with the actual submission by EYLLP of the Partnership Agreement, complies with the requirements of Section 7, Rule 8 of the Rules of Court which Strickland should have specifically denied.[43]

We note that while the cases before us have a foreign element involving foreign parties and international transactions, the parties do not question the jurisdiction of our courts to hear and decide the case. The parties quibble only on whether the dispute between Strickland and EYLLP should be referred to arbitration despite Strickland's alleged causes of action based on tortious conduct of the parties in refusing to compensate him for services rendered. Moreover, in relation to the other defendants, specifically respondent PA, the issue pertains to the suspension of the proceedings in Civil Case No. 05-692 pending resolution of the arbitration between Strickland and EYLLP.

We have consistently affirmed that commercial relationships covered by our arbitration laws are purely private and contractual in nature. Article 1306 of the Civil Code provides for autonomy of contracts where the parties are free to stipulate on such terms and conditions except for those which go against law, morals, and public policy. In our jurisdiction, commercial arbitration is a *purely private system* of adjudication facilitated by *private citizens* which we have consistently recognized as valid, binding, and enforceable.[44]

Thus, we agree with the CA's ruling on the nature of the contract between Strickland and EYLLP, and its application of our commercial arbitration laws to this case:

---

[42] *Id.* at 79-85.

[43] See RULES OF COURT, Rule 8, Sec. 8.

[44] *Fruehauf Electronics Philippines Corporation v. Technology Electronics Assembly and Management Pacific Corporation*, G.R. No. 204197, November 23, 2016, 810 SCRA 280, 308.

x x x "[T]he International Law doctrine of *presumed-identity approach or processual presumption* comes into play. Where a foreign law is not pleaded, or, even if pleaded, is not proved, the presumption is that foreign law is the same as ours."

In this jurisdiction, one of the laws governing arbitration is the [Alternative Dispute Resolution (ADR)] Act. Under this statute, international commercial arbitration shall be governed by the Model Law on International Commercial Arbitration ("Model Law") adopted by the United Nations Commission on International Trade Law. Meanwhile, domestic arbitration is governed by the Arbitration Law as amended by the ADR Act.

To determine the applicable law here, the nature of the arbitration sought to be undertaken must be looked at. The ADR Act defines domestic arbitration negatively by stating that it is one that is not international as defined in the Model Law[]. In turn, Article 1 (3) of the Model Law provides that an arbitration is international if:

"(a) the parties to an arbitration agreement have, at the time of the conclusion of that agreement, their places of business in different States; or

(b) **one of the following places is situated outside the State in which the parties have their places of business:**

(i) the place of arbitration if determined in, or pursuant to, the arbitration agreement;

(ii) any place where a substantial part of the obligations of the commercial relationship is to be performed or **the place with which the subject-matter of the dispute is most closely connected**; or

(c) the parties have expressly agreed that the subject-matter of the arbitration agreement relates to more than one country." x x x (Emphasis in the original; citations omitted.)

It is obvious then that the arbitration sought in the instant case is international for falling under Article 1(3)(b)(ii) quoted above. The place of business of EYLLP is in the United States of America. x x x It is here [the Philippines] that the services for which [Strickland] seeks remuneration were rendered. (Emphasis supplied.)

For the Model Law to apply, however, the arbitration should also be commercial. The explanatory footnote to Article 1(l) of the Model Law explains that "[t]he term 'commercial' should be given a wide interpretation so as to cover matters arising from all relationships of a commercial nature, whether contractual or not." It also states that relationships of a commercial nature include the following transactions among others:

"any trade transaction for the supply or exchange of goods or services; distribution agreement; commercial representation or agency; factoring; leasing; construction of works; consulting; engineering; licensing; investment; financing; banking; insurance; exploitation agreement or concession; **joint venture and other forms of industrial or business co-operation**; carriage of goods or passengers by air, sea, rail or road." x x x

The meaning attached to the term "commercial" by the Model Law is broad enough to cover a partnership. The Civil Code x x x defines a partnership as a contract where "two or more persons bind themselves to contribute money, property, or industry to a common fund, with the intention of dividing the profits among themselves." Hence, considering that EYLLP and Strickland had a partnership relationship, which was not changed during his assignment [to] Manila for the Project, the request for arbitration here has a commercial character. The dispute between the said parties relates to Strickland's and EYLLP's association with each other.[45] x x x (Emphasis and underscoring in the original; citations omitted.)

The following factors further militate against Strickland's insistence on Philippine courts to primarily adjudicate his claims of tortious conduct, and not commercial arbitration, as stipulated in the Partnership Agreement:

1. From his complaint and amended complaint, Strickland's causes of action against EYLLP and PA hinge primarily on contract, i.e., the Partnership Agreement, and the resulting transactions and working relationship among the parties, where Strickland seeks to be paid.[46]

---

[45] *Rollo* (G.R. No. 193782), pp. 59-60.

[46] See Complaint and Amended Complaint, *rollo* (G.R. No. 210695), pp. 127-136 and 181-211, respectively.

2. The Partnership Agreement is bolstered by the assignment letter of EYLLP to Strickland confirming his assignment to Manila as partner and which assignment letter contains a choice of law provision:

I. ASSIGNMENT

Terms of Assignment

x x x x x x x x x

During the assignment, you will be seconded to Asia Pacific Financial Solutions LLC and subject to its rules and regulations. Additionally, you must abide by all laws in the Philippines. It is also expected that you will conduct yourself in a professional manner at all times, and carry out your duties and responsibilities in the high standard achieved throughout Ernst & Young practices worldwide.

This assignment letter will be governed by, and construed in accordance with, the laws of the U.S., under which the firm and you agree to the exclusive jurisdiction of the U.S. courts. In addition, all terms and conditions of your Partnership Agreement with Ernst & Young LLP, which are not consistent with this letter, shall remain in full force and effect.[47] (Emphasis supplied.)

3. The allegations in Strickland's complaint, specifically his narration of facts, admit that the entire controversy stems from his working relationship with EYLLP as a partner, thus:

(~~14~~)(9) When the NHMFC Agreement was signed, [Strickland] was a Partner in E&Y and held the title of Managing Director of Ernst & Young Asia Pacific Financial Solutions LLC ("EYAPFS"), a 100% owned and controlled subsidiary of Ernst & Young LLP ("E&Y").[48] x x x

On the whole, the dispute between Strickland and EYLLP, even considering the former's allegations of tortious conduct, were properly referred by the CA to arbitration.

---

[47] CA *rollo* (CA-G.R. SP No. 102805), p. 263.

[48] *Rollo* (G.R. No. 210695), p. 186.

II

In its Decision in CA-G.R. SP No. 120897, the CA suspended the proceedings in Civil Case No. 05-692, finding that: (1) PA is an agent of EYLLP who cannot be sued by Strickland on the contract of employment between Strickland and EYLLP/EYAPFS; and (2) even without delving into the contract of agency between PA and EYLLP/EYAPFS, "a comparison of the causes of action against [EYLLP/EYAPFS] and x x x PA would justify a suspension of the proceedings in the trial court."[49]

Strickland maintains, however, that the CA's suspension of the proceedings in Civil Case No. 05-692 is grave error because: (1) the Partnership Agreement containing the arbitration clause was not sufficiently proved and authenticated;[50] (2) the CA should have ordered the RTC to conduct an evidentiary hearing on the factual assertions that PA is an agent of EYLLP/EYAPFS and that the causes of action of Strickland against EYLLP are intricately intertwined with those against PA and the other defendants;[51] and (3) Strickland has distinct causes of action against other defendants such as NHMFC.[52]

We disagree. We affirm the CA's ruling.

First. PA was unequivocally an agent of EYLLP at the time it executed, as Philippine Member of the EYLLP global company, the FASA with NHMFC for the UHLP Project.

The records bear out in at least two documents that PA represented EYLLP/EYAPFS in the FASA with NHMFC for the UHLP Project, to wit:

1. The April 15, 2002 letter of PA to Strickland:

---

[49] *Id.* at 18.

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

[51] *Id.* at 60.

[52] *Id.* at 64-70, 86.

> Dear Dale,
>
> Ernst & Young, as represented by Punongbayan & Araullo, the Ernst & Young member firm in the Philippines (P&A/ ERNST & YOUNG) and Ernst & Young Asia Pacific Solutions LLC (EY/APFS) was chosen as the exclusive Financial Advisor for National Home Mortgage Finance Corporation (NHMFC) with respect to the liquidation of its Php40 Billion Unified Home Lending Program (UHLP) portfolio (or the "Transaction"). **P&A/ERNST & YOUNG acted as the contracting party, on behalf of EY/APFS, and signed the contract with NHMFC to officially kick-off the engagement.**[53] (Emphasis supplied.)

2. The March 26, 2002 letter covering the FASA between NHMFC and PA, where PA, as one of the parties, was designated in all references as "P&A/ERNST & YOUNG" or "P&A/E&Y."[54]

This fact of agency relationship between PA and EYLLP cannot be denied and avoided by Strickland, given Articles 1868 and 1873 of the Civil Code which provides, thus:

> Art. 1868. By the contract of agency a person binds himself to render some service or to do something in representation or on behalf of another, with the consent or authority of the latter.
>
> Art. 1873. If a person specially informs another or states by public advertisement that he has given a power of attorney to a third person, the latter thereby becomes a duly authorized agent, in the former case with respect to the person who received the special information, and in the latter case with regard to any person.
>
> x x x x x x x x x

Clearly, with the foregoing documents, PA is considered an agent of EYLLP. We quote with favor the analysis of the CAin CA-G.R. SP No. 120897:

> x x x Strickland admitted the following: (1) that he is an employee of Ernst & Young Asia, assigned to different projects in Korea, Japan,

---

[53] *Id.* at 787.

[54] *Id.* at 107.

Thailand, China and the Philippines; and (2) that x x x P&A is an agent of Ernst & Young Asia. Such agency is also reflected in the letter addressed to Strickland, dated April 15, 2002, stating that P&A was representing Ernst & Young Asia, being its member firm located in the Philippines. P&A, as agent of Ernst & Young Asia, was authorized to act in behalf of the latter with regard to the liquidation of the UHLP as financial advisor for NHMFC.

Having established the fact of agency, there is no question that P&A derives its authority for the UHLP liquidation from Ernst & Young Asia. As such agent, P&A cannot sue and be sued on the contract of employment between Strickland and Ernst & Young Asia. As explained by a recognized authority in civil law:

> "*(a) Normally, the agent has neither rights nor liabilities as against the third party.* ***He cannot sue or be sued on the contract. Since the contract may be violated only by the parties thereto against each other, the real party-in-interest, either as plaintiff or defendant in an action upon that contract must, generally be a party to said contract.***"

In this case, the conflict arose from the terms of Strickland's employment contract with Ernst & Young Asia and P&A's involvement in the same was a mere consequence that the termination occurred while the UHLP was ongoing. The fact of agency in itself and the aforequoted discussion of its effects shows that [PA's] liability is anchored on that of Ernst & Young Asia, giving rise to a reason why the trial court's proceedings must be suspended in the light of the pending arbitration proceedings between [PA's] principal[, EYLLP,] and x x x Strickland.[55] (Emphasis in the original; citations omitted.)

Moreover, that PA is not a signatory to the Partnership Agreement containing the arbitration clause is of no moment. The arbitration clause is applicable to PA and effectively stays the proceedings against it.

In *BF Corporation v. Court of Appeals*,[56] we ruled thus:

Petitioner's contention that there was no arbitration clause because the contract incorporating said provision is part of a "hodge-podge"

---

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

[56] G.R. No. 120105, March 27, 1998, 288 SCRA 267.

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

The flaw in petitioner's contentions therefore lies in its having segmented the various components of the whole contract between the parties into several parts. This notwithstanding, petitioner ironically admits the execution of the Articles of Agreement. Notably, too, the lower court found that the said Articles of Agreement "also provides that the 'Contract Documents' therein listed 'shall be deemed an integral part of this Agreement,' and one of the said documents is the 'Conditions of Contract' which contains the Arbitration Clause.'" It is this Articles of Agreement that was duly signed by Rufo B. Colayco, president of private respondent SPI, and Bayani F. Fernando, president of petitioner corporation. The same agreement was duly subscribed before notary public Nilberto R. Briones. In other words, the subscription of the principal agreement effectively covered the other documents incorporated by reference therein.[57] (Citations omitted.)

Second. The confusion arises because Strickland insists on foregoing suit on his Partnership Agreement with EYLLP precisely because such has an arbitration clause and a choice of law provision. It is quite apparent that Strickland wishes to sue all the defendants before our courts based on a combination of causes of action for violation of obligations arising out of tort,[58] quasi-contract,[59] and contract.[60] However, Strickland's

---

[57] *Id.* at 283-284.

[58] See CIVIL CODE, Art. 2176.

[59] See CIVIL CODE, Arts. 2142 and 2143.

[60] See CIVIL CODE, Art. 1157.

allegations in both the complaint and amended complaint are undoubtedly hinged, and unavoidably linked, to his former contractual relationship with EYLLP to which the present controversy among all the parties can be traced:

> (28)(23) It is likely that one of the reasons that P&A refused to compensate him was because of the influence of [EYLLP]. It is believed that [EYLLP] sought to punish Mr. Strickland by trying to prevent him from receiving compensation despite [EYLLP's] deliberate and reckless abandonment of its contractual responsibilities. NHMFC appears to have refused to compensate [Strickland] because it was not contractually bound by the Agreement to compensate him, although NHMFC believed it could oblige [Strickland] to complete the work because of [his] designation as Project Manager.
>
> (29)(24) [Strickland] is entitled to be compensated for his work.[61]
>
> x x x

The designation in Strickland's amended complaint of "Additional Cause of Action Against [respondent EYLLP]"[62] further demonstrates that the totality of his causes of action are actually anchored on the disintegration of his working relationship with EYLLP whom he faults for his failure to receive compensation from the other defendants.

In a hodge podge of allegations, Strickland, without being a party to the FASA between NHMFC and PA/EYLLP, insists on the continuation of his suit contending that his designation as "Lead Due Diligence Partner," forming part of the Engagement Team, entitles him to equitable compensation. Thus, Strickland maintains that the proceedings in Civil Case No. 05-692 should not have been suspended, and should then proceed independently of the arbitration between Strickland and EYLLP.

We do not agree. We do not find the designation of Strickland in the Engagement Team of the FASA as a stipulation *pour atrui*. Article 1311, paragraph 2 of the Civil Code reads.

---

[61] *Rollo* (G.R. No. 210695), p. 190.

[62] *Id.* at 191.

Art. 1311. x x x

If a contract should contain some stipulation in favor of a third person, he may demand its fulfillment provided he communicated his acceptance to the obligor before its revocation. A mere incidental benefit or interest of a person is not sufficient. The contracting parties must have clearly and deliberately conferred a favor upon a third person.

Considering the clear applicability of the Partnership Agreement and the terms of the arbitration clause, and absent a clear right-duty correlative[63] which supports Strickland's causes of action, the CA certainly did not err in suspending the proceedings in CA-G.R. SP No. 120897.

Third. We are not unaware of previous holdings where we disallowed suspension of trial pending arbitration, even simultaneous arbitration proceedings and trial, where the issue before the court could not then be speedily and efficiently resolved in its entirety. We emphasized that the object of arbitration (that is, to expedite the determination of a dispute) would only be served if the trial court hears and adjudicates the case in a single and complete proceeding.[64]

The following circumstances underscore the high probability of an expeditious resolution of the conflict with the referral to arbitration of the dispute between EYLLP and Strickland and the succeeding suspension of the proceedings before the RTC in Civil Case No. 05-692:

1. As previously stated, these cases comprise of a foreign element, involving foreign parties and international transactions. While the parties have not questioned the jurisdiction of our courts, the RTC may still refuse to assume jurisdiction.[65]

---

[63] See RULES OF COURT, Rule 2, Sec. 2.

[64] See *Del Monte Corporation-USA v. Court of Appeals*, G.R. No. 136154, February 7, 2001, 351 SCRA 373, 381-382, citing *Heirs of Augusto L. Salas, Jr. v. Laperal Realty Corporation*, G.R. No. 135362, December 13, 1999, 320 SCRA 610.

[65] See *Crescent Petroleum, Ltd. v. M/V "Lok Maheshwari,"* G.R. No. 155014, November 11, 2005, 474 SCRA 623.

2. As previously discussed, the causes of action cited by Strickland in his complaint (and amended complaint) all undoubtedly relate to his Partnership Agreement with EYLLP which is subject to arbitration. This very same Partnership Agreement is even reiterated in the November 15, 2002 Assignment Letter assigning Strickland to Manila.[66]

3. Strickland himself admits that as Partner of EYLLP, he was assigned to various parts of Asia. He has also not denied that he was seconded to EYAPFS because of certain tax consequences of his different assignments.[67] In fact, in his additional cause of action against EYLLP, Strickland alleged, among others, that EYLLP did not pay his correct taxes making him liable for these.[68] Evidently, the real dispute between Strickland and EYLLP falls within its Partnership Agreement involving its own choice of law provision.

In *Crescent Petroleum, Ltd. v. M/V "Lok Maheshwari*,"[69] the Court used balancing of basic interest to weigh the varying foreign elements of the case listed in the US case of *Lauritzen v. Larsen*.[70] With Philippine law falling only under one factor as the law of the forum where petitioner Crescent filed suit, the Court declared it inconceivable that the Philippine court had any interest in the case that would outweigh the interests of the involved foreign jurisdictions (Canada or India).[71] Ultimately, the Court held that:

Finally. The submission of petitioner is not in keeping with the reasonable expectation of the parties to the contract. Indeed, when

---

[66] See CA *rollo* (CA-G.R. SP No. 102805), p. 263.

[67] See email thread prior to Strickland's assignment to Manila to ensure that he maximizes his compensation benefits. *Rollo* (G.R. No. 210695), pp. 223-256.

[68] *Id.* at 197-201.

[69] *Supra*.

[70] 345 U.S. 571 (1953).

[71] *Crescent Petroleum, Ltd. v. M/V "Lok Maheshwari," supra* note 65 at 641.

the parties entered into a contract for supplies in Canada, they could not have intended the laws of a remote country like the Philippines to determine the creation of a lien by the mere accident of the Vessel's being in Philippine territory.[72]

In all, while we do not preclude Strickland from pursuing all remedies available to him, we point out that the factual circumstances obtaining here, given that Strickland was then partner of the global company EYLLP, the Philippines is not automatically the law of the place of performance of the contract nor is it the only factor to be considered in the ultimate choice-of- law final analysis.

WHEREFORE, the petitions in G.R. Nos. 193782 and 210695 are **DENIED**. The Decisions of the Court of Appeals in CA-G.R. SP No. 102805 dated June 17, 2010 and CA-G.R. SP No. 120897 dated August 5, 2013 are **AFFIRMED**.

SO ORDERED.

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

---

[72] *Id.* at 641-642.

[*] Designated as Acting Chairperson of the First Division per Special Order No. 2559 dated May 11, 2018.

[**] Designated as Acting Member of the First Division per Special Order No. 2560 dated May 11, 2018.

FIRST DIVISION

[G.R. No. 201292. August 01, 2018]

PENSION AND GRATUITY MANAGEMENT CENTER (PGMC), GHQ, AFP, CAMP AGUINALDO, QUEZON CITY, represented by its CURRENT CHIEF, *petitioner, vs.* **AAA (CA-G.R. SP NO. 04359-MIN),**[*] *respondent.*

SYLLABUS

POLITICAL LAW; ADMINISTRATIVE LAW; RETIREMENT AND PENSION BENEFITS OF MILITARY PERSONNEL; THE COURT MAY ORDER THE PENSION AND GRATUITY MANAGEMENT CENTER OF THE ARMED FORCES OF THE PHILIPPINES (PGMC), TO AUTOMATICALLY DEDUCT A PORTION FROM THE RETIREMENT BENEFITS OF ITS MEMBER-RECIPIENTS FOR DIRECT REMITTANCE TO THE LATTER'S LEGAL SPOUSE AS AND BY WAY OF SUPPORT IN COMPLIANCE WITH A PROTECTION ORDER ISSUED BY THE TRIAL COURT, PURSUANT TO THE PROVISIONS OF REPUBLIC ACT NO. 9262 OR THE ANTI-VIOLENCE AGAINST WOMEN AND THEIR CHILDREN ACT OF 2004.— [I]n *Republic v. Yahon*, the Court held that PGMC may be ordered to automatically deduct a portion from the retirement benefits of its member-recipients for direct remittance to the latter's legal spouse as and by way of support in compliance with a protection order issued by the trial court, pursuant to the provisions of Republic Act No. 9262 (RA 9262) or the Anti-Violence Against Women and Their Children Act of 2004. The Court declared therein that RA 9262 – which is a special law; a later enactment; a support enforcement legislation; and one that addresses one form of violence, which is economic abuse against women and children – should be

[*] Pursuant to Amended Administrative Circular No. 83-2015; confidentiality of the identities of the parties, records and court proceedings is mandated in cases involving Republic Act No. 9262 (Anti-Violence Against Women and Their Children Act of 2004).

> construed as laying down an exception to the general rule that retirement benefits are exempt from execution. The Court therein noted that RA 9262 itself explicitly authorizes the courts to order the withholding of a percentage of the income or salary of the defendant or respondent by the employer, which shall be remitted directly to the plaintiff or complainant – other laws to the contrary notwithstanding. x x x .

APPEARANCES OF COUNSEL

Office of the Judge Advocate General, AFP, for petitioner.
Cynthia M. Sulit-Portugaleza for respondent.

D E C I S I O N

DEL CASTILLO, *J.*:

Assailed in this Petition for Review on *Certiorari*[1] are the August 16, 2011 Resolution[2] and March 9, 2012 Resolution[3] of the Court of Appeals (CA) which dismissed the Petition for Certiorari in CA-G.R. SP No. 04359-MIN and denied herein petitioner's Motion for Reconsideration,[4] respectively.

Factual Antecedents

Respondent AAA filed an action for support against her husband, BBB — a retired military person, before the Regional Trial Court (RTC) of Isabela, Basilan. The case was docketed as Civil Case No. 921-259 and assigned to RTC Branch 1.

---

[1] *Rollo*, pp. 13-38.

[2] *Id*. at 39; per Associate Justices Rodrigo F. Lim, Jr., Pamela Ann A. Maxino and Zenaida T. Galapate-Laguilles.

[3] *Id*. at 41-42; penned by Associate Justice Pamela Ann A. Maxino and concurred in by Associate Justices Edgardo A. Camello and Zenaida T. Galapate-Laguilles.

[4] *Id*. at 90-98.

On February 12, 2010, the trial court issued its Judgment,[5] the dispositive portion of which reads:

> WHEREFORE, judgment is hereby rendered in favor of the petitioner and against the respondent by way of the following:
>
> 1) Ordering the issuance of a Permanent Protection Order decreeing the respondent to support the petitioner and the minor child CCC consisting of 50% of his monthly pension to be withheld regularly by the Pension Gratuity Management Center of the Armed Forces of the Philippines, General Headquarters, Fort Bonifacio, Taguig City, to be remitted by the latter by check directly to the petitioner;
>
> 2) Ordering the respondent to pay the petitioner support in arrears in the amount of ₱130,000.00, representing monthly support of ₱5,000.00 commencing from January, 2008.
>
> SO ORDERED.[6]

On February 12, 2010, the trial court issued a Permanent Protection Order[7] reiterating what was decreed in its Judgment and ordering the automatic withholding of BBB's monthly pension by petitioner Pension Gratuity Management Center of the Armed Forces of the Philippines (PGMC) and its direct remittance to respondent.

Petitioner filed a Manifestation (with Motion)[8] questioning the trial court's directive for it to withhold half of BBB's pension for direct remittance to respondent, arguing that it may not legally release any portion of BBB's monthly pension to any other individual as it was not impleaded as a party defendant to Civil Case No. 921-259; that it is prohibited by law from releasing and distributing monthly pensions of retired military personnel to individuals other than the retirees themselves; and that pensions are public funds and may not be appropriated for a purpose not

---

[5] *Id*. at 44-47; penned by Presiding Judge Leo Jay T. Principe.

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

[7] *Id*. at 48-49.

[8] *Id*. at 50-62.

intended by law. To this motion, respondent filed her Comment,[9] to which petitioner filed a Reply.[10]

In an April 23, 2011 Order,[11] the trial court denied petitioner's Manifestation (withMotion) for lack of merit.

Ruling of the Court of Appeals

Petitioner filed an original Petition for *Certiorari*[12] with the CA, docketed as CA-G.R. SP No. 04359-MIN. In a August 16, 2011 Resolution, however, the CA dismissed the petition for being tardy and for failing to strictly comply with Rules 43 and 65 of the 1997 Rules of Civil Procedure (1997 Rules), particularly for failure to make a valid tender of payment for the docket and other fees, for having remitted postal money orders that bear an invalid date, and for failure to state the material dates of receipt of the assailed judgment and order of the trial court and the date of filing of its motion for reconsideration.

Petitioner moved to reconsider, but the CA held its ground, insisting on a strict application of the 1997 Rules relative to the filing of petitions for *certiorari*.

Issues

In a February 10, 2016 Resolution,[13] this Court resolved to give due course to the Petition, which contains the following assignment of errors:

I.

THE HONORABLE COURT OF APPEALS ERRED WHEN IT DISMISSED OUTRIGHT THE PETITION FOR *CERTIORARI* UNDER RULE 65 ON THE GROUND THAT ONLY THE

---

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

[10] *Id*. at 65-67.

[11] *Id*. at 68-69; penned by Presiding Judge Leo Jay T. Principe.

[12] *Id*. at 71-89.

[13] *Id*. at 138-139.

MATERIAL DATE OF RECEIPT OF THE RESOLUTION OF THE RTC DENYING THE MOTION FOR RECONSIDERATION FILED BY THE PETITIONER WITH THE RTC WAS INDICATED.

II.

THE HONORABLE COURT OF APPEALS GRAVELY ERRED WHEN IT STRICTLY APPLIED THE RULE ON PAYMENT OF DOCKET FEES AND OTHER LAWFUL FEES BY ORDERING THE DISMISSAL OF THE PETITION FOR *CERTIORARI* ON THE GROUND THAT THERE WAS NO VALID TENDER OF PAYMENT OF DOCKET AND OTHER LAWFUL FEES DUE TO THE FACT THAT THE POSTAL MONEY ORDERS REMITTED BORE AN INVALID DATE OF JULY 61, 2011.

III.

THE HONORABLE COURT OF APPEALS GRAVELY ERRED WHEN IT REFUSED TO RULE ON SUBSTANTIVE MERITS OF THE PETITION FOR *CERTIORARI*.[14]

Petitioner's Arguments

In praying that the assailed CA dispositions be set aside and that, instead, the case be remanded to the CA for resolution thereof on the merits, petitioner pleads in its Petition and Reply[15] substantial compliance with the 1997 Rules; that rules of procedure must give way to substantial justice; that the procedural lapses it committed are not fatal to its cause; and that the substantial issues and merit of its case outweigh the procedural lapses it committed.

Respondent's Arguments

Respondent, on the other hand, simply counters in her Comment[16] that the CA was correct in dismissing the petition for *certiorari* for petitioner's failure to properly observe the procedural requirements.

---

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

[15] *Id.* at 129-135.

[16] *Id.* at 113-114.

Our Ruling

The Court denies the Petition.

The lone substantive issue for resolution in this suit — which would settle the case once and for all — is whether petitioner may be validly ordered by the court to withhold half of BBB's pension for direct remittance to respondent. The Court declares that it can; the issue has already been settled in a previous case — one involving the very same petitioner in this case.

Thus, in *Republic v. Yahon*,[17] the Court held that PGMC may be ordered to automatically deduct a portion from the retirement benefits of its member-recipients for direct remittance to the latter's legal spouse as and by way of support in compliance with a protection order issued by the trial court, pursuant to the provisions of Republic Act No. 9262 (RA 9262) or the Anti-Violence Against Women and Their Children Act of 2004. The Court declared therein that RA 9262 — which is a special law; a later enactment; a support enforcement legislation; and one that addresses one form of violence, which is economic abuse against women and children — should be construed as laying down an exception to the general rule that retirement benefits are exempt from execution. The Court therein noted that RA 9262 itself explicitly authorizes the courts to order the withholding of a percentage of the income or salary of the defendant or respondent by the employer, which shall be remitted directly to the plaintiff or complainant - other laws to the contrary notwithstanding. Thus, the Court declared:

> In this petition, the question of law presented is whether petitioner military institution may be ordered to automatically deduct a percentage from the retirement benefits of its enlisted personnel, and to give the same directly to the latter's lawful wife as spousal support in compliance with a protection order issued by the RTC pursuant to R.A. No. 9262.
>
> A *protection order* is an order issued by the court to prevent further acts of violence against women and their children, their family or

---

[17] 738 Phil. 397 (2014).

household members, and to grant other necessary relief. Its purpose is to safeguard the offended parties from further harm, minimize any disruption in their daily life and facilitate the opportunity and ability to regain control of their life. The protection orders issued by the court may be a Temporary Protection Order (TPO) or a Permanent Protection Order (PPO), while a protection order that may be issued by the barangay shall be known as a Barangay Protection Order (BPO).

Section 8 of R.A. No. 9262 enumerates the reliefs that may be included in the TPO, PPO or BPO, to wit:

x x x x x x x x x

> (g) Directing the respondent to provide support to the woman and/or her child if entitled to legal support. **Notwithstanding other laws to the contrary, the court shall order an appropriate percentage of the income or salary of the respondent to be withheld regularly by the respondent's employer for the same to be automatically remitted directly to the woman. Failure to remit and/or withhold or any delay in the remittance of support to the woman and/or her child without justifiable cause shall render the respondent or his employer liable for indirect contempt of court;**

x x x x x x x x x

Petitioner argues that it cannot comply with the RTC's directive for the automatic deduction of 50% from S/Sgt. Yahon's retirement benefits and pension to be given directly to respondent, as it contravenes an explicit mandate under the law governing the retirement and separation of military personnel.

The assailed provision is found in Presidential Decree (P.D.) No. 1638, which states:

> **Section 31.** The benefits authorized under this Decree, except as provided herein, **shall not be subject to attachment, garnishment, levy, execution or any tax whatsoever; neither shall they be assigned, ceded, or conveyed to any third person**: Provided, That if a retired or separated officer or enlisted man who is entitled to any benefit under this Decree has unsettled money and/or property accountabilities incurred while in the active service, not more than fifty per centum of the pension gratuity or other payment due such officer or enlisted man or

his survivors under this Decree may be withheld and be applied to settle such accountabilities.

A similar provision is found in R.A. No. 8291, otherwise known as the "Government Service Insurance System Act of 1997," which reads:

> SEC. 39. *Exemption from Tax, Legal Process and Lien* — x x x
>
> x x x x x x x x x
>
> The funds and/or the properties referred to herein as well as the benefits, sums or monies corresponding to the benefits under this Act shall be exempt from attachment, garnishment, execution, levy or other processes issued by the courts, quasi-judicial agencies or administrative bodies including Commission on Audit (COA) disallowances and from all financial obligations of the members, including his pecuniary accountability arising from or caused or occasioned by his exercise or performance of his official functions or duties, or incurred relative to or in connection with his position or work except when his monetary liability, contractual or otherwise, is in favor of the GSIS.

In *Sarmiento v. Intermediate Appellate Court*, we held that a court order directing the Philippine National Bank to refrain from releasing to petitioner all his retirement benefits and to deliver one-half of such monetary benefits to plaintiff as the latter's conjugal share is illegal and improper, as it violates Section 26 of CA 186 (old GSIS Law) which exempts retirement benefits from execution.

The foregoing exemptions have been incorporated in the 1997 Rules of Civil Procedure, as amended, which governs execution of judgments and court orders. Section 13 of Rule 39 enumerates those properties which are exempt from execution:

> SEC. 13. *Property exempt from execution.* **Except as otherwise expressly provided by law**, the following property, and no other, shall be exempt from execution:
>
> x x x x x x x x x
>
> (1) The right to receive legal support, or money or property obtained as such support, or **any pension or gratuity from the Government**;

It is basic in statutory construction that in case of irreconcilable conflict between two laws, the later enactment must prevail, being the more recent expression of legislative will. Statutes must be so construed and harmonized with other statutes as to form a uniform system of jurisprudence. However, if several laws cannot be harmonized, the earlier statute must yield to the later enactment. The later law is the latest expression of the legislative will.

We hold that Section 8(g) of R.A No. 9262, being a later enactment, should be construed as laying down an exception to the general rule above-stated that retirement benefits are exempt from execution. The law itself declares that the court shall order the withholding of a percentage of the income or salary of the respondent by the employer, which shall be automatically remitted directly to the woman "*[n]otwithstanding other laws to the contrary*."

Petitioner further contends that the directive under the TPO to segregate a portion of S/Sgt. Yahon's retirement benefits was illegal because said [monies] remain as public funds, x x x

x x x x x x x x x

We disagree.

Section 8(g) of R.A. No. 9262 used the general term "employer," which includes in its coverage the military institution, S/Sgt. Yahon's employer. Where the law does not distinguish, courts should not distinguish. Thus, Section 8(g) applies to *all* employers, whether private or government.

It bears stressing that Section 8(g) providing for spousal and child support, is a support enforcement legislation. In the United States, provisions of the Child Support Enforcement Act allow garnishment of certain federal funds where the intended recipient has failed to satisfy a legal obligation of child support. As these provisions were designed 'to avoid sovereign immunity problems' and provide that 'moneys payable by the Government to any individual are subject to child support enforcement proceedings,' the law is clearly intended to 'create a limited waiver of sovereign immunity so that state courts could issue valid orders directed against Government agencies attaching funds in their possession.'

This Court has already ruled that R.A. No. 9262 is constitutional and does not violate the equal protection clause. In *Garcia v. Drilon* the issue of constitutionality was raised by a husband after the latter

failed to obtain an injunction from the CA to enjoin the implementation of a protection order issued against him by the RTC. We ruled that R.A. No. 9262 rests on real substantial distinctions which justify the classification under the law: the unequal power relationship between women and men; the fact that women are more likely than men to be victims of violence; and the widespread bias and prejudice against women.

We further held in *Garcia* that the classification is germane to the purpose of the law, *viz*:

> The distinction between men and women is germane to the purpose of R.A. 9262, which is to address violence committed against women and children, spelled out in its Declaration of Policy, as follows:
>
> SEC. 2. Declaration of Policy. It is hereby declared that the State values the dignity of women and children and guarantees full respect for human rights. The State also recognizes the need to protect the family and its members particularly women and children, from violence and threats to their personal safety and security.
>
> x x x x x x x x x

Under R.A. No. 9262, the provision of spousal and child support specifically addresses one form of violence committed against women: *economic abuse*.

> D. "Economic abuse" refers to acts that make or attempt to make a woman financially dependent which includes, but is not limited to the following:
>
> 1. Withdrawal of financial support or preventing the victim from engaging in any legitimate profession, occupation, business or activity, except in cases wherein the other spouse/partner objects on valid, serious and moral grounds as defined in Article 73 of the Family Code;
>
> 2. Deprivation or threat of deprivation of financial resources and the right to the use and enjoyment of the conjugal, community or property owned in common;
>
> 3. Destroying household property;
>
> 4. Controlling the victims' own money or properties or solely controlling the conjugal money or properties.

The relief provided in Section 8(g) thus fulfills the objective of restoring the dignity of women who are victims of domestic violence and provide them continued protection against threats to their personal safety and security.[18] (Emphasis and italics in the original; citations omitted)

Having disposed of the case in the foregoing manner, the other issues raised by petitioner are deemed irrelevant and need not be passed upon by the Court. Quite the contrary, the resolution of the Court on the substantive issue involved should be enforced with dispatch, this case being one for support.

WHEREFORE, the Petition is **DENIED**. The August 16, 2011 and March 9, 2012 Resolutions of the Court of Appeals in CA-G.R. SP No. 04359-MIN, as well as the February 12, 2010 Judgment of the Regional Trial Court of Isabela, Basilan, Branch 1, in Civil Case No. 921-259 are **AFFIRMED *in toto***.

The case is **REMANDED** to the court of origin for execution, and if necessary, evaluation and determination of what is correctly due to respondent AAA by way of support in arrears and interest, if any, considering the period of time that elapsed since the case was decided by the trial court.

SO ORDERED.

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

---

[18] *Id.* at 407-414.

[**] Per Special Order No. 2559 dated May 11, 2018.

[***] Per Special Order No. 2560 dated May 11, 2018.

THIRD DIVISION

[G.R. No. 206362. August 1, 2018]

RHOMBUS ENERGY, INC., *petitioner, vs.* **COMMISSIONER OF INTERNAL REVENUE,** *respondent.*

SYLLABUS

1. TAXATION; NATIONAL INTERNAL REVENUE CODE (NIRC); TAX CREDIT OR REFUND; IRREVOCABILITY RULE; THE CARRY-OVER OPTION, ONCE ACTUALLY OR CONSTRUCTIVELY CHOSEN BY A CORPORATE TAXPAYER, BECOMES IRREVOCABLE*; CLARIFIED*.— The irrevocability rule is enunciated in Section 76 of the National Internal Revenue Code (NIRC) x x x. The application of the irrevocability rule is explained in *Republic v. Team (Phils.) Energy Corporation formerly Mirant [Phils.] Energy Corporation*, where the Court stated: In *Commissioner of Internal Revenue v. Bank of the Philippine Islands*, the Court, citing the pronouncement in *Philam Asset Management, Inc.,* points out that Section 76 of the NIRC of 1997 is clear and unequivocal in providing that the carry-over option, once actually or constructively chosen by a corporate taxpayer, becomes *irrevocable*. The Court explains: Hence, 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. Consequently, after the taxpayer opts to carry-over its excess tax credit to the following taxable period, the question of whether or not it actually gets to apply said tax credit is irrelevant. Section 76 of the NIRC of 1997 is explicit in stating that once the option to carry over has been made, "no application for tax refund or issuance of a tax credit certificate shall be allowed therefor." The last sentence of Section 76 of the NIRC of 1997 reads: "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 tax refund or issuance of a tax credit certificate shall be allowed therefor." The phrase "for that taxable period" merely identifies the excess income

tax, subject of the option, by referring to the taxable period when it was acquired by the taxpayer. In the present case, the excess income tax credit, which BPI opted to carry over, was acquired by the said bank during the taxable year 1998. The option of BPI to carry over its 1998 excess income tax credit is irrevocable; it cannot later on opt to apply for a refund of the very same 1998 excess income tax credit x x x.

2. ID.; ID.; ID.; THE IRREVOCABILITY RULE TAKES EFFECT WHEN THE OPTION IS EXERCISED.— Although the CTA *En Banc* recognized that Rhombus had actually exercised the option to *be refunded*, it nonetheless maintained that Rhombus was not entitled to the refund for having reported the prior year's excess credits in its quarterly ITRs for the year 2006 x x x. The CTA *En Banc* thereby misappreciated the fact that Rhombus had already exercised the option for its unutilized creditable withholding tax for the year 2005 *to be refunded* when it filed its annual ITR for the taxable year ending December 31, 2005. Based on the disquisition in *Republic v. Team (Phils.) Energy Corporation, supra*, the irrevocability rule took effect when the option was exercised. In the case of Rhombus, therefore, its marking of the box "To be refunded" in its 2005 annual ITR constituted its exercise of the option, and from then onwards Rhombus became precluded from carrying-over the excess creditable withholding tax. The fact that the prior year's excess credits were reported in its 2006 quarterly ITRs did not reverse the option to be refunded exercised in its 2005 annual ITR. As such, the CTA *En Banc* erred in applying the irrevocability rule against Rhombus.

3. ID.; ID.; ID.; ID.; REQUISITES FOR ENTITLEMENT TO A REFUND; COMPLIED WITH IN CASE AT BAR.— It is relevant to mention the requisites for entitlement to the refund as listed in *Republic v. Team (Phils.) Energy Corporation, supra*, to wit: 1. That the claim for refund was filed within the two-year reglementary period pursuant to Section 229 of the NIRC; 2.When it is shown on the ITR that the income payment received is being declared part of the taxpayer's gross income; and 3. When the fact of withholding is established by a copy of the withholding tax statement, duly issued by the payor to the payee, showing the amount paid and income tax withheld from that amount. x x x. The members of the CTA First Division were in the best position as trial judges to examine the documents

submitted in relation thereto, and to make the proper findings thereon. Given their expertise on the matter, we accord weight and respect to their finding that Rhombus had satisfied the requirements for its claim for refund of its excess creditable withholding taxes for the year 2005.

APPEARANCES OF COUNSEL

Follosco Morallos & Herce for petitioner.
BIR Litigation Division for respondent.

D E C I S I O N

BERSAMIN, *J.*:

At issue is whether or not the taxpayer is barred by the irrevocability rule in claiming for the refund of its excess and/or unutilized creditable withholding tax.

The Case

This appeal assails the decision promulgated on October 11, 2012 in CTA EB Case No. 803,[1] whereby the Court of Tax Appeals *En Banc* (CTA *En Banc*) reversed and set aside the decision dated March 23, 2011 of the CTA First Division granting the claim for refund of excess and/or unutilized creditable withholding tax in the total amount of ₱1,500,653.00 filed by Rhombus Energy, Inc. (Rhombus).[2]

---

[1] *Rollo,* pp. 51-71; penned by Associate Justice Olga Palanca-Enriquez, with the concurrence of Presiding Justice Ernesto D. Acosta, Associate Justice Juanito C. Castañenda, Jr., Associate Justice Lovell R. Bautista, Associate Justice Caesar A. Casanova, Associate Justice Cielito N. Mindaro-Grulla; Associate Justice Esperanza R. Fabon-Victorino dissented; Associate Justice Erlinda P. Uy and Associate Justice Amelia R. Colangco-Manalastas were on leave.

[2] *Id*. at 12-37; penned by Associate Justice Fabon-Victorino with the concurrence of Associate Justice Uy; Presiding Justice Acosta dissented.

Antecedents

The factual and procedural antecedents are synthesized by the CTA *En Banc* in its assailed decision as follows:

Records show that from October 1998 to July 2007, respondent was registered with and was under the jurisdiction of Revenue Region No. 8, Revenue District Office ("RDO") No. 50 (South Makati) of the BIR with Taxpayer Identification No. 005-650-790-000. However, due to respondent's change of address from Suite 1402, BDO Plaza, 8737 Paseo de Roxas, Salcedo Village, Makati City to Suite 208, 2nd Floor, the Manila Bank Corporation Condominium Building, 6772 Ayala Avenue, Makati City, respondent filed an application for change of home RDO.

Thus, on July 18, 2007, respondent was transferred to the jurisdiction of RDO No. 47, with Certificate of Registration No. OCN9RC0000211342.

In the meantime, on April 17, 2006, respondent filed its Annual Income Tax Return ("ITR") for taxable year 2005, detailed, as follows:

Sales/Revenues/Receipts/Fees		₱59,551,116.00
Less: Cost of Sales		22,351,923.00
Gross Income from Operations		37,199,193.00
Add: Non-Operating and Other Income		209,320,181.00
Gross Income		₱246,519,374.00
Less: Deductions		144,421,350.00
Taxable Income		₱102,098,024.00
Income Tax		33,181,858.00
Less: Prior year's Excess Credits	₱0.00	
Tax Payments for the First 3 Quarters	6,159,215.00	
Creditable Tax Withheld for the 1st 3 Quarters	28,523,296.00	
Total Tax Credits/Payments		₱34,682,511.00
Tax Payable/(Overpayment)		**1,500,653.00**

In said Annual ITR for taxable year 2005, respondent indicated that its excess creditable withholding tax ("CWT") for the year 2005 was "To be refunded".

On May 29, 2006, respondent filed its Quarterly Income Tax Return for the first quarter of taxable year 2006 showing prior year's excess credits of ₱1,500,653.00.

On August 25, 2006, respondent filed its Quarterly Income Tax Return for the second quarter of taxable year 2006 showing prior year's excess credits of ₱1,500,653.00.

On November 27, 2006, respondent filed its Quarterly Income Tax Return for the third quarter of taxable year 2006 showing prior year's excess credits of ₱1,500,653.00.

On December 29, 2006, respondent filed with the Revenue Region No. 8 an administrative claim for refund of its alleged excess/unutilized CWT for the year 2005 in the amount of ₱1,500,653.00.

On April 2, 2007, respondent filed its Annual Income Tax Return for taxable year 2006 showing prior year's excess credits of ₱0.00.

On December 7, 2007, pending petitioner's action on respondent's claim for refund or issuance of a tax credit certificate of its excess/ unutilized CWT for the year 2005 and before the lapse of the period for filing an appeal, respondent filed the instant Petition for Review.

In her Answer, by way of special and affirmative defenses, the CIR alleged: assuming without admitting that respondent filed a claim for refund, the same is subject to investigation by the BIR; respondent failed to demonstrate that the tax was erroneously or illegally collected; taxes paid and collected are presumed to have been made in accordance with laws and regulations, hence, not refundable; it is incumbent upon respondent to show that it has complied with the provisions of *Section 204(C), in relation to Section 229 of the Tax Code, as amended,* upon which its claim for refund was premised; in an action for tax refund the burden is upon the taxpayer to prove that he is entitled thereto, and failure to discharge said burden is fatal to the claim; and claims for refund are construed strictly against the claimant, as the same partake of the nature of exemption from taxation.

After trial on the merits, on March 23, 2011, the First Division rendered the assailed Decision granting the Petition for Review.

On April 14, 2011, petitioner CIR filed a "Motion for Reconsideration", which was denied for lack of merit by the First Division in a Resolution dated June 30, 2011.

Not satisfied, petitioner CIR filed the instant Petition for Review x x x.[3]

Decision of the CTA *En Banc*

Citing *Commissioner of Internal Revenue v. Mirant (Philippines) Operations, Corporation,*[4] the CTA *En Banc* reversed and set aside the decision dated March 23, 2011 of the CTA First Division, explaining and holding thusly:

> x x x *Section 76* is clear and unequivocal. Once the carry-over option is taken, actually or constructively, it becomes irrevocable. It mentioned no exception or qualification to the irrevocability rule *(Commissioner of Internal Revenue vs. Bank of the Philippine Islands 592 SCRA 231).* Hence, 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. Consequently, after the taxpayer opts to carry-over its excess tax credit to the following taxable period, the question of whether or not it actually gets to apply said tax credit is irrelevant. *Section 76 of the NIRC of 1997* is explicit in stating that once the option to carry over has been made[,] no application for tax refund or issuance of a tax credit certificate shall be allowed therefor' *(supra).*
>
> Applying the foregoing rulings to the instant case, considering that petitioner opted to carry-over its unutilized creditable withholding tax of ₱1,500,653.00 for taxable year 2005 to the first, second and third quarters of taxable year 2006 when it had actually carried-over said excess creditable withholding tax to the first, second and third quarters in its Quarterly Income Tax Returns for taxable year 2006, said option to carry-over becomes irrevocable. Petitioner's act of reporting in its Annual Income Tax Return for taxable year 2006 of prior year's excess credits other than MCIT as 0.00, will not change the fact that petitioner had already opted the carry-over option in its first, second and third quarters Quarterly Income Tax Returns for taxable year 2006, and said choice is irrevocable. As previously mentioned, whether or not petitioner actually gets to apply said excess tax credit is irrelevant and would not change the carry-over option already made.

---

[3] *Id*. at 54-57.

[4] G.R. Nos. 171742 & 176165, June 15, 2011, 652 SCRA 80.

Thus, the present petition praying for refund or issuance of a TCC of its unutilized creditable withholding tax for taxable year 2005 in the amount of ₱1,500,653.00 must perforce be denied in view of the irrevocability rule on carry-over option of unutilized creditable withholding tax.

WHEREFORE, premises considered, the instant Petition for Review is hereby **GRANTED.** Accordingly, the Decision of the First Division dated March 23, 2011 and Resolution dated June 30, 2011 are hereby **REVERSED** and **SET ASIDE,** and another one is hereby entered **DISMISSING** the Petition for Review filed in C.T.A. Case No. 7711.

SO ORDERED.[5]

On March 13, 2013, the CTA *En Banc* denied Rhombus' motion for reconsideration.[6]

Hence, Rhombus appeals to resolve whether or not it has proved its entitlement to the refund.

Ruling of the Court

The appeal is meritorious.

The irrevocability rule is enunciated in Section 76 of the National Internal Revenue Code (NIRC), *viz.*:

Section 76. *Final Adjusted Return.* — Every corporation liable to tax under Section 27 shall file a final adjustment return covering the total taxable income for the preceding calendar of 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 the 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.

---

[5] *Rollo,* pp. 68-70.

[6] *Id*. at 199-204.

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 years 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**. (Bold underscoring supplied to highlight the relevant portion)

The application of the irrevocability rule is explained in *Republic v. Team (Phils.) Energy Corporation (formerly Mirant [Phils.] Energy Corporation*,[7] where the Court stated:

In *Commissioner of Internal Revenue v. Bank of the Philippine Islands*, the Court, citing the pronouncement in *Philam Asset Management, Inc.*, points out that Section 76 of the NIRC of 1997 is clear and unequivocal in providing that the carry-over option, once actually or constructively chosen by a corporate taxpayer, becomes *irrevocable*. The Court explains:

> Hence, 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. Consequently, after the taxpayer opts to carry-over its excess tax credit to the following taxable period, the question of whether or not it actually gets to apply said tax credit is irrelevant. Section 76 of the NIRC of 1997 is explicit in stating that once the option to carry over has been made, "no application for tax refund or issuance of a tax credit certificate shall be allowed therefor."
>
> The last sentence of Section 76 of the NIRC of 1997 reads: "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**

[7] G.R. No. 188016, January 14, 2015, 746 SCRA 41.

taxable period and no application for tax refund or issuance of a tax credit certificate shall be allowed therefor." The phrase "for that taxable period" merely identifies the excess income tax, subject of the option, by referring to the taxable period when it was acquired by the taxpayer. In the present case, the excess income tax credit, which BPI opted to carry over, was acquired by the said bank during the taxable year 1998. The option of BPI to carry over its 1998 excess income tax credit is irrevocable; it cannot later on opt to apply for a refund of the very same 1998 excess income tax credit.

The Court of Appeals mistakenly understood the phrase "for that taxable period" as a prescriptive period for the *irrevocability rule*. This would mean that since the tax credit in this case was acquired in 1998, and BPI opted to carry it over to 1999, then the irrevocability of the option to carry over expired by the end of 1999, leaving BPI free to again take another option as regards its 1998 excess income tax credit. This construal effectively renders nugatory the *irrevocability rule*. 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. The interpretation of the Court of Appeals only delays the flip-flopping to the end of each succeeding taxable period.

The Court similarly disagrees in the declaration of the Court of Appeals that to deny the claim for refund of BPI, because of the *irrevocability rule*, would be tantamount to unjust enrichment on the part of the government. The Court addressed the very same argument in *Philam*, where it elucidated that there would be no unjust enrichment in the event of denial of the claim for refund under such circumstances, because there would be no forfeiture of any amount in favor of the government. The amount being claimed as a refund would remain in the account of the taxpayer until utilized in succeeding taxable years, as provided in Section 76 of the NIRC of 1997. It is worthy to note that unlike the option for refund of excess income tax, which prescribes after two years from the filing of the FAR,

> there is no prescriptive period for the carrying over of the same. Therefore, the excess income tax credit of BPI, which it acquired in 1998 and opted to carry over, may be repeatedly carried over to succeeding taxable years, *i.e.*, to 1999, 2000, 2001, and so on and so forth, until actually applied or credited to a tax liability of BPI.[8]

The CTA First Division duly noted the exercise of the option by Rhombus in the following manner:

> The evidence on record shows that **petitioner clearly signified its intention to be refunded of its excess creditable tax withheld for calendar year 2005 in its Annual ITR for the said year. Petitioner under Line 31 of the said ITR marked "x" on the box "To be refunded".** Moreover, petitioner's 2006 and 2007 Annual ITRs do not have any entries in Line 28A "Prior Year's Excess Credits" which only prove that petitioner did not carry-over its 2005 excess/ unutilized creditable withholding tax to the succeeding taxable years or quarters.[9] (Bold underscoring is supplied for emphasis)

Although the CTA *En Banc* recognized that Rhombus had actually exercised the option *to be refunded*, it nonetheless maintained that Rhombus was not entitled to the refund for having reported the prior year's excess credits in its quarterly ITRs for the year 2006, *viz.*:

> **Based on the records, it is clear that respondent marked the box "To be refunded" in its Annual Income Tax Return.** It is also clear that the 2005 excess CWT were included in the prior year's excess credits reported in the 2006 Quarter ITRs. The 2006 Annual ITR did not reflect the 2005 excess CWT in the prior year's excess credits.[10] (Emphasis supplied)

The CTA *En Banc* thereby misappreciated the fact that Rhombus had already exercised the option for its unutilized creditable withholding tax for the year 2005 *to be refunded* when it filed its annual ITR for the taxable year ending December

---

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

[9] *Rollo*, pp. 24-25.

[10] *Id*. at 84.

31, 2005. Based on the disquisition in *Republic v. Team (Phils.) Energy Corporation*, *supra*, the irrevocability rule took effect when the option was exercised. In the case of Rhombus, therefore, its marking of the box "To be refunded" in its 2005 annual ITR constituted its exercise of the option, and from then onwards Rhombus became precluded from carrying-over the excess creditable withholding tax. The fact that the prior year's excess credits were reported in its 2006 quarterly ITRs did not reverse the option to be refunded exercised in its 2005 annual ITR. As such, the CTA *En Banc* erred in applying the irrevocability rule against Rhombus.

It is relevant to mention the requisites for entitlement to the refund as listed in *Republic v. Team (Phils.) Energy Corporation*, *supra*,[11] to wit:

1. That the claim for refund was filed within the two-year reglementary period pursuant to Section 229 of the NIRC;

2. When it is shown on the ITR that the income payment received is being declared part of the taxpayer's gross income; and

3. When the fact of withholding is established by a copy of the withholding tax statement, duly issued by the payor to the payee, showing the amount paid and income tax withheld from that amount.

Finding that Rhombus met the foregoing requisites based on its examination of the documents submitted, the CTA First Division rendered the following findings:

> x x x [P]etitioner filed its Annual ITR for the year 2005 on April 17, 2006. Counting from the said date, petitioner had until April 17, 2008, within which to file both its administrative and judicial claim for refund or issuance of a tax credit certificate. Clearly, petitioner's administrative claim filed on December 29, 2006 and judicial claim via the instant Petition for Review filed on December 07, 2007, were within the two-year prescriptive limit.

---

[11] *Id*. at 57-58.

To comply with the second requisite, petitioner presented Certificates of Creditable Tax Withheld at Source issued by its sole customer Distileria Bago, Inc., a wholly owned subsidiary of La Tondeña, Inc. (now Ginebra San Miguel, Inc.). The details of the said certificates are summarized as follows:

x x x x x x x x x

To show compliance with the third requisite that petitioner declared in its return the income related to the creditable withholding taxes of Php28,523,295.45, it presented the following documents:

1. Annual Income tax Return for the year ended December 31, 2005 with attached audited financial statements and Account Information Form marked as Exhibit "B";
2. Certificates of Creditable Tax Withheld at Source issued to petitioner for the first three quarters of taxable year 2005 marked as Exhibits "J", "Y", "L" and "K";
3. Summary of invoices issued for taxable year 2005 marked as Exhibit "M"; and
4. The sales invoices issued for taxable year 2005 marked as Exhibits "O-1" to "O-14".

The withholding tax certificates reveal that the creditable income taxes of Php28,523,295.45 were withheld from petitioner's energy service fees of Php9,313,272.54 and from the sale of its generation facility amounting to Php472,283,838.00. The energy fees paid by Distileria Bago, Inc. in the amount of Php9,313,272.54 from which creditable withholding tax in the aggregate amount of Php186,265.45 was withheld was reported by petitioner as part of its "Sales/Revenues/ Receipts/Fees" amounting to Php59,551,116.00 in Item No. 15A of its 2005 Annual ITR.

As regards the income from the sale of power generation facility in the amount of Php472,283,838.00 from which the amount of Php28,337,030.00 creditable withholding tax was withheld, petitioner reported a gain of only Php209,320,181.00 as appearing under Item 18B (Non-Operating and Other Income) of petitioner's Annual ITR marked as Exhibit B. There was nothing fallacious in doing so for petitioner could deduct valid cost (i.e. Book Value of the asset) from

the selling price to arrive at the amount of "Non-operating and Other Income" to be reported in its 2005 Annual ITR.[12]

The members of the CTA First Division were in the best position as trial judges to examine the documents submitted in relation thereto,[13] and to make the proper findings thereon. Given their expertise on the matter, we accord weight and respect to their finding that Rhombus had satisfied the requirements for its claim for refund of its excess creditable withholding taxes for the year 2005.

WHEREFORE, the Court **REVERSES** and **SETS ASIDE** the decision promulgated on October 11, 2012 and the resolution issued on March 13, 2013 by the Court of Tax Appeals *En Banc* in CTA EB Case No. 803; **REINSTATES** the decision rendered on March 23, 2011 and the resolution issued on June 30, 2011 by the Court of Tax Appeals, First Division, in CTA Case No. 7711; and **DIRECTS** the Commissioner of the Bureau of Internal Revenue to refund to or to issue a tax credit certificate in favor of petitioner Rhombus Energy, Inc. in the amount of ₱1,500,653.00 representing excess creditable withholding tax for the year 2005.

No pronouncement on costs of suit.

SO ORDERED.

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

Martires, J., on leave.

---

[12] *Id*. at 30-31; 34-35.

[13] See *Sea-Land Service, Inc. v. Court of Appeals,* G.R. No. 122605, April 30, 2001, 357 SCRA 441, 445-46.

THIRD DIVISION

[G.R. No. 213731. August 1, 2018]

C.F. SHARP CREW MANAGEMENT, INC./ MANNY SABINO and/or NORWEGIAN CRUISE LINE LTD., *petitioners, vs.* **JOWELL P. SANTOS,** *respondent.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; SEAFARERS; DISABILITY COMPENSATION AND BENEFITS; FITNESS OF THE SEAFARER FOR SEA DUTY WHEN MUST BE ASSESSED BY THE COMPANY-DESIGNATED PHYSICIAN.— In *Elburg Shipmanagement Phils., Inc. v. Quiogue, Jr. (Elburg),* it was confirmed that the *Crystal Shipping* doctrine was not binding because a seafarer's disability should not be simply determined by the number of days that he could not work. Nevertheless, it was held that the determination of the fitness of a seafarer by the company-designated physician should be subject to the periods prescribed by law. *Elburg* provided a summation of periods when the company-designated physician must assess the seafarer, to wit: 1. The company-designated physician must issue a final medical assessment on the seafarer's disability grading within a period of 120 days from the time the seafarer reported to him; 2. If the company-designated physician fails to give his assessment within the period of 120 days, without any justifiable reason, then the seafarer's disability becomes permanent and total; 3. If the company-designated physician fails to give his assessment within the period of 120 days with a sufficient justification (e.g., seafarer required further medical treatment or seafarer was uncooperative), then the period of diagnosis and treatment shall be extended to 240 days. The employer has the burden to prove that the company-designated physician has sufficient justification to extend the period; and 4. If the company-designated physician still fails to give his assessment within the extended period of 240 days, then the seafarer's disability becomes permanent and total, regardless of any justification.

2. ID.; ID.; ID.; GUIDING PRINCIPLES.— In *Marlow Navigation Philippines, Inc. v.Osias,* the Court reaffirmed: (1) that mere

inability to work for a period of 120 days does not entitle a seafarer to permanent and total disability benefits; (2) that the determination of the fitness of a seafarer for sea duty is within the province of the company-designated physician, subject to the periods prescribed by law; (3) that the company-designated physician has an initial 120 days to determine the fitness or disability of the seafarer; and (4) that the period of treatment may only be extended to 240 days if a sufficient justification exists such as when further medical treatment is required or when the seafarer is uncooperative.

3. **ID.; ID.; ID.; THE EXTENT OF THE DISABILITY OF THE SEAFARER, WHETHER TOTAL OR PARTIAL, IS DETERMINED, NOT BY THE NUMBER OF DAYS THAT HE COULD NOT WORK, BUT BY THE DISABILITY GRADING THE DOCTOR RECOGNIZES BASED ON HIS RESULTING INCAPACITY TO WORK AND EARN HIS WAGES.—** While a seafarer is entitled to temporary total disability benefits during his treatment period, it does not follow that he should likewise be entitled to permanent total disability benefits when his disability was assessed by the company-designated physician after his treatment. He may be recognized to have permanent disability because of the period he was out of work and could not work, **but the extent of his disability (whether total or partial) is determined, not by the number of days that he could not work, but by the disability grading the doctor recognizes based on his resulting incapacity to work and earn his wages.** It is the doctor's findings that should prevail as he or she is equipped with the proper discernment, knowledge, experience and expertise on what constitutes total or partial disability. The physician's declaration serves as the basis for the degree of disability that can range anywhere from Grade 1 to Grade 14. Notably, this is a serious consideration that cannot be determined by simply counting the number of treatment lapsed days.

4. **ID.; ID.; ID.; A METICULOUSLY AND TIMELY PROVIDED MEDICAL ASSESSMENT OF THE COMPANY-DESIGNATED PHYSICIANS MUST BE GIVEN WEIGHT AND CREDIBILITY BY THE COURT TO DETERMINE THE SEAFARER'S ENTITLEMENT TO DISABILITY BENEFITS.—** [T]he timely medical assessment of a company-designated physician is given great significance

by the Court to determine whether a seafarer is entitled to disability benefits. Indeed, the mere inability of a seafarer to work for a period of 120 days is not the sole basis to determine a seafarer's disability. In this case, respondent was repatriated in the Philippines on January 12, 2012. The next day, or on January 13, 2012, he was immediately referred to C.F. Sharp's company-designated physicians. He was then subjected to different tests and treatments, which were recorded in several medical reports. It was confirmed that he had Diabetes Mellitus II and hypertension. On May 4, 2012, respondent was cleared from the nephrology standpoint and was advised to continue his maintenance medications. Thereafter, after 118 days from repatriation, the company-designated physicians issued a certification stating that respondent's condition was not work-related and that his final disability grading assessment for his hypertension and diabetes was Grade 12. Verily, the company-designated physicians suitably gave their medical assessment of respondent's disability before the lapse of the 120-day period. It was even unnecessary to extend the period of medical assessment to 240 days. After rigorous medical diagnosis and treatments, the company-designated physicians found that respondent only had a partial disability and gave a Grade 12 disability rating. As the medical assessment of the company-designated physicians was meticulously and timely provided, it must be given weight and credibility by the Court.

5. ID.; ID.; ID.; THE REFERRAL TO A THIRD DOCTOR IS MANDATORY WHEN THERE IS A VALID AND TIMELY ASSESSMENT BY THE COMPANY-DESIGNATED PHYSICIAN, AND THE APPOINTED DOCTOR OF THE SEAFARER REFUTED SUCH ASSESSMENT.— Sec. 20(A)(3) of the POEA-SEC provides for a mechanism to challenge the validity of the company-designated physician's assessment: If a doctor appointed by the seafarer disagrees with the assessment, a third doctor may be agreed jointly between the Employer and the seafarer. The third doctor's decision shall be final and binding on both parties. The referral to a third doctor is mandatory when: (1) there is a valid and timely assessment by the company-designated physician and (2) the appointed doctor of the seafarer refuted such assessment.

6. ID.; ID.; ID.; WHERE A SEAFARER DISAGREES WITH THE COMPANY DOCTOR'S ASSESSMENT BASED ON

THE DULY AND FULLY DISCLOSED CONTRARY ASSESSMENT FROM THE SEAFARER'S OWN DOCTOR, THE SEAFARER SHALL THEN SIGNIFY HIS INTENTION TO RESOLVE THE CONFLICT BY THE REFERRAL OF THE CONFLICTING ASSESSMENTS TO A THIRD DOCTOR WHOSE RULING, UNDER THE POEA-SEC, SHALL BE FINAL AND BINDING ON THE PARTIES, ABSENT PROPER COMPLIANCE, THE FINAL MEDICAL REPORT OF THE COMPANY-DESIGNATED PHYSICIAN MUST BE UPHELD.— In *INC Shipmanagement, Inc. v. Rosales,* the Court stated that to definitively clarify how a conflict situation should be handled, upon notification that the seafarer disagrees with the company doctor's assessment based on the duly and fully disclosed contrary assessment from the seafarer's own doctor, **the seafarer shall then signify his intention to resolve the conflict by the referral of the conflicting assessments to a third doctor** whose ruling, under the POEA-SEC, shall be final and binding on the parties. Upon notification, the company carries the burden of initiating the process for the referral to a third doctor commonly agreed between the parties. x x x. In this case, petitioner's chosen physician, Dr. Donato-Tan, issued a medical certificate indicating a total and permanent disability because of hypertension and uncontrolled diabetes, which conflicted with the assessment of the company-designated physicians. Glaringly, respondent only presented a lone medical certificate from Dr. Donato-Tan, which was in contrast with the extensive and numerous medical assessment of the company-designated physicians. Consequently, the credibility and reliability of Dr. Donato-Tan's medical certificate is doubtful. More importantly, respondent never signified his intention to resolve the disagreement with petitioners' company-designated physicians by referring the matter to a third doctor. It is only through the procedure provided by the POEA-SEC, in which he was a party, can he question the timely medical assessment of the company-designated physician and compel the petitioners to jointly seek an appropriate third doctor. Absent proper compliance, the final medical report of the company-designated physician must be upheld. *Ergo,* he is not entitled to permanent and total disability benefits.

7. ID.; ID.; ID.; TO ENABLE COMPENSATION, HYPERTENSION REQUIRES THE ELEMENT OF

GRAVITY, SUCH THAT THE IMPAIRMENT OF FUNCTION OF BODY ORGANS MUST BE OF SUCH SEVERITY AS TO BE RESULTING IN PERMANENT DISABILITY.— Essential hypertension is among the occupational diseases enumerated in Sec. 32-A of the POEA-SEC. To enable compensation, the mere occurrence of hypertension, even as it is work-related and concurs with the four (4) basic requisites of the first paragraph of Sec. 32-A, does not suffice. The POEA-SEC requires an element of gravity. It speaks of essential hypertension only as an overture to the impairment of function of body organs like kidneys, heart, eyes and brain. This impairment must then be of such severity as to be resulting in permanent disability. Sec. 32-A, paragraph 2, thus, requires three successive occurrences: first, the contracting of essential hypertension; second, organ impairment arising from essential hypertension; and third, permanent disability arising from that impairment. In keeping with the requisite gravity occasioning essential hypertension, the mere averment of essential hypertension and its incidents do not suffice.

8. ID.; ID.; ID.; DIABETES MELLITUS DOES NOT WARRANT DISABILITY BENEFITS, AS THE SAME DOES NOT INDICATE WORK-RELATEDNESS BUT THE RESULT OF POOR LIFESTYLE CHOICES AND HEALTH.— [D]iabetes is not among Sec. 32-A's listed occupational diseases. As with hypertension, it is a complex medical condition typified by gradations. Blood sugar levels classify as normal, pre-diabetes, or diabetes depending on the glucose level of a patient. Diabetes mellitus is a metabolic and a familial disease to which one is pre-disposed by reason of heredity, obesity or old age. It does not indicate work-relatedness and by its nature, is more the result of poor lifestyle choices and health habits for which disability benefits are improper.

9. ID.; ID.; ID.; HYPERTENSION AND DIABETES DO NOT *IPSO FACTO* WARRANT THE AWARD OF PERMANENT AND TOTAL DISABILITY BENEFITS TO A SEAFARER; RESPONDENT IS ONLY ENTITLED TO PARTIAL DISABILITY BENEFIT.— [H]ypertension and diabetes do not *ipso facto* warrant the award of permanent and total disability benefits to a seafarer. Notably, Sec. 32-A of the POEA-SEC recognizes that a seafarer can still be employed even if he has

hypertension and/or diabetes provided that he shows compliance with the prescribed maintenance medications and doctor-recommended lifestyle changes. As the company-designated physicians opined that respondent only had a Grade 12 disability, then he is only entitled to US$5,225.00 as partial disability benefit. The sickness pay of US$1,633.66 during respondent's period of treatment is also affirmed. x x x. [P]ursuant to *Nacar v. Gallery Frames*, the Court imposes on the monetary awards an interest at the legal rate of six percent (6%) per annum from the date of finality of this judgment until full satisfaction.

APPEARANCES OF COUNSEL

Del Rosario & Del Rosario for petitioners.
Apolinario C. Florencio for respondent.

D E C I S I O N

GESMUNDO, *J.:*

This is an appeal by*certiorari* seeking to reverse and set aside the May 20, 2014 Decision[1] and the July 30, 2014 Resolution[2] of the Court of Appeals *(CA)* in CA-G.R. SP No. 132805. The CA reversed and set aside the July 30, 2013 Decision and September 24, 2013 Resolution of the National Labor Relations Commission *(NLRC)*and reinstated the November 23, 2012 Decision of the Labor Arbiter *(LA),* a case for permanent and total disability benefits of a seafarer.

The Antecedents

Jowell P. Santos *(respondent)* was hired as an environmental operator by C.F. Sharp Crew Management, Inc., *(CF Sharp)* for and in behalf of its principal, Norwegian Cruise Line, Ltd., collectively known as petitioners, on board the vessel "M/S

---

[1] *Rollo,* pp. 39-49; penned by Associate Justice Remedios A. Salazar-Fernando with Associate Justices Apolinario D. Bruselas, Jr. and Samuel H. Gaerlan, concurring.

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

Norwegian Gem" for a period of nine (9) months. He was deployed on September 9, 2011.

Sometime in December 2011, respondent experienced dizziness, over fatigue, frequent urination and blurring of the eyesight. He was brought to the ship's clinic for initial medical examination and was found to have elevated blood sugar and blood pressure. He was immediately referred to Cape Canaveral Hospital in Miami, Florida, USA, where he was found to have a history of diabetes and has been smoking a pack of cigarettes daily for ten (10) years.

On January 12, 2012, respondent was repatriated to the Philippines. The next day, or on January 13, 2012, he was immediately referred to C.F. Sharp's company-designated physicians at the Sachly International Health Partners Clinic *(SIHPC).* The physicians subjected respondent to different tests and treatments, which were recorded in several medical reports. It was confirmed that he had Diabetes Mellitus II and hypertension. Respondent was advised to continue his medications.

On May 4, 2012, respondent was examined by a nephrologist who noted that he was asymptomatic with a blood pressure *(BP)* of 120/70. His urinalysis and serum creatinine were normal. Thus, he was cleared from a nephrological standpoint and was again advised to continue his maintenance medications.

Thereafter, after 118 days from repatriation, the company-designated physicians issued a certification stating that respondent's condition was not work-related and that his final disability grading assessment for hypertension and diabetes was Grade 12.[3]

Unconvinced, respondent consulted Dr. May S. Donato-Tan *(Dr. Donato-Tan)*, a specialist in Internal Medicine and Cardiology. In her medical certificate, Dr. Donato-Tan noted that respondent had high blood pressure and uncontrolled diabetes mellitus. She also opined that respondent's condition was work-related due to the pressure in the cruise ship, which elevated

---

[3] *Id.* at 41.

his blood pressure, and that the food therein was not balanced, which elevated his blood sugar. She concluded that respondent was permanently disabled to discharge his duties as a seafarer.[4]

Hence, respondent filed a complaint for disability and sickness benefits with damages before the LA.

The LA Ruling

In its decision dated November 23, 2012, the LA ruled in favor of respondent. It found that respondent suffered from permanent and total disabilities due to his hypertension and diabetes. The LA also awarded the maximum benefits provided by the Collective Bargaining Agreement *(CBA)* between petitioners and respondent. The dispositive portion of the LA decision reads:

> WHEREFORE, all the foregoing premises considered, judgment is hereby rendered, ordering respondents C.F. Sharp Crew Management, Inc., and/or Norwegian Cruise Line LTD., to pay, jointly and severally, complainant Jowell P. Santos the aggregate amount of NINETY ONE THOUSAND SIX HUNDRED THIRTY THREE AND 66/100 US DOLLARS (US$91,633.66) or its Philippine peso equivalent at the time of actual payment, representing permanent disability benefits and sickness wages, plus ten percent (10%) thereof as and for attorney's fees.
>
> All other claims are dismissed for lack of merit.
>
> **SO ORDERED**.[5]

Aggrieved, petitioners appealed to the NLRC.

The NLRC Ruling

In its decision dated July 30, 2013, the NLRC modified the decision of the LA. It held that respondent did not suffer from a permanent and total disability because he failed to prove that the diabetes and hypertension he suffered were work-related. The NLRC gave credence to the medical assessment and finding

---

[4] *Id*.

[5] *Id*. at 7.

of the company-designated physicians, which stated that respondent only suffered a partial disability of Grade 12. It also found that respondent was entitled to a sickness pay. The NLRC disposed the case in this wise:

> **WHEREFORE**, foregoing considered, the appeal is partly **GRANTED**. The decision dated 23 November 2012 is **MODIFIED**. The grant of total and permanent disability benefits is set aside but the award of sickness pay in the sum of One Thousand Six Hundred Thirty Three US Dollars and 66/100 (US$1,633.66) remains. In addition, appellants are ordered to pay appellee the sum of Five Thousand Two Hundred Twenty-Five US Dollars (US$5,225.00) as financial assistance for his illness.
>
> **SO ORDERED**.[6]

Respondent filed a motion for reconsideration but it was denied by the NLRC in its resolution dated September 24, 2013.

Undaunted, respondent filed a petition for *certiorari* before the CA arguing that the NLRC committed grave abuse of discretion.

The CA Ruling

In its decision dated May 20, 2014, the CA reversed and set aside the NLRC ruling and reinstated the LA ruling. It held that respondent suffered from permanent and total disabilities because of his hypertension and diabetes. The CA opined that respondent's diseases were work-related because these were caused by the unhealthy working conditions in petitioners' ship. It also ruled that respondent had the right to consult his independent physician of choice to determine the degree of his disability. The CA concluded that since 120 days had passed but respondent had not returned to work, he is entitled to permanent and total disability benefits. The *fallo* of the CA decision states:

> WHEREFORE, premises considered, the petition is hereby GRANTED. The assailed decision dated July 30, 2013 and the resolution dated September 24, 2013 of the National Labor Relations

---

[6] *Id*. at 8.

Commission (Fifth Division) in NLRC NCR-OFW-M-04-06542-12, NLRC LAC No. 01-000071-13 are hereby REVERSED and SET ASIDE, and the decision dated November 23, 2012 of the Labor Arbiter is REINSTATED.

SO ORDERED.[7]

Petitioners moved for reconsideration but it was denied by the CA in its resolution dated July 30, 2014.

Hence, this petition, chiefly anchored on the following issues:

I

WHETHER THE PROVISIONS OF THE PHILIPPINE OVERSEAS EMPLOYMENT ADMINISTRATION *(POEA)* STANDARD EMPLOYMENT CONTRACT *(SEC)* WERE COMPLIED WITH BY THE PARTIES.

II

WHETHER RESPONDENT IS ENTITLED TO PERMANENT AND TOTAL DISABILITY BENEFITS DUE TO HIS HYPERTENSION AND DIABETES.

Petitioners argue that the medical certificate of respondent's physician of choice should not have been considered because the conflicting medical assessments were not referred to a third doctor under the POEA-SEC. They also assert that diabetes is not listed as a work-related illness under Section 32-A of the POEA-SEC, hence, not compensable. Petitioners further claim that respondent's hypertension was not compensable because it does not involve an end organ damage for essential hypertension. They likewise highlighted that the mere lapse of the 120-day period does not result in the grant of total and permanent disability benefits because the timely medical findings of the company-designated physicians must be respected. As the said physician only gave a Grade 12 disability, petitioners conclude that respondent is only entitled to US$5,225.00.

---

[7] *Id*. at 49.

In his Comment,[8] respondent countered that the petition raises questions of fact, which cannot be entertained by the Court. He also argued that diabetes is a compensable disease, which was aggravated by his hypertension. Respondent claimed that his diseases were presumed to be work-related and petitioners failed to prove that there was no reasonable casual connection with the illnesses sustained and the work performed.

In their Reply,[9] petitioners reiterated that mere inability to work for a period of 120 days does not automatically entitle a seafarer to permanent and total disability benefits. They argued that respondent's allegation that his work conditions in their cruise ship aggravated his condition was completely unsubstantiated. Petitioners concluded that, at best, respondent is only entitled to a Grade 12 disability benefit under the POEA-SEC.

The Court's Ruling

The Court finds the petition meritorious.

The law that defines permanent and total disability of laborers would be Article 192 (c) (1) of the Labor Code, which provides that:

> ART. 192. Permanent Total Disability xxx
>
> (c) The following disabilities shall be deemed total and permanent:
>
> (1) Temporary total disability lasting continuously for more than one hundred twenty days, except as otherwise provided in the Rules;

On the other hand, the rule referred to — Rule X, Section 2 of the Amended Rules on Employees' Compensation, which implemented Book IV of the Labor Code *(IRR)* — states:

> Sec. 2. Period of entitlement. — (a) The income benefit shall be paid beginning on the first day of such disability. If caused by an injury or sickness it shall not be paid longer than 120 consecutive days except where such injury or sickness still requires medical

---

[8] *Id.* at 78-90.

[9] *Id.* at 107-130.

attendance beyond 120 days but not to exceed 240 days from onset of disability in which case benefit for temporary total disability shall be paid. However, the System may declare the total and permanent status at anytime after 120 days of continuous temporary total disability as may be warranted by the degree of actual loss or impairment of physical or mental functions as determined by the System.

These provisions should be read in relation to the POEA-SEC wherein Sec. 20(A) (3) states:

In addition to the above obligation of the employer to provide medical attention, the seafarer shall also receive sickness allowance from his employer in an amount equivalent to his basic wage computed from the time he signed off until he is declared fit to work or the degree of disability has been assessed by the company-designated physician. The period within which the seafarer shall be entitled to his sickness allowance shall not exceed 120 days. Payment of the sickness allowance shall be made on a regular basis, but not less than once a month.[10]

In *Crystal Shipping, Inc. v. Natividad*[11] *(Crystal Shipping),* the Court ruled that "[p]ermanent disability is the inability of a worker to perform his job for more than 120 days, regardless of whether or not he loses the use of any part of his body."[12] Thereafter, litigant-seafarers relied on *Crystal Shipping* to claim permanent and total disability benefits because they were incapacitated to work for more than 120 days.

In *Vergara v. Hammonia Maritime Services, Inc.*[13] *(Vergara)*, however, the Court declared that the doctrine in *Crystal Shipping* — that inability to perform customary work for more than 120 days constitutes permanent total disability — is not absolute. By considering the law, the POEA-SEC, and especially the IRR,

---

[10] Amended Standard Terms and Conditions Governing the Overseas Employment of Filipino Seafarers On-Board Ocean-Going Ships, POEA Memorandum Circular No. 010-10, October 26, 2010.

[11] 510 Phil. 332 (2005).

[12] *Id*. at 340.

[13] 588 Phil. 895, 912 (2008).

Vergara extended the period within which the company-designated physician could declare a seafarer's fitness or disability to 240 days. Further, the disability grading issued by the company-designated physician was given more weight compared to the mere incapacity of the seafarer for a period of more than 120 days.

Recently, in *Elburg Shipmanagement Phils., Inc. v. Quiogue, Jr.*[14] *(Elburg),* it was confirmed that the *Crystal Shipping* doctrine was not binding because a seafarer's disability should not be simply determined by the number of days that he could not work. Nevertheless, it was held that the determination of the fitness of a seafarer by the company-designated physician should be subject to the periods prescribed by law. *Elburg* provided a summation of periods when the company-designated physician must assess the seafarer, to wit:

1. The company-designated physician must issue a final medical assessment on the seafarer's disability grading within a period of 120 days from the time the seafarer reported to him;

2. If the company-designated physician fails to give his assessment within the period of 120 days, without any justifiable reason, then the seafarer's disability becomes permanent and total;

3. If the company-designated physician fails to give his assessment within the period of 120 days with a sufficient justification (e.g., seafarer required further medical treatment or seafarer was uncooperative), then the period of diagnosis and treatment shall be extended to 240 days. The employer has the burden to prove that the company-designated physician has sufficient justification to extend the period; and

4. If the company-designated physician still fails to give his assessment within the extended period of 240 days, then the seafarer's disability becomes permanent and total, regardless of any justification.[15]

Finally, in *Marlow Navigation Philippines, Inc. v.Osias,*[16] the Court reaffirmed: (1) that mere inability to work for a period of 120 days

---

[14] 765 Phil. 341 (2015).

[15] *Id.* at 362-363.

[16] 773 Phil. 428 (2015).

does not entitle a seafarer to permanent and total disability benefits; (2) that the determination of the fitness of a seafarer for sea duty is within the province of the company-designated physician, subject to the periods prescribed by law; (3) that the company-designated physician has an initial 120 days to determine the fitness or disability of the seafarer; and (4) that the period of treatment may only be extended to 240 days if a sufficient justification exists such as when further medical treatment is required or when the seafarer is uncooperative.[17]

The company-designated physicians timely gave their medical assessment within the 120-day period

The CA found that since respondent was unable to work as a seafarer for more than 120 days, he is deemed to have a permanent and total disability.

The Court disagrees.

While a seafarer is entitled to temporary total disability benefits during his treatment period, it does not follow that he should likewise be entitled to permanent total disability benefits when his disability was assessed by the company-designated physician after his treatment. He may be recognized to have permanent disability because of the period he was out of work and could not work, **but the extent of his disability (whether total or partial) is determined, not by the number of days that he could not work, but by the disability grading the doctor recognizes based on his resulting incapacity to work and earn his wages.**[18]

It is the doctor's findings that should prevail as he or she is equipped with the proper discernment, knowledge, experience and expertise on what constitutes total or partial disability. The physician's declaration serves as the basis for the degree of disability that can range anywhere from Grade 1 to Grade 14.

---

[17] *Id*. at 443.

[18] See *INC Shipmanagement, Inc., et al. v. Rosales,* 744 Phil. 774, 785-786 (2014).

Notably, this is a serious consideration that cannot be determined by simply counting the number of treatment lapsed days.[19]

Accordingly, the timely medical assessment of a company-designated physician is given great significance by the Court to determine whether a seafarer is entitled to disability benefits. Indeed, the mere inability of a seafarer to work for a period of 120 days is not the sole basis to determine a seafarer's disability.

In this case, respondent was repatriated in the Philippines on January 12, 2012. The next day, or on January 13, 2012, he was immediately referred to C.F. Sharp's company-designated physicians. He was then subjected to different tests and treatments, which were recorded in several medical reports. It was confirmed that he had Diabetes Mellitus II and hypertension. On May 4, 2012, respondent was cleared from the nephrology standpoint and was advised to continue his maintenance medications. Thereafter, after 118 days from repatriation, the company-designated physicians issued a certification stating that respondent's condition was not work-related and that his final disability grading assessment for his hypertension and diabetes was Grade 12.[20]

Verily, the company-designated physicians suitably gave their medical assessment of respondent's disability before the lapse of the 120-day period. It was even unnecessary to extend the period of medical assessment to 240 days. After rigorous medical diagnosis and treatments, the company-designated physicians found that respondent only had a partial disability and gave a Grade 12 disability rating.

As the medical assessment of the company-designated physicians was meticulously and timely provided, it must be given weight and credibility by the Court.

The medical assessment of the company-designated physician was not validly challenged

---

[19] *Id*. at 786.

[20] *Rollo*, p. 41.

Sec. 20(A) (3) of the POEA-SEC provides for a mechanism to challenge the validity of the company-designated physician's assessment:

> If a doctor appointed by the seafarer disagrees with the assessment, a third doctor may be agreed jointly between the Employer and the seafarer. The third doctor's decision shall be final and binding on both parties.[21]

The referral to a third doctor is mandatory when: (1) there is a valid and timely assessment by the company-designated physician and (2) the appointed doctor of the seafarer refuted such assessment.[22]

In *INC Shipmanagement, Inc. v. Rosales,*[23] the Court stated that to definitively clarify how a conflict situation should be handled, upon notification that the seafarer disagrees with the company doctor's assessment based on the duly and fully disclosed contrary assessment from the seafarer's own doctor, **the seafarer shall then signify his intention to resolve the conflict by the referral of the conflicting assessments to a third doctor** whose ruling, under the POEA-SEC, shall be final and binding on the parties. Upon notification, the company carries the burden of initiating the process for the referral to a third doctor commonly agreed between the parties.Further, in *Bahia Shipping Services, Inc. v. Constantino,*[24] it was declared that:

> In the absence of any request from Constantino (as shown by the records of the case), the employer-company cannot be expected to respond. As the party seeking to impugn the certification that the law itself recognizes as prevailing, Constantino bears the burden of positive action to prove that his doctor's findings are correct, as well as the burden to notify the company that a contrary finding had been made by his own physician. Upon such notification, the company must itself respond by setting into motion the process of choosing

---

[21] *Supra* note 16 at 446.

[22] *Id*.

[23] *Supra* note 18.

[24] 738 Phil. 564 (2014).

a third doctor who, as the POEA-SEC provides, can rule with finality on the disputed medical situation.[25]

In this case, petitioner's chosen physician, Dr. Donato-Tan, issued a medical certificate indicating a total and permanent disability because of hypertension and uncontrolled diabetes, which conflicted with the assessment of the company-designated physicians.Glaringly, respondent only presented a lone medical certificate from Dr. Donato-Tan, which was in contrast with the extensive and numerous medical assessment of the company-designated physicians. Consequently, the credibility and reliability of Dr. Donato-Tan's medical certificate is doubtful.

More importantly, respondent never signified his intention to resolve the disagreement with petitioners' company-designated physicians by referring the matter to a third doctor. It is only through the procedure provided by the POEA-SEC, in which he was a party, can he question the timely medical assessment of the company-designated physician and compel the petitioners to jointly seek an appropriate third doctor. Absent proper compliance, the final medical report of the company-designated physician must be upheld. *Ergo,* he is not entitled to permanent and total disability benefits.

Hypertension and diabetes does not ipso facto result into a permanent and total disability

Even if the medical assessment of respondent's physician of choice is considered on the substantive aspect, the Court finds that the hypertension and diabetes of respondent do not warrant a grant of permanent and total disability benefits.

Essential hypertension is among the occupational diseases enumerated in Sec. 32-A of the POEA-SEC.[26] To enable

---

[25] *Id*. at 576.

[26] 20. Essential Hypertension

Hypertension classified as primary or essential is considered compensable if it causes impairment of function of body organs like kidneys, heart, eyes

compensation, the mere occurrence of hypertension, even as it is work-related and concurs with the four (4) basic requisites of the first paragraph of Sec. 32-A, does not suffice. The POEA-SEC requires an element of gravity. It speaks of essential hypertension only as an overture to the impairment of function of body organs like kidneys, heart, eyes and brain. This impairment must then be of such severity as to be resulting in permanent disability. Sec. 32-A, paragraph 2,[27] thus, requires three successive occurrences: first, the contracting of essential hypertension; second, organ impairment arising from essential hypertension; and third, permanent disability arising from that impairment.[28] In keeping with the requisite gravity occasioning essential hypertension, the mere averment of essential hypertension and its incidents do not suffice.[29]

On the other hand, diabetes is not among Sec. 32-A's listed occupational diseases. As with hypertension, it is a complex medical condition typified by gradations. Blood sugar levels classify as normal, pre-diabetes, or diabetes depending on the glucose level of a patient.[30] Diabetes mellitus is a metabolic and a familial disease to which one is pre-disposed by reason of heredity, obesity or old age.[31] It does not indicate work-relatedness and by its nature, is more the result of poor lifestyle choices and health habits for which disability benefits are improper.[32]

---

and brain, resulting in permanent disability; Provided, that the following documents substantiate it: (a) chest x-ray report, (b) ECG report, (c) blood chemistry report, (d) funduscopy report, (e) Ophthalmological evaluation, (f) C-T scan, (g) MRI, (h) MRA, (i) 2-D echo (j) kidney ultrasound and (k) BP monitoring.

[27] *Id*.

[28] *Manansala v. Marlow Navigation Phils., Inc.,* G.R. No. 208314, August 23, 2017.

[29] *Id*.

[30] *Id*.

[31] *Status Maritime Corp., et al. v. Spouses Delalamon,* 740 Phil. 175, 198 (2014).

[32] *Id*.

In this case, the company-designated physicians found that respondent had Diabetes Mellitus II and hypertension. However, they opined that respondent's hypertension was not essential or primary, hence, it was not severe. Thus, the company-designated physicians concluded that respondent's hypertension was only a partial disability. As stated earlier, the mere occurrence of hypertension does not suffice because the POEA-SEC requires that it be severe or grave in order to become a permanent and total disability.

Similarly, the company-designated physicians' observed that respondent's diabetes, aside from not being listed as an occupational disease, was also not severe, thus, merely a partial disability. The nephrologist even noted that respondent's BP was 120/70 and his urinalysis and serum creatinine were normal. Thus, he was cleared from the nephrology standpoint and was advised to continue his maintenance medications.

On the other hand, respondent's physician of choice simply stated that respondent had hypertension and uncontrolled diabetes because of the unhealthy food in the cruise ship and the stress of work therein. However, the said physician failed to validate her findings with concrete medical and factual proofs and simply based her conclusions on a single medical check-up. Compared to the thorough medical procedure conducted by the company-designated physicians, the findings of respondent's chosen physician were unsubstantiated.

Manifestly, hypertension and diabetes do not *ipso facto* warrant the award of permanent and total disability benefits to a seafarer. Notably, Sec. 32-A of the POEA-SEC recognizes that a seafarer can still be employed even if he has hypertension and/or diabetes provided that he shows compliance with the prescribed maintenance medications and doctor-recommended lifestyle changes.

As the company-designated physicians opined that respondent only had a Grade 12 disability, then he is only entitled to

US$5,225.00 as partial disability benefit.[33] The sickness pay of US$1,633.66 during respondent's period of treatment is also affirmed.

Lastly, pursuant to *Nacar v. Gallery Frames*,[34] the Court imposes on the monetary awards an interest at the legal rate of six percent (6%) per annum from the date of finality of this judgment until full satisfaction.

WHEREFORE, the petition is **GRANTED.** The May 20, 2014 Decision and the July 30, 2014 Resolution of the Court of Appeals in CA-G.R. SP No. 132805 are hereby **REVERSED** and **SET ASIDE**. The July 30, 2013 Decision and September 24, 2013 Resolution of the National Labor Relations Commission, are hereby **REINSTATED with MODIFICATION** that the monetary awards shall earn an interest at the rate of six percent (6%) *per annum* from the date of finality of this Decision until full satisfaction.

SO ORDERED.

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

Martires, J., on leave.

---

[33] See Schedule of Disability Allowances under the POEA-SEC where Grade 12 is US$50,000.00 x 10.45%, or US$5,225.00.

[34] 716 Phil. 267, 283 (2013).

THIRD DIVISION

[G.R. No. 227366. August 1, 2018]

DOMINGO AGYAO MACAD @ AGPAD, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CRIMINAL PROCEDURE; APPEALS; WHEN THE COURT OF APPEALS IMPOSED A PENALTY OF *RECLUSION PERPETUA* OR LIFE IMPRISONMENT, AN ACCUSED MAY FILE A NOTICE OF APPEAL UNDER SECTION 13 (C), RULE 124 TO AVAIL OF AN APPEAL AS A MATTER OF RIGHT BEFORE THE COURT AND OPEN THE ENTIRE CASE FOR REVIEW ON ANY QUESTION, OR FILE A PETITION FOR REVIEW ON *CERTIORARI* UNDER RULE 45 TO RESORT TO AN APPEAL AS A MATTER OF DISCRETION AND RAISE ONLY QUESTIONS OF LAW.— Section 13 (c), Rule 124 of the Rules of Court, as amended, states that "[i]n cases where the CA imposes *reclusion perpetua*, life imprisonment or a lesser penalty, it shall render and enter judgment imposing such penalty. The judgment may be appealed to the Supreme Court by notice of appeal filed with the Court of Appeals." Hence, an accused, upon whom the penalty of *reclusion perpetua* or life imprisonment had been imposed by the CA, can simply file a notice of appeal to allow him to pursue an appeal as a matter of right before the Court, which opens the entire case for review on any question including one not raised by the parties. On the other hand, an accused may also resort to an appeal by *certiorari* to the Court via Rule 45 under the Rules of Court. An appeal to this Court by petition for review on *certiorari* shall raise only questions of law. Moreover, such review is not a matter of right, but of sound judicial discretion, and will be granted only when there are special and important reasons. In other words, when the CA imposed a penalty of *reclusion perpetua* or life imprisonment, an accused may: (1) file a notice of appeal under Section 13 (c), Rule 124 to avail of an appeal as a matter of right before the Court and open the entire case for review on any question;

or (2) file a petition for review on *certiorari* under Rule 45 to resort to an appeal as a matter of discretion and raise only questions of law.

2. **ID.; ID.; ID.; A PETITION FOR REVIEW ON *CERTIORARI* WHICH RAISES QUESTIONS OF FACT CANNOT BE ENTERTAINED BY THE COURT, AS THE SAME IS LIMITED TO QUESTIONS OF LAW.—** In this case, the CA affirmed the RTC decision imposing the penalty of life imprisonment to petitioner. Notably, however, the petition filed before this Court invokes grave abuse of discretion in assailing the CA decision, which is a ground under a petition for *certiorari* under Rule 65 of the Rules of Court. In any event, even if the instant petition is treated as a petition for review on *certiorari* under Rule 45, which is limited to questions of law, it still raises questions of fact because it essentially assails the appreciation of the testimonial and documentary evidence by the CA and the RTC. As a rule, these questions of fact cannot be entertained by the Court under Rule 45. Thus, the petition is procedurally infirm.

3. **ID.; ID.; ARREST; WARRANTLESS ARREST, WHEN MAY BE LAWFULLY EFFECTED; ELEMENTS.—** Rule 113 of the Rules of Court identifies three (3) instances when warrantless arrests may be lawfully effected. These are: (*a*) an arrest of a suspect *in flagrante delicto*; (*b*) an arrest of a suspect where, based on personal knowledge of the arresting officer, there is probable cause that said suspect was the perpetrator of a crime which had just been committed; and (*c*) an arrest of a prisoner who has escaped from custody serving final judgment or temporarily confined during the pendency of his case or has escaped while being transferred from one confinement to another. In warrantless arrests made pursuant to Section 5 (a), Rule 113, two (2) elements must concur, namely: (*a*) the person to be arrested must execute an overt act indicating that he has just committed, is actually committing, or is attempting to commit a crime; and (*b*) such overt act is done in the presence or within the view of the arresting officer. On the other hand, Section 5 (b), Rule 113 requires for its application that at the time of the arrest, an offense had in fact just been committed and the arresting officer had personal knowledge of facts indicating that the accused had committed it. In both instances, the officer's personal knowledge of the fact of the commission of an offense is essential.

Under Section 5 (a), Rule 113 of the Revised Rules of Criminal Procedure, the officer himself witnesses the crime; while in Section 5 (b) of the same, he knows for a fact that a crime has just been committed.

4. ID.; ID.; ID.; ID.; AFTER A VALID WARRANTLESS ARREST IS EFFECTED, THE OFFICER MAY ALSO CONDUCT A VALID WARRANTLESS SEARCH, WHICH IS INCIDENTAL TO SUCH ARREST.— A valid warrantless arrest which justifies a subsequent search is one that is carried out under the parameters of Section 5 (a), Rule 113 of the Rules of Court, which requires that the apprehending officer must have been spurred by probable cause to arrest a person caught in *flagrante delicto*. To be sure, the term probable cause has been understood to mean a reasonable ground of suspicion supported by circumstances sufficiently strong in themselves to warrant a cautious man's belief that the person accused is guilty of the offense with which he is charged. Specifically, with respect to arrests, it is such facts and circumstances which would lead a reasonably discreet and prudent man to believe that an offense has been committed by the person sought to be arrested. In this light, the determination of the existence or absence of probable cause necessitates a re-examination of the factual incidents. Accordingly, after a valid warrantless arrest is effected, the officer may also conduct a valid warrantless search, which is incidental to such arrest.

5. ID.; ID.; ID.; ID.; WARRANTLESS SEARCH OF MOVING VEHICLES; ROUTINE INSPECTION *VIS-A-VIS* EXTENSIVE SEARCH OF A MOVING VEHICLE, DISTINGUISHED.— Aside from a search incident leading to a lawful arrest, warrantless searches have also been upheld in cases involving a moving vehicle. The search of moving vehicles has been justified on the ground that the mobility of motor vehicles makes it possible for the vehicle to be searched to move out of the locality or jurisdiction in which the warrant must be sought. A search of a moving vehicle may either be a mere routine inspection or an extensive search. The search in a routine inspection is limited to the following instances: (1) where the officer merely draws aside the curtain of a vacant vehicle which is parked on the public fair grounds; (2) simply looks into a vehicle; (3) flashes a light therein without opening the car's doors; (4) where the occupants are not subjected to

a physical or body search; (5) where the inspection of the vehicles is limited to a visual search or visual inspection; and (6) where the routine check is conducted in a fixed area. On the other hand, an extensive search of a moving vehicle is only permissible when there is probable cause. When a vehicle is stopped and subjected to an extensive search, such a warrantless search has been held to be valid only as long as the officers conducting the search have reasonable or **probable cause** to believe before the search that they will find the instrumentality or evidence pertaining to a crime, in the vehicle to be searched.

6. ID.; EVIDENCE; THE FLIGHT OF AN ACCUSED IS COMPETENT EVIDENCE TO INDICATE HIS GUILT, AND FLIGHT, WHEN UNEXPLAINED, IS A CIRCUMSTANCE FROM WHICH AN INFERENCE OF GUILT MAY BE DRAWN.— Petitioner's flight at the sight of the uniformed police officer and leaving behind his baggage are overt acts, which reinforce the finding of probable cause to conduct a warrantless arrest against him. The Court has held that the flight of an accused is competent evidence to indicate his guilt; and flight, when unexplained, is a circumstance from which an inference of guilt may be drawn. Indeed, the wicked flee when no man pursueth, but the innocent are as bold as lion.

7. CRIMINAL LAW; COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (REPUBLIC ACT NO. 9165); CHAIN OF CUSTODY, EXPLAINED. — Chain of custody means the duly recorded authorized movements and custody of seized drugs or controlled chemicals or plant sources of dangerous drugs or laboratory equipment of each stage, from the time of seizure/confiscation to receipt in the forensic laboratory to safekeeping to presentation in court for destruction. Such record of movements and custody of seized item shall include the identity and signature of the person who held temporary custody of the seized item, the date and time when such transfer of custody were made in the course of safekeeping and use in court as evidence, and the final disposition.

8. ID.; ID.; SECTION 21 OF R.A. NO. 9165; REQUIREMENTS OF PHYSICAL INVENTORY AND TAKING OF PHOTOGRAPH OF THE SEIZED ITEMS; THREE-WITNESS RULE.— [S]ection 21 of R.A. No. 9165 requires

the apprehending team, after seizure and confiscation, to immediately conduct a physical inventory; and photograph the same in the presence of **(1) the accused or the persons from whom such items were confiscated and/or seized, or his/her representative or counsel, (2) a representative from the media and (3) the DOJ, and (4) any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof**. In the amendment of R.A. No. 10640, the apprehending team is now required to conduct a physical inventory of the seized items and photograph the same in **(1) the presence of the accused or the persons from whom such items were confiscated and/or seized, or his/her representative or counsel, (2) with an elected public official and (3) 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. In the present case, as the alleged crimes were committed on November 27, 2011, then the provisions of Section 21 of R.A. No. 9165 and its IRR shall apply.

9. ID.; ID.; ID.; ID.; NON-COMPLIANCE WITH THE MANDATORY REQUIREMENTS SHALL NOT RENDER VOID AND INVALID THE SEIZURES OF AND CUSTODY OVER THE CONFISCATED ITEMS PROVIDED THAT SUCH NON-COMPLIANCE WERE UNDER JUSTIFIABLE GROUNDS AND THE INTEGRITY AND THE EVIDENTIARY VALUE OF THE SEIZED ITEMS ARE PROPERLY PRESERVED BY THE APPREHENDING OFFICER OR TEAM.— [S]ection 21 of the IRR provides a saving clause which states that non-compliance with these requirements shall not render void and invalid such seizures of and custody over the confiscated items provided that **such non-compliance were under justifiable grounds and the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer or team**. The exception found in the IRR of R.A. 9165 comes into play when strict compliance with the prescribed procedures is not observed. This saving clause, however, applies only (I) where the prosecution recognized the procedural lapses, and thereafter explained the cited justifiable grounds, and (2) when the prosecution established that the integrity and evidentiary value of the evidence seized had been preserved. The prosecution,

thus, loses the benefit of invoking the presumption of regularity and bears the burden of proving — with moral certainty — that the illegal drug presented in court is the same drug that was confiscated from the accused during his arrest.

10. ID.; ID.; ID.; CHAIN OF CUSTODY RULE; SUBSTANTIALLY COMPLIED WITH IN CASE AT BAR.— The Court finds that the prosecution was able to sufficiently comply with the chain of custody rule under Section 21 of R.A. No. 9165 and its IRR. [T]he prosecution was able to establish the chain of custody of the seized drugs. They were able to prove that all the persons who handled the drugs were duly accounted for and that the integrity and evidentiary value of the seized items were maintained by these persons until their presentation in court. In addition, there was no lapse or gap in the handling of the seized items because the witnesses of the prosecution correctly identified the persons involved in the custody of the seized marijuana bricks.

11. ID.; ID.; ID.; THE PHYSICAL INVENTORY AND PHOTOGRAPH OF THE SEIZED ITEMS SHALL BE CONDUCTED AT THE PLACE WHERE THE SEARCH WARRANT IS SERVED AND THE MARKING SHOULD BE DONE UPON IMMEDIATE CONFISCATION; EXCEPTION; MARKING UPON IMMEDIATE CONFISCATION CONTEMPLATES EVEN MARKING AT THE NEAREST POLICE STATION OR OFFICE OF THE APPREHENDING TEAM.— As a rule, under the IRR, the physical inventory and photograph of the seized items shall be conducted at the place where the search warrant is served. Likewise, the marking should be done upon immediate confiscation. However, Section 21 of the IRR also provides an exception that the physical inventory and photography of the seized items may be conducted at the nearest police station or the nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizures. In such instance, provided that it is practicable, the marking of the seized items may also be conducted at nearest police station. In *Imson v. People*, the Court stated that to be able to create a first link in the chain of custody, what is required is that the marking be made in the presence of the accused and upon immediate confiscation. "Immediate Confiscation" has no exact definition. Thus, testimony that included the marking of the seized items at the

police station and in the presence of the accused was sufficient in showing compliance with the chain of custody rules. Marking upon immediate confiscation contemplates even marking at the nearest police station or office of the apprehending team. x x x. In this case, it was reasonable for the police officers not to conduct the marking immediately at the place of the arrest and seizure. Evidently, petitioner is a flight risk because he immediately ran away at the sight of SPO2 Suagen. To conduct the marking in an unsecured location may result in the escape of petitioner. Also, the seized baggage contained large quantities of marijuana. It would be impractical, if not dangerous, for merely two police officers to conduct the marking of such drugs in broad daylight and in open public, without the assistance and security of other police officers. Accordingly, it was prudent and rational for the police officers to conduct the marking in the police station.

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

1. POLITICAL LAW; CONSTITUTIONAL LAW; BILL OF RIGHTS; RIGHT AGAINST UNREASONABLE SEARCHES AND SEIZURES; DISCUSSED.— Article III, Section 2 of the Constitution provides: Section 2. The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures of whatever nature and for any purpose shall be inviolable, and no search warrant or warrant of arrest shall issue except upon probable cause to be determined personally by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched and the persons or things to be seized. The foregoing wording of Article III, Section 2 of the Constitution implies that there may be instances when there can be "reasonable" searches and seizures which may be valid, even if done without a warrant. It should be noted that what may be "reasonable" in relation to a lawful warrantless search may be different from what may be "reasonable" in relation to a lawful warrantless arrest. The reasonableness must be considered in relation to the values being protected by the Constitution. The right against unreasonable searches protects the implicit right of the person to be left alone or the person's right to privacy. In other words, the right recognizes and protects inviolable spaces, which cannot

be intruded into by the State, except when compelling State interests are present, and even then, only when such intrusion is the least restrictive way to meet that State interest. Thus, this Court has traditionally recognized that the State may conduct warrantless searches of moving vehicles but only when there is probable cause and when they are limited to a visual one aided only by a non-intrusive tool, such as a flashlight. An argument can be made in favor of the validity of olfactory searches done with the aid of a dog because the intrusion on the privacy of the individual being searched is not too burdensome.

2. **REMEDIAL LAW; CRIMINAL PROCEDURE; ARREST; A WARRANTLESS ARREST MAY NOT BE VALID ON THE BASIS OF MERE HEARSAY INFORMATION.—** [T]he question of whether any particular warrantless search is reasonable is entirely distinct from the question of whether a warrantless arrest is reasonable. The right of a person to not be unreasonably seized is related to his very right to life and liberty. Thus, the grounds for causing warrantless arrests have been traditionally limited to instances where police officers have personal knowledge that a crime has been committed. A warrantless arrest may not be valid on the basis of mere hearsay information.

3. **ID.; ID.; ID.; WARRANTLESS ARREST, WHEN LAWFUL.—** The Rules of Court provides for exceptions where a person may be lawfully arrested, even without any arrest warrant having been issued x x x. Rule 113, Section 5(a) of the Rules of Court only allows warrantless arrests for crimes *in flagrante* when the police officer or private citizen conducting the arrest has, within his or her purview, all the elements of the offense being committed by the accused. This provision cannot validly be invoked where a police officer only possesses information that the accused has committed a crime. On the other hand, Section 5(b) of the same rule requires that the arresting police officer has perceived, through his or her own senses, that a crime has just been committed and, in addition to this perception, also has perceived facts which could reasonably lead to the belief that the person about to be arrested was the offender. In this case, the police officer did not witness the occurrence of the crime itself but witnessed some facts that led him to believe that the person about to be arrested committed the offense.

4. ID.; ID.; SEARCH AND SEIZURE; WARRANTLESS SEARCH AKIN TO A STOP AND FRISK.— When explaining why a warrantless search or seizure was valid, this Court must take great care to specify how the circumstances allow for a warrantless search or seizure. This Court must be clear on the exceptions that it is invoking to avoid inadvertent carving out of additional situations where warrantless arrests appear to be allowable, despite having little to no doctrinal basis. In this case, the police officer already had basis to conduct a warrantless search from the time he smelled the odor of marijuana emanating from the carton and the bag with a Sagada weave. This is similar to the case of *Posadas v. Court of Appeals*, wherein the police officer had reason to conduct a warrantless search in a way akin to a stop and frisk: The assailed search and seizure may still be justified as akin to a "stop and frisk" situation whose object is either to determine the identity of a suspicious individual or to maintain the status quo, momentarily while the police officer seeks to obtain more information. x x x. It is not necessary to invoke the presence of the carton and the bag in a moving vehicle to justify their warrantless search. That an odor of marijuana was emanating from the bag already sufficiently justified its inspection. Further, it should be noted that if the presence of the bag in a moving vehicle had formed the basis for the warrantless search, under jurisprudence, the police officer would have been limited to its visual inspection only. The search could have been justified in relation to the consent of the accused. Of course, had this been the basis for the warrantless search, there would have been a burden to establish that the accused made a knowing and intelligent waiver in consenting to the search. The mere testimony of the police officer would have been insufficient for this purpose.

5. ID.; ID.; ID.; FOR A SEARCH TO BE VALIDLY MADE AS AN INCIDENT TO A LAWFUL ARREST, THE LAWFUL ARREST SHOULD HAVE PRECEDED THE SEARCH; NOT A CASE OF.— For a search to be validly made as an incident to a lawful arrest, the lawful arrest should have preceded the search. In *Malacat v. Court of Appeals*, this Court stressed this rule: At the outset, we note that the trial court confused the concepts of a "stop-and-frisk" and of a search incidental to a lawful arrest. These two types of warrantless searches differ in terms of the requisite quantum of proof before they may be validly effected and in their allowable scope. In a search

incidental to a lawful arrest, as the precedent arrest determines the validity of the incidental search, the legality of the arrest is questioned in a large majority of these cases, *e.g.*, whether an arrest was merely used as a pretext for conducting a search. In this instance, the law requires that there first be a lawful arrest before a search can be made ¯- the process cannot be reversed. At bottom, assuming a valid arrest, the arresting officer may search the person of the arrestee and the area within which the latter may reach for a weapon or for evidence to destroy, and seize any money or property found which was used in the commission of the crime, or the fruit of the crime, or that which may be used as evidence, or which might furnish the arrestee with the means of escaping or committing violence. Here, there could have been no valid *in flagrante delicto* or hot pursuit arrest preceding the search in light of the lack of personal knowledge on the part of Yu, the arresting officer, or an overt physical act, on the part of petitioner, indicating that a crime had just been committed, was being committed or was going to be committed. In this case, the warrantless search was attempted before the accused started to flee. Consequently, the search could not be considered an incident to a lawful arrest.

APPEARANCES OF COUNSEL

Norberg C. Luis for petitioner.
The Solicitor General for respondent.

DECISION

GESMUNDO, *J.*:

This is an appeal by *certiorari* which seeks to reverse and set aside the March 17, 2016 Decision[1] and August 30, 2016 Resolution[2] of the Court Appeals *(CA)*in CA-G.R. CR-H.C. No. 06638. The CA affirmed the September 16, 2013 Judgment[3]

---

[1] *Rollo*, pp. 64-77; penned by Associate Justice Noel G. Tijam with Associate Justices Francisco P. Acosta and Eduardo B. Peralta, Jr., concurring.

[2] *Id.* at 78-79.

[3] *Id.* at 40-59; penned by Judge Sergio T. Angnganay, Jr.

and the January 10, 2014 Resolution[4] of the Regional Trial Court, Bontoc, Mountain Province,Branch 36 *(RTC)*in Criminal Case No. 2011-11-29-108. The RTC found Domingo Agyao Macad *a.k.a.* Agpad *(petitioner)* guilty of violating Section 5, Article II of Republic Act *(R.A.)* No. 9165 or the *Comprehensive Dangerous Drugs Act of 2002*.

The Antecedents

In an information dated November 29, 2011, petitioner was charged with violating Section 5, Article II of R.A. No. 9165. When arraigned, he pleaded "not guilty." Thereafter, trial ensued.

Version of the Prosecution

In the afternoon of November 27, 2011, PO1 Davies Falolo *(PO1 Falolo),* who was not on duty, boarded a Bing Bush bus bound for Bontoc, Mountain Province. He sat on the top of the bus as it was full. At Botbot, petitioner boarded the bus. He threw his carton baggage over to PO1 Falolo. Petitioner, also carrying a Sagada woven bag, then sat on top of the bus, two (2) meters away from PO1 Falolo.[5]

When petitioner threw his carton box, PO1 Falolo already suspected that it contained marijuana because of its distinct smell and irregular shape. He was also dubious of the Sagada woven bag that petitioner had because it was supposed to be oval but it was rectangular in shape. PO1 Falolo planned to inform other police officers at the barracks but he was unable to do so because he ran out of load to send a text message.[6]

Upon reaching Bontoc, petitioner alighted at Caluttit, while PO1 Falolo went down at the Department of Public Works and Highways *(DPWH)* Compound to buy load for his cellular phone. Unable to find any store selling load, PO1 Falolo hailed a tricycle and asked to be brought to Caluttit. PO1 Falolo seated at the

---

[4] *Id.* at 60-63.

[5] Id. at 65.

[6] *Id*.

back of the driver. When the tricycle arrived at Caluttit, petitioner was still there and hailedand rode inside the same tricycle, with PO1 Falolostill seated behind the driver.[7]

When the tricycle reached the Community Police Assistance Center *(COMPAC)* circle, PO1 Falolo stopped the tricycle and called SPO2 Gaspar Suagen*(SPO2 Suagen)*, who was then on duty. While SPO2 Suagen approached them, PO1 Falolo asked petitioner if he could open his baggage, to which the latter replied in the affirmative. However, petitioner suddenly ran away from the tricycle towards the Pines Kitchenette. Both police officers ran after him and apprehended him in front of Sta. Rita Parish Church. Petitioner was then handcuffed and he, together with his baggage, were brought to the Municipal Police Station.[8]

At the police station, the baggage of petitioner were opened and these revealed eleven (11) bricks of marijuana from the carton baggage and six (6) bricks of marijuana from the Sagada woven bag. The seized items were marked, photographed and inventoried in the presence of petitioner, the barangay chairman, a prosecutor and a media representative. The bricks from the carton baggage weighed 10.1 kilograms; while the bricks from the Sagada woven bag weighed 5.9 kilograms. The items were brought to the Regional Crime Laboratory Office for a forensic examination, which yielded a positive result for marijuana.[9]

Version of the Defense

On November 27, 2011, petitioner boarded a Bing Bush bus and sat on top. With him was an unidentified man, who had a carton box.When he alighted from the bus, petitioner called for a tricycle where PO1 Falolo and the unidentified man had already boarded. The unidentified man then asked petitioner to have his baggage dropped at the "circle" and the former alighted at the motorpool.[10]

---

[7] *Id*. at 66.

[8] *Id*.

[9] *Id*. at 66-67.

[10] *Id*. at 67.

Upon reaching the COMPAC, PO1 Falolo stopped the tricycle and asked petitioner why his companion left. Petitioner denied that he had a companion. When he saw PO1 Falolo call for another police officer, he ran away. Realizing that the baggage was not his, petitioner stopped near the church. At this point, PO1 Falolo and another police officer caught him and arrested him. Petitioner was then brought to the COMPAC, where they waited for thirty (30) minutes before going to the municipal hall. There, he was coerced to confess that the baggage was his.

The RTC Ruling

In its January 10, 2014 judgment, the RTC found petitioner guilty of transporting illegal drugs and sentenced him to suffer the penalty of life imprisonment and to pay a fine of Five Hundred Thousand Pesos (₱500,000.00). The trial court ruled that petitioner's warrantless arrest was legal because he was caught *in flagrante delicto* of transporting marijuana, and, as such, the subsequent search and seizure of the marijuana was legal as an incident of a lawful arrest. In addition, it posited that the integrity and evidentiary value of the drugs seized were preserved. The RTC observed that no considerable time had elapsed from the time petitioner ran away until he was arrested. Also, the trial court noted that the immediate marking of the seized items at the nearest police station was valid. Further, it stated that the witnesses were able to explain the minor inconsistencies in the documentary evidence presented. The *fallo* of the RTC judgment reads:

> ACCORDINGLY, judgment is hereby rendered finding the accused DOMINGO AGYAO MACAD GUILTY beyond reasonable doubt of the crime [of violation]of Section 5 of R.A. [No.] 9165 and is sentenced to suffer the penalty of LIFE IMPRISONMENT and a fine of FIVE HUNDRED THOUSAND PESOS (PhP500,000.00).
>
> The subject prohibited drugs are forfeited in favor of the government and are hereby directed to be turned over with dispatch to the Philippine Drug Enforcement (PDEA) for disposition in accordance with the law.
>
> Pursuant to Administrative Circular No. 4-92-A of the Court Administrator, the District Jail Warden of the Bureau of Jail

Management and Penology, Bontoc District Jail, Bontoc, Mountain Province is directed to immediately transfer the accused, DOMINGO AGYAO MACAD, to the custody of the Bureau of Corrections, Muntinlupa City, Metro Manila after the expiration of fifteen (15) days from date of promulgation unless otherwise ordered by this Court.

SO ORDERED.[11]

Petitioner filed a motion for reconsideration but it was denied by the RTC in its resolution dated January 10, 2014.

Undaunted, petitioner appealed to the CA.

The CA Ruling

In its March 17, 2016 decision, the CA affirmed the RTC's decision. The appellate court agreed that the search conducted was an incident of a lawful arrest because petitioner's warrantless arrest was valid as it fell under Section 5(a) and (b), Rule 113 of the Rules of Court. The CA also noted that the pungent smell of marijuana emanating from the baggage of petitioner constituted probable cause for PO1 Falolo to conduct a warrantless arrest. It likewise reiterated that the prosecution was able to establish the chain of custody.

Petitioner moved for reconsideration, but it was denied by the CA in its September 23, 2016 resolution.

Hence, this petition.

ISSUES

Petitioner argues that:

THE COURT OF APPEALS COMMITTED MISAPPREHENSION OF FACTS AND CONSEQUENTLY ERRED AND GRAVELY ABUSED ITS DISCRETION IN UPHOLDING THE FINDING OF THE REGIONAL TRIAL COURT THAT THE ACCUSED WAS COMMITTING A CRIME WHEN HE WAS ARRESTED THEREBY JUSTIFYING HIS WARRANTLESS ARREST AND EVENTUAL SEARCH AND SEIZURE.

---

[11] *Id*. at 59.

THE COURT OF APPEALS GRAVELY ABUSED ITS DISCRETION IN NOT EXCLUDING THE MARIJUANA ALLEGEDLY [SEIZED] FROM THE PETITIONER IN [CONSONANCE] WITH ARTICLE III, SECTION 3(2) OF THE 1987 CONSTITUTION.

THE COURT OF APPEALS ERRED AND GRAVELY ABUSED ITS DISCRETION IN UPHOLDING THE FINDING OF THE REGIONAL TRIAL COURT THAT THE CHAIN OF CUSTODY OF THE SEIZED DRUG WAS PROPERLY ESTABLISHED.[12]

Petitioner asserts that the search conducted was neither an incident of a lawful arrest nor was it made with his consent. He assails that PO1 Falolo's actions belie that he had probable cause to believe that petitioner was transporting marijuana because it took him a long time to make any overt act in arresting petitioner.

In addition, petitioner argues that the integrity of the items seized was compromised because the baggage, which contained the drugs, were left behind when the police officers chased him. Also, he claims that the procedure prescribed under Section 21 of R.A. No. 9165 was not followed because the marking, photography and inventory were not immediately made at the place of arrest.

In its Comment,[13] respondent, through the Office of the Solicitor General *(OSG),* argues that at the moment petitioner boarded the bus, PO1 Falolo had probable cause to conduct the warrantless search and seizure on petitioner's personal effects due to the distinctive smell of marijuana emanating from petitioner's carton baggage and the unusual shape of the Sagada woven bag. It also states that the probable cause of PO1 Falolo was reinforced when petitioner ran away when asked for permission to check his baggage. Respondent concludes that petitioner's warrantless arrest and incidental search from such arrest were based on the existence of probable cause.

---

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

[13] *Id*. at 90-116; prepared by Solicitor General Jose C. Calida, Senior State Solicitor M.L. Carmela P. Aquino-Cagampang, and Associate Solicitor Ronn Michael M. Villanueva.

Respondent also argues that PO1 Falolo immediately tried to contact the Provincial Head Quarters *(PHQ)* when he had probable cause that petitioner was transporting marijuana, but his cellular phone ran out of load; and that the integrity and evidentiary value of the seized items were preserved because all the police officers involved in the chain of custody took the necessary precautions to ensure that there had been no change in the condition of the marijuana bricks. It further avers that the minor discrepancy in the document, entitled "Turn Over of Evidence," is too inconsequential to affect the integrity and evidentiary value of the seized items.

In his Reply,[14] petitioner reiterates that PO1 Falolo did not have probable cause to search his baggage because he did not immediately confront him regarding the matter; and that PO1 Falolo's indifferent actions cast doubt on his certainty that petitioner's baggage contained illegal drugs.

The Court's Ruling

The petition lacks merit.

Petition resorted to the wrong mode of appeal

Section 13 (c), Rule 124 of the Rules of Court, as amended, states that "[i]n cases where the CA imposes *reclusion perpetua*, life imprisonment or a lesser penalty, it shall render and enter judgment imposing such penalty. The judgment may be appealed to the Supreme Court by notice of appeal filed with the Court of Appeals." Hence, an accused, upon whom the penalty of *reclusion perpetua* or life imprisonment had been imposed by the CA, can simply file a notice of appeal to allow him to pursue an appeal as a matter of right before the Court, which opens the entire case for review on any question including one not raised by the parties.[15]

---

[14] *Id*. at 125-132.

[15] *Dungo, et al. v. People,* 762 Phil. 630, 651 (2015).

On the other hand, an accused may also resort to an appeal by *certiorari* to the Court via Rule 45 under the Rules of Court. An appeal to this Court by petition for review on *certiorari* shall raise only questions of law. Moreover, such review is not a matter of right, but of sound judicial discretion, and will be granted only when there are special and important reasons.[16]

In other words, when the CA imposed a penalty of *reclusion perpetua* or life imprisonment, an accused may: (1) file a notice of appeal under Section 13 (c), Rule 124 to avail of an appeal as a matter of right before the Court and open the entire case for review on any question; or (2) file a petition for review on *certiorari* under Rule 45 to resort to an appeal as a matter of discretion and raise only questions of law.[17]

In this case,the CA affirmed the RTC decision imposing the penalty of life imprisonment to petitioner. Notably, however, the petition filed before this Court invokes grave abuse of discretion in assailing the CA decision, which is a ground under a petition for *certiorari* under Rule 65 of the Rules of Court.In any event, even if the instant petition is treated as a petition for review on *certiorari* under Rule 45, which is limited to questions of law, it still raises questions of fact because it essentially assails the appreciation of the testimonial and documentary evidence by the CA and the RTC.[18] As a rule, these questions of fact cannot be entertained by the Court under Rule 45. Thus, the petition is procedurally infirm.

Nonetheless, even if the questions of fact raised by petitioner are considered by the Court, the petition is still bereft of merit.

---

[16] *Id*. at 652.

[17] *Id*.

[18] If the petition requires a calibration of the evidence presented, then it poses a question of fact, which cannot be raised before the Court; see *Republic of the Phils. v. Rayos Del Sol,et al.*, 785 Phil. 877, 887 (2016).

PO1 Falolo had probable cause to conduct a valid warrantless arrest and a valid incidental search

Rule 113 of the Rules of Court identifies three (3) instances when warrantless arrests may be lawfully effected. These are: *(a)* an arrest of a suspect *in flagrante delicto*; *(b)* an arrest of a suspect where, based on personal knowledge of the arresting officer, there is probable cause that said suspect was the perpetrator of a crime which had just been committed; and *(c)* an arrest of a prisoner who has escaped from custody serving final judgment or temporarily confined during the pendency of his case or has escaped while being transferred from one confinement to another.[19]

In warrantless arrests made pursuant to Section 5 (a), Rule 113, two (2) elements must concur, namely: *(a)* the person to be arrested must execute an overt act indicating that he has just committed, is actually committing, or is attempting to commit a crime; and *(b)* such overt act is done in the presence or within the view of the arresting officer. On the other hand, Section 5 (b), Rule 113 requires for its application that at the time of the arrest, an offense had in fact just been committed and the arresting officer had personal knowledge of facts indicating that the accused had committed it. [20]

In both instances, the officer's personal knowledge of the fact of the commission of an offense is essential. Under Section 5 (a), Rule 113 of the Revised Rules of Criminal Procedure, the officer himself witnesses the crime; while in Section 5 (b) of the same, he knows for a fact that a crime has just been committed.[21]

---

[19] *Sindac v. People*, 794 Phil. 421, 429 (2016).

[20] *Id*. at 429-430.

[21] *Peralta v. People,* G.R. No. 221991, August 30, 2017.

A valid warrantless arrest which justifies a subsequent search is one that is carried out under the parameters of Section 5 (a), Rule 113 of the Rules of Court, which requires that the apprehending officer must have been spurred by probable cause to arrest a person caught in *flagrante delicto*. To be sure, the term probable cause has been understood to mean a reasonable ground of suspicion supported by circumstances sufficiently strong in themselves to warrant a cautious man's belief that the person accused is guilty of the offense with which he is charged. Specifically, with respect to arrests, it is such facts and circumstances which would lead a reasonably discreet and prudent man to believe that an offense has been committed by the person sought to be arrested. In this light, the determination of the existence or absence of probable cause necessitates a re-examination of the factual incidents.[22] Accordingly, after a valid warrantless arrest is effected, the officer may also conduct a valid warrantless search, which is in incidental to such arrest.

Aside from a search incident leading to a lawful arrest, warrantless searches have also been upheld in cases involving a moving vehicle. The search of moving vehicleshas been justified on the ground that the mobility of motor vehicles makes it possible for the vehicle to be searched to move out of the locality or jurisdiction in which the warrant must be sought.[23]

A search of a moving vehicle may either be a mere routine inspection or an extensive search. The search in a routine inspection is limited to the following instances: (1) where the officer merely draws aside the curtain of a vacant vehicle which is parked on the public fair grounds; (2) simply looks into a vehicle; (3) flashes a light therein without opening the car's doors; (4) where the occupants are not subjected to a physical or body search; (5) where the inspection of the vehicles is limited to a visual search or visual inspection; and (6) where the routine check is conducted in a fixed area.[24]

---

[22] *Martinez v. People,*703 Phil. 609, 617-618 (2013).

[23] *People v. Bagista,* 288 Phil. 828, 836 (1992).

[24] *Caballes v. Court of Appeals, et al.,* 424 Phil. 263, 280 (2002).

On the other hand, an extensive search of a moving vehicle is only permissible when there is probable cause. When a vehicle is stopped and subjected to an extensive search, such a warrantless search has been held to be valid only as long as the officers conducting the search have reasonable or **probable cause** to believe before the search that they will find the instrumentality or evidence pertaining to a crime, in the vehicle to be searched.[25]

This Court has in the past found probable cause to conduct without a judicial warrant an extensive search of moving vehicles in situations where (1) **there had emanated from a package the distinctive smell of marijuana**; (2) officers of the Philippine National Police (*PNP*) had received a confidential report from informers that a sizeable volume of marijuana would be transported along the route where the search was conducted; (3) [police officers] had received information that a Caucasian coming from Sagada, Mountain Province, had in his possession prohibited drugs and when the Narcom agents confronted the accused Caucasian, because of a conspicuous bulge in his waistline, he failed to present his passport and other identification papers when requested to do so; (4) [police officers] had received confidential information that a woman having the same physical appearance as that of the accused would be transporting marijuana; (5) the accused who were riding a jeepney were stopped and searched by policemen who had earlier received confidential reports that said accused would transport a large quantity of marijuana; and (6) where the moving vehicle was stopped and searched on the basis of intelligence information and clandestine reports by a deep penetration agent or spy — one who participated in the drug smuggling activities of the syndicate to which the accused belonged — that said accused were bringing prohibited drugs into the country.[26]

In *People v. Claudio*,[27] a police officer rode a bus with the accused therein from Baguio City to Olongapo City. The officer

---

[25] *Supra* note 23 at 836.

[26] *Supra* note 24 at 281-282.

[27] 243 Phil.795 (1988).

noticed that the accused was acting suspiciously with her woven buri bag. While in transit, the officer inserted his finger in the buri bag and smelled marijuana. However, the officer did not do anything after he discovered that there was marijuana inside the bag of the accused until they reached Olongapo City. Right after the accused alighted from the bus, the officer apprehended her and brought her to the police station. There, a search on the bag of the accused yielded marijuana. In that case, the Court ruled that the officer had probable cause to conduct a valid warrantless arrest and make a warrantless search incidental to a lawful arrest.

In *People v.Vinecario*,[28] the accused therein were onboard a motorcycle when they sped past a checkpoint and the officers ordered them to return. Upon their return, the officers required them to produce their identification cards, but they failed to comply. The officers noticed that the accused were acting suspiciously with the military bag they were carrying because it was passed from one person to another. The officers then ordered one of the accused to open the bag. When the latter opened it, a package wrapped in paper was taken out and when one of the accused grabbed it, the wrapper was torn and the smell of marijuana wafted in the air. Thereafter, the accused were arrested and the items were confiscated. In that case, the Court ruled that there was probable cause to conduct an extensive search because of the numerous circumstances indicating that accused were offenders of the law.

In this case, the Court finds that PO1 Falolohad probable cause to believe that petitioner was carrying marijuana in his baggage. He testified as follows:

[Pros. DOMINGUEZ]

Q According to you when you reached Botbot a certain Domingo Macad [hailed the bus], what did you do Mr. Witness?

[Police Officer FALOLO]

A He [threw] his [carton] baggage and went at the top load, sir.

---

[28] 465 Phil.192 (2004).

Q Before he [threw] you his baggage, what did he do?
A He [flagged] down the bus, sir.

x x x x x x x x x

Q When the bus stop, what did Domingo Macad do?
A He [threw] me his baggage, sir.

Q How did he throw to you the baggage [carton]?
A He threw the baggage upwards, sir.

Q Were you able to catch the [carton] baggage?
A Yes, sir.

Q Aside from that what did you notice when he [threw] you that baggage [carton]?
A **The smell and the shape of the [carton], sir.**

Q Will you describe to us the [carton] baggage of Domingo Macad?
A **The [carton] was supposed to be flat but it seems there is something at the top, sir.**

Q Was there markings on this [carton]?
A Yes, sir. Magic flakes.

Q After he threw you this [carton] what happened next?
A He immediately came to the top load, sir.

Q How far were you seated from him?
A About two meters, sir.

Q Aside from this [carton] what else did you notice when he went on top of the bus?
A I noticed a Sagada traveling pack, sir. **The shape of the bag is rectangular [but] it is supposed to be oval, sir.**

Q What is the color of the bag?
A Blue, sir,

Q Was he carrying this Sagada woven bag?
A Yes, sir.

Q What did you notice to this woven bag, Mr. witness?
A **The shape, sir. When I touched [it], it's hard, sir.**

Q What came to your mind when you [touched that] it's hard?
A **[I] suspected marijuana bricks, sir.**

Q Why did you suspect that they are marijuana bricks?
A First, when he [threw] me the [carton] baggage [and] right there I [smelled] the odor [that] is the same as marijuana, sir.

Q You mean to say, when you [held] that [carton], you [smelled] marijuana leaves?
A Yes, sir.

Q Why are you familiar with the smell of marijuana leaves?
A It is familiar to us law enforces because in our trainings, our instructors showed to us the different kinds of marijuana. We touch and we smell, sir.

Q That was during your training as police officers?
A Yes, sir and the same odor when we caught marijuana in Tocucan, sir.

Q So you mean to say, Mr. witness, that at the time he [threw] you that [carton] and he boarded and [joined] you at the top load and so with the Sagada woven bag, you suspected marijuana leaves?
A Yes, sir.[29] (emphases supplied)

Evidently, petitioner hailed the same bus that PO1 Falolo was riding on the way to Bontoc, Mountain Province. He then threw his carton baggage to PO1 Falolo who was then seated on the roof and was toting a Sagada woven bag as well. Immediately, PO1 Falolo smelled the distinct scent of marijuana emanating from the carton baggage and noticed its irregular shape. He also noticed that the Sagada woven bag of petitioner was rectangular instead of an oval and, upon touching it, he noticed that it was hard.

Accordingly, PO1 Falolo had probable cause that petitioner was committing the crime of transporting dangerous drugs, specifically marijuana bricks, due to the unique scent of marijuana emanating from the bag and the unusual shapes and hardness of the baggage. As PO1 Falolo was not in uniform at that time, he intended to inform his colleagues at the PHQ Barracks to

---

[29] *Rollo,* pp. 45-47.

conduct a check point so that they could verify his suspicion about the transport of illegal drugs.[30] As seen in his testimony, **PO1 Falolo already had probable cause to conduct an extensive search of a moving vehicle** because he believed before the search that he and his colleagues would find instrumentality or evidence pertaining to a crime, particularly transportation of marijuana, in the vehicle to be searched.

However, PO1 Falolo discovered that his load was insufficient to make a phone call. Thus, without the back-up of his colleagues, he chose to remain vigilant of petitioner until he could contact them. When the bus reached Bontoc, petitioner alighted in lower Caluttit. On the other hand, PO1 Falolo alighted in front of the DPWH Compound, which was not more than a kilometer away from lower Caluttit, to look for cellphone load to contact his colleagues. When he failed to find load for his phone, PO1 Falolo immediately boarded a tricycle back to lower Caluttit and sat at the back of the driver.

There, PO1 Falolo chanced upon petitioner, who boarded the same tricycle and sat inside. When the tricycle reached the COMPAC, PO1 Falolo stopped the tricycle and called SPO2 Suagen, who was on duty. He then asked petitioner if he could check his baggage and the latter answered in the affirmative. However, when petitioner saw SPO2 Suagen approaching the tricycle, he suddenly ran away towards the Pizza Kitchenette and left his baggage.

At that moment, PO1 Falolo also acquired probable cause to conduct a warrantless arrest on petitioner. There were numerous circumstances and overt acts which show that PO1 Falolo had probable cause to effect the said warrantless arrest: (1) the smell of marijuana emanating from the carton baggage; (2) the irregular shape of the baggage; (3) the hardness of the baggage; (4) the assent of petitioner in the inspection of his baggage but running away at the sight of SPO2 Suagen; and (5) leaving behind his baggage to avoid the police officers.

---

[30] *Id*. at 92.

Petitioner's flight at the sight of the uniformed police officer and leaving behind his baggage are overt acts, which reinforce the finding of probable cause to conduct a warrantless arrest against him. The Court has held that the flight of an accused is competent evidence to indicate his guilt; and flight, when unexplained, is a circumstance from which an inference of guilt may be drawn. Indeed, the wicked flee when no man pursueth, but the innocent are as bold as lion.[31]

Based on these facts, PO1 Falolo had probable cause to believe that there was a reasonable ground of suspicion supported by circumstances sufficiently strong in themselves to warrant a cautious man's belief that petitioner is guilty of the offense charged. Petitioner was caught *in flagrante delicto* of transporting marijuana bricks by PO1 Falolo.

Consequently, when PO1 Falolo and SPO2 Suagen captured petitioner in front of the St. Rita Parish Church, they had probable cause to arrest him and bring him and his baggage to the police station. There, the police officers properly conducted a search of petitioner's baggage, which is an incident to a lawful arrest. Indeed, numerous devious circumstances surround the incident, from the time petitioner boarded the bus until he was caught after fleeing at the sight of the police officer, that constitute as probable cause to arrest him and to conduct the warrantless search incidental to such lawful arrest.

Under the circumstances, PO1 Falolo could not immediately conduct the search

Petitioner's argument – that PO1 Falolo's finding of probable cause is not authentic because petitioner was not immediately arrested or searched in the bus or upon disembarking – is bereft of merit.

As properly discussed by the RTC, it was reasonable for PO1 Falolo not to immediately arrest petitioner.[32] PO1 Falolo

---

[31] *People v. Niegas*, 722 Phil. 301, 313 (2013).

[32] *Rollo,* p. 61.

was not on duty and was not in uniform when he smelled the pungent odor of marijuana from the baggage of petitioner. They were in a crowded bus and any commotion therein may cause panic to the civilian passengers. Further, it was not shown that PO1 Falolo was carrying handcuffs, thus, he may not be able to single-handedly restrain petitioner.[33] Moreover, the Court finds that it was sensible for PO1 Falolo to wait for back-up as petitioner could be carrying a dangerous weapon to protect his two large bags of suspected marijuana.

When he saw petitioner disembark from the bus in lower Caluttit, PO1 Falolo did not immediately follow him; rather, PO1 Falolo disembarked in front of the DPWH. The RTC underscored that the proximity of the said place was not more than a kilometer away from lower Caluttit.[34] Thus, when PO1 Falolo failed to find load for his cellular phone, he was able to reach lower Caluttit immediately on board a tricycle and was able to chance upon petitioner due to the proximity of their positions. **Manifestly, PO1 Falolo's acts showed that he clung to his determination of probable cause to conduct an extensive search on the baggage of petitioner.**When PO1 Falolo saw his colleague SPO2 Suagen in the COMPAC, he decided that it was safe and reasonable to conduct the search and immediately asked permission from petitioner to examine his baggage.

Nevertheless, when petitioner suddenly ran away from the tricycle while SPO2 Suagen was approaching and left his baggage behind, PO1 Falolo also obtained probable cause to conduct a warrantless arrest. He was earnest in his probable cause that petitioner was committing a crime *in flagrante delicto,* thus, PO1 Falolo religiously pursued him until he was arrested and his baggage eventually searched as an incident thereof.

The chain of custody rule

Chain of custody means the duly recorded authorized movements and custody of seized drugs or controlled chemicals

---

[33] *Id*.

[34] *Id*. at 61-62.

or plant sources of dangerous drugs or laboratory equipment of each stage, from the time of seizure/confiscation to receipt in the forensic laboratory to safekeeping to presentation in court for destruction. Such record of movements and custody of seized item shall include the identity and signature of the person who held temporary custody of the seized item, the date and time when such transfer of custody were made in the course of safekeeping and use in court as evidence, and the final disposition.[35] To ensure the establishment of the chain of custody, Section 21 (1) of RA No. 9165 specifies that:

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

Section 21 (a) of the Implementing Rules and Regulations *(IRR)* of R.A. No. 9165 supplements Section 21 (1) of the said law, viz:

> (a) The apprehending officer/team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof: Provided, that the physical inventory and photograph shall be conducted at the place where the search warrant is served; **or at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizures;** Provided, further, that non-compliance with these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly

---

[35] Section 1(b) of Dangerous Drugs Board Regulation No. 1, Series of 2002.

preserved by the apprehending officer/team, shall not render void and invalid such seizures of and custody over said items[.] (emphasis supplied)

Based on the foregoing, Section 21 of R.A. No. 9165 requires the apprehending team, after seizure and confiscation, to immediately conduct a physical inventory; and photograph the same in the presence of **(1) the accused or the persons from whom such items were confiscated and/or seized, or his/her representative or counsel, (2) a representative from the media and (3) the DOJ, and (4) any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof.**[36]

In the amendment of R.A. No. 10640, the apprehending team is now required to conduct a physical inventory of the seized items and photograph the same in **(1) the presence of the accused or the persons from whom such items were confiscated and/or seized, or his/her representative or counsel, (2) with an elected public official and (3) 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.[37] In the present case, as the alleged crimes were committed on November 27, 2011, then the provisions of Section 21 of R.A. No. 9165 and its IRR shall apply.

Notably, Section 21 of the IRR provides a saving clause which states that non-compliance with these requirements shall not render void and invalid such seizures of and custody over the confiscated items provided that **such non-compliance were under justifiable grounds and the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer or team.**[38]

The exception found in the IRR of R.A. 9165 comes into play when strict compliance with the prescribed procedures is

---

[36] *People v. Dahil, et al.*, 750 Phil. 212, 228 (2015).

[37] *People v. Dela Rosa*, G.R. No. 230228, December 13, 2017.

[38] *People v. Dela Cruz,* 591 Phil. 259, 271 (2008).

not observed. This saving clause, however, applies only (1) where the prosecution recognized the procedural lapses, and thereafter explained the cited justifiable grounds, and (2) when the prosecution established that the integrity and evidentiary value of the evidence seized had been preserved. The prosecution, thus, loses the benefit of invoking the presumption of regularity and bears the burden of proving — with moral certainty — that the illegal drug presented in court is the same drug that was confiscated from the accused during his arrest.[39]

The prosecution substantially complied with the chain of custody rule

The Court finds that the prosecution was able to sufficiently comply with the chain of custody rule under Section 21 of R.A. No. 9165 and its IRR. When petitioner was apprehended, he and his baggage were brought to the Municipal Police Station. There, the seized items, consisting of eleven (11) bricks of marijuana from the carton baggage and six (6) bricks of marijuana from the Sagada woven bag, were marked, photographed and inventoried. At that moment, the presence of petitioner, Barangay Chairman Erlinda Bucaycay, DOJ representative Prosecutor Golda Bagawa, a media representative Gregory Taguiba, and a certain Atty. Alsannyster Patingan were secured by the police officers.[40] Accordingly, all the required witnesses under Section 21 of R.A. No. 9165 were obtained. Petitioner does not even question the sufficiency of the required witnesses.

The seized items were also immediately weighed. The eleven (11) bricks from the carton baggage weighed 10.1 kilograms; while six (6) bricks from the Sagada woven bag weighed 5.9 kilograms.[41]

---

[39] *People v. Carlit*, G.R. No. 227309, August 16, 2017, citing *People v. Cayas*, 789 Phil. 70 (2016).

[40] *Supra* note 7.

[41] *Rollo*, p. 42.

After the marking, inventory and taking of photographs, SPO1 Jessie Lopez *(SPO1 Lopez)* prepared the inventory report and allowed the witnesses to sign it. SPO1 Lopez also signed the spot report. The seized items were then turned over to PO2 Jonathan Canilang*(PO2 Canilang),* who thereafter brought the said items along with the request for laboratory examination to SPO3 Oscar Cayabas*(SPO3 Cayabas)* of the Provincial Crime Laboratory, Bontoc, Mountain Province. SPO3 Cayabas then made a request for examination to the Regional Crime Laboratory Office. There, PSI Alex Biadang*(PSI Biadang)* received the request for examination, along with the seized items. After the examination, all the bricks tested positive for marijuana. The subject bag and carton, together with the seized marijuana bricks, were all identified in open court by PO1 Falolo and PSI Biadang.[42]

Clearly, the prosecution was able to establish the chain of custody of the seized drugs. They were able to prove that all the persons who handled the drugs were duly accounted for and that the integrity and evidentiary value of the seized items were maintained by these persons until their presentation in court. In addition, there was no lapse or gap in the handling of the seized items because the witnesses of the prosecution correctly identified the persons involved in the custody of the seized marijuana bricks.

The seized items may be marked in the nearest police station; minor discrepancy in the document is immaterial

Petitioner argues that the police officers should have immediately marked the seized items upon his arrest and should not have left the baggage in the tricycle.

The Court is not convinced.

As a rule, under the IRR, the physical inventory and photograph of the seized items shall be conducted at the place

---

[42] *Supra* note 9.

where the search warrant is served. Likewise, the marking should be done upon immediate confiscation. However, Section 21 of the IRR also provides an exception that the physical inventory and photography of the seized items may be conducted at the nearest police station or the nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizures. In such instance, provided that it is practicable, the marking of the seized items may also be conducted at nearest police station.

In *Imson v. People,*[43] the Court stated that to be able to create a first link in the chain of custody, what is required is that the marking be made in the presence of the accused and upon immediate confiscation. "Immediate Confiscation" has no exact definition. Thus, testimony that included the marking of the seized items at the police station and in the presence of the accused was sufficient in showing compliance with the chain of custody rules. Marking upon immediate confiscation contemplates even marking at the nearest police station or office of the apprehending team.

Similarly, in *People v. Bautista,*[44] the Court reiterated that the failure to mark the seized items at the place of arrest does not itself impair the integrity of the chain of custody and render the confiscated items inadmissible in evidence. Marking upon "immediate" confiscation can reasonably cover marking done at the nearest police station or office of the apprehending team,especially when the place of seizure is volatile and could draw unpredictable reactions from its surroundings.

In this case, it was reasonable for the police officers not to conduct the marking immediately at the place of the arrest and seizure. Evidently, petitioner is a flight risk because he immediately ran away at the sight of SPO2 Suagen. To conduct the marking in an unsecured location may result in the escape of petitioner. Also, the seized baggage contained large quantities

---

[43] 669 Phil. 262 (2011).

[44] 723 Phil. 646 (2013).

of marijuana. It would be impractical, if not dangerous, for merely two police officers to conduct the marking of such drugs in broad daylight and in open public, without the assistance and security of other police officers. Accordingly, it was prudent and rational for the police officers to conduct the marking in the police station. As stated earlier, PO1 Falolo and PSI Biadang were able to identify all the marked items in open court.

Further, there was no opportunity of tampering when PO1 Falolo and SPO2 Suagen ran after petitioner. As properly discussed by the RTC, there was no considerable time that elapsed from the moment that petitioner ran away from his baggage up to the time the police officers arrested him. The distance between the Sta. Rita Church, where petitioner was caught, and the COMPAC, where the baggage was left, was only about 500 meters. Thus, the police officers were able to immediately return to the baggage once they arrested petitioner. It would be the height of absurdity to require the police officers to simply wait at the tricycle while they freely allow petitioner to escape even though there was probable cause to believe that he was transporting illegal drugs.

Likewise, petitioner argues that the mistake in the document, entitled "Turn Over of Evidence," which states that six (6) bricks of marijuana were contained in a carton, instead of the Sagada woven bag, taints the chain of custody.

Again, the argument has no merit.

The RTC correctly observed that the statement in the turn over of evidence that the six (6) bricks of marijuana were contained in a carton, instead of the Sagada woven bag, was a minor oversight and does not in any way destroy the prosecution's case. PO1 Falolo testified that the six (6) bricks of marijuana were contained in the Sagada woven bag. When PO2 Canilang was presented as witness, he also testified that the six (6) bricks of marijuana were acquired in the Sagada woven bag. Both witnesses were able to properly identify the marking contained in the said bricks of marijuana from the Sagada woven bag. These portions of the testimonies of the police officer were never assailed by petitioner during cross-examination, hence, these were readily admitted by the RTC.

Verily, it was only in the turn over of evidence that the minor mistake was found and it was a mere product of inadvertence. The testimonies of the prosecution witnesses sufficiently established that the six (6) bricks of marijuana were indeed found in the Sagada woven bag. Accordingly, it was proven by the prosecution that the six (6) marijuana bricks were seized from the Sagada woven bag belonging to petitioner, and not from the carton.

In fine, the guilt of petitioner for violating Section 5, Article II of Republic Act *(R.A.)* No. 9165 for transporting illegal drugs has been proven beyond reasonable doubt.

WHEREFORE, the petition is **DENIED.** The March 17, 2016 Decision and September 23, 2016 Resolution of the Court Appeals in CA-G.R. CR-H.C. No. 06638 are **AFFIRMED *in toto.***

SO ORDERED.

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

Leonen, J., see concurring opinion.

Martires, J., on leave.

CONCURRING OPINION

LEONEN, *J.*:

This case involves a man who was both searched and arrested without a warrant. Thus, while this case requires analysis of the rules governing when arrests may be made without a warrant, due attention must also be given to the constitutional rights, which underpin these rules, in particular the right of persons against unreasonable searches and seizures.

Article III, Section 2 of the Constitution provides:

Section 2. The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches any seizures of whatever nature and for any purpose shall be inviolable, and no

search warrant or warrant of arrest shall issue except upon probable cause to be determined personally by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched and the persons or things to be seized.

The foregoing wording of Article III, Section 2 of the Constitution implies that there may be instances when there can be "reasonable" searches and seizures which may be valid, even if done without a warrant.

It should be noted that what may be "reasonable" in relation to a lawful warrantless search may be different from what may be "reasonable" in relation to a lawful warrantless arrest. The reasonableness must be considered in relation to the values being protected by the Constitution.

The right against unreasonable searches protects the implicit right of the person to be left alone or the person's right to privacy. In other words, the right recognizes and protects inviolable spaces, which cannot be intruded into by the State, except when compelling State interests are present, and even then, only when such intrusion is the least restrictive way to meet that State interest.

Thus, this Court has traditionally recognized that the State may conduct warrantless searches of moving vehicles but only when there is probable cause and when they are limited to a visual one aided only by a non-intrusive tool, such as a flashlight. An argument can be made in favor of the validity of olfactory searches done with the aid of a dog because the intrusion on the privacy of the individual being searched is not too burdensome.

However, the question of whether any particular warrantless search is reasonable is entirely distinct from the question of whether a warrantless arrest is reasonable. The right of a person to not be unreasonably seized is related to his very right to life and liberty. Thus, the grounds for causing warrantless arrests have been traditionally limited to instances where police officers

have personal knowledge that a crime has been committed. A warrantless arrest may not be valid on the basis of mere hearsay information.

The Rules of Court provides for exceptions where a person may be lawfully arrested, even without any arrest warrant having been issued:

> RULE 113
> Arrest
>
> . . . . . .
>
> Section 5. Arrest without warrant; when lawful.— A peace officer or a private person may, without a warrant, arrest a person:
>
> (a) When, in his presence, the person to be arrested has committed, is actually committing, or is attempting to commit an offense;
>
> (b) When an offense has just been committed and he has probable cause to believe based on personal knowledge of facts or circumstances that the person to be arrested has committed it; and
>
> (c) When the person to be arrested is a prisoner who has escaped from a penal establishment or place where he is serving final judgment or temporarily confined while his case is pending, or has escaped while being transferred from one confinement to another.
>
> In cases falling under paragraphs (a) and (b) above, the person arrested without a warrant shall be forthwith delivered to the nearest police station or jail and shall be proceeded against in accordance with Section 7 of Rule 112.[1]

Rule 113, Section 5(a) of the Rules of Court only allows warrantless arrests for crimes *in flagrante* when the police officer or private citizen conducting the arrest has, within his or her purview, all the elements of the offense being committed by the accused. This provision cannot validly be invoked where a police officer only possesses information that the accused has committed a crime.

---

[1] RULES OF COURT, Rule 113, Sec. 5.

On the other hand, Section 5(b) of the same rule requires that the arresting police officer has perceived, through his or her own senses, that a crime has just been committed and, in addition to this perception, also has perceived facts which could reasonably lead to the belief that the person about to be arrested was the offender. In this case, the police officer did not witness the occurrence of the crime itself but witnessed some facts that led him to believe that the person about to be arrested committed the offense.

When explaining why a warrantless search or seizure was valid, this Court must take great care to specify how the circumstances allow for a warrantless search or seizure. This Court must be clear on the exceptions that it is invoking to avoid inadvertent carving out of additional situations where warrantless arrests appear to be allowable, despite having little to no doctrinal basis.

In this case, the police officer already had basis to conduct a warrantless search from the time he smelled the odor of marijuana emanating from the carton and the bag with a Sagada weave. This is similar to the case of *Posadas v. Court of Appeals*,[2] wherein the police officer had reason to conduct a warrantless search in a way akin to a stop and frisk:

> The assailed search and seizure may still be justified as akin to a "stop and frisk" situation whose object is either to determine the identity of a suspicious individual or to maintain the status quo, momentarily while the police officer seeks to obtain more information. This is illustrated in the case of Terry vs. Ohio, 392 U.S. 1 (1968). In this case, two men repeatedly walked past a store window and returned to a spot where they apparently conferred with a third man. This aroused the suspicion of a police officer. To the experienced officer, the behavior of the men indicated that they were sizing up the store for an armed robbery. When the police officer approached the men and asked them for their names, they mumbled a reply. Whereupon, the officer grabbed one of them, spun him around and frisked him. Finding a concealed weapon in one, he did the same to

---

[2] 266 Phil. 306 (1990) [Per *J.* Gancayco, First Division].

the other two and found another weapon. In the prosecution for the offense of carrying a concealed weapon, the defense of illegal search and seizure was put up. The United States Supreme Court held that "a police officer may in appropriate circumstances and in an appropriate manner approach a person for the purpose of investigating possible criminal behavior even though there is no probable cause to make an arrest." In such a situation, it is reasonable for an officer rather than simply to shrug his shoulder and allow a crime to occur, to stop a suspicious individual briefly in order to determine his identity or maintain the *status quo* while obtaining more information . . . .

Clearly, the search in the case at bar can be sustained under the exceptions heretofore discussed, and hence, the constitutional guarantee against unreasonable searches and seizures has not been violated.[3] (Citation omitted)

It is not necessary to invoke the presence of the carton and the bag in a moving vehicle to justify their warrantless search. That an odor of marijuana was emanating from the bag already sufficiently justified its inspection. Further, it should be noted that if the presence of the bag in a moving vehicle had formed the basis for the warrantless search, under jurisprudence, the police officer would have been limited to its visual inspection only.

The search could have been justified in relation to the consent of the accused. Of course, had this been the basis for the warrantless search, there would have been a burden to establish that the accused made a knowing and intelligent waiver in consenting to the search. The mere testimony of the police officer would have been insufficient for this purpose.

For a search to be validly made as an incident to a lawful arrest, the lawful arrest should have preceded the search. In *Malacat v. Court of Appeals*,[4] this Court stressed this rule:

At the outset, we note that the trial court confused the concepts of a "stop-and-frisk" and of a search incidental to a lawful arrest.

---

[3] *Id.* at 312-313.

[4] 347 Phil. 462 (1997) [Per *J.* Davide, Jr., *En Banc*].

These two types of warrantless searches differ in terms of the requisite quantum of proof before they may be validly effected and in their allowable scope.

In a search incidental to a lawful arrest, as the precedent arrest determines the validity of the incidental search, the legality of the arrest is questioned in a large majority of these cases, e.g., whether an arrest was merely used as a pretext for conducting a search. In this instance, the law requires that there first be a lawful arrest before a search can be made — the process cannot be reversed. At bottom, assuming a valid arrest, the arresting officer may search the person of the arrestee and the area within which the latter may reach for a weapon or for evidence to destroy, and seize any money or property found which was used in the commission of the crime, or the fruit of the crime, or that which may be used as evidence, or which might furnish the arrestee with the means of escaping or committing violence.

Here, there could have been no valid *in flagrante delicto* or hot pursuit arrest preceding the search in light of the lack of personal knowledge on the part of Yu, the arresting officer, or an overt physical act, on the part of petitioner, indicating that a crime had just been committed, was being committed or was going to be committed.[5] (Citations omitted)

In this case, the warrantless search was attempted before the accused started to flee. Consequently, the search could not be considered an incident to a lawful arrest.

Accordingly, I concur in the result.

---

[5] *Id.* at 479-480.

SECOND DIVISION

[G.R. No. 229288. August 1, 2018]

SHERWIN T. GATCHALIAN, *petitioner, vs.* **OFFICE OF THE OMBUDSMAN and FIELD INVESTIGATION OFFICE OF THE OFFICE OF THE OMBUDSMAN,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; PETITION FOR *CERTIORARI* BEFORE THE COURT OF APPEALS; THE COURT OF APPEALS HAS JURISDICTION OVER PETITION FOR *CERTIORARI* UNDER RULE 65 ASSAILING THE OMBUDSMAN'S PREVENTIVE SUSPENSION ORDER, WHICH IS AN INTERLOCUTORY ORDER, AND THUS UNAPPEALABLE. — The Court agrees with the CA that the *Morales* decision should be read and viewed in its proper context. The Court in *Morales* held that the CA had subject matter jurisdiction over the petition for *certiorari* under Rule 65 filed therein because what was assailed in the said petition was a preventive suspension order, which was an interlocutory order and thus unappealable, issued by the Ombudsman. Consistent with the rationale of *Estrada*, the Court held that a petition for *certiorari* under Rule 65 was proper as R.A. 6770 did not provide for an appeal procedure for interlocutory orders issued by the Ombudsman. The Court also held that it was correctly filed with the CA because the preventive suspension order was an incident of an **administrative case**. The Court in *Morales* was thus applying only what was already well-established in jurisprudence.

2. ID.; ID.; ID.; THE SUPREME COURT'S RULING IN THE CASE OF *MORALES V. COURT OF APPEALS* (772 PHIL. 672 [2015]) ON THE JURISDICTION OF THE COURT OF APPEALS OVER PETITIONS FOR *CERTIORARI* QUESTIONING THE RESOLUTIONS OR ORDERS OF THE OMBUDSMAN APPLIES ONLY IN ADMINISTRATIVE CASES, NOT TO DECISIONS OR ORDERS OF THE OMBUDSMAN IN NON-ADMINISTRATIVE OR CRIMINAL CASES.— A thorough reading of the *Morales*

decision, x x x would reveal that it was limited in its application — that it was meant to cover only decisions or orders of the Ombudsman in administrative cases. The Court never intimated, much less categorically stated, that it was abandoning its rulings in *Kuizon* and *Estrada* and the distinction made therein between the appellate recourse for decisions or orders of the Ombudsman in administrative and non-administrative cases. Bearing in mind that *Morales* dealt with an interlocutory order in an administrative case, it cannot thus be read to apply to decisions or orders of the Ombudsman in non-administrative or criminal cases.

3. ID.; ID.; PETITION FOR *CERTIORARI* BEFORE THE SUPREME COURT; THE DECISIONS OR ORDERS OF THE OMBUDSMAN FINDING THE EXISTENCE OF PROBABLE CAUSE OR THE LACK THEREOF SHOULD BE QUESTIONED BEFORE THE SUPREME COURT THROUGH A PETITION FOR *CERTIORARI* UNDER RULE 65; THE DECLARATION OF UNCONSTITUTIONALITY OF SECTION 14 OF OMBUDSMAN ACT OF 1989 (R.A. 6770) IS IMMATERIAL ON THE APPELLATE PROCEDURE FOR ORDERS AND DECISIONS BY THE OMBUDSMAN IN CRIMINAL CASES.— Gatchalian's contention that the unconstitutionality of Section 14 of R.A. 6770 declared in *Morales* equally applies to both administrative and criminal cases — and thus the CA from then on had jurisdiction to entertain petitions for *certiorari* under Rule 65 to question orders and decisions arising from criminal cases — is simply misplaced. Section 14 of R.A. 6770 was declared unconstitutional because it trampled on the rule-making powers of the Court by 1) prescribing the mode of appeal, which was by Rule 45 of the Rules of Court, for all cases whether final or not; and 2) rendering nugatory the *certiorari* jurisdiction of the CA over incidents arising from administrative cases. The unconstitutionality of Section 14 of R.A. 6770, therefore, did not necessarily have an effect over the appellate procedure for orders and decisions arising from criminal cases precisely because the said procedure was not prescribed by the aforementioned section. To recall, the rule that decisions or orders of the Ombudsman finding the existence of probable cause (or the lack thereof) should be questioned through a petition for *certiorari* under Rule 65 filed with the Supreme Court was laid down by the Court itself in the cases of *Kuizon, Tirol Jr.,*

Mendoza-Arce v. Ombudsman, Estrada, and subsequent cases affirming the said rule. The rule was, therefore, not anchored on Section 14 of R.A. 6770, but was instead a rule prescribed by the Court in the exercise of its rule-making powers. The declaration of unconstitutionality of Section 14 of R.A. 6770 was therefore immaterial insofar as the appellate procedure for orders and decisions by the Ombudsman in criminal cases is concerned. The argument therefore that the promulgation of the *Morales* decision — a case which involved an interlocutory order arising from an administrative case, and which did not categorically abandon the cases of *Kuizon, Tirol, Jr., Mendoza-Arce*, and *Estrada* — gave the CA *certiorari* jurisdiction over final orders and decisions arising from non-administrative or criminal cases is clearly untenable.

4. ID.; CIVIL PROCEDURE; JUDGMENTS; PRINCIPLE OF *STARE DECISIS ET NON QUIETA MOVERE*; WHEN A COURT HAS LAID DOWN A PRINCIPLE OF LAW AS APPLICABLE TO A CERTAIN STATE OF FACTS, IT WILL ADHERE TO THAT PRINCIPLE AND APPLY IT TO ALL FUTURE CASES WHERE THE FACTS ARE SUBSTANTIALLY THE SAME.— [I]t is the better practice that when a court has laid down a principle of law as applicable to a certain state of facts, it will adhere to that principle and apply it to all future cases where the facts are substantially the same. Following the principle of *stare decisis et non quieta movere* — or follow past precedents and do not disturb what has been settled — the Court therefore upholds the x x x established rules on appellate procedure, and so holds that the CA did not err in dismissing the case filed by petitioner Gatchalian for lack of jurisdiction.

APPEARANCES OF COUNSEL

Custodio Acorda Sicam & De Castro Law Offices for petitioner.

The Solicitor General for petitioner.

D E C I S I O N

CAGUIOA, *J.*:

Before the Court is a Petition for Review on *Certiorari*[1] under Rule 45 assailing the Resolutions dated September 13, 2016[2] and January 13, 2017[3] issued by the Special Thirteenth Division of the Court of Appeals (CA) in CA-G.R. SP No. 145852.

The Facts

Six different criminal complaints were filed by the Field Investigation Office (FIO) of the Office of the Ombudsman (Ombudsman),[4] Cesar V. Purisima,[5] and Rustico Tutol[6] against several individuals, including petitioner Sherwin T. Gatchalian (Gatchalian). Specifically, Gatchalian was one of the respondents in OMB-C-C-13-0212, a complaint accusing the respondents therein of (a) violation of Section 3(e) and (g) of Republic Act No. 3019 (R.A. 3019); (b) Malversation under Article 217 of the Revised Penal Code (RPC); and (c) violation of Section X126.2 (c) (1) (2) and (3) of the Manual of Regulations for Banks (MORB) in relation to Sections 36 and 37 of Republic Act No. 7653 (R.A. 7653). The said complaint arose from the sale of shares in Express Savings Bank, Inc. (ESBI), in which Gatchalian was a stockholder, in 2009, to Local Water Utilities Administration (LWUA), a government-owned and controlled corporation (GOCC).[7]

---

[1] *Rollo,* pp. 10-28.

[2] *Id*. at 30-35. Penned by Associate Justice Ma. Luisa C. Quijano-Padilla with Associate Justices Japar B. Dimaampao and Samuel H. Gaerlan concurring.

[3] *Id.* at 37-38. Penned by Associate Justice Ma. Luisa C. Quijano-Padilla with Associate Justices Japar B. Dimaampao and Samuel H. Gaerlan concurring.

[4] Docketed as OMB-C-C-13-0212, OMB-C-C-13-0213, OMB-C-C-13-0214, and OMB-C-C-13-0211.

[5] Docketed as OMB-C-C-12-0031-A.

[6] Docketed as OMB-C-C-10-0402-I.

[7] *Id*. at 73-74.

In a Joint Resolution dated March 16, 2015 (Joint Resolution),[8] the Ombudsman found probable cause to indict Gatchalian of the following: (a) one count of violation of Section 3(e) of R.A. 3019, (b) one count of malversation of public funds, and (c) one count of violation of Section X126.2(C) (1) and (2) of MORB in relation to Sections 36 and 37 of R.A. 7653. While it was the other respondents – members of the Board of Trustees of LWUA (LWUA Board) – who were directly responsible for the damage caused to the government by the acquisition by LWUA of ESBI's shares, the Ombudsman found that the latter's stockholders who sold their shares, including Gatchalian, profited from the transaction. The Ombudsman held that in view of ESBI's precarious financial standing at the time of the transaction, the windfall received by Gatchalian and the other stockholders must be deemed an unwarranted benefit, advantage, or preference within the ambit of R.A. 3019.

The Ombudsman also found that there was conspiracy among the officers of LWUA and ESBI, and the stockholders of ESBI, for the latter authorized the former to push through with the transaction. The Ombudsman found that the officers and the stockholders acted in concert towards attaining a common goal, and that is to ensure that LWUA acquires 60% stake in ESBI in clear contravention of requirements and procedures prescribed by then existing banking laws and regulations.[9] With regard to the violation of Section X126.2(C) (1) and (2) of MORB in relation to Sections 36 and 37 of R.A. 7653, the Ombudsman held that the stockholders of ESBI were likewise liable because the MORB specifically requires both the transferors and the transferees to secure the prior approval of the Monetary Board before consummating the sale.

---

[8] *Id*. at 39-176. Signed by a Special Panel composed of Graft Investigation and Prosecution Officers M.A. Christian O. Uy, Bayani H. Jacinto, Julita Mañalac-Calderon, Jasmine Ann B. Gapatan, and Assistant Special Prosecutor Karen E. Funelas. Approved by Ombudsman Conchita Carpio Morales.

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

The respondents in the Ombudsman cases, including Gatchalian, filed separate motions for reconsideration of the Joint Resolution. However, on April 4, 2016, the Ombudsman issued a Joint Order[10] denying the motions for reconsideration.

Aggrieved, Gatchalian filed with the CA a Petition for *Certiorari*[11] under Rule 65 of the Rules of Court, and sought to annul the Joint Resolution and the Joint Order of the Ombudsman for having been issued with grave abuse of discretion. He argued that the Ombudsman made a general conclusion without specifying a "series of acts" done by him that would "clearly manifest a concurrence of wills, a common intent or design to commit a crime."[12] Furthermore, he argued that he was neither a director nor an officer of ESBI, such that he never negotiated nor was he personally involved with the transaction in question. Ultimately, Gatchalian claimed that there was no probable cause to indict him of the crimes charged. Procedurally, he explained that he filed the Petition for *Certiorari* with the CA,[13] and not with this Court, because of the ruling in *Morales v. Court of Appeals.*[14]

On September 19, 2016, the Ombudsman, through the Office of the Solicitor General (OSG), filed a Comment[15] on the Petition for *Certiorari*. The OSG argued that the CA had no jurisdiction to take cognizance of the case, as the decisions of the Ombudsman in criminal cases were unappealable and may thus be assailed only through a petition for *certiorari* under Rule 65 filed with the Supreme Court. On the merits, it maintained that the Joint

---

[10] *Id*. at 177-208. Signed by a Special Panel composed of Graft Investigation and Prosecution Officers M.A. Christian O. Uy, Bayani H. Jacinto, Julita Mañalac-Calderon, Jasmine Ann B. Gapatan (on leave), and Assistant Special Prosecutor Karen E. Funelas. Approved by Ombudsman Conchita Carpio Morales.

[11] *Id*. at 209-249.

[12] *Id*. at 243.

[13] *Id*. at 210-211.

[14] 772 Phil. 672 (2015).

[15] *Rollo,* pp. 250-268.

Resolution and the Joint Order were based on evidence, and were thus issued without grave abuse of discretion.

Before the filing of the OSG's Comment, however, the CA had already issued a Resolution[16] dated September 13, 2016 wherein it held that it had no jurisdiction over the case. The CA opined that the *Morales* ruling should be understood in its proper context, *i.e.*, that what was assailed therein was the preventive suspension order arising from an **administrative case** filed against a public official.[17]

On October 7, 2016, Gatchalian sought reconsideration of the CA's Resolution dismissing the Petition for *Certiorari*.[18] He reiterated his arguments in the petition, and maintained that the CA has jurisdiction over the case by virtue of the ruling in *Morales.* The OSG filed its Comment on Gatchalian's motion for reconsideration and argued that there was no cogent reason for the CA to reconsider its decision. On December 7, 2016, Gatchalian filed a Reply.[19]

On January 13, 2017, the CA issued another Resolution[20] where it upheld its earlier Resolution. It held that the points raised in Gatchalian's motion for reconsideration were a mere rehash of the arguments which had already been passed upon by the CA in the earlier decision.

Gatchalian thus appealed to this Court.[21] He maintains that the import of the decision in *Morales* is that the remedy for

---

[16] *Id*. at 30-35. Penned by Associate Justice Ma. Luisa C. Quijano-Padilla with Associate Justices Japar B. Dimaampao and Samuel H. Gaerlan concurring.

[17] *Id*. at 33.

[18] *Id*. at 269-280.

[19] *Id*. at. 287-292.

[20] *Id*. at 37-38. Penned by Associate Justice Ma. Luisa C. Quijano-Padilla with Associate Justices Japar B. Dimaampao and Samuel H. Gaerlan concurring.

[21] *Id*. at 10-28.

parties aggrieved by decisions of the Ombudsman is to file with the CA a petition for review under Rule 43 for administrative cases, and a petition for *certiorari* under Rule 65 for criminal cases.

On December 19, 2017, the OSG filed its Comment.[22] According to the OSG, jurisprudence is well-settled that the CA has no jurisdiction to review the decisions of the Ombudsman in criminal cases. It reiterated that the *Morales* decision should be understood to apply only in administrative cases. Gatchalian thereafter filed a Reply on April 4, 2018.[23]

Issue

The sole issue to be resolved in this case is whether the CA erred in dismissing Gatchalian's Petition for *Certiorari* under Rule 65 for its alleged lack of jurisdiction over the said case.

The Court's Ruling

The petition is unmeritorious.

The first case on the matter was the 1998 case of *Fabian vs. Desierto,*[24] where the Court held that Section 27 of Republic Act No. 6770 (R.A. 6770), which provides that all "orders, directives, or decisions [in administrative cases] of the Office of the Ombudsman may be appealed to the Supreme Court by filing a petition for *certiorari* within ten (10) days from receipt of the written notice of the order, directive or decision or denial of the motion for reconsideration in accordance with Rule 45 of the Rules of Court," was unconstitutional for it increased the appellate jurisdiction of the Supreme Court without its advice and concurrence. The Court thus held that "appeals from decisions of the Office of the Ombudsman in **administrative disciplinary cases** should be taken to the Court of Appeals under the provisions of Rule 43."[25]

---

[22] *Id.* at 307-318.

[23] *Id.* at 341-348.

[24] 356 Phil. 787 (1998).

[25] *Id.* at 808.

Subsequently, in *Kuizon v. Desierto,*[26] the Court stressed that the ruling in *Fabian* was limited only to administrative cases, and added that it is the Supreme Court which has jurisdiction when the assailed decision, resolution, or order was an incident of a criminal action. Thus:

> In dismissing petitioners' petition for lack of jurisdiction, the Court of Appeals cited the case of *Fabian vs. Desierto*. **The appellate court correctly ruled that its jurisdiction extends only to decisions of the Office of the Ombudsman in administrative cases.** In the *Fabian* case, we ruled that appeals from decisions of the Office of the Ombudsman in *administrative disciplinary cases* should be taken to the Court of Appeals under Rule 43 of the 1997 Rules of Civil Procedure. It bears stressing that when we declared Section 27 of Republic Act No. 6770 as unconstitutional, we categorically stated that said provision is involved only whenever an appeal by *certiorari* under Rule 45 is taken from a decision in an administrative disciplinary action. **It cannot be taken into account where an original action for *certiorari* under Rule 65 is resorted to as a remedy for judicial review, such as from an incident in a criminal action. In fine, we hold that the present petition should have been filed with this Court.**[27] (Emphasis supplied)

In *Golangco vs. Fung,*[28] the Court voided a decision of the CA which directed the Ombudsman to withdraw an Information already filed by it with a Regional Trial Court (RTC). The Court in *Golangco* reasoned that "[t]he Court of Appeals has jurisdiction over orders, directives and decisions of the Office of the Ombudsman in administrative disciplinary cases only. **It cannot, therefore, review the orders, directives or decisions of the Office of the Ombudsman in criminal or non-administrative cases**." [29]

With regard to orders, directives, or decisions of the Ombudsman in criminal or non-administrative cases, the Court,

---

[26] 406 Phil. 611 (2001).

[27] *Id.* at 625-626.

[28] 535 Phil. 331 (2006).

[29] *Id.* at 343-344.

in *Tirol, Jr. v. Del Rosario,*[30] held that the remedy for the same is to file a petition for *certiorari* under Rule 65 of the Rules of Court. The Court explained:

> True, the law is silent on the remedy of an aggrieved party in case the Ombudsman found sufficient cause to indict him in criminal or non-administrative cases. We cannot supply such deficiency if none has been provided in the law. We have held that the right to appeal is a mere statutory privilege and may be exercised only in the manner prescribed by, and in accordance with, the provisions of law. Hence, there must be a law expressly granting such privilege. The Ombudsman Act specifically deals with the remedy of an aggrieved party from orders, directives and decisions of the Ombudsman in administrative disciplinary cases. As we ruled in *Fabian*, the aggrieved party is given the right to appeal to the Court of Appeals. Such right of appeal is not granted to parties aggrieved by orders and decisions of the Ombudsman in criminal cases, like finding probable cause to indict accused persons.
>
> **However, an aggrieved party is not without recourse where the finding of the Ombudsman as to the existence of probable cause is tainted with grave abuse of discretion, amounting to lack or excess of jurisdiction. An aggrieved party may file a petition for certiorari under Rule 65 of the 1997 Rules of Civil Procedure.**[31] (Emphasis supplied)

The Court in *Tirol, Jr.,* however, was unable to specify the court whether it be the RTC, the CA, or the Supreme Court to which the petition for *certiorari* under Rule 65 should be filed given the concurrent jurisdictions of the aforementioned courts over petitions for *certiorari*.

Five years after, the Court clarified in *Estrada v. Desierto*[32] that a petition for *certiorari* under Rule 65 of the Rules of Court questioning the finding of the existence of probable cause or the lack thereof — by the Ombudsman should be filed with the Supreme Court. The Court elucidated:

---

[30] 376 Phil. 115 (1999).

[31] *Id*. at 122.

[32] 487 Phil. 169 (2004).

But in which court should this special civil action be filed?

Petitioner contends that certiorari under Rule 65 should first be filed with the Court of Appeals as the doctrine of hierarchy of courts precludes the immediate invocation of this Court's jurisdiction. *Unfortunately for petitioner, he is flogging a dead horse as this argument has already been shot down in* Kuizon v. Ombudsman *where we decreed —*

> In dismissing petitioners' petition for lack of jurisdiction, the Court of Appeals cited the case of *Fabian vs. Desierto***.** The appellate court correctly ruled that its jurisdiction extends only to decisions of the Office of the Ombudsman in administrative cases. In the *Fabian* case, we ruled that appeals from decisions of the Office of the Ombudsman in *administrative disciplinary* cases should be taken to the Court of Appeals under Rule 43 of the 1997 Rules of Civil Procedure. It bears stressing that when we declared Section 27 of Republic Act No. 6770 as unconstitutional, we categorically stated that said provision is involved only whenever an appeal by *certiorari* under Rule 45 is taken from a decision in an administrative disciplinary action. It cannot be taken into account where an original action for certiorari under Rule 65 is resorted to as a remedy for judicial review, such as from an incident in a criminal action. In fine, we hold that the present petition should have been filed with this Court.

Kuizon **and the subsequent case of** ***Mendoza-Arce v. Office of the Ombudsman (Visayas)*** **drove home the point that the remedy of aggrieved parties from resolutions of the Office of the Ombudsman finding probable cause in criminal cases or non-administrative cases, when tainted with grave abuse of discretion, is to file an original action for *certiorari* with this Court and not with the Court of Appeals.** In cases when the aggrieved party is questioning the Office of the Ombudsman's finding of lack of probable cause, as in this case, there is likewise the remedy of *certiorari* under Rule 65 to be filed with this Court and not with the Court of Appeals following our ruling in *Perez v. Office of the Ombudsman*.[33] (Emphasis supplied)

---

[33] *Id*. at 178-180.

In the 2009 case of *Ombudsman v. Heirs of Margarita Vda. De Ventura,*[34] the Court reiterated *Kuizon*, *Golangco*, and *Estrada*, and ruled that the CA did not have jurisdiction over orders and decisions of the Ombudsman in non-administrative cases, and that the remedy of aggrieved parties was to file a petition for *certiorari* under Rule 65 with this Court. The foregoing principles were repeatedly upheld in other cases, such as in *Soriano v. Cabais*[35] and *Duyon v. Court of Appeals.*[36]

In this petition, Gatchalian argues that the decision of the Court *En Banc* in *Morales v. Court of Appeals*[37] abandoned the principles enunciated in the aforementioned line of cases.

The Court disagrees.

In the *Morales* case, what was involved was the preventive suspension order issued by the Ombudsman against Jejomar Binay, Jr. (Binay) in an **administrative case** filed against the latter. The preventive suspension order was questioned by Binay in the CA via a petition for *certiorari* under Rule 65 with a prayer for the issuance of a temporary restraining order (TRO). The CA then granted Binay's prayer for a TRO, which the Ombudsman thereafter questioned in this Court for being in violation of Section 14 of R.A. 6770, which provides:

> SECTION 14. *Restrictions*. — No writ of injunction shall be issued by any court to delay an investigation being conducted by the Ombudsman under this Act, unless there is a *prima facie* evidence that the subject matter of the investigation is outside the jurisdiction of the Office of the Ombudsman.
>
> No court shall hear any appeal or application for remedy against the decision or findings of the Ombudsman, except the Supreme Court, on pure question of law.

---

[34] 620 Phil. 1, 8-9 (2009).

[35] 552 Phil. 339 (2007).

[36] 748 Phil. 375 (2014).

[37] *Supra* note 14.

Relying on the second paragraph of the abovequoted provision, the Ombudsman also questioned the CA's subject matter jurisdiction over the petition for *certiorari* filed by Binay.

The Court in *Morales* applied the same rationale used in *Fabian*, and held that the second paragraph of Section 14 is unconstitutional:

> Since the second paragraph of Section 14, RA 6770 limits the remedy against "decision or findings" of the Ombudsman to a Rule 45 appeal and thus — similar to the fourth paragraph of Section 27, RA 6770 — attempts to effectively increase the Supreme Court's appellate jurisdiction without its advice and concurrence, it is therefore concluded that the former provision is also unconstitutional and perforce, invalid. Contrary to the Ombudsman's posturing, *Fabian* should squarely apply since the above-stated Ombudsman Act provisions are *in pari materia* in that they "cover the same specific or particular subject matter," that is, the manner of judicial review over issuances of the Ombudsman.
>
> x x x x x x x x x
>
> Thus, with the unconstitutionality of the second paragraph of Section 14, RA 6770, the Court, consistent with existing jurisprudence, concludes that the CA has subject matter jurisdiction over the main CA-G.R. SP No. 139453 petition.[38]

Gatchalian argues that the consequence of the foregoing is that *all* orders, directives, and decisions of the Ombudsman – whether it be an incident of an administrative or criminal case – are now reviewable by the CA.

The contention is untenable.

The Court agrees with the CA that the *Morales* decision should be read and viewed in its proper context. The Court in *Morales* held that the CA had subject matter jurisdiction over the petition for *certiorari* under Rule 65 filed therein because what was assailed in the said petition was a preventive suspension order, which was an interlocutory order and thus unappealable, issued

---

[38] *Morales v. Court of Appeals*, *supra* note 14 at 716-719.

by the Ombudsman. Consistent with the rationale of *Estrada*, the Court held that a petition for *certiorari* under Rule 65 was proper as R.A. 6770 did not provide for an appeal procedure for interlocutory orders issued by the Ombudsman. The Court also held that it was correctly filed with the CA because the preventive suspension order was an incident of an **administrative case**. The Court in *Morales* was thus applying only what was already well-established in jurisprudence.

It must likewise be pointed out that the Court, in arriving at the decision in *Morales,* cited and was guided by the case of *Office of the Ombudsman v. Capulong*.[39] In *Capulong,* a preventive suspension order issued by the Ombudsman was questioned through a petition for *certiorari* under Rule 65 filed with the CA. The Court in *Capulong* held that:

> [t]he preventive suspension order is interlocutory in character and not a final order on the merits of the case. The aggrieved party may then seek redress from the courts through a petition for *certiorari* under Section 1, Rule 65 of the 1997 Rules of Court. x x x There being a finding of grave abuse of discretion on the part of the Ombudsman, it was certainly imperative for the CA to grant incidental reliefs, as sanctioned by Section 1 of Rule 65.[40]

Also, as aptly pointed out by the CA in its assailed Resolution, "the Supreme Court never mentioned the proper remedy to be taken from the Ombudsman's orders in non-administrative cases or criminal cases, such as the finding of probable cause. In fact, this matter was not even alluded to in the *Morales* decision."[41]

A thorough reading of the *Morales* decision, therefore, would reveal that it was limited in its application — that it was meant to cover only decisions or orders of the Ombudsman in administrative cases. The Court never intimated, much less categorically stated, that it was abandoning its rulings in *Kuizon*

---

[39] 729 Phil. 553 (2014).

[40] *Id.* at 563.

[41] *Rollo,* p. 33.

and *Estrada* and the distinction made therein between the appellate recourse for decisions or orders of the Ombudsman in administrative and non-administrative cases. Bearing in mind that *Morales* dealt with an interlocutory order in an administrative case, it cannot thus be read to apply to decisions or orders of the Ombudsman in non-administrative or criminal cases.

As a final point, it must be pointed out that subsequent to the *Morales* decision, the Court — likewise sitting *En Banc* — decided the case of *Information Technology Foundation of the Philippines, et al. v. Commission on Elections,*[42] where it again upheld the difference of appellate procedure between orders or decisions of the Ombudsman in administrative and non-administrative cases. Thus:

> As a preliminary procedural matter, we observe that while the petition asks this Court to set aside the Supplemental Resolution, which dismissed both administrative and criminal complaints, it is clear from the allegations therein that what petitioners are questioning is the criminal aspect of the assailed resolution, *i.e.*, the Ombudsman's finding that there is no probable cause to indict the respondents in the Ombudsman cases. Movants in G.R. No. 159139 similarly question this conclusion by the Ombudsman and accordingly pray that the Ombudsman be directed to file an information with the Sandiganbayan against the responsible COMELEC officials and conspiring private individuals.
>
> **In *Kuizon v. Desierto* and *Mendoza-Arce v. Office of the Ombudsman*, we held that this Court has jurisdiction over petitions for *certiorari* questioning resolutions or orders of the Ombudsman in criminal cases. For administrative cases, however, we declared in the case of *Dagan v. Office of the Ombudsman(Visayas)* that the petition should be filed with the Court of Appeals in observance of the doctrine of hierarchy of courts. The *Dagan* ruling homogenized the procedural rule with respect to administrative cases falling within the jurisdiction of the Ombudsman — first enunciated in *Fabian v. Desierto* — that is, all remedies involving the orders, directives, or decisions of the Ombudsman in administrative cases, whether by an appeal under Rule 43 or a**

---

[42] G.R. Nos. 159139 & 174777, June 6, 2017.

petition for *certiorari* under Rule 65, must be filed with the Court of Appeals.

x x x x x x x x x

The Ombudsman's determination of probable cause may only be assailed through *certiorari* proceedings before this Court on the ground that such determination is tainted with grave abuse of discretion. Not every error in the proceedings or every erroneous conclusion of law or fact, however, constitutes grave abuse of discretion. It has been stated that the Ombudsman may err or even abuse the discretion lodged in her by law, but such error or abuse alone does not render her act amenable to correction and annulment by the extraordinary remedy of *certiorari*. To justify judicial intrusion into what is fundamentally the domain of another constitutional body, the petitioner must clearly show that the Ombudsman committed grave abuse of discretion amounting to lack or excess of jurisdiction in making her determination and in arriving at the conclusion she reached. For there to be a finding of grave abuse of discretion, it must be shown that the discretionary power was exercised in an arbitrary or despotic manner by reason of passion or personal hostility, and the abuse of discretion must be so patent and gross as to amount to an evasion of a positive duty or to a virtual refusal to perform the duty enjoined or to act in contemplation of law.[43] (Emphasis supplied)

It is thus clear that the *Morales* decision never intended to disturb the well-established distinction between the appellate remedies for orders, directives, and decisions arising from administrative cases and those arising from non-administrative or criminal cases.

Gatchalian's contention that the unconstitutionality of Section 14 of R.A. 6770 declared in *Morales* equally applies to both administrative and criminal cases — and thus the CA from then on had jurisdiction to entertain petitions for *certiorari* under Rule 65 to question orders and decisions arising from criminal cases — is simply misplaced. Section 14 of R.A. 6770 was declared unconstitutional because it trampled on the rule-making powers of the Court by 1) prescribing the mode of appeal, which was by Rule 45 of the Rules of Court, for all cases whether

---

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

final or not; and 2) rendering nugatory the *certiorari* jurisdiction of the CA over incidents arising from administrative cases.

The unconstitutionality of Section 14 of R.A. 6770, therefore, did not necessarily have an effect over the appellate procedure for orders and decisions arising from criminal cases precisely because the said procedure was not prescribed by the aforementioned section. To recall, the rule that decisions or orders of the Ombudsman finding the existence of probable cause (or the lack thereof) should be questioned through a petition for *certiorari* under Rule 65 filed with the Supreme Court was laid down by the Court itself in the cases of *Kuizon*, *Tirol Jr.*, *Mendoza-Arce v. Ombudsman*,[44] *Estrada,* and subsequent cases affirming the said rule. The rule was, therefore, not anchored on Section 14 of R.A. 6770, but was instead a rule prescribed by the Court in the exercise of its rule-making powers. The declaration of unconstitutionality of Section 14 of R.A. 6770 was therefore immaterial insofar as the appellate procedure for orders and decisions by the Ombudsman in criminal cases is concerned.

The argument therefore that the promulgation of the *Morales* decision — a case which involved an interlocutory order arising from an administrative case, and which did not categorically abandon the cases of *Kuizon*, *Tirol, Jr.*, *Mendoza-Arce*, and *Estrada* — gave the CA *certiorari* jurisdiction over final orders and decisions arising from non-administrative or criminal cases is clearly untenable.

To stress, it is the better practice that when a court has laid down a principle of law as applicable to a certain state of facts, it will adhere to that principle and apply it to all future cases where the facts are substantially the same.[45] Following the principle of *stare decisis et non quieta movere* — or follow past precedents and do not disturb what has been settled — the

---

[44] 430 Phil. 101 (2002).

[45] *Tala Realty Services Corp. v. Banco Filipino Savings & Mortgage Bank,* 389 Phil. 455, 461-462 (2000).

Court therefore upholds the abovementioned established rules on appellate procedure, and so holds that the CA did not err in dismissing the case filed by petitioner Gatchalian for lack of jurisdiction.

WHEREFORE, premises considered, the Petition for Review on *Certiorari* is hereby **DENIED**. The Resolutions dated September 13, 2016 and January 13, 2017 issued by the Special Thirteenth Division of the Court of Appeals in CA-G.R. SP No. 145852 are **AFFIRMED.**

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 232300. August 1, 2018]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **ROSE EDWARD OCAMPO *y* EBESA,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (REPUBLIC ACT NO. 9165); IN BUY-BUST OPERATIONS, A PRIOR SURVEILLANCE, MUCH LESS A LENGTHY ONE, IS NOT NECESSARY, ESPECIALLY WHERE THE POLICE OPERATIVES ARE ACCOMPANIED BY THEIR INFORMANT DURING THE ENTRAPMENT.— As to the argument of appellant that his arrest was invalid because the arresting officers did not have with them any warrant of arrest nor a search warrant considering

that the police officers had enough time to secure such, the same does not deserve any merit. Buy-bust operations are legally sanctioned procedures for apprehending drug-peddlers and distributors. These operations are often utilized by law enforcers for the purpose of trapping and capturing lawbreakers in the execution of their nefarious activities. There is no textbook method of conducting buy-bust operations. A prior surveillance, much less a lengthy one, is not necessary, especially where the police operatives are accompanied by their informant during the entrapment. Hence, the said buy-bust operation is a legitimate, valid entrapment operation.

2. ID.; ID.; THE ILLEGAL SALE AND THE ILLEGAL POSSESSION OF PROHIBITED DRUGS; ELEMENTS.— Under Article II, Section 5 of R.A. No. 9165 or illegal sale of prohibited drugs, in order to be convicted of the said violation, the following must concur: (1) the identity of the buyer and the seller, the object of the sale and its consideration; and (2) the delivery of the thing sold and the payment therefor. In illegal sale of dangerous drugs, it is necessary that the sale transaction actually happened and that "the [procured] object is properly presented as evidence in court and is shown to be the same drugs seized from the accused." Also, under Article II, Section 11 of R.A. No. 9165 or illegal possession of dangerous drugs, the following must be proven before an accused can be convicted: [1] the accused was in possession of dangerous drugs; [2] such possession was not authorized by law; and [3] the accused was freely and consciously aware of being in possession of dangerous drugs.

3. ID.; ID.; ID.; THE IDENTITY OF THE DANGEROUS DRUG MUST BE ESTABLISHED BEYOND REASONABLE DOUBT, AND THAT IT MUST BE PROVEN WITH CERTITUDE THAT THE SUBSTANCE BOUGHT DURING THE BUY-BUST OPERATION IS EXACTLY THE SAME SUBSTANCE OFFERED IN EVIDENCE BEFORE THE COURT.— In both cases involving illegal sale and illegal possession, the illicit drugs confiscated from the accused comprise the *corpus delicti* of the charges. In *People v. Gatlabayan,* the Court held that it is of paramount importance that the identity of the dangerous drug be established beyond reasonable doubt; and that it must be proven with certitude that the substance bought during the buy-bust operation is exactly

the same substance offered in evidence before the court. In fine, the illegal drug must be produced before the court as exhibit and that which was exhibited must be the very same substance recovered from the suspect. Thus, the chain of custody carries out this purpose "as it ensures that unnecessary doubts concerning the identity of the evidence are removed."

4. **ID.; ID.; SECTION 21 OF R.A. NO. 9165; REQUIREMENTS OF PHYSICAL INVENTORY AND TAKING OF PHOTOGRAPH OF THE SEIZED DRUGS; THREE-WITNESS RULE.—** Under the original provision of Section 21, after seizure and confiscation of the drugs, the apprehending team was required to immediately conduct a physical inventory and photograph of the same in the presence of (1) the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, (2) a representative from the media **and** (3) the DOJ, and (4) any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof. It is assumed that the presence of these three persons will guarantee "against planting of evidence and frame up," *i.e.*, they are "necessary to insulate the apprehension and incrimination proceedings from any taint of illegitimacy or irregularity." Now, the amendatory law mandates that the conduct of physical inventory and photograph of the seized items must be in the presence of (1) the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, (2) with an elected public official and (3) a representative of the National Prosecution Service **or** the media who shall sign the copies of the inventory and be given a copy thereof. In the present case, the old provisions of Section 21 and its IRR shall apply since the alleged crime was committed before the amendment.

5. **ID.; ID.; ID.; ID.; ABSENCE OF THE REQUIRED WITNESSES, WHEN JUSTIFIED.—** Although the requirements stated in Section 21 of R.A. No. 9165 have not been strictly followed, the prosecution was able to prove a justifiable ground for doing so. The refusal of the members of the media to sign the inventory of the seized items as testified to by PO1 Llacuna can be considered by the Court as a valid ground to relax the requirement. In *People v. Angelita Reyes, et al.,* this Court enumerated certain instances where the absence of the required witnesses may be justified, thus: x x x It must be emphasized

that the prosecution must able to prove a justifiable ground in omitting certain requirements provided in Sec.21 such as, but not limited to the following: 1) media representatives are not available at that time or that the police operatives had no time to alert the media due to the immediacy of the operation they were about to undertake, especially if it is done in more remote areas; 2) the police operatives, with the same reason, failed to find an available representative of the National Prosecution Service; 3) the police officers, due to time constraints brought about by the urgency of the operation to be undertaken and in order to comply with the provisions of Article 125 of the Revised Penal Code in the timely delivery of prisoners, were not able to comply with all the requisites set forth in Section 21 of R.A. 9165.

6. REMEDIAL LAW; EVIDENCE; PRESUMPTIONS AND BURDEN OF PROOF; WHERE NO ILL MOTIVES TO MAKE FALSE CHARGES WAS SUCCESSFULLY ATTRIBUTED TO THE MEMBERS OF THE BUY-BUST TEAM, THE PRESUMPTION PREVAILS THAT SAID POLICE OPERATIVES HAD REGULARLY PERFORMED THEIR DUTY, PROVIDED THERE IS NO SHOWING THAT THE CONDUCT OF POLICE DUTY WAS IRREGULAR.— If, from the examples of justifiable grounds in not strictly following the requirements in Section 21 of R.A. No. 9165, as provided by this Court, the presence of the required persons can be dispensed with, there is more reason to relax the rule in this case because the media representatives were present but they simply refused to sign the inventory. It needs no elucidation that the presumption of regularity in the performance of official duty must be seen in the context of an existing rule of law or statute authorizing the performance of an act or duty or prescribing a procedure in the performance thereof. The presumption, in other words, obtains only where nothing in the records is suggestive of the fact that the law enforcers involved deviated from the standard conduct of official duty as provided for in the law. Otherwise, where the official act in question is irregular on its face, an adverse presumption arises as a matter of course. There is indeed merit in the contention that where no ill motives to make false charges was successfully attributed to the members of the buy-bust team, the presumption prevails that said police operatives had regularly performed

their duty, but the theory is correct only where there is no showing that the conduct of police duty was irregular. Suffice it to say at this point that the presumption of regularity in the conduct of police duty is merely just that — a mere presumption disputable by contrary proof and which when challenged by the evidence cannot be regarded as binding truth.

7. CRIMINAL LAW; COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (REPUBLIC ACT NO. 9165); THE REQUIREMENTS OF MARKING THE SEIZED ITEMS, CONDUCT OF INVENTORY AND TAKING PHOTOGRAPH IN THE PRESENCE OF A REPRESENTATIVE FROM THE MEDIA OR THE DEPARTMENT OF JUSTICE AND A LOCAL ELECTIVE OFFICIAL, ARE POLICE INVESTIGATION PROCEDURES WHICH CALL FOR ADMINISTRATIVE SANCTIONS IN CASE OF NON-COMPLIANCE, BUT THE NON-OBSERVANCE THEREOF SHOULD NOT AFFECT THE VALIDITY OF THE SEIZURE OF THE EVIDENCE, BECAUSE THE ISSUE OF CHAIN OF CUSTODY IS ULTIMATELY ANCHORED ON THE ADMISSIBILITY OF EVIDENCE, WHICH IS EXCLUSIVELY WITHIN THE PREROGATIVE OF THE COURTS TO DECIDE IN ACCORDANCE WITH THE RULES OF EVIDENCE. — It must be remembered that evidentiary matters are indeed well within the power of the 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. [T]he requirements of marking the seized items, conduct of inventory and taking photograph in the presence of a representative from the media or the DOJ and a local elective official, are police investigation procedures which call for administrative sanctions in case of non-compliance. However, non-observance of such police administrative procedures should not affect the validity of the seizure of the evidence, because the issue of chain of custody is ultimately anchored on the admissibility of evidence, which is exclusively within the prerogative of the courts to decide in accordance with the rules of evidence.

APPEARANCES OF COUNSEL

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

D E C I S I O N

PERALTA, *J.*:

This is an appeal of the Court of Appeals' (*CA)* Decision[1] dated February 10, 2017 dismissing appellant's appeal and affirming the Joint Decision[2] dated October 16, 2015 of the Regional Trial Court *(RTC),* Branch 172, Valenzuela City convicting appellant Rose Edward Ocampo y Ebesa of Violation of Sections 5 and 11, Article II, Republic Act *(R.A.)* No. 9165.

The facts follow.

A conference to address the complaints of parents and residents of *Barangay* Pinalagad, Malinta, Valenzuela City about the rampant solvent abuse in the area was conducted on June 4, 2012 by the Office of Valenzuela City Councilor Tony Espiritu, the Chairman of the Valenzuela Anti-Drug Abuse Council. Present in the said conference were the Chief of PCR Major Fortaleza, the representative of the Station Anti-Illegal Drugs *(SAID)* of the Valenzuela Police Station, SPO1 Garcia and the complainants of Area 1 and Area 4 of *Barangay* Pinalagad. It was discussed during the conference that a certain "alias Kris" was involved in the illegal trade of solvents.

Thereafter, Police Chief Inspector Allan Rabusa Ruba of the Valenzuela Police Station formed a team to validate the reports and complaints of the residents of *Barangay* Pinalagad and to conduct a surveillance in the said *barangay.* On June 5, 2012, at 9 o'clock in the morning, the team went to *Barangay* Pinalagad.

---

[1] Penned by Associate Justice Socorro B. Inting with the concurrence of Associate Justices Remedios A. Salazar-Fernando and Priscilla J. Baltazar-Padilla; *rollo,* pp. 2-12.

[2] Penned by Judge Nancy Rivas-Palmones; CA *rollo,* pp. 67-75.

The team interviewed a confidential informant, a known resident in the area and learned that a certain *"alias ER,"* herein appellant, is engaged in the illegal trade of marijuana and is usually doing business inside a billiard hall situated near the Pinalagad Elementary School. The team then proceeded near the front part of the said school at around 5 o'clock in the afternoon of the same day and conducted a surveillance on the appellant. It was observed that appellant used his bicycle to deliver the marijuana, engaged a young boy as an errand boy and waited inside the billiard hall for his customers. Around 7:20 in the evening of the same day, the team reported the result of their investigation to Chief Ruba and upon receiving the report, Chief Ruba organized a team to conduct a buy-bust operation against appellant which composed of SPO2 Espiritu, PO2 Fabreag, PO2 Recto, PO1 Congson, SPO1 Garcia and PO1 Edgardo Llacuna.

After planning the operation, the team coordinated with the Philippine Drug Enforcement Agency *(PDEA)* and submitted to the latter their Pre-Operation Report and the PDEA received from the Valenzuela Police Station SAID the Coordination Form and Pre-Operation Report on June 6, 2012 at 6:00 p.m. and 6:20 p.m., respectively.

Around 8:20 p.m. of June 6, 2012, the team then proceeded to the target area in *Barangay* Pinalagad and reached the same place at around 8:45 p.m. The confidential informant met with the team and informed PO1 Llacuna, the designated poseur-buyer, that appellant was inside the billiard hall repacking marijuana leaves. Afterwards, the confidential informant brought PO1 Llacuna inside the billiard hall and introduced him to appellant as a buyer. Appellant then asked PO1 Llacuna how much he was going to buy and the latter replied "five pesos" which really meant "five hundred pesos." PO1 Llacuna handed the marked money to appellant, thereafter, the latter pulled out five (5) pieces of heat-sealed transparent plastic sachets containing suspected marijuana leaves from a Zesto juice box. PO1 Llacuna immediately motioned the confidential informant to rush out of the billiard hall which was the pre-arranged signal for the other team members. PO1 Llacuna then grabbed the

appellant and introduced himself as a police officer and informed him of his constitutional rights. PO1 Llacuna searched the appellant and recovered the marked money from the latter's pocket. The team also recovered fifty-eight (58) small plastic sachets containing marijuana leaves with fruiting tops, one (1) glass tube, eighteen (18) transparent plastic sachets, one (1) newspaper wrapper containing suspected marijuana leaves with fruiting tops and one (1) partially burned cigarette. After that, the team conducted an inventory at the place of arrest in the presence of the appellant, and a barangay official. The inventory report was executed and signed by PO1 Llacuna as the arresting officer, SPO1 Garcia as the investigating officer, and *Kagawad* Sherwin De Guzman as the witness. The conduct of the inventory was also photographed. Immediately after, SPO1 Garcia turned over the seized items which were sealed and labeled to the Crime Laboratory Office of Valenzuela City. The items were received by PO1 Pataueg and turned over the same to Forensic Chemist PCI Cejes who personally received the same evidence and as a result of her examination, the same items tested positive for marijuana, a dangerous drug.

Thus, two Informations were filed against the appellant for violations of Sections 5 and 11, Article II of R.A. No. 9165 that read as follows:

Crim. Case No. 605-V-12

That on or about June 6, 2012 in Valenzuela City and within the jurisdiction of this Honorable Court, the above-named accused, without any authority of law, did then and there willfully, unlawfully and feloniously sell to PO1 EDGARDO S. LLACUNA, who posed as buyer of five (5) heat sealed transparent plastic sachet each containing of one (1.00); one (1.00); one (1.00); one (1.00); one (1.00); for a total combined weight of Five (5) grams of dried marijuana leaves with Fruiting tops, knowing the same to be a dangerous drug.

CONTRARY TO LAW.[3]

[3] *Id.* at 14.

Crim. Case No. 606-V-12

That on or about June 6, 2012, in Valenzuela City and within the jurisdiction of this Honorable Court, the above-named accused, without any authority of law, did then and there willfully, unlawfully and feloniously have in his possession and control fifty-eight (58) heat-sealed transparent plastic sachets each containing one point ten (1.10); one point ten (1.10); one point ten (1.10); one point ten (1.10); one point ten (1.10); one point twenty-five (1.25); one point twenty-five (1.25); one point fifteen (1.15); zero point ninety-five (0.95); zero point ninety-five (0.95); zero point ninety-five (0.95); zero point ninety-five (0.95); zero point ninety-five (0.95); zero point ninety-five (0.95); zero point ninety (0.90); zero point ninety (0.90); one point zero five (1.05); zero point ninety (0.90); one point twenty (1.20); one point fifteen (1.15); one point twenty-five (1.25); one (1); one (1); one (1); one (1); one point twenty-five (1.25); one point twenty-five (1.25); one (1); one (1); one (1); one point twenty (1.20); one point twenty (1.20); one point twenty (1.20); one point twenty (1.20); zero point ninety-five (0.95); zero point ninety-five (0.95); zero point ninety-five (0.95); zero point ninety-five (0.95); zero point ninety-five (0.95); one point zero five (1.05); zero point seventy-five (0.75); one point zero five (1.05); zero point ninety-five (0.95); zero point eighty-five (0.85); one point zero five (1.05); zero point eighty (0.80); zero point eighty (0.80); one point ten (1.10); one point ten (1.10); zero point eighty (0.80); zero point eighty (0.80); zero point eighty (0.80); zero point ninety-five (0.95); zero point ninety-five (0.95); zero point ninety-five (0.95); one (1); one (1); and one (1) for a total combined weight of fifty-seven point eighty-five (57.85) grams of dried Marijuana leaves with Fruiting tops, knowing the same to be a dangerous drug.

CONTRARY TO LAW.[4]

Upon arraignment, appellant, with the assistance of counsel, entered a plea of "not guilty" on both charges.

Appellant denied that he sold and possessed the dangerous drugs seized from him and claimed that he was the victim of a frame-up. According to appellant, on June 6, 2012, around 8:00 p.m. to 9:00 p.m., he was playing billiards with a minor

[4] *Id.* at 15.

at *Barangay* Pinalagad, Valenzuela City near the Pinalagad Elementary School Annex and while playing, two (2) persons who were both male arrived, one of whom he knew as Jayson. The two men asked whether they could buy marijuana, but appellant told them that no one sells marijuana in the area. The two men then left but after a few minutes, Jayson's companion and four (4) more men and one (1) woman arrived. Appellant noticed that two of the men were wearing police identification cards. Immediately thereafter, the group shouted, *"walang tatakbo, raid ito."* Appellant was surprised and was told to go to the side where the chairs were placed. Afterwards, one of the police officers asked appellant if he knows a certain *"alias Kris"* and the latter answered no. The group proceeded to search the billiard hall and found a brown envelope containing a glass tube, plastic sachets and plastics containing marijuana under the billiard table. Appellant and his minor companion were then shown the brown envelope. Another police officer was called and talked to them and asked them if they have anything to give. Appellant asked how much and was told to give them ₱60,000.00 each. When appellant and the minor failed to give such amount, the police officers told them, *"Ah, ganun ba, sige tuluyan na natin yan."* Later on, a *barangay kagawad* and a person from media arrived.

The RTC found appellant guilty beyond reasonable doubt of the offenses charged and sentenced him as follows:

> WHEREFORE, the court finds the accused ROSE EDWARD OCAMPO y EBESA a.k.a. ER guilty beyond reasonable doubt, as principal, of the crime of violation of Section 5 and Section 11 of R.A. 9165 and he is hereby sentenced to suffer the following penalties:
>
> 1. In Criminal Case No. 605-V-12, the penalty of imprisonment and a fine of ₱500,000.00;
>
> 2. In Criminal Case No. 606-V-12, the penalty of imprisonment of twelve (12) years and one (1) day, as minimum, to fourteen (14) years, as maximum, and to pay a fine in the amount of Three Hundred Thousand Pesos (Php300,000.00).
>
> The City Jail Warden of Valenzuela City is hereby directed to transfer/commit the accused to the New Bilibid Prison, Bureau of Corrections, Muntinlupa City immediately upon receipt of this decision.

The Branch Clerk of Court is hereby directed to deliver/transmit to the PDEA the seized items subject of these cases for proper disposition.

SO ORDERED.[5]

The RTC ruled that appellant was validly arrested before the police officers proceeded to bodily search the appellant and that appellant's denial is weak and unsubstantiated.

The CA affirmed the decision of the RTC *in toto,* thus:

WHEREFORE, premises considered, the Joint Decision dated October 16, 2015 of the Regional Trial Court of Valenzuela City, Branch 172, is hereby AFFIRMED.

SO ORDERED.[6]

The CA ruled that appellant's warrantless arrest was valid because he was caught *in flagrante delicto.* It also ruled that the body of evidence adduced by the prosecution supports the conclusion that the identity, integrity and evidentiary value of the subject marijuana leaves with fruiting tops were successfully and properly preserved and safeguarded through an unbroken chain of custody. Furthermore, the CA ruled that appellant's defense of denial and frame up is viewed with disfavor.

Hence, the present appeal.

The errors presented in the appeal are the following:

I.

THE TRIAL COURT GRAVELY ERRED IN FINDING THE PROSECUTION EVIDENCE TO BE ADMISSIBLE DESPITE BEING THE RESULT OF AN INVALID WARRANTLESS SEARCH AN ARREST.

---

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

[6] *Rollo,* p. 11.

II.

THE TRIAL COURT GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT FOR THE CRIME CHARGED WHEN THERE ARE DOUBTS THAT THE BUY-BUST OPERATION FROM WHICH THE EVIDENCE WAS ALLEGEDLY SECURED ACTUALLY OCCURRED.

III.

THE TRIAL COURT GRAVELY ERRED IN FINDING THAT THE INTEGRITY AND EVIDENTIARY VALUE OF THE EVIDENCE TAKEN FROM THE ACCUSED-APPELLANT TO HAVE BEEN PRESERVED AND SAFEGUARDED.[7]

According to appellant, his warrantless arrest was invalid as the policemen had plenty of time to secure a warrant. He also argues that the prosecution was not able to prove the chain of custody of the recovered items.

The appeal is devoid of any merit.

As to the argument of appellant that his arrest was invalid because the arresting officers did not have with them any warrant of arrest nor a search warrant considering that the police officers had enough time to secure such, the same does not deserve any merit. Buy-bust operations are legally sanctioned procedures for apprehending drug-peddlers and distributors. These operations are often utilized by law enforcers for the purpose of trapping and capturing lawbreakers in the execution of their nefarious activities.[8] There is no textbook method of conducting buy-bust operations. A prior surveillance, much less a lengthy one, is not necessary, especially where the police operatives are accompanied by their informant during the entrapment.[9] Hence, the said buy-bust operation is a legitimate, valid entrapment operation.

---

[7] CA *rollo,* pp. 53-54.

[8] *People v. Rebotazo,* 711 Phil. 150, 162 (2013).

[9] See *People v. Manlangit,* 654 Phil. 427, 437 (2011).

As to whether the prosecution was able to prove appellant's guilt beyond reasonable doubt, this Court rules in the affirmative.

Under Article II, Section 5 of R.A. No. 9165 or illegal sale of prohibited drugs, in order to be convicted of the said violation, the following must concur:

> (1) the identity of the buyer and the seller, the object of the sale and its consideration; and (2) the delivery of the thing sold and the payment therefor.[10]

In illegal sale of dangerous drugs, it is necessary that the sale transaction actually happened and that "the [procured] object is properly presented as evidence in court and is shown to be the same drugs seized from the accused."[11]

Also, under Article II, Section 11 of R.A. No. 9165 or illegal possession of dangerous drugs, the following must be proven before an accused can be convicted:

> [1] the accused was in possession of dangerous drugs; [2] such possession was not authorized by law; and [3] the accused was freely and consciously aware of being in possession of dangerous drugs.[12]

In both cases involving illegal sale and illegal possession, the illicit drugs confiscated from the accused comprise the *corpus delicti* of the charges.[13] In *People v. Gatlabayan,*[14] the Court held that it is of paramount importance that the identity of the dangerous drug be established beyond reasonable doubt; and that it must be proven with certitude that the substance bought during the buy-bust operation is exactly the same substance offered in evidence before the court. In fine, the illegal drug must be produced before the court as exhibit and that which

---

[10] *People v. Salim Ismael y Radang,* G.R. No. 208093, February 20, 2017.

[11] *Id.*

[12] *Id.*

[13] *Id.*

[14] 699 Phil. 240. 252 (2011).

was exhibited must be the very same substance recovered from the suspect.[15] Thus, the chain of custody carries out this purpose "as it ensures that unnecessary doubts concerning the identity of the evidence are removed."[16]

To ensure an unbroken chain of custody, Section 21 (1) of R.A. No. 9165 specifies:

> (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.

Supplementing the above-quoted provision, Section 21 (a) of the IRR of R.A. No. 9165 provides:

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

---

[15] *People v. Mirondo,* 771 Phil. 345, 356-357 (2015).

[16] See *People v. Salim Ismael y Radang, supra* note 10.

On July 15, 2014, R.A. No. 10640 was approved to amend R.A. No. 9165. Among other modifications, it essentially incorporated the saving clause contained in the IRR, thus:

> (1) The apprehending team having initial custody and control of the dangerous drugs, controlled precursors and essential chemicals, instruments/paraphernalia and/or laboratory equipment shall, immediately after seizure and confiscation, conduct a physical inventory of the seized items and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, with an elected public official and a representative of the National Prosecution Service or the media who shall be required to sign the copies of the inventory and be given a copy thereof: Provided, That the physical inventory and photograph shall be conducted at the place where the search warrant is served; or at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizures: Provided, finally, That noncompliance of these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures and custody over said items.

In her Sponsorship Speech on Senate Bill No. 2273, which eventually became R.A. No. 10640, Senator Grace Poe admitted that "while Section 21 was enshrined in the Comprehensive Dangerous Drugs Act to safeguard the integrity of the evidence acquired and prevent planting of evidence, the application of said Section resulted in the ineffectiveness of the government's campaign to stop increasing drug addiction and also, in the conflicting decisions of the courts."[17] Specifically, she cited that "compliance with the rule on witnesses during the physical inventory is difficult. For one, media representatives are not always available in all corners of the Philippines, especially in more remote areas. For another, there were instances where elected *barangay* officials themselves were involved in the

---

[17] Senate Journal. Session No. 80, 16th Congress, 1st Regular Session, June 4, 2014, p. 348.

punishable acts apprehended."[18] In addition, "[t]he requirement that inventory is required to be done in police station is also very limiting. Most police stations appeared to be far from locations where accused persons were apprehended."[19]

Similarly, Senator Vicente C. Sotto III manifested that in view of the substantial number of acquittals in drug-related cases due to the varying interpretations of the prosecutors and the judges on Section 21 of R.A. No. 9165, there is a need for "certain adjustments so that we can plug the loopholes in our existing law" and "ensure [its] standard implementation."[20] In his Co-sponsorship Speech, he noted:

> Numerous drug trafficking activities can be traced to operations of highly organized and powerful local and international syndicates. The presence of such syndicates that have the resources and the capability to mount a counter-assault to apprehending law enforcers makes the requirement of Section 21(a) impracticable for law enforcers to comply with. It makes the place of seizure extremely unsafe for the proper inventory and photograph of seized illegal drugs.
>
> x x x x x x x x x
>
> Section 21(a) of RA 9165 needs to be amended to address the foregoing situation. We did not realize this in 2002 where the safety of the law enforcers and other persons required to be present in the inventory and photography of seized illegal drugs and the preservation of the very existence of seized illegal drugs itself are threatened by an immediate retaliatory action of drug syndicates at the place of seizure. The place where the seized drugs may be inventoried and photographed has to include a location where the seized drugs as well as the persons who are required to be present during the inventory and photograph are safe and secure from extreme danger.
>
> It is proposed that the physical inventory and taking of photographs of seized illegal drugs be allowed to be conducted either in the place of seizure or at the nearest police station or office of the apprehending

---

[18] *Id.*

[19] *Id.*

[20] *Id.* at 349.

law enforcers. The proposal will provide effective measures to ensure the integrity of seized illegal drugs since a safe location makes it more probable for an inventory and photograph of seized illegal drugs to be properly conducted, thereby reducing the incidents of dismissal of drug cases due to technicalities.

Non-observance of the prescribed procedures should not automatically mean that the seizure or confiscation is invalid or illegal, as long as the law enforcement officers could justify the same and could prove that the integrity and the evidentiary value of the seized items are not tainted. This is the effect of the inclusion in the proposal to amend the phrase "justifiable grounds." There are instances wherein there are no media people or representatives from the DOJ available and the absence of these witnesses should not automatically invalidate the drug operation conducted. Even the presence of a public local elected official also is sometimes impossible especially if the elected official is afraid or scared.[21]

The foregoing legislative intent has been taken cognizance of in a number of cases. Just recently, We opined in *People v. Miranda:*[22]

The Court, however, clarified that under varied field conditions, strict compliance with the requirements of Section 21 of RA 9165 may not always be possible. In fact, the Implementing Rules and Regulations (IRR) of RA 9165 – which is now crystallized into statutory law with the passage of RA 10640 – provide that the said inventory and photography may be conducted at the nearest police station or office of the apprehending team in instances of warrantless seizure, and that non-compliance with the requirements of Section 21 of RA 9165 – under justifiable grounds – will not render void and invalid the seizure and custody over the seized items so long as the integrity and evidentiary value of the seized items are properly preserved by the apprehending officer or team. Tersely put, 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

---

[21] *Id.* at 349-350.

[22] G.R. No. 229671, January 31, 2018.

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 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.[23]

Under the original provision of Section 21, after seizure and confiscation of the drugs, the apprehending team was required to immediately conduct a physical inventory and photograph of the same in the presence of (1) the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, (2) a representative from the media **and** (3) the DOJ, and (4) any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof. It is assumed that the presence of these three persons will guarantee "against planting of evidence and frame up," i.e., they are "necessary to insulate the apprehension and incrimination proceedings from any taint of illegitimacy or irregularity."[24] Now, the amendatory law mandates that the conduct of physical inventory and photograph of the seized items must be in the presence of (1) the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, (2) with an elected public official and (3) a representative of the National Prosecution Service **or** the media who shall sign the copies of the inventory and be given a copy thereof. In the present case, the old provisions

---

[23] See also *People v. Paz,* G.R. No. 229512, January 31, 2018; *People v. Mamangon,* G.R. No. 229102, January 29, 2018; *People v. Jugo,* G.R. No. 231792, January 29, 2018; *People v. Calibod,* G.R. No. 230230, November 20, 2017; *People v. Ching,* G.R. No. 223556, October 9, 2017; *People v. Geronimo,* G.R. No. 225500, September 11, 2017; *People v. Ceralde,* G.R. No. 228894, August 7, 2017; and *People v. Macapundag,* G.R. No. 225965, March 13, 2017.

[24] *People v. Sagana,* G.R. No. 208471, August 2, 2017.

of Section 21 and its IRR shall apply since the alleged crime was committed before the amendment.

The CA ruled that the chain of custody was aptly followed, thus:

> In the present case, the body of evidence adduced by the prosecution supports the conclusion that the identity, integrity and evidentiary value of the subject marijuana leaves with fruiting tops were successfully and properly preserved and safeguarded through an unbroken chain of custody. Contrary to accused-appellant's assertion, **the refusal of the media representatives to sign the inventory of the seized items does not automatically impair the integrity of the chain of custody so established by the prosecution. After all, no one can force them to sign the inventory.** In the same vein, the failure to identify the name of the evidence custodian to whom the object evidence was turned over for safekeeping does not likewise discredit the identity, integrity and evidentiary value of the seized evidence. The evidence custodian did not come into contact with the object evidence and merely stored the already sealed and marked package submitted to him by the forensic chemist, and as admitted by both parties, the object evidence was not tampered and still contained the original seal and marking when it was retrieved for presentation in the trial court.[25]

Although the requirements stated in Section 21 of R.A. No. 9165 have not been strictly followed, the prosecution was able to prove a justifiable ground for doing so. The refusal of the members of the media to sign the inventory of the seized items as testified to by PO1 Llacuna can be considered by the Court as a valid ground to relax the requirement. In *People v. Angelita Reyes, et al.,*[26] this Court enumerated certain instances where the absence of the required witnesses may be justified, thus:

> x x x It must be emphasized that the prosecution must able to prove a justifiable ground in omitting certain requirements provided in Sec.21 such as, but not limited to the following: 1) media representatives are not available at that time or that the police operatives had no time to alert the media due to the immediacy of the operation they were about to undertake, especially if it is done in more remote

---

[25] *Rollo,* pp. 9-10. (Emphasis ours)

[26] G.R. No. 219953, April 23, 2018.

areas; 2) the police operatives, with the same reason, failed to find an available representative of the National Prosecution Service; 3) the police officers, due to time constraints brought about by the urgency of the operation to be undertaken and in order to comply with the provisions of Article 125[27] of the Revised Penal Code in the timely delivery of prisoners, were not able to comply with all the requisites set forth in Section 21 of R.A. 9165.

The above-ruling was further reiterated by this Court in *People v. Vicente Sipin y De Castro,*[28] thus:

The prosecution never alleged and proved that the presence of the required witnesses was not obtained for any of the following reasons, such as: (1) their attendance was impossible because the place of arrest was a remote area; (2) their safety during the inventory and photograph of the seized drugs was threatened by an immediate retaliatory action of the accused or any person/s acting for and in his/her behalf; (3) the elected official themselves were involved in the punishable acts sought to be apprehended; (4) earnest efforts to secure the presence of a DOJ or media representative and elected public official within the period required under Article 125 of the Revised Penal Could prove futile through no fault of the arresting officers, who face the threat of being charged with arbitrary detention; or (5) time constraints and urgency of the anti-drug operations, which often rely on tips of confidential assets, prevented the law enforcers from obtaining the presence of the required witnesses even before the offenders could escape.

---

[27] **Article 125.** *Delay in the delivery of detained persons to the proper judicial authorities.* — The penalties provided in the next preceding article shall be imposed upon the public officer or employee who shall detain any person for some legal ground and shall fail to deliver such person to the proper judicial authorities within the period of; twelve (12) hours, for crimes or offenses punishable by light penalties, or their equivalent; eighteen (18) hours, for crimes or offenses punishable by correctional penalties, or their equivalent and thirty-six (36) hours, for crimes, or offenses punishable by afflictive or capital penalties, or their equivalent. In every case, the person detained shall be informed of the cause of his detention and shall be allowed upon his request, to communicate and confer at any time with his attorney or counsel. (As amended by E.O. Nos. 59 and 272, Nov. 7, 1986 and July 25, 1987, respectively).

[28] G.R. No. 224290, June 11, 2018.

If, from the examples of justifiable grounds in not strictly following the requirements in Section 21 of R.A. No. 9165, as provided by this Court, the presence of the required persons can be dispensed with, there is more reason to relax the rule in this case because the media representatives were present but they simply refused to sign the inventory. It needs no elucidation that the presumption of regularity in the performance of official duty must be seen in the context of an existing rule of law or statute authorizing the performance of an act or duty or prescribing a procedure in the performance thereof.[29] The presumption, in other words, obtains only where nothing in the records is suggestive of the fact that the law enforcers involved deviated from the standard conduct of official duty as provided for in the law.[30] Otherwise, where the official act in question is irregular on its face, an adverse presumption arises as a matter of course.[31] There is indeed merit in the contention that where no ill motives to make false charges was successfully attributed to the members of the buy-bust team, the presumption prevails that said police operatives had regularly performed their duty, but the theory is correct only where there is no showing that the conduct of police duty was irregular.[32] Suffice it to say at this point that the presumption of regularity in the conduct of police duty is merely just that—a mere presumption disputable by contrary proof and which when challenged by the evidence cannot be regarded as binding truth.[33]

It must be remembered that evidentiary matters are indeed well within the power of the 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

---

[29] *People v. Obmiranis,* 594 Phil. 561, 577 (2008).

[30] *Id.*

[31] *Id.* citing JONES ON EVIDENCE, p. 94, citing Arkansas R. COM. V. CHICAGO R.L. & P.R. CO., 274 U.S. 597, 71 L Ed 1221, 1224.

[32] *Id.*

[33] *Mallillin v. People,* 576 Phil. 576, 593 (2008); *People v. Ambrosio,* 471 Phil. 241, 250 (2004), citing *People v. Tan,* 432 Phil. 171, 197 (2002).

evidentiary value of the seized items have been preserved may warrant the conviction of the accused.[34] [T]he requirements of marking the seized items, conduct of inventory and taking photograph in the presence of a representative from the media or the DOJ and a local elective official, are police investigation procedures which call for administrative sanctions in case of non-compliance.[35] However, non-observance of such police administrative procedures should not affect the validity of the seizure of the evidence, because the issue of chain of custody is ultimately anchored on the admissibility of evidence, which is exclusively within the prerogative of the courts to decide in accordance with the rules of evidence.[36]

WHEREFORE, premises considered, the Decision dated February 10, 2017 of the Court of Appeals in CA-G.R. CR-HC No. 07896, convicting appellant Rose Edward Ocampo *y* Ebesa of Violation of Sections 5 and 11, Article II, Republic Act No. 9165, is **AFFIRMED.**

SO ORDERED.

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

---

[34] *People v. Vicente Sipin y De Castro, supra* note 28.

[35] *Id.*

[36] *Id.*

FIRST DIVISION

[G.R. No. 232337. August 1, 2018]

THE PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **BONG BARRERA *y* NECHALDAS,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; THE COMPREHENSIVE DRUGS ACT OF 2002 (REPUBLIC ACT NO. 9165); ARTICLE II, SECTION 21 THEREOF; FAILURE TO STRICTLY COMPLY WITH THE MANDATORY PROCEDURE IN THE CUSTODY AND DISPOSITION OF CONFISCATED, SEIZED, AND/OR SURRENDERED DANGEROUS DRUGS DOES NOT *IPSO FACTO* INVALIDATE OR RENDER VOID THE SEIZURE AND CUSTODY OVER THE ITEMS AS LONG AS THE PROSECUTION IS ABLE TO SHOW THAT THERE IS JUSTIFIABLE GROUND FOR NON-COMPLIANCE, AND THE INTEGRITY AND EVIDENTIARY VALUE OF THE SEIZED ITEMS ARE PROPERLY PRESERVED. — Non-compliance with the requirements of Section 21, RA 9165 casts doubt on the integrity of the seized item and creates reasonable doubt on the guilt of the accused-appellant. Sec. 21, Article II of RA 9165 sets out the procedure as regards the custody of dangerous drugs x x x. The rules clearly provides that the apprehending team should mark and conduct a physical inventory of the seized items and to photograph the same immediately after seizure and confiscation in the presence of the accused or his representative or counsel, as well as any elected public official and a representative of the National Prosecution Service or the media. The law mandates that the insulating witnesses be present during the marking, the actual inventory, and the taking of photographs of the seized items to deter [possible planting of] evidence. In this case, there was failure all together for the police to conduct the inventory and photograph the same before the insulating witnesses x x x. What is particularly disturbing is that there was no justifiable explanation proffered by the prosecution as regards the absence of these insulating witnesses. Indeed, failure to strictly comply with this rule, however, does not *ipso facto*

invalidate or render void the seizure and custody over the items as long as the prosecution is able to show that "(a) there is justifiable ground for non-compliance; and (b) the integrity and evidentiary value of the seized items are properly preserved." However, in case of non-compliance, the prosecution must be able to "explain the reasons behind the procedural lapses, and that the integrity and value of the seized evidence had nonetheless been preserved" x x x because the Court cannot presume what these grounds are or that they even exist. Also, 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. Here, it was markedly absent.

2. **ID.; ID.; ID.; ID.; THE BREACHES IN THE PROCEDURE COMMITTED BY THE POLICE OFFICERS, IF LEFT UNACKNOWLEDGED AND UNEXPLAINED BY THE STATE, MILITATE AGAINST A FINDING OF GUILT BEYOND REASONABLE DOUBT AGAINST THE APPELLANTS AS THE INTEGRITY AND EVIDENTIARY VALUE OF THE *CORPUS DELICTI* HAD BEEN COMPROMISED; ACQUITTAL OF ACCUSED-APPELLANT ON THE BASIS OF REASONABLE DOUBT, WARRANTED.—** Considering the absence of a justifiable explanation as to the non-compliance with the rules, We find that the prosecution failed to show that the seized substance from the accused was the same substance offered in Court. The *corpus delicti*'s integrity cannot then be said to have been properly established. The breaches in the procedure committed by the police officers, and left unacknowledged and unexplained by the State, militate against a finding of guilt beyond reasonable doubt against the appellants as the integrity and evidentiary value of the *corpus delicti* had been compromised. The Court, therefore, acquits on the basis of reasonable doubt.

APPEARANCES OF COUNSEL

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

D E C I S I O N

TIJAM, *J.*:

Before Us is an appeal, assailing the September 15, 2016 Decision[1] of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 07144, which affirmed the September 11, 2014 Decision[2] of the Regional Trial Court (RTC) of Quezon City, Branch 82 in Criminal Case No. Q-08-153487 which convicted accused-appellant of violation of Section 5, Article II of Republic Act (RA) No. 9165, otherwise known as the "Comprehensive Drugs Act of 2002".

Antecedent Facts

An Information[3] for the sale of 0.03 gram of methamphetamine hydrochloride or *shabu* was filed against accused-appellant, to which he pleaded not guilty to.

During trial, the prosecution established that on August 9, 2008, on the basis of a report of a confidential informant (CI) the day before that a certain "*Bong*" was selling drugs in Barangay Damayan, Quezon City, a buy-bust operation was organized.[4]

SPO2 Purisimo Angeles (SPO2 Angeles) was designated as the *poseur*-buyer and was given a marked ₱500.00 bill by Police

---

[1] Penned by Associate Justice Carmelita Salandanan Manahan and concurred in by Associate Justices Jane Aurora C. Lantion and Franchito N. Diamante. *Rollo*, pp. 2-14.

[2] Penned by Acting Presiding Judge, Lily Ann M. Padaen, CA *rollo*, pp. 47-53.

[3] "That on or about the 9th day of August 2008 in Quezon City, accused, without lawful authority did then and there willfully and unlawfully sell, trade, administer, dispense, deliver, give away to another, distribute, dispatch in transit or transport, or act as broker in the said transaction, a dangerous drug, to wit: One (1) plastic sachet of white crystalline substance containing zero point zero three (0.03) grams of Methylamphetamine (sic) Hydrochloride, a dangerous drug.

CONTRARY TO LAW." *Rollo*, pp. 2-3.

[4] *Id*. at 3; CA *rollo*, pp. 47-48.

Superintendent Allan Acong Parreno (P/Supt. Parreno)[5] Chief Inspector Richard Fiesta prepared the coordination form and the Pre-operation report was prepared by PO1 Jonathan Rodriguez (PO1 Rodriguez). The operation was coordinated with the Philippine Drug Enforcement Agency (PDEA).[6]

SPO2 Angeles and the CI proceeded to General Lim, Barangay Damayan, Quezon Avenue where they met with accused-appellant. The CI introduced SPO2 Angeles as the buyer. Accused-appellant drew a plastic sachet from his right pocket and gave it to SPO2 Angeles, who in turn, handed to accused-appellant the marked ₱500.00 bill. SPO2 Angeles then removed his bull cap as the pre-arranged signal for the rest of the buy-bust team to approach them. SPO3 Edgardo Ramos arrested accused-appellant and informed him of his constitutional rights. The arrest yielded the marked ₱500.00 bill and one heat-sealed transparent plastic sachet containing white crystalline substance.[7] Accused-appellant was thereafter brought to the Masambong Police Station 2.

The confiscated item remained in SPO2 Angeles' possession from the crime scene up to the police station. Upon arrival at the station, SPO2 Angeles affixed his initials on the plastic sachet and explained that he did not do so at the crime scene because there were too many people looking at them and they wanted to avoid a commotion. SPO2 Angeles conducted an inventory of the confiscated items and prepared a draft inventory that was finalized by PO1 Rodriguez. PO1 Rodriguez made the request for laboratory examination and SPO2 Angeles brought the specimen to the Crime Laboratory, where it was tested positive for methylamphetamine hydrochloride.[8]

---

[5] The initials "PA" was written on the center logo of the "Bangko Sentral". *Rollo*, p. 3; CA *rollo*, p. 48.

[6] *Id*.

[7] *Id*. at 3-4 & 48.

[8] *Id*. at 4 & 48.

During trial, the parties stipulated, among others, the following:

1. That Engr. Leonard Jabonillo is a Forensic Chemist of the Philippine National Police and that his office received a Request for Laboratory Examination;
2. That together with the said Request, a plastic sachet which contained a smaller plastic sachet with white crystalline substance inside was submitted to his office;
3. That he conducted the requested laboratory examination and submitted Chemistry Report D-395-2008;
4. That he found the specimen positive for methylamphetamine hydrochloride; and
5. That he turned over the specimen to the evidence custodian and retrieved the same and brought it to Court.[9]

On cross-examination, SPO2 Angeles stated that when the inventory was prepared, there were no representatives from the media, DOJ and barangay officials. He said that as the apprehending officer, it was not his duty but that of his office to contact these representatives.[10]

Accused-appellant, for his part, testified that he was buying cigarettes from a store when he and his two other companions were arrested. They were brought to the precinct and to a room upstairs where they were told that illegal drugs were recovered from them. He alleged that "*pang areglo*" was being asked from them in the amount of ₱100,000.00 that was later lowered to ₱50,000.00. His companions were able to give the said amount but he told them that he did not have the money. He was thereafter brought to a detention cell and after three days was subjected to inquest proceedings. He denied selling shabu in the area where he was arrested.[11]

In its Decision dated September 11, 2014[12] the RTC found that all elements of the crime for illegal sale of dangerous drugs

---

[9] *Id*. at 5.

[10] CA *rollo*, p. 49.

[11] *Rollo*, p. 6; CA *rollo*, p. 50.

[12] *Id*. at 47-53.

was established. It further found that prosecution was able to establish the integrity of the *corpus delicti* and the unbroken chain of custody of the seized drug. It disposed, thus:

> WHEREFORE, premises considered, judgment is hereby rendered finding accused Bong Barrera y Nechaldas "Guilty" beyond reasonable doubt of violation of Section 5, Article II of R.A. 9165.
>
> Accordingly, this Court sentences accused Bong Barrera y Nechaldas to suffer the penalty of Life Imprisonment and to pay a Fine in the amount of Five hundred Thousand (₱500,000.00) Pesos without eligibility for parole in accordance with R.A. 9346.
>
> The Branch Clerk of Court is hereby directed to transmit to the Philippine Drug Enforcement Agency the dangerous drug subject of this case for proper disposition and final disposal.
>
> SO ORDERED.[13]

On appeal, the CA sustained the accused-appellant's conviction. It echoed that the elements of the illegal sale of shabu were established. It found that the non-compliance with Sec. 21 of RA 9165 was negligible considering that the prosecution was able to preserve the integrity and evidentiary value of the illegal drug.

Hence, this appeal.

Our Ruling

Accused-appellant questions the integrity of the *corpus delicti* and points out the various non-compliance with Sec. 21 of RA 9165, *i.e.* "the item allegedly subject of sale was not immediately marked by the apprehending officers after confiscation but only at the police station. Neither was there any showing that the marking was done in the presence of the accused-appellant; nothing in the records would show that the inventory was conducted and photographs were taken within the presence of any representative from the media, Department of Justice or any elected official.

---

[13] *Id*. at 53.

The Office of the Solicitor General (OSG) counters that the guilt of the appellant for the crime charged was proven beyond reasonable doubt and that the defenses of denial, frame-up and extortion are utterly weak to controvert the evidence of the prosecution. It also insists that the integrity and evidentiary value of the subject drug were duly preserved.

The petition is meritorious.

Non-compliance with the requirements of Section 21, RA 9165 casts doubt on the integrity of the seized item and creates reasonable doubt on the guilt of the accused-appellant.[14]

Sec. 21, Article II of RA 9165 sets out the procedure as regards the custody of dangerous drugs:

Section 21. *Custody and Disposition of Confiscated, Seized, and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/Paraphernalia and/or Laboratory Equipment.* — The PDEA shall take charge and have custody of all dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment so confiscated, seized and/or surrendered, for proper disposition in the following manner:

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

(2) Within twenty-four (24) hours upon confiscation/seizure of dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment, the same shall be submitted to the PDEA Forensic Laboratory for a qualitative and quantitative examination;

---

[14] *People v. Binasing*, G.R. No. 221439, July 4, 2018.

(3) A certification of the forensic laboratory examination results, which shall be done under oath by the forensic laboratory examiner, shall be issued within twenty-four (24) hours after the receipt of the subject item/s: *Provided*, That when the volume of the dangerous drugs, plant sources of dangerous drugs, and controlled precursors and essential chemicals does not allow the completion of testing within the time frame, a partial laboratory examination report shall be provisionally issued stating therein the quantities of dangerous drugs still to be examined by the forensic laboratory: *Provided, however*, That a final certification shall be issued on the completed forensic laboratory examination on the same within the next twenty-four (24) hours;

(4) After the filing of the criminal case, the Court shall, within seventy-two (72) hours, conduct an ocular inspection of the confiscated, seized and/or surrendered dangerous drugs, plant sources of dangerous drugs, and controlled precursors and essential chemicals, including the instruments/paraphernalia and/or laboratory equipment, and through the PDEA shall within twenty-four (24) hours thereafter proceed with the destruction or burning of the same, in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the DOJ, civil society groups and any elected public official. The Board shall draw up the guidelines on the manner of proper disposition and destruction of such item/s which shall be borne by the offender: *Provided*, That those item/s of lawful commerce, as determined by the Board, shall be donated, used or recycled for legitimate purposes: *Provided, further*, That a representative sample, duly weighed and recorded is retained;

(5) The Board shall then issue a sworn certification as to the fact of destruction or burning of the subject item/s which, together with the representative sample/s in the custody of the PDEA, shall be submitted to the court having jurisdiction over the case. In all instances, the representative sample/s shall be kept to a minimum quantity as determined by the Board;

(6) The alleged offender or his/her representative or counsel shall be allowed to personally observe all of the above proceedings and his/her presence shall not constitute an admission of guilt. In case the said offender or accused refuses or fails to appoint a representative after due notice in writing

> to the accused or his/her counsel within seventy-two (72) hours before the actual burning or destruction of the evidence in question, the Secretary of Justice shall appoint a member of the public attorney's office to represent the former;
>
> (7) After the promulgation and judgment in the criminal case wherein the representative sample/s was presented as evidence in court, the trial prosecutor shall inform the Board of the final termination of the case and, in turn, shall request the court for leave to turn over the said representative sample/s to the PDEA for proper disposition and destruction within twenty-four (24) hours from receipt of the same; and
>
> (8) Transitory Provision: a) Within twenty-four (24) hours from the effectivity of this Act, dangerous drugs defined herein which are presently in possession of law enforcement agencies shall, with leave of court, be burned or destroyed, in the presence of representatives of the Court, DOJ, Department of Health (DOH) and the accused/and or his/her counsel, and, b) Pending the organization of the PDEA, the custody, disposition, and burning or destruction of seized/surrendered dangerous drugs provided under this Section shall be implemented by the DOH.

The rules clearly provides that the apprehending team should mark and conduct a physical inventory of the seized items and to photograph the same immediately after seizure and confiscation in the presence of the accused or his representative or counsel, as well as any elected public official and a representative of the National Prosecution Service or the media. The law mandates that the insulating witnesses be present during the marking, the actual inventory, and the taking of photographs of the seized items to deter [possible planting of] evidence.[15]

In this case, there was failure all together for the police to conduct the inventory and photograph the same before the insulating witnesses:

> Q: May I go back to the preparation of the inventory. The law requires you to prepare the inventory in the presence of the representative from Justice, is it not?

---

[15] *People v. Binasing*, *supra* note 13.

A: No, sir.

Q: You do not require the presence of a representative whenever you conduct an inventory?
A: No, sir.

Q: Is it not also a fact that you should prepare the inventory in the presence of media?
A: No, sir.

Q: You do not also require the presence of media also?
A: Yes, sir.

Q: You should also prepare that m the presence of the barangay officials?
A: No, sir.

Q: In all these cases, there was nothing?
A: Yes, sir.[16]

The OSG admits the same in its Brief: While a photograph of the seized drug was not taken and there was no elected public official or a representative from the media or the DOJ present during the inventory, these, however, are likewise not fatal to the chain of custody.[17]

What is particularly disturbing is that there was no justifiable explanation proffered by the prosecution as regards the absence of these insulating witnesses.

Q: Mr. Witness, in the year 2008, how long have you been an Anti-Narcotics operative?
A: Almost fifteen 15 years, sir.

Q: In the span of fifteen years were you even subjected by your superior to any training on R.A. 9165?
A: Yes, sir.

x x x x x x x x x

[16] TSN, November 5, 2012, pp. 4-5.

[17] CA *rollo*, p. 78.

Q: As mentioned by the defense lawyer, Section 21 expressly requires the presence of the prosecutors, of the DOJ, representative of the media and barangay officials. Why did you not require the presence of this (sic) persons during the inventory?

A: As apprehending officer, I am not responsible in contacting these persons. It was our office.[18]

Indeed, failure to strictly comply with this rule, however, does not *ipso facto* invalidate or render void the seizure and custody over the items as long as the prosecution is able to show that "(a) there is justifiable ground for non-compliance; and (b) the integrity and evidentiary value of the seized items are properly preserved."[19] However, in case of non-compliance, the prosecution must be able to "explain the reasons behind the procedural lapses, and that the integrity and value of the seized evidence had nonetheless been preserved"[20] x x x because the Court cannot presume what these grounds are or that they even exist.

Also, 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.[21] Here, it was markedly absent.

Considering the absence of a justifiable explanation as to the non-compliance with the rules, We find that the prosecution failed to show that the seized substance from the accused was the same substance offered in Court. The *corpus delicti*'s integrity cannot then be said to have been properly established.

The breaches in the procedure committed by the police officers, and left unacknowledged and unexplained by the State, militate against a finding of guilt beyond reasonable doubt against the appellants as the integrity and evidentiary value of the *corpus*

---

[18] TSN, November 5, 2012, pp. 5-6.

[19] *People v. Dumagay*, G.R. No. 216753, February 7, 2018.

[20] *People v. Almorfe, et al.*, 631 Phil. 51, 60 (2010).

[21] *People v. Crispo*, G.R. No. 230065, March 14, 2018.

delicti had been compromised.[22] The Court, therefore, acquits on the basis of reasonable doubt.

WHEREFORE, the appeal is **GRANTED**. The Court of Appeals' Decision dated September 15, 2016, docketed as CA-G.R. CR-H.C. No. 07144, which affirmed the Regional Trial Court of Quezon City, Branch 82 Decision dated September 11, 2014 in Criminal Case No. Q-08-153487, is hereby **REVERSED** and **SET ASIDE**.

Accordingly, accused-appellant BONG BARRERA y NECHALDAS is hereby **ACQUITTED** based on reasonable doubt.

The Director of the Bureau of Corrections is directed to cause the immediate release of accused-appellant, unless the latter is being lawfully held for another cause, and to inform the Court of the date of his release or reason for his continued confinement within five days from notice.

SO ORDERED.

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

---

[22] *People v. Ferrer*, G.R. No. 213914, June 6, 2018.

[*] Designated as Acting Chairperson of the First Division per Special Order No. 2559, dated May 11, 2018.

[**] Designated as Acting Member of the First Division per Special Order No. 2560, dated May 11, 2018.

SECOND DIVISION

[G.R. No. 232381. August 1, 2018]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **RYAN MARALIT *y* CASILANG,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; REPUBLIC ACT NO. 9165 (COMPREHENSIVE DANGEROUS DRUGS ACT); VIOLATION; THE PRESENCE OR ABSENCE OF CONSIDERATION IN EXCHANGE FOR THE DELIVERY OF DANGEROUS DRUGS IS NOT MATERIAL WHEN AN ACCUSED IS CHARGED WITH COMMITTING THE OTHER ACTS PUNISHABLE UNDER SECTION 5, ARTICLE II OF REPUBLIC ACT NO. 9165; CASE AT BAR.— While an accused charged with the violation of this provision is usually caught in the act of selling illegal drugs, Section 5, Article II of R.A. No. 9165 also punishes the trade, delivery, distribution, and giving away of any dangerous drug to another. Section 3, Article I of R.A. No. 9165 defines the punishable acts of "*deliver*" and "*trading*" x x x Clearly, the presence (or absence) of consideration in exchange for the delivery of dangerous drugs is not material when an accused is charged with committing the other acts punishable under Section 5, Article II of R.A. No. 9165. The act of giving away, transporting, or delivering the two (2) bricks of *marijuana* is already a punishable act in itself. In *People v. De la Cruz,* the Court held that the presentation of the marked money, as well as the fact that the money was paid in exchange for the delivery of dangerous drugs, were unnecessary to consummate the crime, x x x As applied in the present case, the prosecution correctly charged Maralit with the violation of Section 5, Article II of R.A. No. 9165. Maralit could not be accused of the illegal sale of dangerous drugs because the transaction was not consummated prior to his arrest—there being no money taken in return for the *marijuana* bricks. This notwithstanding, his mere act of delivering and conveying these *marijuana* bricks to IO1 Esmin already constitutes a violation of Section 5, Article II of R.A. No. 9165.

2. ID.; ID.; ID.; CHAIN OF CUSTODY RULE; THE CHAIN OF CUSTODY RULE SERVES AS A MODE OF AUTHENTICATING EVIDENCE THAT REMOVES DOUBTS REGARDING THE IDENTITY OF THE EVIDENCE PRESENTED IN COURT; LINKS IN THE CHAIN OF CUSTODY, ENUMERATED.— [T]he prosecution still bore the burden of proving the identity and integrity of the *corpus delicti,* which in this case is the seized bricks of *marijuana.* This is accomplished by proving an unbroken chain of custody, to ensure that the items presented before the trial court are the same items taken from the accused. The chain of custody rule thus serves as a mode of authenticating evidence that removes doubts regarding the identity of the evidence presented in court. In *People v. Kamad,* the Court identified the following links in the chain of custody, which the prosecution should establish: *First,* the seizure and marking, if practicable, of the illegal drug recovered from the accused by the apprehending officer; *Second,* the turnover of the illegal drug seized by the apprehending officer to the investigating officer; *Third,* the turnover by the investigating officer of the illegal drug to the forensic chemist for laboratory examination; and *Fourth,* the turnover and submission of the marked illegal drug seized from the forensic chemist to the court.

3. ID.; ID.; ID.; ID.; COMPLIANCE WITH THE REQUIREMENTS; WHILE THE PRESENCE OF ALL THE WITNESSES ARE ORDINARILY REQUIRED, NON-COMPLIANCE, WHICH SHOULD BE PROPERLY JUSTIFIED, IS EXCUSABLE WHEN THE INTEGRITY AND THE EVIDENTIARY VALUE OF THE SEIZED ITEMS WERE PROPERLY PRESERVED; CASE AT BAR.— Section 21(1) of R.A. No. 9165 provides the procedure for the custody and disposition of confiscated, seized, or surrendered dangerous drugs. This provision specifically requires the apprehending officers to *immediately* conduct a physical inventory and to photograph the seized items in the presence of the following: (a) the accused or the person from whom the items were confiscated, or his representative or counsel; (b) a representative from the media; (c) a representative from the DOJ; and (d) any elected public official. They should also sign the inventory and be furnished a copy thereof. x x x

The Court does not lose sight of the fact that under various field conditions, compliance with the requirements under Section 21 of R.A. No. 9165 may not always be possible. Thus, while the presence of all these witnesses are ordinarily required, non-compliance is excusable when the integrity and the evidentiary value of the seized items were properly preserved. There should also be proper justification for the arresting officers' failure to comply with the procedure under Section 21 of R.A. No. 9165. Considering that the police officers explained the absence of the DOJ representative, coupled with the fact that they endeavored to comply with the mandatory procedure by securing the presence of elected officials and a representative from the media, their failure to strictly observe Section 21 of R.A. No. 9165 is not fatal to the case. The integrity and evidentiary value of the seized evidence were nonetheless preserved because there were other witnesses to the marking and inventory of the seized bricks of *marijuana.* x x x Notably, the subsequent amendment of Section 21 of R.A. No. 9165 requires only an elected public official, and a representative of the National Prosecution Service *or* the media, to witness the marking and physical inventory of the seized items. x x x Verily, the presence of the other witnesses, the immediate marking and inventory conducted after Maralit's arrest, and the photographs taken during that time, all attest to the identity and integrity of the seized dangerous drugs.

CAGUIOA, *J.*, *dissenting opinion*:

1. CRIMINAL LAW; REPUBLIC ACT NO. 9165 (COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002); ILLEGAL SALE OF DANGEROUS DRUGS; ELEMENTS; NOT ESTABLISHED IN CASE AT BAR.— 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. In the case at bar, it is readily apparent that no sale was consummated as the consideration, much less its receipt by the accused-appellant, were not established. x x x Here, there is more reason to acquit accused-appellant of the crime of illegal sale of dangerous drugs as the prosecution failed to

establish the identity and integrity of the *corpus delicti* of the offense charged. In *People v. Torres*, the Court held that the identity of the prohibited drug must be proved with moral certainty. It must also be established with the same degree of certitude that the substance bought or seized during the buy-bust operation is the same item offered in court as exhibit. In this regard, paragraph 1, Section 21, Article II of RA 9165 (the chain of custody rule) provides for safeguards for the protection of the identity and integrity of dangerous drugs seized.

2. ID.; ID.; CHAIN OF CUSTODY RULE; MANDATORY REQUIREMENTS IN THE SEIZURE AND CUSTODY OF SEIZED OR CONFISCATED DANGEROUS DRUGS AND PARAPHERNALIA, ENUMERATED; NON-COMPLIANCE THEREOF MAY BE CONDONED ONLY WHEN THERE ARE JUSTIFIABLE GROUNDS WHICH WILL ALLOW DEPARTURE FROM THE RULE ON STRICT COMPLIANCE AND THAT THE INTEGRITY AND EVIDENTIARY VALUE OF THE SEIZED ITEMS ARE PROPERLY PRESERVED BY THE APPREHENDING OFFICERS.— Section 21(1) of RA 9165 lays down the following mandatory requirements in the seizure and custody of seized or confiscated dangerous drugs and paraphernalia: 1. The seized items must be **physically inventoried** and **photographed**; 2. The initial custody requirements must be done **immediately after seizure** or confiscation; 3. The foregoing must be done **in the presence of**: a. The **accused** or his representative or counsel; **and** b. The **required witnesses**: i. a representative from the **media** and the **Department of Justice (DOJ)**, and any **elected public official** for offenses committed during the effectivity of RA 9165 and prior to its amendment by RA 10640; ii. with an **elected public official** and a representative from the **National Prosecution Service of the DOJ or the media** for offenses committed during the effectivity of RA 10640. Section 21(a), Article II of the Implementing Rules and Regulations (IRR) of RA 9165 filled in the details as to where the initial custody requirements should be done, *i.e.*, at the place of seizure, at the nearest police station or at the nearest office of the apprehending officer/team, *whichever is practicable*. Further, "saving clause" was added in cases where there is justifiable deviation from the mandatory procedure. x x x In cases involving dangerous drugs, the drug itself

constitutes the *corpus delicti* of the offense. Thus, strict compliance with the requirements of Section 21 is mandatory in order to dispel any doubt as to the source, identity, and integrity of the seized drugs. However, following the IRR of RA 9165, non-compliance may be condoned if the following requisites are availing: (1) the existence of "justifiable grounds" allowing departure from the rule on strict compliance; **and** (2) the integrity and the evidentiary value of the seized items are properly preserved by the apprehending team.

3. **ID.; ID.; ID.; THE PRESENCE OF THE THREE WITNESSES AT THE TIME OF SEIZURE AND CONFISCATION OF THE DRUGS MUST BE SECURED AND COMPLIED WITH AT THE TIME OF THE WARRANTLESS ARREST; RATIONALE.—** [W]hile the physical inventory and photographing is allowed to be done "at the nearest police station or at the nearest office of the apprehending officer/team, whichever is applicable, in case of warrantless seizures," this does **not** dispense with the requirement of having the DOJ or media representative and the elected public official to be physically present at the time or near the place of apprehension. The reason is simple, it is at the time of arrest — or at the time of the drugs' "seizure and confiscation" — that the presence of the three witnesses is most needed, as it is their presence at the time of seizure and confiscation that would **insulate** against the police practice of planting evidence. Using the language of the Court in *People v. Mendoza*, without the ***insulating presence*** of the representative from the media or the DOJ and any elected public official during the seizure and marking of the 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 subject bricks that were the evidence of the *corpus delicti*, and thus adversely affected the trustworthiness of the incrimination of the accused. Thus, it is compliance with this most fundamental requirement — the presence of the "insulating" witnesses — that the pernicious practice of planting of evidence is greatly minimized if not foreclosed altogether. Stated otherwise, this is the first and foremost requirement provided by Section 21 to ensure the preservation of the "integrity and evidentiary value of the seized

drugs" in a buy-bust situation whose nature, as already explained, is that it is a planned operation. To restate, the presence of the three witnesses at the time of seizure and confiscation of the drugs must be secured and complied with at the time of the warrantless arrest; such that they are required to be at or near the intended place of the arrest so that they can be ready to witness the inventory and photographing of the seized and confiscated drugs "immediately after seizure and confiscation." x x x Given the serious substantive and procedural lapses of the police officers, and considering that the *corpus delicti* has not been proved with unwavering exactitude, an essential element of the offense is missing, the conviction of the accused-appellant cannot be upheld.

4. REMEDIAL LAW; CRIMINAL PROCEDURE; PRESUMPTION OF INNOCENCE; PRESUMPTION OF INNOCENCE IS OVERTURNED ONLY WHEN THE PROSECUTION HAS DISCHARGED ITS BURDEN OF PROOF, THAT IS, PROVING THE GUILT OF THE ACCUSED BEYOND REASONABLE DOUBT.—The presumption of innocence is overturned only when the prosecution has discharged its burden of proof, that is, proving the guilt of the accused beyond reasonable doubt— to prove each and every element of the crime charged in the information to warrant a finding of guilt for that crime or for any other crime necessarily included therein. To be sure, the concept of moral certainty is subjective. But, in our criminal justice system, **the overriding consideration is not whether the court doubts the innocence of the accused but whether it entertains reasonable doubt as to his guilt.**

APPEARANCES OF COUNSEL

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

D E C I S I O N

A. REYES, JR., *J.*:

This is an appeal[1] from the Decision[2] dated December 22, 2016 of the Court of Appeals (CA) rendered in CA-G.R. CR-HC No. 06464, which affirmed the Judgment[3] dated October 16, 2013 of the Regional Trial Court (RTC) of Agoo, La Union. In these decisions, accused Ryan Maralit *y* Casilang (Maralit) was found guilty of violating Section 5, Article II of Republic Act (R.A.) No. 9165, otherwise known as the Comprehensive Dangerous Drugs Act.

Factual Antecedents

Maralit was charged with the offense of illegal trade, transport, and delivery of dangerous drugs, punishable under Section 5, Article II of R.A. No. 9165. The Information against him was docketed as Criminal Case No. A-6046, which reads:

Criminal Case No. A-6046

That on or about the 19th day of July 2011, in the Municipality of Sto. Tomas, Province of La Union, Philippines and within the jurisdiction of this Honorable Court, the above named accused did then and there, willfully, unlawfully and knowingly, trade, transport, deliver and give away two (2) bricks of marijuana to IO1 EFREN L. ESMIN with a total weight of ONE THOUSAND EIGHT HUNDRED FIFTY-NINE POINT NINETY-SEVEN (1,859.97) grams, a dangerous and prohibited drug, without any authority of law.

Contrary to the provision of Section 5, Art. II of R.A. 9165.[4]

During the arraignment on August 17, 2011, the charge against Maralit was read to him in the Pangasinan dialect, a language

---

[1] *Rollo*, pp. 20-21.

[2] Penned by Associate Justice Ramon Paul L. Hernando, with Associate Justices Jose C. Reyes, Jr. and Stephen C. Cruz concurring; *id*. at 2-19.

[3] CA *rollo*, pp. 46-62.

[4] Records, p. 1.

he knew and understood. Maralit, with the assistance of his counsel, pleaded not guilty to the offense.[5]

The prosecution alleged that on July 19, 2011, IA3 Dexter B. Asayco (IA3 Asayco), the team leader of the Philippine Drug Enforcement Agency-La Union Special Enforcement Team (PDEA-LUSET), received information from a confidential informant that an individual known as "RAM," who comes from Dagupan City, Pangasinan, was a known dealer of *marijuana*.[6] The confidential informant described "RAM" as 5'11" in height, with an athletic built.[7]

Following his receipt of this information, IA3 Asayco called for a briefing at around 9:00 a.m. regarding a planned entrapment operation against "RAM" later in the day.[8] Soon after, at 9:15 a.m., IA3 Asayco coordinated with the team leader of the La Union Provincial Anti-Illegal Drug Special Operation Task Group (PAIDSOTG), Police Chief Inspector Erwin Dayag (PCI Dayag). In response, PCI Dayag instructed a member of his team, Police Officer 2 Froilan D. Caalim (PO2 Caalim), to proceed to the PDEA office for the briefing.[9]

During the briefing, IA3 Asayco informed his team that the confidential informant gave "RAM" the cellphone number of the PDEA-LUSET, under the guise of an interested buyer of *marijuana* from Tarlac. "RAM," in several text messages, introduced himself as the cousin of the confidential informant and informed them that he had two (2) bricks of dried *marijuana* he can deliver to an interested buyer.[10]

IA3 Asayco then passed the cellphone to IO1 Efren L. Esmin (IO1 Esmin), a member of his team, and tasked him to

---

[5] *Id*. at 40.

[6] *Id*. at 153.

[7] TSN, October 24, 2011, p. 12.

[8] *Id*. at 6.

[9] *Id*. at 8; records, p. 153.

[10] TSN, October 24, 2011, p. 10.

make arrangements with "RAM" for the delivery of the *marijuana*. IO1 Esmin exchanged text messages with "RAM," and thereafter, "RAM" agreed to deliver the two (2) bricks of *marijuana* for Php 5,300.00 each (or an aggregate amount of Php 10,600.00). They also agreed to meet at Barangay Damortis, Sto. Tomas, La Union at 6:00 p.m. that day, to complete the transaction.[11]

IO1 Esmin and PO2 Caalim were designated as the arresting officers, while the rest of the team were tasked to secure the area.[12] The briefing ended at around 12:00 noon, and after about an hour, the team proceeded to Sto. Tomas, La Union Police Station using a private vehicle. The team arrived at the police station at around 2:30 p.m., where they passed the time before the designated meeting time with "RAM."[13]

The team left the police station at around 4:30 p.m. and arrived at the target area by 5:00 p.m. Upon their arrival, the members of the team surveyed the area and positioned themselves according to the plan.[14] At about 5:30 p.m., IO1 Esmin received a text message from "RAM" telling him that he was on his way aboard a bus, and identified a certain store as their meeting place. IO1 Esmin then waited for "RAM" outside the said store, while PO2 Caalim positioned himself across the street.[15]

At around 6:30 p.m., a man that matched the physical description of "RAM" approached IO1 Esmin. The man was holding a brown paper bag and he asked IO1 Esmin to confirm that he was the man from Tarlac. When IO1 Esmin answered in the affirmative, the man handed over the brown paper bag to him. IO1 Esmin opened the brown paper bag and inspected the contents. He found a white plastic bag inside the brown

---

[11] *Id*. at 11.

[12] *Id*. at 12.

[13] *Id*. at 13-14.

[14] *Id*. at 14-16.

[15] *Id*. at 17-18; TSN, November 28, 2011, p. 8; records, p. 164.

paper bag, which when opened, revealed two (2) bricks of *marijuana*.[16]

When IO1 Esmin found that the brown paper bag contained substances suspected to be *marijuana*, he arrested the man later identified as accused Maralit, and informed him of his constitutional rights.[17] In the meantime, the other team members contacted two (2) barangay officials and a media representative to witness the marking and inventory of the illegal drugs. They were unable to obtain the presence of a Department of Justice (DOJ) representative allegedly because the entrapment operation ended after office hours, and there was no available DOJ representative beyond this time.[18] IO1 Esmin then frisked Maralit for dangerous weapons and discovered a cellphone in his person. They did not find any messages or a SIM card on the cellphone.[19]

The barangay officials and the media representative arrived at the scene about ten minutes after Maralit's arrest. IO1 Esmin proceeded to mark the evidence in the presence of the barangay officials, the media representative, and Maralit. The brown paper bag was marked as "A", the white plastic bag containing the two (2) bricks of *marijuana* was marked as "A-1", the bricks of *marijuana* were marked as "A-2" and "A-3", respectively, and the cellphone was marked as "B". Each item was also marked with IO1 Esmin's initials ("ELE"), the date ("19 July 2011"), and IO1 Esmin's signature.[20]

After the marking, IO1 Esmin made an inventory of the seized items.[21] Photographs of the marking and inventory were also taken.[22]

---

[16] TSN, October 24, 2011, pp. 19-21.

[17] *Id.* at 21.

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

[19] Id. at 23-24.

[20] *Id.* at 25, 33-36; records, pp. 155-156.

[21] TSN, October 24, 2011, pp. 30-33.

[22] *Id.* at 26.

The team took Maralit and the seized items to the PDEA Regional Office 1 in Camp Diego Silang, Carlatan, San Fernando City, La Union.[23] IO1 Esmin then prepared the Booking Sheet and Arrest Report,[24] as well as the Request for Laboratory Examination.[25] The Request for Laboratory Examination was signed by IA3 Asayco, and later on delivered by IO1 Esmin to Lei-Yen Valdez (Valdez) of the PDEA Regional Office 1 Laboratory at 7:30 p.m. of the same day.[26]

The chemistry report yielded a positive result for the presence of *marijuana* in the specimen samples taken from the pieces of evidence marked as "A-2" and "A-3."[27]

After the presentation and offer of the prosecution's evidence, Maralit filed a Demurrer to Evidence on June 13, 2013. He alleged that the prosecution's evidence was insufficient to find him guilty beyond reasonable doubt of the crime charged. Particularly, Maralit pointed out that the money used for the entrapment operation was not even marked or presented before the trial court, which negates the presence of a consideration for the sale of the subject drugs—an essential element of Section 5, Article II of R.A. No. 9165.[28] He also argued that the absence of the DOJ representative during the marking and inventory of the seized items casts doubt on their identity and integrity, which warrants his acquittal.[29] The prosecution objected to the Demurrer to Evidence.[30]

In an Order[31] dated July 23, 2013, the RTC denied Maralit's Demurrer to Evidence for lack of merit. The trial court further

---

[23] *Id*. at 36-37.

[24] Records, p. 159.

[25] *Id*. at 162.

[26] *Id*.

[27] *Id*. at 163.

[28] *Id*. at 167-168.

[29] *Id*. at 169.

[30] *Id*. at 172-176.

[31] *Id*. at 177-178.

ruled that since the demurrer was filed without leave of court, Maralit was deemed to have waived the right to present his evidence and the case was submitted for decision.[32]

Ruling of the RTC

In the Judgment[33] dated October 16, 2013 of the RTC, Maralit was found guilty beyond reasonable doubt for the violation of Section 5, Article II of R.A. No. 9165, thus:

> WHEREFORE, in view of all the foregoing, this Court finds accused [MARALIT] GUILTY BEYOND REASONABLE DOUBT of violation of Section 5 of [R.A.] No. 9165 and hereby sentences him to suffer the penalty of life imprisonment, the accused shall be credited in the service of his sentence with his preventive imprisonment under the terms and conditions set forth by Article 29 of the Revised Penal Code and to pay a fine of five hundred thousand pesos (Php500,000.00).
>
> The items subject of the case, particularly the two (2) bricks of *marijuana* with a total weight of 1,859.97 grams shall be forfeited in favor of the government and shall be destroyed in accordance with law.
>
> Agoo, La Union, October 16, 2013.[34]

The trial court ruled that it was unnecessary for the prosecution to present the money used for the entrapment operation. The RTC further found that the chain of custody was sufficiently established despite the absence of a DOJ representative during the marking of the seized pieces of evidence. Thus, the integrity and evidentiary value of the illegal drugs taken from Maralit were preserved.[35]

Aggrieved, Maralit filed a Notice of Appeal with the RTC on October 23, 2013.[36] The RTC granted the appeal in its Order[37] dated October 29, 2013.

---

[32] *Id*. at 178.

[33] *Id*. at 187-203.

[34] *Id*. at 203.

[35] *Id*. at 200-202.

[36] *Id*. at 205.

[37] *Id*. at 208.

In his brief, Maralit alleged that the trial court erred in finding him guilty of the offense charged against him, considering that the prosecution failed to prove his guilt beyond reasonable doubt. According to Maralit, the testimonies of the prosecution witnesses were contrary to the common experience and observation of mankind, especially pointing out the absence of a consideration for the alleged purchase of the seized marijuana bricks.[38] Maralit further assailed the inconsistencies in the testimony of IO1 Esmin and the documentary evidence of the prosecution,[39] as well as the failure of the PDEA officers to comply with the chain of custody rule.[40]

The People, on the other hand, argued that there was sufficient proof to establish Maralit's guilt beyond reasonable doubt. According to the prosecution, it was unnecessary to present the marked money used for the entrapment operation. Section 5, Article II of R.A. No. 9165 punishes the mere act of delivering dangerous drugs, even without a consideration. The People also refuted the argument of Maralit regarding the break in the chain of custody, and pointed out that by virtue of his admissions in the RTC, the integrity of the seized illegal drugs was preserved.[41]

Ruling of the CA

In a Decision[42] dated December 22, 2016, the CA denied the appeal and affirmed the judgment of the RTC, thus:

WHEREFORE, the instant appeal is DENIED. The assailed Decision dated October 16, 2013 of the [RTC], Branch 32 of Agoo, La Union in Criminal Case No. A-6046 is hereby AFFIRMED.

SO ORDERED.[43]

---

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

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

[40] *Id*. at 40-42.

[41] *Id*. at 81-86.

[42] *Id*. at 95-112.

[43] *Id*. at 112.

The CA found that the prosecution sufficiently established the chain of custody of the illegal drugs. The inconsistency as to the time stated by IO1 Esmin in his testimony and the time reflected in the Request for Laboratory Examination, was deemed a trivial matter that does not affect the integrity and evidentiary value of the seized illegal drugs.[44] Considering that IO1 Esmin was the only person in custody of the seized items until it was turned over to the forensic chemist for examination, the CA ruled that the chain of custody was adequately established.[45]

Unsatisfied with the decision of the CA, Maralit appealed his conviction to the Court.[46] The CA gave due course to the appeal in its Resolution[47] dated January 25, 2017.

Ruling of the Court

The issue presented before the Court is whether the guilt of Maralit was proven beyond reasonable doubt. For purposes of resolving this issue, the Court must review whether the identity and the integrity of the seized illegal drugs—the *corpus delicti* of this case—were duly preserved.

There being no evidence that the chain of custody over the illegal drugs was broken, the Court finds that the guilt of the accused was proven beyond reasonable doubt.

The Court denies the present appeal.

A conviction for violating Section 5, Article II of R.A. No. 9165 does not always require the presentation of the marked money.

The Information against Maralit charged him with the violation of Section 5, Article II of R.A. No. 9165. It further alleged that Maralit "willfully, unlawfully[,] and knowingly trade[d],

---

[44] *Id*. at 104.

[45] *Id*. at 105-111.

[46] *Id*. at 116.

[47] *Id*. at 123.

transport[ed], deliver[ed] and [gave] away two (2) bricks of *marijuana*" to IO1 Esmin.[48] Maralit alleged that in order to be convicted under this provision, the prosecution should have established the consideration for his supposed sale of the *marijuana* bricks.[49]

While an accused charged with the violation of this provision is usually caught in the act of selling illegal drugs, Section 5, Article II of R.A. No. 9165 also punishes the trade, delivery, distribution, and giving away of any dangerous drug to another. Section 3, Article I of R.A. No. 9165 defines the punishable acts of "*deliver*" and "*trading*" as follows:

> (k) Deliver. – Any act of knowingly passing a dangerous drug to another, personally or otherwise, and by any means, **with or without** consideration.
>
> x x x x x x x x x
>
> (jj) Trading. – Transactions involving the illegal trafficking of dangerous drugs and/or controlled precursors and essential chemicals using electronic devices such as, but not limited to, text messages, email, mobile or landlines, two-way radios, internet, instant messengers and chat rooms or acting as a broker in any of such transactions **whether for money or any other consideration** in violation of this Act. (Emphasis and underscoring Ours)

Clearly, the presence (or absence) of consideration in exchange for the delivery of dangerous drugs is not material when an accused is charged with committing the other acts punishable under Section 5, Article II of R.A. No. 9165. The act of giving away, transporting, or delivering the two (2) bricks of *marijuana* is already a punishable act in itself.[50]

In *People v. De la Cruz*,[51] the Court held that the presentation of the marked money, as well as the fact that the money was

---

[48] Records, p. 1.

[49] *Id.* at 167; *See* also CA *rollo*, p. 37.

[50] *People v. Asislo*, 778 Phil. 509, 519 (2016).

[51] 263 Phil. 340 (1990).

paid in exchange for the delivery of dangerous drugs, were unnecessary to consummate the crime, thus:

> [E]ven if the money given to De la Cruz was not presented in court, the same would not militate against the People's case. In fact, there was even no need to prove that the marked money was handed to the appellants in payment of the goods. The crime could have been consummated by the mere delivery of the prohibited drugs. What the law proscribes is not only the act of selling but also, albeit not limited to, the act of delivering. In the latter case, **the act of knowingly passing a dangerous drug to another personally or otherwise, and by any means, with or without consideration, consummates the offense**.[52] (Emphasis Ours)

As applied in the present case, the prosecution correctly charged Maralit with the violation of Section 5, Article II of R.A. No. 9165. Maralit could not be accused of the illegal sale of dangerous drugs because the transaction was not consummated prior to his arrest—there being no money taken in return for the *marijuana* bricks. This notwithstanding, his mere act of delivering and conveying these *marijuana* bricks to IO1 Esmin already constitutes a violation of Section 5, Article II of R.A. No. 9165.

It was therefore unnecessary for the prosecution to present the money used in the entrapment operation in order to prove Maralit's guilt beyond reasonable doubt. In the same manner, neither may Maralit disprove the fact of delivery by simply pointing out that there was no consideration received in exchange for the dangerous drugs.

The prosecution was able to establish an unbroken chain of custody.

In any case, the prosecution still bore the burden of proving the identity and integrity of the *corpus delicti,* which in this case is the seized bricks of *marijuana*. This is accomplished by proving an unbroken chain of custody, to ensure that the

---

[52] *Id*. at 350.

items presented before the trial court are the same items taken from the accused. The chain of custody rule thus serves as a mode of authenticating evidence that removes doubts regarding the identity of the evidence presented in court.[53]

In *People v. Kamad*,[54] the Court identified the following links in the chain of custody, which the prosecution should establish:

First, the seizure and marking, if practicable, of the illegal drug recovered from the accused by the apprehending officer;

Second, the turnover of the illegal drug seized by the apprehending officer to the investigating officer;

Third, the turnover by the investigating officer of the illegal drug to the forensic chemist for laboratory examination; and

Fourth, the turnover and submission of the marked illegal drug seized from the forensic chemist to the court.[55]

Each link is discussed sequentially to determine whether the prosecution was able to discharge its burden of proving the identity and integrity of the *corpus delicti* in this case.

The First Link: the seizure, marking, and inventory of the illegal drugs taken from Maralit.

Section 21(1) of R.A. No. 9165 provides the procedure for the custody and disposition of confiscated, seized, or surrendered dangerous drugs.[56] This provision specifically requires the apprehending officers to *immediately* conduct a physical

---

[53] *People of the Philippines v. Salim Ismael y Radang*, G.R. No. 208093, February 20, 2017; *See also Mallillin v. People*, 576 Phil. 576 (2008).

[54] 624 Phil. 289 (2010).

[55] *Id*. at 304.

[56] *See* Implementing Rules and Regulations of R.A. No. 9165, Section 21(a); *See* also PDEA Guidelines on the Implementing Rules and Regulations of Section 21 of R.A. No. 9165 as Amended by R.A. No. 10640 (May 28, 2015).

inventory and to photograph the seized items in the presence of the following: (a) the accused or the person from whom the items were confiscated, or his representative or counsel; (b) a representative from the media; (c) a representative from the DOJ; and (d) any elected public official. They should also sign the inventory and be furnished a copy thereof.

Here, it is evident from the records that the marking and inventory of the two (2) bricks of *marijuana* were immediately conducted at the place of the arrest, soon after these items were taken from Maralit. Between Maralit's arrest and the marking of the items, only ten (10) minutes passed, which the prosecution adequately justified as the time spent by the apprehending team waiting for the arrival of the witnesses to the marking and inventory.[57]

Furthermore, during the marking and inventory of the seized items, there were two (2) barangay officials and one (1) media representative present. While there was no DOJ representative to witness the marking and inventory, IO1 Esmin and PO2 Caalim explained that they were no longer able to contact a representative from the DOJ because by the time they were finished with the entrapment operation, it was beyond office hours.[58]

The Court does not lose sight of the fact that under various field conditions, compliance with the requirements under Section 21 of R.A. No. 9165 may not always be possible.[59] Thus, while the presence of all these witnesses are ordinarily required, non-compliance is excusable when the integrity and the evidentiary value of the seized items were properly preserved. There should also be proper justification for the arresting officers' failure to comply with the procedure under Section 21 of R.A. No. 9165.[60]

---

[57] TSN, October 24, 2011, p. 23.

[58] *Id.* at 22-23; TSN, March 19, 2012, p. 8.

[59] *People v. Sanchez*, 590 Phil. 214, 234 (2008).

[60] *People of the Philippines v. Eddie Barte y Mendoza*, G.R. No. 179749, March 1, 2017.

Considering that the police officers explained the absence of the DOJ representative, coupled with the fact that they endeavored to comply with the mandatory procedure by securing the presence of elected officials and a representative from the media, their failure to strictly observe Section 21 of R.A. No. 9165 is not fatal to the case. The integrity and evidentiary value of the seized evidence were nonetheless preserved because there were other witnesses to the marking and inventory of the seized bricks of *marijuana*. Two (2) barangay officials and a representative from the media were present during this stage, photographs were taken, and an inventory signed by these witnesses was prepared.[61] Furthermore, while the inventory does not bear the signature of Maralit, the photographs show that Maralit was present during the marking and inventory of the seized items.[62]

Notably, the subsequent amendment of Section 21 of R.A. No. 9165 requires only an elected public official, and a representative of the National Prosecution Service *or* the media, to witness the marking and physical inventory of the seized items.[63] The Court also explained in *Lescano v. People*[64] that the media representative may witness the marking and inventory as an alternative to a DOJ representative:

> Moreover, Section 21(1) requires at least three (3) persons to be present during the physical inventory and photographing. These persons are: first, the accused or the person/s from whom the items were seized; second, an elected public official; and third, a representative of the National Prosecution Service. **There are, however, alternatives to the first and the third**. As to the first

---

[61] Records, pp. 155-158.

[62] *Id.* at 157-158.

[63] *R.A. No. 10640* or AN ACT TO FURTHER STRENGTHEN THE ANTI-DRUG CAMPAIGN OF THE GOVERNMENT, AMENDING FOR THE PURPOSE SECTION 21 OF REPUBLIC ACT NO. 9165, OTHERWISE KNOWN AS THE "COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002," Section 1. Approved on July 15, 2014.

[64] 778 Phil. 460 (2016).

(i.e., the accused or the person/s from whom items were seized), there are two (2) alternatives: first, his or her representative; and second, his or her counsel. **As to the representative of the National Prosecution Service, a representative of the media may be present in his or her place**.[65] (Emphasis Ours)

Verily, the presence of the other witnesses, the immediate marking and inventory conducted after Maralit's arrest, and the photographs taken during that time, all attest to the identity and integrity of the seized dangerous drugs. Therefore, the first link in the chain of custody was sufficiently established in this case.

The Second and Third Links: the turnover of the seized drugs by the apprehending officer to the investigating officer, and in turn, to the forensic chemist.

The second and third links in the chain of custody refer respectively to the turnover of the seized drugs by the apprehending officer to the investigating officer, and subsequently, by the investigating officer to the forensic chemist for examination. In this case, IO1 Esmin was the sole custodian of the seized items from the time Maralit was arrested, to the moment they returned to their office, and until such time that he turned it over to the forensic chemist:

Assistant Provincial Prosecutor Gaudencio G. Valdez, Jr.:

> Now from the place where you arrested [RAM], where did you bring these items identified as brown paper bag, sando bag and two (2) bricks?

IO1 Esmin:

> In our office, sir.

---

[65] *Lescano v. People*, *id*. at 475. *See* also PDEA Guidelines on the Implementing Rules and Regulations of Section 21 of Republic Act No. 9165 as Amended by Republic Act No. 10640, Section 1(A.1.5). Approved on May 28, 2015.

Q: Who was in possession of these items going to your office at the PDEA, San Fernando City, La Union?
A: Myself, sir.

Q: Was there anybody who took hold of these items on your way to your office?
A: None, sir.

Q: Okey (*sic*). How about [RAM], where did you bring this person?
A: Also at our office, sir.

Q: While at your office, what did you do to [RAM] inorder (*sic*) to identify him?
A: We conducted booking sheet, sir (*sic*).

x x x x x x x x x

Q: And, what's the real name of [RAM] that you come to know when you conduct this what we call now as booking sheet and arrest report?
A: Ryan Maralit y Casilang, sir.

Q: From what place did he come from?
A: From Barangay Pantal, Dagupan City, Pangasinan sir.

x x x x x x x x x

Q: What other documents did you prepare relative to the arrest of alyas [RAM] (*sic*)?
A: Laboratory request, sir for the marijuana.

Q: What else?
A: The request for physical examination sir of Ryan Maralit, sir.

x x x x x x x x x

Q: Now, the time that you were already at the PDEA office, who took custody of the bricks of marijuana, the paper bag and the sando bag?
A: Mine, sir (*sic*).

Q: Now, where did you bring the request for laboratory examination?
A: To the Chemist, we went to the PNP, Crime Laboratory, sir.

Q: Who was your chemist at the time?
A: Ms. Lei-Yen Valdez, sir.

x x x x x x x x x

Q: Now, from your possession of these items particularly of the paper bag, the two (2) bricks and the sando bag, to whom did you now give possession or pass possession of these items?
A: To our chemist, sir.

Q: Do you have any evidence to show to the Honorable Court that from your possession you handed or turned-over the possession of these items to your chemist Lei-Yen Valdez?
A: Yes, sir.

Q: What is that?
A: The request, we put the time.

Q: I am showing you back the request for laboratory examination, could you point us to that portion of the request that will prove that indeed there was this turn-over of the items to be examined from your possession to the possession of your chemist?
A: Yes, sir I am the one who delivered to our chemist, sir.

Q: And, who received it?
A: Ms. Lei-Yen Valdez, sir.[66]

PO2 Caalim, a member of the apprehending team, corroborated the testimony of IO1 Esmin.[67] The documentary evidence likewise indicates that IO1 Esmin delivered the Request for Laboratory Examination to Valdez in the evening of July 19, 2011.[68] Thus, the prosecution was able to establish that IO1 Esmin had custody of the drugs seized from Maralit from the time of his arrest, during their transit from the place of arrest to the PDEA office, and from the PDEA office until it was submitted to the Philippine National Police (PNP) Crime Laboratory.

---

[66] TSN, October 24, 2011, pp. 36-40.

[67] TSN, May 14, 2012, pp. 14-17.

[68] Records, p. 162; Exhibit "M".

The Fourth Link: the turnover and submission of the marked illegal drugs from the forensic chemist to the court.

For purposes of establishing the fourth link in the chain of custody, several matters were submitted for the admission of Maralit during trial. These include the fact that: (a) Valdez, the forensic chemist, personally received the Request for Laboratory Examination, together with the specimens enumerated in the request, from IO1 Esmin;[69] (b) samples from the specimens were examined for the presence of dangerous drugs, which was later confirmed as positive for *marijuana*;[70] (c) the specimens were taken from the two (2) bricks of *marijuana* marked as "A-2 ELE 19 July 2011" and "A-3 ELE 19 July 2011," both with signatures;[71] and (d) the items duly described and marked were in the custody of the forensic chemist until these were submitted to the RTC.[72]

By virtue of these admissions, there is no question as to the fourth link in the chain of custody. In his own testimony, IO1 Esmin identified the items brought before the trial court as the same items he seized from Maralit. He was able to identify the items by virtue of the markings placed on the bricks of *marijuana*.[73]

Considering that the prosecution was able to satisfactorily establish an unbroken chain of custody, the integrity and evidentiary value of the illegal drugs taken from Maralit were preserved. A review of the records and the evidence presented reveal that the RTC and the CA did not overlook factual matters that would warrant the reversal of their decisions. The Court

---

[69] TSN, October 10, 2011, p. 4.

[70] *Id*. at 5.

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

[72] *Id*. at 18-19.

[73] TSN, October 24, 2011, pp. 33-36.

therefore affirms the CA's decision to uphold the conviction of Maralit.

WHEREFORE, premises considered, the appeal is **DENIED**. The Decision dated December 22, 2016 of the Court of Appeals in CA-G.R. CR-HC No. 06464, which found accused Ryan Maralit *y* Casilang guilty beyond reasonable doubt of violation of Section 5, Article II of the Comprehensive Dangerous Drugs Act, is **AFFIRMED** in all respects.

SO ORDERED.

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

Caguioa, J., see dissenting opinion.

DISSENTING OPINION

CAGUIOA, *J.*:

I vote to acquit accused-appellant Ryan Maralit y Casilang.

Firstly, the prosecution failed to prove that there was a consideration for the alleged sale of dangerous drugs. Secondly, the apprehending officers failed to comply with the requirements of Republic Act No. (RA) 9165,[1] in the seizure and handling of the seized drugs. The prosecution also failed to present justifiable grounds for such non-compliance. In view thereof, the integrity and evidentiary value of the *corpus delicti* had been compromised.[2]

As summarized in the *ponencia*, the facts of the case are as follows:

---

[1] 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 (2002).

[2] See *People v. Alagarme*, 754 Phil. 449, 461 (2015) [Per *J.* Bersamin, First Division]; *People v. Sumili*, 753 Phil. 342, 352 (2015) [Per *J.* Perlas-Bernabe, First Division].

The prosecution alleged that on July 19, 2011, IA3 Dexter B. Asayco (IA3 Asayco), the team leader of the Philippine Drug Enforcement Agency-La Union Special Enforcement Team (PDEA-LUSET), received information from a confidential informant that an individual known as "RAM," who comes from Dagupan City, Pangasinan, was a known dealer of *marijuana*. The confidential informant described "RAM" as 5'11" in height, with an athletic built.

Following his receipt of this information, IA3 Asayco called for a briefing at around 9:00 a.m. regarding a planned entrapment operation against "RAM" later in the day. Soon after, at 9:15 a.m., IA3 Asayco coordinated with the team leader of the La Union Provincial Anti-Illegal Drug Special Operation Task Group (PAIDSOTG), Police Chief Inspector Erwin Dayag (PCI Dayag). In response, PCI Dayag instructed a member of his team, Police Officer 2 Froilan D. Caalim (PO2 Caalim), to proceed to the PDEA office for the briefing.

During the briefing, IA3 Asayco informed his team that the confidential informant gave "RAM" the cellphone number of the PDEA-LUSET, under the guise of an interested buyer of *marijuana* from Tarlac. "RAM," in several text messages, introduced himself as the cousin of the confidential informant and informed them that he had two (2) bricks of dried *marijuana* he can deliver to an interested buyer.

IA3 Asayco then passed the cellphone to IO1 Efren L. Esmin (IO1 Esmin), a member of his team, and tasked him to make arrangements with "RAM" for the delivery of the *marijuana*. IO1 Esmin exchanged text messages with "RAM," and thereafter, "RAM" agreed to deliver the two (2) bricks of *marijuana* for Php 5,300.00 each (or an aggregate amount of Php 10,600.00). They also agreed to meet at Barangay Damortis, Sto. Tomas, La Union at 6:00 p.m. that day, to complete the transaction.

IO1 Esmin and PO2 Caalim were designated as the arresting officers, while the rest of the team were tasked to secure the area. The briefing ended at around 12:00 noon, and after about an hour, the team proceeded to the Sto. Tomas, La Union Police Station using a private vehicle. The team arrived at the police station at around 2:30 p.m., where they passed the time before the designated meeting time with "RAM."

The team left the police station at around 4:30 p.m. and arrived at the target area by 5:00 p.m. Upon their arrival, the members of

the team surveyed the area and positioned themselves according to the plan. At about 5:30 p.m., IO1 Esmin received a text message from "RAM" telling him that he was on his way aboard a bus, and identified a certain store as their meeting place. IO1 Esmin then waited for "RAM" outside the said store, while PO2 Caalim positioned himself across the street.

At around 6:30 p.m., a man that matched the physical description of "RAM" approached IO1 Esmin. The man was holding a brown paper bag and he asked IO1 Esmin to confirm that he was the man from Tarlac. When IO1 Esmin answered in the affirmative, the man handed over the brown paper bag to him. IO1 Esmin opened the brown paper bag and inspected the contents. He found a white plastic bag inside the brown paper bag, which when opened, revealed two (2) bricks of *marijuana*.

When IO1 Esmin found that the brown paper bag contained substances suspected to be *marijuana*, he arrested the man later identified as the accused Maralit, and informed him of his constitutional rights. In the meantime, the other team members contacted two (2) barangay officials and a media representative to witness the marking and inventory of the illegal drugs. They were unable to obtain the presence of a Department of Justice (DOJ) representative allegedly because the entrapment operation ended after office hours, and there was no available DOJ representative beyond this time. IO1 Esmin then frisked Maralit for dangerous weapons and discovered a cellphone in his person. They did not find any messages or a SIM card on the cellphone.

The barangay officials and the media representative arrived at the scene about ten minutes after Maralit's arrest. IO1 Esmin proceeded to mark the evidence in the presence of the barangay officials, the media representative, and Maralit. The brown paper bag was marked as "A", the white plastic bag containing two (2) bricks of *marijuana* was marked as "A-1", the bricks of *marijuana* were marked as "A-2" and "A-3", respectively, and the cellphone was marked as "B". Each item was also marked with IO1 Esmin's initials ("ELE"), the date ("19 July 2011"), and IO1 Esmin's signature.

After the marking, IO1 Esmin made an inventory of the seized items. Photographs of the marking and inventory were also taken.

The team took Maralit and the seized items to the PDEA Regional Office 1 in Camp Diego Silang, Carlatan, San Fernando City, La

Union. IO1 Esmin then prepared the Booking Sheet and Arrest Report, as well as the Request for Laboratory Examination. The Request for Laboratory Examination was signed by IA3 Asayco, and later on delivered by IO1 Esmin to Lei-Yen Valdez (Valdez) of the PDEA Regional Office 1 Laboratory at 7:30 p.m. of the same day.[3]

No Sale of Dangerous Drugs

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.[4]

In the case at bar, it is readily apparent that no sale was consummated as the consideration, much less its receipt by the accused-appellant, were not established. As testified on by IO1 Efren L. Esmin (IO1 Esmin), the poseur-buyer:

COURT:

x x x x x x x x x

Q Are you telling me Mr. Witness that there was no exchange of goods in this case?

A There is but I did not give the payment, Your Honor.

Q The money was never handed to Ram?

A No, Your Honor.

x x x x x x x x x

Q What first did he do?

A He asked first if I am the man from Tarlac sir.

Q So he ask you if you were the man from Tarlac?

A Yes, sir.

---

[3] *Ponencia*, pp. 2-4.

[4] *People v. Sumili*, *supra* note 2, at 348.

Q And after you said yes, he already gave you the bag and the marijuana?

A Yes, sir.

Q Is that what you are trying to maintain to the Honorable Court?

A Yes, sir.

Q He did not ask for any other information regarding you?

A None sir.

Q He did not even ask for the money?

A No, sir.

Q Considering the illegal activity of this person are they not very cautious persons?

x x x x x x x x x

Q When Ram arrive and approach you and ask you if you were the person from Tarlac and you answered yes he immediately gave you the paper bag containing the two (2) bricks, is that what you are saying?

A Yes, Your Honor.

Q And he did not ask you to show him the money that you agreed upon?

A No, Your Honor because I already scrutinize the contents of that bag is marijuana I immediately arrested him Your Honor.

Q Before giving you the paper bag containing the bricks of marijuana did Ram ever ask you to show him the money?

A No, Your Honor.

Q So there was no time that you pulled out the money from your pocket?

A Yes, Your Honor.

Q But you have money with you when you were at the place?

A Yes, Your Honor.[5] (Emphasis supplied)

In the recent case of *People v. Bulawan*,[6] where the poseur-buyer did not bring the marked money to the buy-bust operation, the Court acquitted therein accused-appellant as the prosecution was not able to prove that there was even a consideration for the supposed sale of dangerous drugs. In *People v. Dasigan*,[7] where the marked money was shown to therein accused-appellant but was not actually given to her as she was immediately arrested when the *shabu* was handed over to the poseur-buyer, the Court acquitted said accused-appellant of the crime of illegal sale of dangerous drugs. Citing *People v. Hong Yen E*,[8] the Court held therein that it is material in illegal sale of dangerous drugs that the sale actually took place, and what consummates the buy-bust transaction is the delivery of the drugs to the poseur-buyer and, in turn, the seller's receipt of the marked money. While the parties may have agreed on the selling price of the *shabu* and delivery of payment was intended, these do not prove a consummated sale. Receipt of the marked money, whether done before delivery of the drugs or after, is required.[9]

Here, there is more reason to acquit accused-appellant of the crime of illegal sale of dangerous drugs as the prosecution failed to establish the identity and integrity of the *corpus delicti* of the offense charged.

In *People v. Torres*,[10] the Court held that the identity of the prohibited drug must be proved with moral certainty. It must also be established with the same degree of certitude that the substance bought or seized during the buy-bust operation is the same item offered in court as exhibit. In this regard, paragraph

---

[5] TSN, November 14, 2011, pp. 7, 10-12.

[6] 786 Phil. 655 (2016) [Per *J.* Perez, Third Division].

[7] 753 Phil. 288 (2015) [Per *J.* Perez, First Division].

[8] 701 Phil. 280, 285 (2013) [Per *J.* Abad, Third Division].

[9] *People v. Dasigan*, *supra* note 7, at 306.

[10] 710 Phil. 398, 408 (2013) [Per *J.* Perez, Second Division].

1, Section 21, Article II of RA 9165 (the chain of custody rule) provides for safeguards for the protection of the identity and integrity of dangerous drugs seized.

Requirements of Section 21 of RA 9165

Section 21(1)[11] of RA 9165 lays down the following mandatory requirements in the seizure and custody of seized or confiscated dangerous drugs and paraphernalia:

1. The seized items must be **physically inventoried** and **photographed**;
2. The initial custody requirements must be done **immediately after seizure** or confiscation;
3. The foregoing must be done **in the presence of**:
    a. The **accused** or his representative or counsel; **and**
    b. The **required witnesses**:
        i. a representative from the **media** and the **Department of Justice (DOJ)**, and any **elected public official** for offenses

---

[11] 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 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[.]

committed during the effectivity of RA 9165 and prior to its amendment by RA 10640[12];

ii. with an **elected public official** and a representative from the **National Prosecution Service of the DOJ or the media** for offenses committed during the effectivity of RA 10640.[13]

---

[12] 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.

[13] RA 10640 amended Section 21 of RA 9165, which now reads:

SEC. 21. *Custody and Disposition of Confiscated, Seized, and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/ Paraphernalia and/or Laboratory Equipment*. – The PDEA shall take charge and have custody of all dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment so confiscated, seized and/or surrendered, for proper disposition in the following manner:

(1) The apprehending team having initial custody and control of the dangerous drugs, controlled precursors and essential chemicals, instruments/paraphernalia and/or laboratory equipment shall, **immediately after seizure and confiscation, conduct a physical inventory of the seized items and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, with an elected public official and a representative of the National Prosecution Service or the media who shall be required to sign the copies of the inventory and be given a copy thereof**: *Provided*, That the physical inventory and photograph shall be conducted at the place where the search warrant is served; or at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizures: ***Provided, finally*, That noncompliance of these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures and custody over said items.** (Emphasis supplied)

Section 21(a), Article II of the Implementing Rules and Regulations (IRR) of RA 9165 filled in the details as to where the initial custody requirements should be done, *i.e.*, at the place of seizure, at the nearest police station or at the nearest office of the apprehending officer/team, *whichever is practicable*. Further, the following "saving clause" was added in cases where there is justifiable deviation from the mandatory procedure:

> **x x x Provided, further, that non-compliance with these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures of and custody over said items**[.][14] (Emphasis supplied)

In cases involving dangerous drugs, the drug itself constitutes the *corpus delicti* of the offense.[15] Thus, strict compliance with the requirements of Section 21 is mandatory in order to dispel any doubt as to the source, identity, and integrity of the seized drugs.[16] However, following the IRR of RA 9165, non-compliance may be condoned if the following requisites are availing: (1) the existence of "justifiable grounds" allowing departure from the rule on strict compliance; **and** (2) the integrity and the evidentiary value of the seized items are properly preserved by the apprehending team.

The apprehending officers failed to comply with the requirements under Section 21 of RA 9165

In this case, the following lapses of the buy-bust team are observed:

(1) The inventory was not conducted immediately after seizure and confiscation; and

---

[14] IRR of RA 9165, Sec. 21(a).

[15] *People v. Suan*, 627 Phil. 174, 179 and 188 (2010) [Per *J*. Del Castillo, Second Division].

[16] See *People v. Cayas*, 789 Phil. 70, 79-80 (2016) [Per *J*. Brion, Second Division]; see also *People v. Havana*, 776 Phil. 462, 475-476 (2016) [Per *J*. Del Castillo, Second Division].

(2) The inventory was not conducted in the presence of the required witnesses under RA 9165, namely a representative from the media and the DOJ and an elected public official.[17]

The testimony of IO1 Esmin, the poseur-buyer, showed that inventory was not conducted immediately after seizure and confiscation because the witnesses were merely called in after the buy-bust operation:

Q Okey. How about the paper bag containing this sando and the two (2) bricks, what did you do with that when you arrested this Ram?

A I confiscated, sir.

Q Where did you put now these items then?

A I waited for the witnesses and conducted markings.

Q Yes, while waiting for the witnesses, where did you put the paper bag sando bag and that of the two (2) bricks?

A At the table of that store, sir.

Q Where is that table located in relation to the store?

A Infront of the GMGK store, sir.

Q Okey. So, you waited for witnesses, who contacted the witnesses?

A My companion, sir.

Q Who were the witnesses who were contacted?

A Two (2) barangay officials in that place and the media, sir.

Q Who were these barangay officials that were contacted?

A I cannot remember their names, sir.

Q How about the media man?

---

[17] Since the offense was allegedly committed on July 19, 2011, RA 9165, the old law which requires the presence of three (3) insulating witnesses, applies in this case.

A In the person of Alhambra, sir.[18]

x x x x x x x x x

Q And Mr. Witness, the witnesses for the inventory of course did not know where the confiscated objects came from, is that correct?

COURT:

Witness may answer.

A Yes, sir.

Q Because when they arrived the confiscated objects were already on the table?

A Yes, sir. When they arrived the evidence was at the table then we explained to them where that item came from.[19] (Emphasis supplied)

The *ponencia* asseverates that the buy-bust team's failure to strictly observe Section 21 of RA 9165 was not fatal to the case because the police officers explained the absence of the DOJ representative, coupled with the fact that they endeavored to comply with the mandatory procedure by securing the presence of elected officials and a representative from the media[20]:

Q Why was there no DOJ representative?

A It's almost 6:00 o'clock sir, we didn't contacted any DOJ, sir.

Q Why did you decide not to contact anymore representative from the DOJ?

A Because their work is only at 5:00 o'clock, sir.

Q Now, how long a time did you wait for these witnesses?

A Only ten (10) minutes, sir.

---

[18] TSN, October 24, 2011, pp. 22-23.

[19] TSN, November 14, 2011, p. 15.

[20] *Ponencia*, p. 10.

Q Why did it take you only ten (10) minutes to wait for these witnesses?

A Because the local police helped us sir to contact these witnesses, sir.

Q Okey. So, upon the arrival of these witnesses to the place where the arrest was done, what did you do now with these items confiscated from Ram?

A I conducted markings of that evidence, sir.[21] (Emphasis supplied)

I disagree.

The buy-bust team had reasonable time to secure the presence of the representative from the DOJ. The records of the case show that as early as 1:00 o'clock in the afternoon or more than five (5) hours before the buy-bust operation, the members of the buy-bust team were on their way to the area where the transaction took place. **Just as the buy-bust team sought the assistance of the local police in securing the presence of the media representative and the elected public officials, the buy-bust team could have easily made arrangements to secure the presence of a DOJ representative, prior to the closing time of the local prosecution office.**

Furthermore, I submit that the phrase "immediately after seizure and confiscation" means that the physical inventory and photographing of the drugs were intended by the law to be made immediately after, or at the place of apprehension. And only if this is not practicable, then the inventory and photographing should be done as soon as the apprehending team reaches the nearest police station or the nearest office. There can be no other meaning to the plain import of this requirement. By the same token, however, this also means that the DOJ or media representative and the elected public official should already be physically present at the time of apprehension — a requirement that can easily be complied with by the buy-bust team considering

---

[21] TSN, October 24, 2011, p. 23.

that the buy-bust operation is, by its nature, a planned activity. Simply put, the apprehending team has enough time and opportunity to bring with them said witnesses.

In other words, while the physical inventory and photographing is allowed to be done "at the nearest police station or at the nearest office of the apprehending officer/team, whichever is applicable, in case of warrantless seizures," this does **not** dispense with the requirement of having the DOJ or media representative and the elected public official to be physically present at the time or near the place of apprehension. The reason is simple, it is at the time of arrest — or at the time of the drugs' "seizure and confiscation" — that the presence of the three witnesses is most needed, as it is their presence at the time of seizure and confiscation that would **insulate** against the police practice of planting evidence.

Using the language of the Court in *People v. Mendoza*,[22] without the ***insulating presence*** of the representative from the media or the DOJ and any elected public official during the seizure and marking of the 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 subject bricks that were the evidence of the *corpus delicti*, and thus adversely affected the trustworthiness of the incrimination of the accused.[23]

Thus, it is compliance with this most fundamental requirement — the presence of the "insulating" witnesses — that the pernicious practice of planting of evidence is greatly minimized if not foreclosed altogether. Stated otherwise, this is the first and foremost requirement provided by Section 21 to ensure the preservation of the "integrity and evidentiary value of the seized drugs" in a buy-bust situation whose nature, as already explained, is that it is a planned operation.

---

[22] 736 Phil. 749 (2014) [Per *J.* Bersamin, First Division].

[23] *Id.* at 764.

To restate, the presence of the three witnesses at the time of seizure and confiscation of the drugs must be secured and complied with at the time of the warrantless arrest; such that they are required to be at or near the intended place of the arrest so that they can be ready to witness the inventory and photographing of the seized and confiscated drugs "immediately after seizure and confiscation."

The practice of police operatives of not bringing to the intended place of arrest the DOJ or media representative and the elected public official, when they could easily do so — and "calling them in" to the police station to witness the inventory and photographing of the drugs only after the buy-bust operation has already been finished — does not achieve the purpose of the law in having these witnesses prevent or insulate against the planting of drugs. I believe the Court should send a strong message that faithful compliance with this most important requirement — bringing them a place near the intended place of arrest — should be strictly complied with.

Given the serious substantive and procedural lapses of the police officers, and considering that the *corpus delicti* has not been proved with unwavering exactitude, an essential element of the offense is missing, the conviction of the accused-appellant cannot be upheld.[24]

The presumption of innocence is overturned only when the prosecution has discharged its burden of proof, that is, proving the guilt of the accused beyond reasonable doubt[25] — to prove each and every element of the crime charged in the information to warrant a finding of guilt for that crime or for any other crime necessarily included therein.[26] To be sure, the concept

---

[24] See *People v. Gutierrez*, 614 Phil. 285, 293 (2009) [Per *J.* Carpio Morales, Second Division].

[25] RULES OF COURT, Rule 133, Sec. 2 provides that proof beyond reasonable doubt does not mean such a degree of proof as excluding possibility of error, produces absolute certainty. Only moral certainty is required, or that degree of proof which produces conviction in an unprejudiced mind.

[26] *People v. Belocura*, 693 Phil. 476, 503-504 (2012) [Per *J.* Bersamin, First Division].

of moral certainty is subjective. But, in our criminal justice system, **the overriding consideration is not whether the court doubts the innocence of the accused but whether it entertains reasonable doubt as to his guilt.**[27]

From the foregoing, all the evidence on record has not produced in my mind the conviction that accused-appellant Maralit, indeed committed the crime charged. Necessarily, accused-appellant Maralit's guilt was not proved beyond reasonable doubt.

SECOND DIVISION

[A.C. No. 9850. August 6, 2018]

ATTY. MA. ROWENA AMELIA V. GUANZON, *complainant, vs.* **ATTY. JOEL G. DOJILLO,** *respondent.*

SYLLABUS

1. LEGAL ETHICS; DISBARMENT AND DISCIPLINE OF ATTORNEYS; THE BURDEN OF PROOF IN DISBARMENT AND SUSPENSION PROCEEDINGS ALWAYS RESTS ON THE COMPLAINANT; CASE AT BAR.— As a rule, an attorney enjoys the legal presumption that he is innocent of the charges against him until the contrary is proved. The burden of proof in disbarment and suspension proceedings always rests on the complainant. Considering the serious consequence of 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 administrative penalty. Preponderance of evidence means that the evidence

---

[27] *People v. Pagaura*, 334 Phil. 683, 690 (1997) [Per *J.* Torres, Jr., Second Division]; *People v. Salangga*, 304 Phil. 571, 589 (1994) [Per *J.* Regalado, Second Division].

adduced by one side is, as a whole, superior to or has greater weight than that of the other. Thus, not only does the burden of proof that the respondent committed the act complained of rests on complainant, but the burden is not satisfied when complainant relies on mere assumptions and suspicions as evidence.

2. **ID.; CODE OF CONDUCT FOR COURT PERSONNEL (A.M. NO. 03-06-13-SC); CONFIDENTIALITY; THE CONFIDENTIALITY RULE REQUIRES ONLY THE PROCEEDINGS AGAINST ATTORNEYS BE KEPT PRIVATE AND CONFIDENTIAL WHICH DOES NOT EXTEND SO FAR THAT IT COVERS THE MERE EXISTENCE OR PENDENCY OF DISCIPLINARY ACTIONS; CASE AT BAR.—** It must also be pointed out that the confidentiality in disciplinary actions for lawyers is not absolute. It is not to be applied, under any circumstance, to all disclosures of any nature. The confidentiality rule requires only that proceedings against attorneys be kept private and confidential. The rule does not extend so far that it covers the mere existence or pendency of disciplinary actions. Thus, Atty. Dojillo, in attaching the subject documents to his client's Answer, did not *per se* violate the confidentiality rule as the purpose was to inform the court of its existence. Moreover, the subject documents become part of court records which are protected by A.M. No. 03-06-13-SC, x x x Thus, in view of the above-quoted policies, even if Atty. Dojillo attached said subject documents to Garcia's Answer and Counter-Affidavit filed before the courts, the same remains private and confidential. In fact, even after the decision, resolution, or order is made public, such information that a justice or judge uses in preparing a decision, resolution, or order shall remain confidential.

D E C I S I O N

PERALTA, *J.*:

Before us is a Complaint for Disbarment[1] dated September 25, 2007, filed by Atty. Ma. Rowena Amelia V. Guanzon (*Atty. Guanzon*) against Atty. Joel G. Dojillo (*Atty. Dojillo*), for violation of the Code of Professional Responsibility and the

[1] *Rollo*, pp. 3-6.

Rules of Court on confidentiality of documents and proceedings, gross misconduct, discourtesy, unfairness, malicious and unethical conduct towards a fellow lawyer.

The facts are as follows:

Complainant Atty. Guanzon was the counsel of Rosalie Jaype-Garcia (*Rosalie*) and her minor children when they filed a Petition for Temporary Protection Order under R.A. No. 9262, otherwise known as the *Anti-Violence against Women and their Children Act of 2004* against Jesus Chua Garcia (*Garcia*), Rosalie's husband. Later, the Regional Trial Court (*RTC*), Branch 41 of Bacolod City granted the temporary protection order (*TPO*) and financial support in favor of the clients of Atty. Guanzon.

Subsequently, before the Integrated Bar of the Philippines (*IBP*), Garcia then filed a disbarment complaint against herein complainant Atty. Guanzon docketed as CBD Case No. 06-1710 and Administrative Case No. 7176 for immorality, grave misconduct and conduct unbecoming of a member of the Bar. In the said disbarment complaint, Garcia submitted the affidavits of Sheryl Jamola, former "yaya" of their child and a certain Bernadette Yap (subject documents), who both alleged that Atty. Guanzon has "romantic and pecuniary interest" on Rosalie and the financial support which was ordered by the court.

On June 13, 2006, Atty. Guanzon filed a case for Damages against Garcia and docketed as Civil Case No. 802-C before the Regional Trial Court (*RTC*), Branch 60, Cadiz City. On September 27, 2006, Atty. Guanzon filed anew a case for Unjust Vexation against Garcia and docketed as Criminal Case No. 06-10-12695 before the MTCC, Branch 6, Bacolod City. On October 12, 2006, Atty. Guanzon filed a case for Grave Oral Defamation against Garcia and docketed as Criminal Case No. 06-10-12696 before the MTCC, Branch 5, Bacolod City.

In Garcia's Answer and Counter-Affidavits in the aforesaid three (3) complaints, respondent Atty. Dojillo as counsel of Garcia, attached the documents in the disbarment case*, i.e.,* the affidavits of Sheryl Jamola and Bernadette Yap against Atty. Guanzon. Thus, the filing of disbarment complaint against Atty. Dojillo for violating the Code of Professional Responsibility

and Section 18, Rule 139 on the confidentiality of disbarment proceedings and documents.

Atty. Guanzon lamented that Atty. Dojillo knew that there was a disbarment suit filed by his client against her, yet, with malice and bad faith, he submitted the subject documents as part of Garcia's Answer and Counter-Affidavits. By doing so, Atty. Dojillo caused the exposure of confidential records in the disbarment case which damaged her good reputation.

On September 27, 2007, the Integrated Bar of the Philippines-Commission on Bar Discipline (*IBP-CBD*) resolved to require Atty. Dojillo to submit his answer on the charges against him.[2]

In his Answer[3] dated October 26, 2007, Atty. Dojillo averred that he was compelled to attach the subject documents as part of Garcia's Answer and Counter-Affidavit to establish Atty. Guanzon's motive since he surmised that the three (3) cases filed by the latter against his client was merely an afterthought and her way of revenge for filing the disbarment complaint against her.

Atty. Dojillo further argued that Atty. Guanzon herself attached the very same subject documents in her Complaint for Contempt against him and his client Garcia, docketed as Civil Case No. 824-C before the RTC, Branch 60, Cadiz City. Atty. Dojillo asserted that if Atty. Guanzon's act of attaching the subject documents in the said contempt case is not a violation of the confidentiality rule, then he has not violated the same rule also when he attached the same subject documents in Garcia's defense. Finally, Atty. Dojillo maintained that there was neither malice nor willful violation of the Rules of Court on the confidentiality of disbarment proceedings and the Code of Professional Responsibility when he submitted the subject documents to the courts.

In its Report and Recommendation,[4] the IBP-CBD recommended that the instant disbarment complaint against Atty. Dojillo be dismissed for insufficiency of evidence.

---

[2] *Id.* at 43.

[3] *Id.* at 44-48.

[4] *Id.* at 221-224.

Upon investigation, the IBP-CBD was unconvinced that Atty. Dojillo is liable for violation of the Code of Professional Responsibility and the Rules of Court on confidentiality of disbarment proceedings. It observed that Atty. Dojillo, as counsel, merely found it necessary to submit said subject documents in order to defend his client by establishing Atty. Guanzon's real motive in filing the civil and criminal cases against Garcia.

The IBP-CBD also opined that Atty. Guanzon's successive filing of cases against Garcia gives the impression that she merely wanted to overwhelm Garcia with several cases and exhaust his resources in order to get back at him for filing the disbarment case against her.

It likewise noted that in the unjust vexation case which Atty. Guanzon filed against Garcia, entitled *People of the Philippines v. Jesus Chua Garcia*, docketed as Criminal Case No. 06-10-12695, the MTCC, Branch 6, Bacolod City, similarly believed that Atty. Guanzon filed several cases against Garcia merely in retaliation for the latter's filing of disbarment case against her. The IBP-CBD, thus, further recommended that Atty. Guanzon be censured for filing harassment and baseless suits.

In Resolution No. XVIII-2008-645[5] dated December 11, 2008, the IBP-Board of Governors adopted and approved with modification the report and recommendation of the Investigating Commissioner to dismiss the complaint against Atty. Dojillo due to insufficiency of evidence. It further resolved to warn Atty. Guanzon to refrain from filing groundless complaints.

Atty. Guanzon moved for reconsideration, but the same was denied by the IBP-Board of Governors in Resolution No. XX-2013-12[6] dated January 3, 2013. It likewise affirmed the Resolution No. XVIII-2008-645 dated December 11, 2008.[7]

---

[5] *Id*. at 220.

[6] *Id*. at 219.

[7] *Id*.

Thus, on April 10, 2013, Atty. Guanzon filed the instant petition for review of IBP Resolution No. XX-2013-12.[8]

RULING

The Court adopts the findings and recommendation of the Investigating Commissioner and the IBP Board of Governors.

In the instant case, we find that Atty. Guanzon failed to provide clear and convincing evidentiary support to his allegations against Atty. Dojillo. As the IBP aptly concluded, Atty. Dojillo cannot be faulted in attaching the disbarment records in his client's Answer and Counter-Affidavit in the three cases which Atty. Guanzon filed against his client as he found it necessary to establish factual basis on the motive of Atty. Guanzon in filing said cases against his client. In effect, Atty. Dojillo's act of attaching said subject documents to his client's Answer was to defend his client's cause which is his duty as counsel. In the absence of proof that Atty. Dojillo was motivated by malice or bad faith, or intent to harass or damage Atty. Guanzon's reputation, the instant disbarment complaint deserves no merit.

As a rule, an attorney enjoys the legal presumption that he is innocent of the charges against him until the contrary is proved. The burden of proof in disbarment and suspension proceedings always rests on the complainant. Considering the serious consequence of 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 administrative penalty. Preponderance of evidence means that the evidence adduced by one side is, as a whole, superior to or has greater weight than that of the other. Thus, not only does the burden of proof that the respondent committed the act complained of rests on complainant, but the burden is not satisfied when complainant relies on mere assumptions and suspicions as evidence.[9]

---

[8] *Id*. at 227-256.

[9] *Atty. De Jesus v. Atty. Risos-Vidal*, 730 Phil. 47, 53 (2014).

It must also be pointed out that the confidentiality in disciplinary actions for lawyers is not absolute. It is not to be applied, under any circumstance, to all disclosures of any nature.[10] The confidentiality rule requires only that proceedings against attorneys be kept private and confidential. The rule does not extend so far that it covers the mere existence or pendency of disciplinary actions.[11] Thus, Atty. Dojillo, in attaching the subject documents to his client's Answer, did not *per se* violate the confidentiality rule as the purpose was to inform the court of its existence.

Moreover, the subject documents become part of court records which are protected by A.M. No. 03-06-13-SC,[12] to wit:

CANON II

CONFIDENTIALITY

SECTION 1. Court personnel shall not disclose to any unauthorized person any confidential information acquired by them while employed in the Judiciary, whether such information came from authorized or unauthorized sources.

Confidential information means information not yet made a matter of public record relating to pending cases, as well as information not yet made public concerning the work of any justice or judge relating to pending cases, including notes, drafts, research papers, internal discussions, internal memoranda, records of internal deliberations, and similar papers.

The notes, drafts, research papers, internal discussions, internal memoranda, records of internal deliberations and similar papers that a justice or judge uses in preparing a decision, resolution or order shall remain confidential even after the decision, resolution or order is made public.

SEC. 2. Confidential information available to specific individuals by reason of statute, court rule or administrative policy shall be disclosed only by persons authorized to do so.

---

[10] *Atty. Harry Roque v. AFP*, G.R. No. 214986, February 15, 2017.

[11] *Id*.

[12] Code of Conduct for Court Personnel, April 23, 2004.

SEC. 3. Unless expressly authorized by the designated authority, court personnel shall not disclose confidential information given by litigants, witnesses or attorneys to justices, judges or any other person.

SEC. 4. Former court personnel shall not disclose confidential information acquired by them during their employment in the Judiciary when disclosure by current court personnel of the same information would constitute a breach of confidentiality. Any disclosure in violation of this provision shall constitute indirect contempt of court.[13]

Thus, in view of the above-quoted policies, even if Atty. Dojillo attached said subject documents to Garcia's Answer and Counter-Affidavit filed before the courts, the same remains private and confidential. In fact, even after the decision, resolution, or order is made public, such information that a justice or judge uses in preparing a decision, resolution, or order shall remain confidential.[14]

In fine, since Atty. Guanzon failed to discharge the *onus* of proving her charges against Atty. Dojillo by clear, convincing and satisfactory evidence, her present petition for review of the IBP's dismissal of her complaint must fail.

This Court will not hesitate to mete out proper disciplinary punishment upon lawyers who are shown to have failed to live up to their sworn duties, but neither will it hesitate to extend its protective arm to them when the accusation against them is not indubitably proven.[15]

WHEREFORE, the instant petition for review is **DENIED** for lack of merit.

SO ORDERED.

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

---

[13] Emphasis ours.

[14] *Id*.

[15] *Vide Garrido v. Atty. Quisumbing*, A.C. No. 3724, March 31, 1992, 207 SCRA 616, 621; *Martin v. Felix, Jr.*, 246 Phil. 113, 134 (1988); *Arcadio v. Atty. Ylagan*, 227 Phil. 157, 165 (1986).

FIRST DIVISION

[G.R. No. 197514. August 6, 2018]

RAMON R. VILLARAMA, *petitioner, vs.* **CRISANTOMAS D. GUNO, HON. JUDGE RAMON A. CRUZ, PRESIDING JUDGE OF THE REGIONAL TRIAL COURT OF QUEZON CITY, BRANCH 223, CARMELITA YADAO GUNO and PRUDENTIAL BANK AND TRUST COMPANY,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; SUMMONS; SERVICE IN PERSON ON DEFENDANT; WITHOUT A VALID SERVICE OF SUMMONS, THE COURT CANNOT ACQUIRE JURISDICTION OVER THE DEFENDANT, UNLESS THE DEFENDANT VOLUNTARILY SUBMITS TO IT.— Contrary to the ruling of the CA, We find that the RTC was correct in ruling that the alias summons served upon Carmelita is binding upon Crisantomas as well. There is no dispute that service of summons upon a defendant is imperative in order that a court may acquire jurisdiction over his person. In the case of *Manotoc vs. Court of Appeals*, The courts' jurisdiction over a defendant is founded on a valid service of summons. Without a valid service, the court cannot acquire jurisdiction over the defendant, unless the defendant voluntarily submits to it. The defendant must be properly apprised of a pending action against him and assured of the opportunity to present his defenses to the suit. Proper service of summons is used to protect one's right to due process. Here, as borne by the records, the alias summons was served upon Crisantomas and Carmelita at the 3rd Floor Quezon Hall, UP Diliman, Quezon City. The same was received albeit with the caveat that it was received only in so far as Carmelita was concerned. Carmelita then proceeded to participate in the proceedings and filed her answer where she raised that an earlier case involving the same documents, except for the amended trust agreement, had already been passed upon by the RTC, CA and SC in the case entitled "*Spouses Crisantomas and Carmelita Guno vs. Prudential Bank and Trust Co.*". Carmelita fully participated in the proceedings

of the instant case until the rendition of judgment on May 9, 2005.

2. ID.; EVIDENCE; DENIAL; BARE ALLEGATIONS, UNSUBSTANTIATED BY EVIDENCE, ARE NOT EQUIVALENT TO PROOF.— Crisantomas' denial is merely that — an unsubstantiated denial x x x. Apart from his denial, there was no additional evidence adduced in support of his claim that he was never served a copy of the summons, the decision of the case or the proceedings of the case. He actually never stated in his affidavit that he and Carmelita were separated in fact — this was merely stated in his motion as a footnote and that their marriage was eventually annulled. Curiously, however, no dates or evidence were ever supplied as to the exact date when they were separated in fact or when their eventual annulment took place. "It is basic in the rule of evidence that bare allegations, unsubstantiated by evidence, are not equivalent to proof. In short, mere allegations are not evidence."

3. ID.; CIVIL PROCEDURE; ACTIONS; AN ACTION SEEKING THE RESCISSION OF PROMISSORY NOTES, DEED OF SALE OF REAL PROPERTY, CANCELLATION OF TITLE WITH DAMAGES IN CONNECTION WITH PROMISSORY NOTES AND A DEED OF SALE OF REAL PROPERTY ENTERED INTO BY THE PARTIES IS AN ACTION *IN PERSONAM*.— An action *in personam* is an action against a person on the basis of his personal liability. The action brought by petitioner against Crisantomas and Carmelita, is without a doubt an action *in personam* as he sought the Rescission of Promissory Notes, Deed of Sale of Real Property, Cancellation of Title with Damages in connection with promissory notes and a deed of sale of real property entered into by Crisantomas and Carmelita.

4. CIVIL LAW; THE FAMILY CODE; ALL PROPERTY ACQUIRED DURING THE MARRIAGE, WHETHER THE ACQUISITION APPEARS TO HAVE BEEN MADE, CONTRACTED OR REGISTERED IN THE NAME OF ONE OR BOTH SPOUSES, IS PRESUMED TO BE CONJUGAL UNLESS THE CONTRARY IS PROVED; CREDITS LOANED DURING THE TIME OF THE MARRIAGE ARE PRESUMED TO BE CONJUGAL PROPERTY. — It appears from the records that Crisantomas

and Carmelita were married prior to the effectivity of the Family Code on August 3, 1988. As there is nothing on record evincing that they executed any marriage settlement, the regime of conjugal partnership of gains governs their property relations. All property acquired during the marriage is presumed to be conjugal unless the contrary is proved. Plainly, conjugal property has been defined in *Carandang vs. Heirs of Quirino A. de Guzman* as: All property acquired during the marriage, whether the acquisition appears to have been made, contracted or registered in the name of one or both spouses, is presumed to be conjugal unless the contrary is proved. Credits are personal properties, acquired during the time the loan or other credit transaction was executed. Therefore, credits loaned during the time of the marriage are presumed to be conjugal property.

5. REMEDIAL LAW; CIVIL PROCEDURE; SUMMONS; SERVICE IN PERSON ON DEFENDANT; THE HUSBAND AND THE WIFE ARE CO-DEFENDANTS IN AN ACTION *IN PERSONAM* OVER DOCUMENTS ENTERED INTO AS REGARDS THEIR CONJUGAL PROPERTY, AS THEY HAVE SAME INTERESTS THEREIN; THUS, THE RECEIPT BY THE WIFE OF THE SUMMON IS BINDING TO HER AS IT IS TO HER HUSBAND.— As the deed of sale and promissory notes were entered into during the course of their marriage, the obligations thereunder are subsumed under their conjugal partnership. Article 161(1) of the New Civil Code (now Article 121 [2 and 3] of the Family Code of the Philippines) provides: Art. 161. The conjugal partnership shall be liable for: (1) All debts and obligations contracted by the husband for the benefit of the conjugal partnership, and those contracted by the wife, also for the same purpose, in the cases where she may legally bind the partnership: x x x Considering that the obligation entered into by Crisantomas and Carmelita clearly appeared to be a transaction that their conjugal partnership is liable for, they were therefore correctly made co-defendants as they had the same interests therein. Also, as the case involves an action *in personam* over documents entered into as regards a conjugal property, We reiterate that We deem the receipt of Carmelita of the summons as binding to her as it is to Crisantomas.

APPEARANCES OF COUNSEL

Delos Angeles Aguirre Olaguer Salomon Fabro & Ojeda for petitioner.

BPI LADRD for Prudential Bank (Now BPI).

Generosa R. Jacinto Law Firm for Carmelita Yadao-Guno.

Camacho Law Office for Crisantomas Guno.

D E C I S I O N

TIJAM, *J.*:

Before Us is a Petition for Review on *Certiorari*[1], assailing the November 15, 2010 Decision[2] and June 29, 2011 Resolution[3] of the Court of Appeals (CA) in CA-G.R. SP No. 93271, which nullified the Regional Trial Court's (RTC's) order[4] of denial of Crisantomas D. Guno's (Crisantomas) Special Appearance with Motion to Vacate Judgment.[5]

Antecedent Facts

The case stemmed from the sale of a house and lot located at No. 19 Jose Escaller Street, Loyola Heights, Quezon City by the Sps. Marcial and Rita Reyes (Sps. Reyes) to Crisantomas (Crisantomas) and Carmelita (Carmelita) Yadao Guno (collectively referred to as Sps. Guno). By virtue of said sale, a deed of absolute sale was entered into by the parties and eighteen (18) promissory notes were issued by Sps. Guno in favor of the Sps. Reyes.[6]

---

[1] *Rollo*, pp. 11-32.

[2] Penned by Associate Justice Mario Y. Lopez, and concurred in by Associate Justices Magdangal M. De Leon and Amy C. Lazaro-Javier. *Id*. at 37-47.

[3] *Id*. at 48-50.

[4] *Id*. at 51-54.

[5] *Id*. at 76-87.

[6] *Id*. at 15, 37-38.

The Sps. Reyes thereafter executed a Trust Agreement with Prudential Bank and Trust Company (Prudential) covering the promissory notes, naming their children as beneficiaries of the trust. On May 22, 1990, the Sps. Reyes executed an Amended Trust Agreement naming Petitioner Ramon Villarama (petitioner Villarama) as an irrevocable beneficiary.[7]

The Sps. Guno obtained loans from Prudential and as security, executed promissory notes and real estate mortgages on the property. A Transfer Certificate of Title (TCT) No. 298124 was issued under their name.[8] The Sps. Guno, however, defaulted in their payment with Prudential, prompting the latter to foreclose the mortgage on the property and sell it in a public auction where it emerged as the highest bidder. It later consolidated its ownership over the property. A new title, TCT No. 355218 was issued in its name and it caused the eviction of the Sps. Guno and placed petitioner Villarama in possession of the property.[9]

On November 20, 1987, the Sps. Guno lodged a complaint for annulment of foreclosure sale and title against Prudential before the RTC-Branch 95 of Quezon City. The RTC nullified the foreclosure sale for failure to comply with the requirements in Section 3 of Act No. 3135, as amended, ordered the cancellation of Prudential's title and reinstated the Sps. Guno's title to the property. The CA and this Court affirmed the RTC decision which attained finality on March 11, 1997.[10]

Subsequently, on July 17, 1997, Villarama instituted a Complaint for Rescission of Promissory Notes, Deed of Sale of Real Property and Cancellation of Title with Damages against the Sps. Guno before the RTC-Branch 223, docketed as Civil Case No. Q-97-31700.[11]

---

[7] *Id*. at 38.

[8] *Id*.

[9] *Id*.

[10] *Id*. at 38-39.

[11] *Id*. at 39, 150-155.

On September 19, 1997, the RTC issued an Alias Summons to the Sps. Guno at the U.P. Law Center, Diliman, Quezon City (c/o 3rd Floor, Quezon Hall, U.P. Diliman, Quezon City).[12]

The Sheriffs Return dated September 24, 1997 reads:

I HEREBY CERTIFY that on the 23rd day of September, 1997, a copy of summons together with complaint and annexes dated September 19, 1997, addressed to SPS. CRISANTOMAS GUNO AND CARMELITA GUNO at the 3rd Floor Quezon Hall, UP Diliman, Quezon City, issued by the Honorable Court in connection with the above-entitled case was caused to be served by substituted service (Section 7, Rule 14) to defendant Carmelita Guno considering that defendant cannot be served within a reasonable time as provided for in Section 8, Rule 14 and that earnest efforts were exerted to serve summons personally to the defendants and service was effected by leaving a copy of summons at the defendant's office through Ms. Francesa V. Tadeo, a clerk at the defendant's office and a person with suitable age and discretion then working therein, who acknowledged receipt thereof only for defendant Carmelita Guno as evidenced by her signature located at the lower left portion of the original summons.

This is to further certify that summons to defendant Crisantomas D. Guno cannot be served considering that he does not reside nor hold office in the address provided in the complaint; hence, summons to defendant Crisantomas D. Guno is being returned UNSERVED.[13]

On March 6, 1998, the process server issued an Officer's Return stating:

THIS IS TO CERTIFY UNDER OATH that on March 6, 1998 th (sic) undersigned personally went at 408 P. Bernarld Street, Ugong, Pasig City to serve copies of herein Alias Summons with complaint and annexes attached thereto issued by the Court on February 24, 1998 in the above-entitled case upon defendant Crisantomas Guno. The Alias Summons with complaint and annexes was served to the above-mentioned defendant thru SUBSTITUTED SERVICE, by leaving copy (sic) of the Alias Summons with complaint and annexes

---

[12] *Id*.

[13] *Id*. at 99.

at the defendant's given address/residence with Ruby Guno Santiago (sister of defendant Crisantomas D. Guno), a person of suitable age and discretion then residing therein.

DULY SERVED THRU SUBSTITUTED SERVICE.[14]

On November 7, 1997, Carmelita filed her Answer with Counterclaim. Crisantomas, on the other hand, was declared in default for failure to file an answer.[15]

In a Decision dated May 9, 2005,[16] the RTC granted Villarama's complaint for rescission, thus:

WHEREFORE, on the basis of the foregoing, judgment is hereby entered declaring the following:

(1) The eighteen (18) promissory notes executed by the Defendant Sps. Crisantomas and Carmelita Guno dated February 21, 1983 as **RESCINDED**;

(2) The Deed of Sale of Real Property dated March 24, 1983 between Sps. Marcial and Rita V. Reyes and the Defendant Sps. Crisantomas and Carmelita Guno as likewise **RESCINDED**;

(3) The Register of Deeds of Quezon City is directed to **CANCEL** Transfer Certificate of Title No. 218121 registered under the name of the Sps. Crisantomas and Carmelita Guno;

(4) Directing the Defendants Sps. Crisantomas and Carmelita Guno to pay the plaintiff the following:

(a) Liquidated damages in the amount of fifty thousand pesos (₱50,000.00), Philippine Currency; and

(b) Attorney's fees in the amount of fifty thousand pesos (₱50,000.00) Philippine Currency;

(5) The Complaint in Intervention filed by Prudential Bank is ordered **DISMISSED**;

(6) All counterclaims are **DISMISSED**.

---

[14] *Id*. at 100.

[15] *Id*. at 40.

[16] *Id*. at 55-75.

No costs.

SO ORDERED.[17]

The said Decision was later appealed by both Carmelita and Prudential, which was docketed as CA-G.R. No. 87062.[18]

On July 6, 2005, Crisantomas filed a Special Appearance with Motion to Vacate Judgment[19] claiming that the decision was void for improper service of summons on his person.

In an Order dated November 16, 2005,[20] the RTC denied the motion. It ruled, thus:

> x x x. The general rule is that husband and wife shall sue or be sued jointly inasmuch as both are co-administrators of the community property under the absolute (sic) system of absolute community of property, as well as the conjugal partnership property. Defendant spouse Carmelita Yadao was served by substituted service on September 19, 1997, wherein the summons was directed to both spouses. Since Carmelita's marriage to Crisantomas had not yet been annulled when the present action was instituted, the service to her was binding as to Crisantomas and the qualification of the receipt made by a competent person in the regular place of business of Carmelita that the summons was "received for Atty. Yadao-Guno only" had no effect.
>
> x x x x x x x x x
>
> The Court notes that the first motion for extension of time to file answer/responsive pleading filed by defendant Carmelita Guno dated October 2, 1997 was furnished to Crisantomas Guno at the same address which reads: "c/o 3rd Floor, Quezon City Hall UP Diliman, Quezon City" in Carmelita's regular place of business, where she also was served alias summons. Soon after, in the second motion for extension of time to file answer/responsive pleading which she filed dated October 22, 1997, the same was furnished Crisantomas at the

---

[17] *Id*. at 74-75.

[18] *Id*. at 224.

[19] *Id*. at 76-87.

[20] *Id*. at 51-54.

address: "c/o 408 P. Bernald Street Ugong, Pasig City." In the subsequent pleadings she filed through her counsel, she likewise copy furnished her husband at the second address.

Assuming *arguendo* that service of summons to the husband must be separate from service to the wife, the records of the case show that service was properly made to defendant Crisantomas since the Court could find no possible explanation as to why defendant Carmelita will use an address where her husband could not be found nor deliberately lie about the residence of her husband, assuming that they were, at that time summons was supposed to be served, already *de facto* separated. To bolster the conclusion that Crisantomas truly resided in the abovementioned address, a certain Cris Santiago received an order of the court in behalf of Crisantomas at 408 P. Bernald Street, Ugong, (sic) sister named Ruby Guno Santiago at the same address on March 6, 1998. Quite obviously, defendant Crisantomas is estopped from claiming the contrary, and that his affidavit stating that he never resided or lived at 408 P. Bernald Street, Ugong, Pasig City was done as a mere afterthought to escape the liability imposed by the Court in the decision dated May 9, 2005. Thus, the said affidavit and the motion to vacate judgment filed by Crisantomas should not be given credence by this Court.[21]

Crisantomas then questioned the said order before the CA which ruled in his favor in the assailed Decision. The CA ruled that there was no valid service of summons on Crisantomas. It found that the return did not state that prompt and personal service on Crisantomas was rendered impossible and neither was it shown that efforts were made to find Crisantomas personally and that the said efforts failed. It further ruled that being in derogation of the usual method of service, strict compliance with the indispensable requirements for the substituted service of summons is mandated.[22]

Villarama now comes before Us, positing the sole issue of whether or not the summons was validly served on Crisantomas in Civil Case No. Q-97-31700. He insists that the RTC was in the best position to determine the veracity of the parties'

---

[21] *Id*. at 52-54.

[22] *Id*. at 46.

allegations. He points out that the only evidence submitted by Crisantomas in support of the allegations in his motion was his affidavit denying receipt and service of the summons. He asseverates that it was incumbent upon Crisantomas to prove the fact, or details of his separation from Carmelita; and that Crisantomas did not allege any meritorious defense which is a requirement before the relief sought can be granted. Furthermore, he insists that the requirements of substituted service have been complied with.

Respondent Prudential echoes Villarama's arguments. It argued that considering the Sps. Guno were still married to each other at the time of the complaint, the nullification of the proceedings to allow Crisantomas to prosecute his separate claim, which appears to be in conjunction with Carmelita's arguments, would serve no other purpose than to delay the resolution of the case.

Carmelita submits that the CA decision is the correct application of law and prevailing jurisprudence. She stresses that Crisantomas did not and never held office in the same address as she did, and that long before the filing of the complaint, they have been separated in fact.

Crisantomas insists that the fatally deficient Officer's Return cannot possibly establish a valid substituted Service of Summons and that our laws do not support Villarama's "no need for service on husband after service of summons on wife" argument.

Villarama submits in his reply that the CA decision in Carmelita's and Prudential's appeal (CA-G.R. No. 87062), which affirmed the RTC decision with modification, had already attained finality. He also raises that the RTC issued an Order dated November 28, 2016,[23] granting the motion for issuance of a writ of execution ordering Carmelita to pay Prudential the unpaid principal obligation plus accrued interests, penalty and attorney's fees. Villarama posits that if the herein assailed CA decision would not be reversed, he would be constrained to

---

[23] *Id*. at 231-234.

file anew a case for rescission against Crisantomas who has no better defense than Carmelita.

The Court's Ruling

We find merit in the petition for review.

Contrary to the ruling of the CA, We find that the RTC was correct in ruling that the alias summons served upon Carmelita is binding upon Crisantomas as well.

There is no dispute that service of summons upon a defendant is imperative in order that a court may acquire jurisdiction over his person. In the case of *Manotoc vs. Court of Appeals*,[24]

> The courts' jurisdiction over a defendant is founded on a valid service of summons. Without a valid service, the court cannot acquire jurisdiction over the defendant, unless the defendant voluntarily submits to it. The defendant must be properly apprised of a pending action against him and assured of the opportunity to present his defenses to the suit. Proper service of summons is used to protect one's right to due process.[25]

Here, as borne by the records, the alias summons was served upon Crisantomas and Carmelita at the 3rd floor Quezon Hall, UP Diliman, Quezon City. The same was received albeit with the caveat that it was received only in so far as Carmelita was concerned. Carmelita then proceeded to participate in the proceedings and filed her answer where she raised that an earlier case involving the same documents, except for the amended trust agreement, had already been passed upon by the RTC, CA and SC in the case entitled "*Spouses Crisantomas and Carmelita Guno vs. Prudential Bank and Trust Co.*". Carmelita fully participated in the proceedings of the instant case until the rendition of judgment on May 9, 2005.

Crisantomas, on the basis of an affidavit denying receipt of summons, would have Us rule that jurisdiction was not acquired over his person. We do not agree.

---

[24] 530 Phil. 454 (2006).

[25] *Id*. at 462.

Crisantomas' denial is merely that — an unsubstantiated denial:

I, CRISANTOMAS GUNO, Filipino, of legal age, single, residing at Unit No. 9, Goldmine Townhomes, Melissa Drive, Xavierville I, Loyola Heights, Quezon City, subscribing under oath, hereby depose and state that:

1. I have **never** resided and/or lived at No. 408 P. Bernald Street., (sic), Ugong, Pasig City;

2. I was **never** served a copy of the summons in respect to the case entitled Ramon Villarama vs. Sps. Crisantomas D. Guno et al. pending before QC RTC Br. 223, docketed therein as Civil Case No. Q-97-31700;

3. I **never** received a copy of the summons in respect to the above-mentioned case from the personnel of said court or from any person for that matter;

4. From the inception of said case until a decision was rendered, I was **never** notified of the proceedings of the said case;

5. In fact, I was **not** even furnished a copy of the Decision rendered in the said case;

6. I execute this affidavit to attest to the truth of the foregoing and for whatever legal purpose the same may serve;[26]

Apart from his denial, there was no additional evidence adduced in support of his claim that he was never served a copy of the summons, the decision of the case or the proceedings of the case. He actually never stated in his affidavit that he and Carmelita were separated in fact — this was merely stated in his motion as a footnote[27] and that their marriage was eventually annulled. Curiously, however, no dates or evidence were ever supplied as to the exact date when they were separated in fact or when their eventual annulment took place. "It is basic in the rule of evidence that bare allegations, unsubstantiated by

---

[26] *Rollo*, p. 88.

[27] *Id*. at 77; *See* footnote 1: "The other defendant in the above-captioned case, Carmelita Yadao-Guno, was the previous spouse of herein GUNO. They have been separated in fact even before the inception of the instant case. Their marriage was eventually annulled."

evidence, are not equivalent to proof. In short, mere allegations are not evidence."[28]

A review of the records will easily reveal that under no instance was it ever stated, even by Carmelita, during the proceedings before the RTC, that she and Crisantomas were separated in fact or their marriage ties have been severed, by one way or another. She in fact admitted in her answer: "*However, she admits the allegation contained in par. 1.02 insofar as her personal circumstances*."[29] Par. 1.02 of the Complaint indicates: "*Defendants Sps. Crisantomas D. Guno and Carmelita Y. Guno, are both of legal age, Filipinos, with postal address at UP Law Center, Diliman Quezon City, where they may be served with summons and other court processes*."[30]

The CA in fact noted: "*Indeed, the records are barren of any indication or positive declaration that Carmelita and petitioner were already separated in fact*."[31] It was only in her Comment[32] before Us did Carmelita echo that she and Crisantomas have been separated: "*3. Private respondent Yadao is not in a position to comment on the alleged impropriety of the services of summons on private respondent Crisantomas D. Guno. As the records of the case will readily show, private respondents Yadao and Crisantomas D. Guno, prior to and at the time of the filing of the Complaint subject of the instant Petition, had long been separated in fact*."[33] Like Crisantomas, however, no evidence apart from the said statement was proffered by Carmelita.

---

[28] *GSIS v. Prudential Guarantee and Assurance, Inc., et al.*, 721 Phil. 740, 753-754 (2013).

[29] *Rollo*, p. 89.

[30] *Id*. at 150.

[31] *Id*. at 42.

[32] *Id*. at 128-132.

[33] *Id*. at 130.

An action *in personam* is an action against a person on the basis of his personal liability.[34] The action brought by petitioner against Crisantomas and Carmelita, is without a doubt an action *in personam* as he sought the Rescission of Promissory Notes, Deed of Sale of Real Property, Cancellation of Title with Damages in connection with promissory notes and a deed of sale of real property entered into by Crisantomas and Carmelita.

It appears from the records that Crisantomas and Carmelita were married prior to the effectivity of the Family Code on August 3, 1988. As there is nothing on record evincing that they executed any marriage settlement, the regime of conjugal partnership of gains governs their property relations.[35] All property acquired during the marriage is presumed to be conjugal unless the contrary is proved.[36]

Plainly, conjugal property has been defined in *Carandang vs. Heirs of Quirino A. de Guzman*[37] as:

> All property acquired during the marriage, whether the acquisition appears to have been made, contracted or registered in the name of one or both spouses, is presumed to be conjugal unless the contrary is proved. Credits are personal properties, acquired during the time the loan or other credit transaction was executed. Therefore, credits loaned during the time of the marriage are presumed to be conjugal property.[38]

As the deed of sale and promissory notes were entered into during the course of their marriage, the obligations thereunder are subsumed under their conjugal partnership. Article 161(1) of the New Civil Code (now Article 121 [2 and 3] of the Family Code of the Philippines) provides:

---

[34] *Perkin Elmer Singapore PTE Ltd. v. Dakila Trading Corp.*, 556 Phil. 822, 839 (2007).

[35] Civil Code, Article 118.

[36] *Id*., Article 160; *See* also Family Code, Article 116.

[37] 538 Phil. 319 (2006).

[38] *Id*. at 334-335.

Art. 161. The conjugal partnership shall be liable for:

(1) All debts and obligations contracted by the husband for the benefit of the conjugal partnership, and those contracted by the wife, also for the same purpose, in the cases where she may legally bind the partnership:

x x x x x x x x x

Considering that the obligation entered into by Crisantomas and Carmelita clearly appeared to be a transaction that their conjugal partnership is liable for, they were therefore correctly made co-defendants as they had the same interests therein. Also, as the case involves an action *in personam* over documents entered into as regards a conjugal property, We reiterate that We deem the receipt of Carmelita of the summons as binding to her as it is to Crisantomas.

The core of the service of summons, which is the protection of the right to due process[39], cannot be said to have been transgressed in this case. Crisantomas failed to substantiate his claims that he failed to receive summons or that he was never notified of the proceedings. We further stress that Carmelita was able to actively participate in the proceedings and litigate their interests — which are undeniably the same, and that Crisantomas was unable to prove that he and Carmelita were already separated in fact or their marriage was otherwise annulled at that time. As correctly noted by the RTC, the notation that the summons was "received for Atty. Yadao-Guno only" had no effect as its receipt nevertheless bound Crisantomas.

The Court's disquisition in *Montefalcon, et al. vs. Vasquez*[40] is telling:

x x x A plaintiff is merely required to know the defendant's residence, office or regular business place. **He need not know where a resident defendant actually is at the very moment of filing suit. He is not even duty-bound to ensure that the person upon whom**

---

[39] See *Biaco v. Phil. Countryside Rural Bank*, 544 Phil. 45 (2007).

[40] 577 Phil. 383 (2008).

service was actually made delivers the summons to the defendant or informs him about it. The law presumes that for him. It is immaterial that defendant does not receive actual notice.[41] (Emphasis Ours)

Indeed, given the peculiar circumstances of this case, to rule otherwise would serve nothing but to delay a case that has already been in litigation since the 1990's. Villarama would be constrained to file anew a case for rescission against Crisantomas who is in no better position than Carmelita, who had already thoroughly threshed out their interests in the proceedings below.

Considering that the alias summons served upon Carmelita is deemed service upon and binding on Crisantomas, We no longer deem it necessary to discuss the correctness and ramifications of the substituted service upon him.

WHEREFORE, the Petition for Review on *Certiorari* is **GRANTED**. The Court of Appeals' Decision dated November 15, 2010 and Resolution dated June 29, 2011 are hereby **REVERSED**. The Motion to Vacate Judgment, dated July 6, 2005, filed by defendant Crisantomas Guno is hereby **DENIED**.

SO ORDERED.

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

---

[41] *Id.* at 395.

[*] Designated Acting Chairperson of the First Division per Special Order No. 2559 dated May 11, 2018.

[**] Designated Additional Member per Raffle dated April 25, 2018 vice Associate Justice Francis H. Jardeleza.

[***] Designated Acting Member per Special Order No. 2560-F dated August 8, 2018 vice Associate Justice Alexander G. Gesmundo.

SECOND DIVISION

[G.R. No. 212987. August 6, 2018]

ELIZABETH M. LANSANGAN, *petitioner, vs.* **ANTONIO S. CAISIP**, *respondent.*

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; ACTIONS; MOTION TO DISMISS; AS A RULE, THE GROUNDS THAT MAY BE RAISED IN A MOTION TO DISMISS MUST BE INVOKED BY THE PARTY-LITIGANT AT THE EARLIEST OPPORTUNITY, AS IN A MOTION TO DISMISS OR IN THE ANSWER, OTHERWISE; SUCH GROUNDS ARE DEEMED WAIVED; EXCEPTION.—** Section 1, Rule 16 of the Rules of Court provides for the grounds that may be raised in a motion to dismiss a complaint, x x x As a general rule, the listed grounds must be invoked by the party-litigant at the earliest opportunity, as in a motion to dismiss or in the answer; otherwise, such grounds are deemed waived. As an exception, however, the courts may order the *motu proprio* dismissal of a case on the grounds of lack of jurisdiction over the subject matter, *litis pendentia, res judicata,* and prescription of action, pursuant to Section 1, Rule 9 of the Rules of Court.

2. **ID.; ID.; ID.; ID.; THE NON-REFERRAL OF A CASE FOR BARANGAY CONCILIATION WHEN SO REQUIRED UNDER THE LAW IS NOT JURISDICTIONAL IN NATURE, AND MAY THEREFORE BE DEEMED WAIVED IF NOT RAISED SEASONABLY IN A MOTION TO DISMISS OR IN A RESPONSIVE PLEADING; CASE AT BAR.—** Under Section 409 (a) of RA 7160, "[d]isputes between persons actually residing in the same barangay [(as in the parties in this case)] shall be brought for amicable settlement before the *lupon* of said barangay." Lifted from Presidential Decree No. 1508, otherwise known as the "*Katarungang Pambarangay* Law," the primordial objective of a prior barangay conciliation is to reduce the number of court litigations and prevent the deterioration of the quality of justice which has been brought by the indiscriminate filing of cases in courts.

> Subject to certain exemptions, a party's failure to comply with this requirement before filing a case in court would render his complaint dismissible on the ground of failure to comply with a condition precedent, pursuant to Section 1 (j), Rule 16 of the Rules of Court. Notably, in *Aquino v. Aure,* the Court clarified that ***such conciliation process is not a jurisdictional requirement, such that non-compliance therewith cannot affect the jurisdiction which the court has otherwise acquired over the subject matter or over the person of the defendant,*** x x x Similarly, in *Banares II v. Balising,* it was mentioned that the non-referral of a case for barangay conciliation when so required under the law is ***not jurisdictional in nature,*** and may therefore be deemed waived if not raised seasonably in a motion to dismiss or in a responsive pleading. Here, the ground of non-compliance with a condition precedent, *i.e.,* undergoing prior barangay conciliation proceedings, was not invoked at the earliest opportunity, as in fact, respondent was declared in default for failure to file a responsive pleading despite due notice. Therefore, it was grave error for the courts *a quo* to order the dismissal of petitioner's complaint on said ground. Hence, in order to rectify the situation, the Court finds it proper that the case be reinstated and remanded to the MCTC, which is the court of origin, for its resolution on the merits.

APPEARANCES OF COUNSEL

Ramon D. Facun for petitioner.

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 January 23, 2014 and the Resolution[3] dated

---

[1] *Rollo*, pp. 12-27.

[2] *Id*. at 103-114. Penned by Associate Justice Normandie B. Pizarro with Presiding Justice (now a member of this Court) Andres B. Reyes, Jr. and Associate Justice Manuel M. Barrios, concurring.

[3] *Id*. at 123-124.

May 20, 2014 of the Court of Appeals (CA) in CA-G.R. SP No. 129824, which affirmed the Decision[4] dated January 31, 2013 and the Order[5] dated April 2, 2013 of the Regional Trial Court of Capas, Tarlac, Branch 66 (RTC) in Special Civil Action Case No. 58-C-12, upholding the *motu proprio* dismissal of petitioner Elizabeth M. Lansangan's (petitioner) complaint for failure to refer the matter for barangay conciliation proceedings before recourse to the courts.

The Facts

This case stemmed from a Complaint for Sum of Money and Damages[6] dated June 27, 2012 filed before the 2nd Municipal Circuit Trial Court of Capas-Bamban-Concepcion, Tarlac (MCTC) by petitioner against respondent Antonio Caisip (respondent), docketed as Civil Case No. 2738-12.

Petitioner, a resident of Camanse Street, Purok 4, Rose Park, Concepcion, Tarlac, alleged that respondent, a resident of Barangay Sto. Niño, Concepcion, Tarlac, executed a promissory note[7] in her favor in the amount of €2,522.00 payable in three (3) installments. As respondent defaulted in his obligation under the promissory note and refused to heed petitioner's demands to comply therewith, the latter was constrained to file the said complaint.[8]

Since respondent failed to file any responsive pleading, petitioner moved to declare him in default and for the MCTC to render judgment,[9] which was granted in an Order[10] dated August 28, 2012. Accordingly, the case was submitted for resolution.[11]

---

[4] *Id*. at 80-81. Penned by Judge Alipio C. Yumul.

[5] *Id*. at 89-90.

[6] *Id*. at 66-67.

[7] *Id*. at 69-70.

[8] See *id*. at 66 and 104.

[9] See Motion to Declare Defendant in Default and Motion to Render Judgment dated July 17, 2012; *id*. at 73-74.

[10] *Id*. at 41. Penned by Presiding Judge Antonio M. Pangan.

[11] *Id*. See also *id*. at 105.

The MCTC Ruling

In an Order[12] dated September 3, 2012, the MCTC *motu proprio* dismissed without prejudice the complaint for failure to comply with the provisions of Republic Act No. (RA) 7160,[13] otherwise known as "The Local Government Code of 1991," which requires the prior referral of the dispute between residents of the same barangay for conciliation proceedings before the filing of a case in court.[14]

Petitioner moved for reconsideration,[15] which was, however, denied in an Order[16] dated September 25, 2012. In the said Order, the MCTC opined that petitioner's failure to refer the matter for barangay conciliation proceedings rendered it without jurisdiction to rule on her complaint.[17] Aggrieved, she filed a petition for *certiorari*[18] before the RTC.

The RTC Ruling

In a Decision[19] dated January 31, 2013, the RTC upheld the *motu proprio* dismissal of petitioner's complaint. It ruled that prior barangay conciliation proceedings before the filing of the instant complaint is jurisdictional; thus, non-compliance therewith warrants its dismissal.[20]

---

[12] *Id*. at 42.

[13] Entitled "AN ACT PROVIDING FOR A LOCAL GOVERNMENT CODE OF 1991" (January 1, 1992).

[14] *Rollo*, p. 42.

[15] See motion for reconsideration dated September 6, 2012; *id*. at 44-46.

[16] *Id*. at 47-48.

[17] See *id*.

[18] Dated November 3, 2012. *Id*. at 50-60.

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

[20] See *id*. at 81.

Petitioner moved for reconsideration,[21] but the same was denied in an Order[22] dated April 2, 2013. Undeterred, she appealed[23] to the CA.

The CA Ruling

In a Decision[24] dated January 23, 2014, the CA affirmed the RTC Ruling. It held that since the party-litigants are both residents of Concepcion, Tarlac, petitioner's complaint should have undergone the mandatory barangay conciliation proceedings before raising the matter before the courts.[25]

Undaunted, Elizabeth moved for reconsideration,[26] which was denied in a Resolution[27] dated May 20, 2014; 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 *motu proprio* dismissal of petitioner's complaint.

The Court's Ruling

The petition is meritorious.

Section 1, Rule 16 of the Rules of Court provides for the grounds that may be raised in a motion to dismiss a complaint, to wit:

Section 1. *Grounds*. — Within the time for but before filing the answer to the complaint or pleading asserting a claim, a motion to dismiss may be made on any of the following grounds:

---

[21] See motion for reconsideration dated February 16, 2013; *id*. at 82-88.

[22] *Id*. at 89-90.

[23] See Appeal Memorandum for the Petitioner-Appellant dated June 12, 2013; *id*. at 91-100.

[24] *Id*. at 103-114.

[25] See *id*. at 108-110.

[26] See motion for reconsideration dated February 14, 2014; *id*. at 116-120.

[27] *Id*. at 123-124.

(a) That the court has no jurisdiction over the person of the defending party;

(b) That the court has no jurisdiction over the subject matter of the claim;

(c) That venue is improperly laid;

(d) That the plaintiff has no legal capacity to sue;

(e) That there is another action pending between the same parties for the same cause;

(f) That the cause of action is barred by a prior judgment or by the statute of limitations;

(g) That the pleading asserting the claim states no cause of action;

(h) That the claim or demand set forth in the plaintiff's pleading has been paid, waived, abandoned, or otherwise extinguished;

(i) That the claim on which the action is founded is unenforceable under the provisions of the statute of frauds; and

(j) That a condition precedent for filing the claim has not been complied with. (Emphasis and underscoring supplied)

As a general rule, the above-listed grounds must be invoked by the party-litigant at the earliest opportunity, as in a motion to dismiss or in the answer; otherwise, such grounds are deemed waived. As an exception, however, the courts may order the *motu proprio* dismissal of a case on the grounds of lack of jurisdiction over the subject matter, *litis pendentia*, *res judicata*, and prescription of action, pursuant to Section 1, Rule 9 of the Rules of Court, which reads:

Section 1. *Defenses and objections not pleaded.* — Defenses and objections not pleaded either in a motion to dismiss or in the answer are deemed waived. However, when it appears from the pleadings or the evidence on record that the court has no jurisdiction over the subject matter, that there is another action pending between the same parties for the same cause, or that the action is barred by a prior judgment or by statute of limitations, the court shall dismiss the claim.

In this case, the *motu proprio* dismissal of the complaint was anchored on petitioner's failure to refer the matter for

barangay conciliation proceedings which in certain instances, is a condition precedent before filing a case in court. As Section 412 (a) of RA 7160 provides, the conduct of barangay conciliation proceedings is a pre-condition to the filing of a complaint involving any matter within the authority of the *lupon*, to wit:

> Section 412. *Conciliation.* — (a) *Pre-condition to Filing of Complaint in Court.* — No complaint, petition, action, or proceeding involving any matter within the authority of the *lupon* shall be filed or instituted directly in court or any other government office for adjudication, unless there has been a confrontation between the parties before the *lupon* chairman or the *pangkat*, and that no conciliation or settlement has been reached as certified by the *lupon* secretary or *pangkat* secretary as attested to by the *lupon* or *pangkat* chairman or unless the settlement has been repudiated by the parties thereto.

Under Section 409 (a) of RA 7160, "[d]isputes between persons actually residing in the same barangay [(as in the parties in this case)] shall be brought for amicable settlement before the *lupon* of said barangay."

Lifted from Presidential Decree No. 1508,[28] otherwise known as the "*Katarungang Pambarangay* Law," the primordial objective of a prior barangay conciliation is to reduce the number of court litigations and prevent the deterioration of the quality of justice which has been brought by the indiscriminate filing of cases in courts. Subject to certain exemptions,[29] a party's failure to comply with this requirement before filing a case in court would render his complaint dismissible on the ground of failure to comply with a condition precedent, pursuant to Section 1 (j), Rule 16 of the Rules of Court.[30]

---

[28] Entitled "ESTABLISHING A SYSTEM OF AMICABLY SETTLING DISPUTES AT THE BARANGAY LEVEL," approved on June 11, 1978.

[29] See Sections 408 and 412 (b) of RA 7160.

[30] See *Aquino v. Aure*, 569 Phil. 403 (2008).

Notably, in *Aquino v. Aure*,[31] the Court clarified that ***such conciliation process is not a jurisdictional requirement, such that non-compliance therewith cannot affect the jurisdiction which the court has otherwise acquired over the subject matter or over the person of the defendant***,[32] *viz.*:

> Ordinarily, non-compliance with the condition precedent [of prior barangay conciliation] could affect the sufficiency of the plaintiff's cause of action and make his complaint vulnerable to dismissal on [the] ground of lack of cause of action or prematurity; but the same would not prevent a court of competent jurisdiction from exercising its power of adjudication over the case before it, where the defendants, as in this case, failed to object to such exercise of jurisdiction in their answer and even during the entire proceedings *a quo*.[33]

Similarly, in *Banares II v. Balising*,[34] it was mentioned that the non-referral of a case for barangay conciliation when so required under the law is ***not jurisdictional in nature***, and may therefore be deemed waived if not raised seasonably in a motion to dismiss or in a responsive pleading.[35]

Here, the ground of non-compliance with a condition precedent, *i.e.*, undergoing prior barangay conciliation proceedings, was not invoked at the earliest opportunity, as in fact, respondent was declared in default for failure to file a responsive pleading despite due notice. Therefore, it was grave error for the courts *a quo* to order the dismissal of petitioner's complaint on said ground. Hence, in order to rectify the situation, the Court finds it proper that the case be reinstated and remanded to the MCTC, which is the court of origin, for its resolution on the merits.

---

[31] *Id*.

[32] *Id*. at 416, citing *Presco v. CA*, 270 Phil. 322, 332 (1990).

[33] *Id*. at 417, citing *Royales v. Intermediate Appellate Court,* 212 Phil. 432, 435-436 (1984).

[34] 384 Phil. 567 (2000).

[35] *Id*. at 583 (2000); citations omitted.

WHEREFORE, the petition is **GRANTED**. The Decision dated January 23, 2014 and the Resolution dated May 20, 2014 of the Court of Appeals in CA-G.R. SP No. 129824 are hereby **REVERSED** and **SET ASIDE**. Accordingly, Civil Case No. 2738-12 is hereby **REINSTATED** and **REMANDED** to the 2nd Municipal Circuit Trial Court of Capas-Bamban-Concepcion, Tarlac for resolution on the merits, with reasonable dispatch.

SO ORDERED.

Carpio (*Chairperson*), *Leonardo-de Castro, Peralta,* and *Caguioa, JJ.,* concur.

FIRST DIVISION

[G.R. No. 218804. August 6, 2018]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **LEONARDO QUIAPO @ "LANDO,"** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; REVISED PENAL CODE; RAPE; ANY DISCREPANCY REGARDING THE DATES, PLACE AND TIME OF THE INCIDENTS DESERVES SCANT CONSIDERATION; RATIONALE.— "[T]he date of the commission of the rape is not an essential element of the crime of rape, for the gravamen of the offense is carnal knowledge of a woman. Inconsistencies and discrepancies in details which are irrelevant to the elements of the crime are not grounds for acquittal." Thus, any discrepancy regarding the dates, place and time of the incidents deserves scant consideration. In *People v. Sarcia*, the Court "ruled, time and again that the date is not an essential element of the crime of rape, for the gravamen of the offense is carnal knowledge of a woman. As such, the time

or place of commission in rape cases need not be accurately stated."

2. **ID.; ID.; ID.; DELAY IN REPORTING RAPE INCIDENTS IS NOT AN INDICATION OF FABRICATED CHARGE AND DOES NOT NECESSARILY CAST DOUBT ON THE CREDIBILITY OF THE COMPLAINANT.—** We have already ruled that "delay 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."

3. **ID.; ID.; ID.; DENIAL AND ALIBI; WITHOUT STRONG EVIDENCE TO SUPPORT ALIBI, AS WELL AS DENIAL, THE SAME CAN SCARCELY OVERCOME THE POSITIVE DECLARATION BY THE VICTIM OF THE IDENTITY OF THE ACCUSED.—** Well established is the rule that "a mere denial, without any strong evidence to support it, can scarcely overcome the positive declaration by the victim of the identity and involvement of appellant in the crimes attributed to him." The same is true with his claim of alibi. As observed by the courts below, appellant failed to prove his physical impossibility to be at the crime scene during their alleged commissions.

4. **ID.; ID.; STATUTORY RAPE; ELEMENTS; ESTABLISHED IN CASE AT BAR.—** The elements of the crime of statutory rape under Article 266-A(1)(d) are: (1) that the offender had carnal knowledge of a woman; and (2) that such a woman is under 12 years of age or is demented. Essentially, the foregoing elements are the same as those provided under paragraph 3 of Article 335, the law in force when the rapes on MMM transpired. Thus based on records, the prosecution had established the element of carnal knowledge through the testimony of MMM with her age of being under 12 years old supported by her Certificate of Live Birth.

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.*:

On appeal is the April 24, 2015 Decision[1] of the Court of Appeals (CA) in CA-G.R. CR HC No. 00669-MIN affirming with modification the September 5, 2008 Decision[2] of the Regional Trial Court (RTC) of Liloy, Zamboanga del Norte, Branch 28 in Criminal Case Nos. L-0098 to L-00103 convicting Leonardo Quiapo @ "Lando" (appellant) of one count of attempted rape and five counts of consummated rape.

Antecedent Facts

Appellant was charged before the RTC of Liloy, Zamboanga del Norte, Branch 28 in six separate Informations with rape under Article 335 of the Revised Penal Code (RPC) and were docketed as Criminal Case Nos. L-0098 to L-00103, inclusive.

The accusatory portions of the Informations read, as follows:

Criminal Case No. L-0098

That, in the afternoon, on or about the 20th day of September, 1996, in x x x Zamboanga del Norte, within the jurisdiction of this Honorable Court, the said accused, moved by lewd and unchaste desire and by means of force, violence and intimidation, did then and there wilfully, unlawfully and feloniously succeed in having sexual intercourse with one MMM,[3] an 11 year old child, against her will and without her consent.

---

[1] CA *rollo*, pp. 211-229; penned by Associate Justice Edward B. Contreras and concurred in by Associate Justices Edgardo T. Lloren and Rafael Antonio M. Santos.

[2] *Id*. at 125-155; penned by Judge Oscar D. Tomarong.

[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

CONTRARY TO LAW (Viol. of Art. 335, Revised Penal Code).[4]

Criminal Case No. L-0099

That, in the evening, on or about the 21st day of September, 1996, in x x x Zamboanga del Norte, within the jurisdiction of this Honorable Court, the said accused, moved by lewd and unchaste desire and by means of force, violence and intimidation, did then and there wilfully, unlawfully and feloniously succeed in having sexual intercourse with one MMM, an 11 year old child, against her will and without her consent.

CONTRARY TO LAW (Viol. of Art. 335, Revised Penal Code).[5]

Criminal Case No. L-00100

That, in the morning, on or about the 18th day of April, 1996, in x x x Zamboanga del Norte, within the jurisdiction of this Honorable Court, the said accused, moved by lewd and unchaste desire and by means of force, violence and intimidation, did then and there wilfully, unlawfully and feloniously succeed in having sexual intercourse with one AAA, a 12 year old child, against her will and without her consent.

CONTRARY TO LAW (Viol. of Art. 335, Revised Penal Code).[6]

Criminal Case No. L-00101

That, at noon, on or about the 18th day of April, 1996, in x x x Zamboanga del Norte, within the jurisdiction of this Honorable Court, the said accused, moved by lewd and unchaste desire and by means of force, violence and intimidation, did then and there wilfully, unlawfully and feloniously succeed in having sexual intercourse with one AAA, a 12 year old child, against her will and without her consent.

CONTRARY TO LAW (Viol. of Art. 335, Revised Penal Code).[7]

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).

[4] Records (Vol. 1), p. 1.

[5] *Id.* at 4.

[6] Records (Vol. 2), p. 1

[7] *Id.* at 6.

Criminal Case No. L-00102

That, in the evening, on or about the 18th day of April, 1996, in x x x Zamboanga del Norte, within the jurisdiction of this Honorable Court, the said accused, moved by lewd and unchaste desire and by means of force, violence and intimidation, did then and there wilfully, unlawfully and feloniously succeed in having sexual intercourse with one AAA, a 12 year old child, against her will and without her consent.

CONTRARY TO LAW (Viol. of Art. 335, Revised Penal Code).[8]

Criminal Case No. L-00103

That, in the evening, on or about the 13th day of May, 1996, in x x x Zamboanga del Norte, within the jurisdiction of this Honorable Court, the said accused, moved by lewd and unchaste desire and by means of force, violence and intimidation, did then and there wilfully, unlawfully and feloniously succeed in having sexual intercourse with one AAA, a 12 year old child, against her will and without her consent.

CONTRARY TO LAW (Viol. of Art. 335, Revised Penal Code).[9]

Appellant pleaded not guilty to the charges. Thereafter, trial on the merits ensued.

The CA and the Office of the Solicitor General (OSG) summarized the prosecution's version of the incidents in the following manner:

Criminal Case Nos. L-0100, L-0101, L-0102 and L-0103: Rapes committed on AAA:

In the summer of 1996, AAA stayed with x x x appellant Leonardo Quiapo, and Aunt [BBB] Quiapo at their residence x x x, per request of AAA's Aunt [BBB]. While living with the spouses, AAA helped out in the daily household chores x x x. Everytime that [BBB] leaves the house, Leonardo would ask her to come to him.

In the afternoon of 18 April 1996, while AAA was fetching water, Leonardo followed and beckoned her to come to him x x x. At first, AAA did not respond to Leonardo's call. x x x Eventually, [AAA] succumbed to [appellant's] unrelenting request and came near him.

---

[8] *Id.* at 11.

[9] *Id.* at 16.

Immediately thereafter, Leonardo x x x [undressed AAA and threatened her] not to shout.

Terrified by the bolo [hanging] at the side of Leonardo and the threat of killing her x x x, AAA yielded to [her] uncle's desire. Leonardo laid her on the grass and took out his penis x x x and positioned himself on top of AAA. However, Leonardo was not able to fully insert his penis into AAA's vagina.

Days after, Leonardo's second sexual attack on AAA took place at the Quiapos['J house x x x. While AAA was sleeping together with her aunt and cousins in the same room — which was dark because the light[s] were off — Leonardo advanced towards AAA. Despite AAA's three (3) shouts for help, her aunt [and cousins] did not wake up[.]x x x Leonardo succeeded in penetrating her [causing her severe] pain and x x x vaginal bleeding. She was sure that it was Leonardo because she recognized x x x his voice.

The third rape incident was committed in the grassy portion surrounding the house of the Quiapos['] x x x while AAA was fetching water. Similarly, AAA felt severe pain and vaginal bleeding resulting from Leonardo's penetration of her.

For the fourth time, Leonardo raped AAA while she was sleeping together with all the members of the Quiapo family in the same room. Her shouting twice [at] the top of her voice did not wake her aunt or anybody in the room x x x. Leonardo covered her mouth to prevent her from shouting further. He succeeded in undressing and laying on top of AAA by threatening her that [he] would kill her. Again, Leonardo successfully penetrated AAA resulting in another episode of pain and vaginal bleeding on the part of AAA.

The fifth episode happened one morning while AAA was carrying palay from the rice mill. Moments after reaching the house, AAA was commanded by Leonardo to come close to him. When AAA did not accede, x x x Leonardo grabbed her hand. At this point, [BBB] saw what her husband was doing to her niece. [BBB] hurriedly went inside the house and a fight ensued thereafter. [BBB] inquired from AAA what her husband did to her and AAA confessed the sexual molestations made by appellant against her x x x. On the same day, AAA was brought to her house x x x. She was also brought to the doctor for medical examination and to the police for investigation.

x x x x x x x x x

Dr. Joshua G. Brillantes, Rural Health Physician of Labason, Zamboanga del Norte conducted the physical examination on AAA on May 29, 1997. During the examination, Dr. Brillantes observed that there was a complete laceration of hymenal membrane which [had] already healed[, which laceration was] possibly caused by a penis inserted through the hymen causing it to break.

On internal examination or manual examination, it was discovered that AAA's vaginal womb readily admit[ted] the tip of the little finger without any resistance[. This was] a result of the insertion of any object x x x to the vagina which [had] caused the elasticity of the vaginal muscles. He testified that the above mentioned findings indicated that a previous penetration occurred prior to the examination.

x x x x x x x x x

Criminal Case Nos. L-0098 and L-0099:
Rapes committed on MMM

Sometime in September 1996, MMM was invited by her Aunt [BBB] to stay in the latter's house x x x to be a playmate to the latter's two children. MMM would [be] sleeping [in] a small room beside her Aunt [BBB] who was, in turn, lying beside Leonardo.

[In the evening] of 20 September 1996 [MMM] was sleeping inside her Aunt [BBB] and Leonardo's bedroom. At that time, her aunt was not around. While she was sleeping, appellant came to lie beside her, x x x. While MMM tried to move away[,] Leonardo pulled her towards him x x x. Leonardo held her hand, then shoulders, covered her mouth and undressed her. MMM attempted to shout but Leonardo managed to cover her mouth.

Eventually, after successfully pulling down MMM's panty, Leonardo removed his own clothes and [laid] on top of her. MMM suddenly felt much pain when Leonardo inserted his penis into her vagina Maintaining such position, Leonardo continued with a series of 'push and pull' movements until MMM felt something x x x flowed inside her vagina.

After Leonardo was through, hex x x warned her that[,] if she [would] report x x x what [had] happened, he [would] kill her and her mother. Leonardo also promised to give MMM money. Driven by an overwhelming fear, MMM did as she was told. Leonardo was armed with an air gun beside him while he was committing these acts.

The following day, 21 September 1996 at around 4:00 PM, while MMM was [on a trail] through the nearby grassy portion, Leonardo shouted at [her] and instructed her to come near him because he had something to tell her. Thereat, Leonardo raped MMM for the second time [and] blood oozed out of MMM's vagina after another painful sexual attack made by appellant.

MMM reported the sexual molestations caused to her by her uncle to the police x x x [in] May 1997 or approximately eight (8) months when her cousin AAA, who was also raped by her uncle, appellant Leonardo, reported the matter to MMM's mother.

Dr. Brillantes was also the one who conducted the physical examination on MMM on May 29, 1997. Dr. Brillantes observed that there was a complete laceration of hymenal membrane which [had] already healed. He testified that the above mentioned findings [indicated] that MMM was 'no longer a virgin' at the time of the examination [and] the same result as that of his examination with AAA.[10]

On the other hand, appellant relied on denial and alibi. He denied ever having carnal knowledge of AAA and MMM as he was no longer a resident of the place where the occurrences transpired. He alleged that the accusations against him were fabricated and instigated by the complainants' grandmother who was driven by a grudge against him.

Ruling of the Regional Trial Court

The RTC gave more credence to the testimonies of AAA and MMM. It rejected appellant's defenses of denial and alibi applying the principle that these defenses cannot prevail over the positive testimony and identification of the accused. The RTC was not persuaded that the charges were just fabricated as it was not clearly established that the grandmother of the complainants really had a grudge on him. However, in Criminal Case No. L-0100, the RTC found appellant liable only for attempted rape since the prosecution failed to prove that appellant's penis was able to penetrate, however slight, AAA's

---

[10] CA *rollo*, pp. 215-218.

vagina. Thus, on September 5, 2008, the RTC rendered its Decision, the decretal portion of which reads:

> WHEREFORE, premises considered, the court finds accused *LEONARDO QUIAPO alias Lando*, guilty beyond reasonable doubt of the following:
>
> 1. For the crime of Attempted Rape in Criminal Case No. L-0100 and sentences [him] to an indeterminate penalty of imprisonment ranging from two (2) years, four (4) months and one (1) day of *prision correccional* as minimum, to eight (8) years and one (1) day of *prision mayor* as maximum and to pay Victim — AAA x x x the sum of Php30,000.00 as civil indemnity; Php25,000.00 as moral damages and Php10,000.00 as exemplary damages, and
>
> 2. For two (2) counts of Consummated Rape, in Criminal Case Nos. L-0098, L-0099, and sentences him to suffer the penalty of *Reclusion Perpetua* in two (2) counts, and to pay the Victim— MMM x x x the sum of Php75,000.00; Php25,000.00 as exemplary damages and Php75,000.00 as moral damages, for each case.
>
> 3. For three (3) counts of Consummated Rape in Criminal Case Nos. L-0101, L-0102, and L-0103 and sentences him to suffer the penalty of *Reclusion Perpetua* in three (3) counts, and to pay the Victim — AAA x x x the sum of Php75,000.00[,] Php25,000.00 as exemplary damages and Php75,000.00 as moral damages, for each case.
>
> SO ORDERED.[11]

Insisting on his innocence, appellant appealed to the CA.

Ruling of the Court of Appeals

The CA found the testimonies of AAA and MMM clear, candid and straightforward and was convinced that appellant's guilt was proven beyond reasonable doubt. It rejected his defenses of denial and alibi holding that affirmative testimony was far stronger than negative testimony especially when it comes from a reliable witness. The CA ruled that appellant failed to prove his physical impossibility to be at the *situs criminis* at the time and date the crimes were committed. The precise time and date

---

[11] *Id*. at 152-153.

when the rapes took place had no substantial bearing on its commission. Moreover, the CA held that the delay in reporting the incidents did not militate against the credibility of AAA and MMM as they were threatened with death by appellant. Thus, on April 24, 2015, the CA disposed of appellant's appeal, as follows:

> WHEREFORE, the appealed decision of the Regional Trial Court, Branch 28, in Liloy, Zamboanga del Norte in Criminal Case Nos. L-0098, L-0099, L-0100, L-0101, L-0102 and L-0103, is AFFIRMED with MODIFICATION. Appellant Leonardo Quiapo is found guilty beyond reasonable doubt of:
>
> (a) statutory rape under paragraph 1 (d), article 266A of the Revised Penal Code in Criminal Case Nos. L-0098 and L-0099 and sentenced to suffer the penalty of *reclusion perpetua* without eligibility of parole, and to further pay the victim, MMM, for each count of rape the amounts of [a] ₱50,000.00 as civil indenmity, [b] ₱50,000.00 as moral damages, and [c] ₱30,000.00 as exemplary damages.
>
> (b) simple rape under paragraph 1(a), Article 266-A of the Revised Penal Code in Criminal Case Nos. L-0101, L-0102 and L-0103 and sentenced to suffer the penalty of *reclusion perpetua* without eligibility of parole, and to further pay the victim, AAA, for each count of rape the amounts of [a] ₱50,000.00 as civil indenmity, [b] ₱50,000.00 as moral damages, and [c] ₱30,000.00 as exemplary damages.
>
> (c) attempted rape in Criminal Case No. [L-]0100 for which he is sentenced to prison term of two (2) years, four (4) months and one (1) day of *prision correccional*,as minimum, to eight (8) years and one (1) day of *prision mayor*, as maximum. He is likewise ordered to pay the victim, MMM, the amounts of [a] ₱30,000.00 as civil indenmity, [b] P25,000.00 as moral damages, and [c] ₱10,000.00 as exemplary damages.
>
> Upon finality of this decision, appellant is further directed to pay interest, at the rate of 6% *per annum*, on all monetary awards for damages from the date of finality until fully paid.
>
> SO ORDERED.[12]

---

[12] *Id*. at 227-228.

Hence, this appeal.

In our Resolution[13] dated August 5, 2015, we required the parties to submit their respective supplemental briefs within 30 days from notice, if they so desired. The parties filed their separate manifestations that they were no longer filing supplemental briefs; instead, they were adopting their briefs filed before the CA.[14]

Our Ruling

The appeal is unmeritorious.

In assailing his conviction, appellant harps on the credibility of AAA and MMM contending that their respective recollection of the events were conflicting and contradictory regarding the details of the place, date and time of the incidents; and, their delayed disclosure of the incidents to their parents.

Appellant explains that the Information in Criminal Case No. L-0100 stated that the crime was committed in the morning on or about the 18th day of April, 1996; in Criminal Case No. L-0101 stated that the crime was committed at noon or about the 18th day of April, 1996; in Criminal Case No. L-0102 stated that the crime was committed in the evening on or about the 18th day of April, 1996; and; in Criminal Case No. L-0103 stated that the crime was committed on or about the 13th day of May, 1996. However, AAA testified during the trial that she was sexually abused in the year 1996 but could not remember the dates and gave inconsistent testimonies on the details. Appellant also avers that MMM could not state with consistency the place where the incidents of rape happened on September 20 and 21, 1996. Moreover, appellant posits that the delay in reporting the incidents hardly conforms to human experience.

Appellant's submissions are not tenable.

"[T]he date of the commission of the rape is not an essential element of the crime of rape, for the gravamen of the offense

---

[13] *Rollo*, p. 24.

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

is carnal knowledge of a woman. Inconsistencies and discrepancies in details which are irrelevant to the elements of the crime are not grounds for acquittal."[15] Thus, any discrepancy regarding the dates, place and time of the incidents deserves scant consideration. In *People v. Sarcia*,[16] the Court "ruled, time and again that the date is not an essential element of the crime of rape, for the gravamen of the offense is carnal knowledge of a woman. As such, the time or place of commission in rape cases need not be accurately stated."

Neither the delay of AAA and MMM in reporting the incidents undermines their credibility. We have already ruled that "delay 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."[17]

The courts below correctly rejected appellant's defenses of denial and alibi. Well established is the rule that "a mere denial, without any strong evidence to support it, can scarcely overcome the positive declaration by the victim of the identity and involvement of appellant in the crimes attributed to him."[18] The same is true with his claim of alibi. As observed by the courts below, appellant failed to prove his physical impossibility to be at the crime scene during their alleged commissions.

Anent appellant's ascription of ill-motive in filing the charges against him, the Court already ruled that "motives such as resentment, hatred or revenge have never swayed this Court from giving full credence to the testimony of a minor rape victim."[19]

---

[15] *People v. Arpon*, 678 Phil. 752, 773 (2011).

[16] 615 Phil. 97, 116 (2009) citing *People v. Purazo*, 450 Phil. 651, 671 (2003).

[17] *People v. Rusco*, 796 Phil. 147, 157-158 (2016).

[18] *People v. Pamintuan*, 710 Phil. 414, 424 (2013).

[19] *Id*.

Incidentally, appellant's contentions basically relate to the trial court's appreciation of the evidence adduced by the prosecution and its factual findings based thereon particularly the credibility of the prosecution witnesses.

The time-honored rule is that 'the issue of credibility of witnesses is a question best addressed to the province of the trial court because of its unique position of having observed that elusive and incommunicable evidence of the witnesses' deportment on the stand while testifying, x x x and absent any substantial reason which would justify the reversal of the trial court's assessments and conclusions, the reviewing court is bound by the former's findings, particularly when no significant facts and circumstances are shown to have been overlooked or disregarded, which when considered would have affected the outcome of the case. The rule finds an even more stringent application where the said findings are sustained by the CA.[20]

This Court is convinced that the courts below were correct in giving full credence to the complainants.

The Court agrees with the CA that appellant should be held liable for statutory rape in Criminal Case Nos. L-0098 and L-0099. The elements of the crime of statutory rape under Article 266-A(1)(d) are: (1) that the offender had carnal knowledge of a woman; and (2) that such a woman is under 12 years of age or is demented.[21] Essentially, the foregoing elements are the same as those provided under paragraph 3 of Article 335, the law in force when the rapes on MMM transpired. Thus based on records, the prosecution had established the element of carnal knowledge through the testimony of MMM with her age of being under 12 years old supported by her Certificate of Live Birth.

With respect to the rapes committed on AAA, the CA made a clear conclusion which we quote:

However, with respect to AAA, the Court upholds the trial court in finding appellant only liable for simple rape in Criminal Case Nos. L-0101, L-0102 and L-0103. While it may appear that AAA

---

[20] *People v. Biala*, 773 Phil. 464, 480 (2015).

[21] *People v. Pamintuan*, *supra* note 18 at 422.

was under twelve (12) years old at the time appellant raped her, the same was not properly alleged in the Information. Consequently, due to the defect in the information charging appellant of rape, he can only be made liable for simple rape even if it was proven during trial that AAA was under twelve (12) years old at the time of the commission of the crimes charged.[22]

In addition, the Court finds no compelling reason to deviate from the findings of the CA affirming that of the trial court that appellant can only be made liable for attempted rape in Criminal Case No. L-0100 in view of the absence of any showing of the slightest penetration of appellant's penis inside AAA's vagina.

Consequently, the CA properly imposed on appellant the penalty of *reclusion perpetua* in Criminal Case Nos. L-0098, L-0099, L-0101, L-0102 and L-0103. Recent jurisprudence[23] however, constrains us to modify the amount of damages awarded by the CA. The awards of civil indemnity, moral and exemplary damages have to be modified and increased to ₱75,000.00 each in the aforenumbered cases, which amounts shall bear interest at the rate of 6% per annum from the date of finality of this Decision until fully paid.

While we sustain the prison term of two (2) years, four (4) months and one (1) day of *prision correccional*, as minimum, to eight (8) years and one (1) day of *prision mayor*, as maximum, imposed by the CA in Criminal Case No. L-0100 for attempted rape, we find a need also for some modifications in the award of damages in line with recent jurisprudence. The award of ₱30,000.00 as civil indemnity must be reduced to ₱25,000.00 while the amount of ₱10,000.00 as exemplary damages is increased to ₱25,000.00. The award of ₱25,000.00 as moral damages is retained. All the amounts awarded shall bear interest at the rate of 6% *per annum* from the date of finality of this Decision until fully paid.

---

[22] CA *rollo*, p. 225.

[23] *People v. Jugueta*, 783 Phil. 806 (2016).

WHEREFORE, the appeal is **DISMISSED**. The assailed April 24, 2015 Decision of the Court of Appeals in CA-G.R. CR HC No. 00669-MIN is **AFFIRMED** with **MODIFICATIONS**:

1. In Criminal Case Nos. L-0098 and L-0099, the appellant is found **GUILTY** of statutory rape and sentenced to suffer the penalty of *reclusion perpetua* for each count. He is ordered to pay MMM ₱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 at 6% *per annum* from finality of this Decision until fully paid.

2. In Criminal Case Nos. L-0101, L-0102 and L-0103, the appellant is found **GUILTY** of simple 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, P75,000.00 as moral damages and ₱75,000.00 as exemplary damages for each count, all with interest at 6% *per annum* from finality of this Decision until fully paid.

3. In Criminal Case No. L-0100, the appellant is found **GUILTY** of attempted rape and sentenced to a prison term of two (2) years, four (4) months and one (1) day of *prision correccional*, as minimum, to eight (8) years and one (1) day of *prision mayor*, as maximum. He is ordered to pay AAA ₱25,000.00 as civil indemnity, ₱25,000.00 as moral damages and ₱25,000.00 as exemplary damages, all with interest of 6% *per annum* from finality of this Decision until fully paid.

SO ORDERED.

Leonardo-de Castro[*] (*Acting Chairperson*), *Tijam, A. Reyes,*[**] *Jr.*, and *Gesmundo,*[***] *JJ.*, concur.

---

[*] Per Special Order No. 2559 dated May 11, 2018.

[**] Designated as additional member per October 18, 2017 raffle vice *J.* Jardeleza who recused due to prior action as Solicitor General.

[***] Per Special Order No. 2560 dated May 11, 2018.

FIRST DIVISION

[G.R. No. 219525. August 6, 2018]

MARIA THERESA B. BONOT, *petitioner, vs.* **EUNICE G. PRILA,** *respondent.*

SYLLABUS

POLITICAL LAW; ADMINISTRATIVE LAW; ADMINISTRATIVE DUE PROCESS; OBJECTIONS ON THE GROUND OF DUE PROCESS VIOLATIONS DO NOT LIE AGAINST AN ADMINISTRATIVE AGENCY RESOLVING A CASE SOLELY ON THE BASIS OF POSITION PAPERS, AFFIDAVITS OR DOCUMENTARY EVIDENCE SUBMITTED BY THE PARTIES BECAUSE AFFIDAVITS OF WITNESSES MAY TAKE THE PLACE OF THEIR DIRECT TESTIMONY; CASE AT BAR.— In *Vivo v. Phil. Amusement and Gaming Corporation*, We had ruled that "[t]he essence of due process is to be heard, and, as applied to administrative proceedings, this means a fair and reasonable opportunity to explain one's side, or an opportunity to seek a reconsideration of the action or ruling complained of." In administrative cases, "[a] formal or trial-type hearing is **not** always necessary." It has long been settled that administrative due process only requires that "[t]he decision be rendered on the evidence presented at the hearing, or at least contained in the record and disclosed to the parties affected." Otherwise stated, objections on the ground of due process violations do not lie against an administrative agency resolving a case solely on the basis of position papers, affidavits or documentary evidence submitted by the parties because affidavits of witnesses may take the place of their direct testimony. With the foregoing, We find that the CSC did not deprive nor violate the right of Prila to due process as she was given the opportunity to submit the affidavits of Alanis and Rivero to corroborate her accusations against Dra. Bonot, and that these pieces of evidence were already considered and weighed by the CSC in rendering its April 8, 2013 Decision.

APPEARANCES OF COUNSEL

Generalaw Abogados for petitioner.
Jofrey I. Botor for respondent.

D E C I S I O N

TIJAM, *J.*:

This petition for review on *certiorari*[1] under Rule 45 of the Rules of Court assails the Decision[2] dated October 29, 2014 and Resolution[3] dated June 26, 2015 of the Court of Appeals (CA) in CA-G.R. SP No. 130034 which reversed and set aside the Decisions dated October 25, 2012[4] and April 8, 2013[5] of the Civil Service Commission (CSC) dismissing the administrative complaint for Grave Misconduct filed by respondent Eunice G. Prila (Prila) against petitioner Maria Theresa B. Bonot (Dra. Bonot).

Facts of the Case

Sometime in March 2012, Prila, who then worked as Administrative Aide III at the Central Bicol State University of Agriculture (CBSUA), was informed by her colleagues that Dra. Bonot, the Dean of the College of Arts and Sciences at CBSUA, uttered defamatory statements against her. This prompted Prila to file an administrative complaint[6] against Dra. Bonot for Grave Misconduct before the Civil Service Commission Regional Office No. V (CSCRO5) on August 9, 2012, charging her of the following act:

---

[1] *Rollo*, pp. 21-42.

[2] Penned by Associate Justice Socorro B. Inting, concurred in by Associate Justices Jose C. Reyes, Jr. and Agnes Reyes-Carpio; *id*. at 44-51.

[3] *Id*. at 52-53.

[4] *Id*. at 69-70.

[5] *Id*. at 84-87.

[6] *Id*. at 54-59.

In March 2012, Mrs. Francia Alanis, Mrs. Evelyn Rivero, and other Arts and Science Teachers and Staff of Dra. Bonot informed me that Dra. Maria Theresa Bonot is angry at me and said in the vernacular defamatory words against me [in] her office, to wit: "DEMONYADA INI SI EUNICE PRILA! DAING SUPOG NA MARAY! PIGPAPANTASYAHAN NIYA AN AGOM KO! MAYONG IBANG PADANGAT AN AGOM KO, AKO SANA! TARANTADA PALAN SIYA!" (Eunice Prila is a devil! She is shameless! She is fantasizing my husband! My husband has no other love, only me! She is crazy!).[7]

To support her charge against Dra. Bonot, Prila submitted a sworn Preliminary Inquiry[8] dated July 23, 2012 stating that she was sexually harassed by Dr. Alden Bonot (Dr. Bonot), the husband of herein respondent and the Campus Administrator of CBSUA, sometime in February 2012. On the said date, Prila claimed that Dr. Bonot instructed her to open his laptop, showed her a picture of a woman wearing a bikini, and asked inappropriate questions about her body. Shortly thereafter, Prila was transferred to another office upon her request. Prila alleged that Dra. Bonot made defamatory utterances against her because of the said incident.

The CSCRO5, acting on Prila's complaint, ordered Dra. Bonot to submit her counter-affidavit together with affidavits of her witnesses and other documentary evidence, if any.[9] In compliance thereto, Dra. Bonot filed her Counter-Affidavit[10] on September 20, 2012 together with affidavits[11] of her witnesses, namely, Maricel Grajo (Grajo), Doreen Arellano (Arellano), Elvie B. Bornel (Bornel), and Diane N. Solis (Solis). Dra. Bonot raised the defense that the accusatory statements of Prila against her were not based on the personal knowledge of Prila and were mere hearsay. In support thereof, Grajo, Arellano, Bornel, and

---

[7] *Id*. at 54.

[8] *Id*. at 56-59.

[9] *Id*. at 61.

[10] *Id*. at 62-64.

[11] *Id*. at 65-68.

Solis, all employees of CBSUA, averred that they had never heard Dra. Bonot utter any defamatory statement against any employee, including Prila, during the period stated in Prila's complaint.[12]

Ruling of the CSC

On October 25, 2012, the CSCRO5 rendered a Decision[13] dismissing the complaint of Prila, stating that her allegations against Dra. Bonot were baseless and completely hearsay. The CSCRO5 further held that no witness attested to the truth of Prila's accusations against Dra. Bonot, and that the complaint must fail in light of the affidavits of Grajo, Arellano, Bornel, and Solis appended to the counter-affidavit of Dra. Bonot.

On November 27, 2012, Prila filed an Entry of Appearance with Verified Motion for Reconsideration[14] alleging that the summary dismissal of her complaint was tantamount to deprivation of her constitutional right to due process as she was denied the opportunity to substantiate her charge by adducing additional evidence. In the said motion for reconsideration, Prila attached the affidavits of Francia Alanis (Alanis) and Evelyn Rivero (Rivero) to corroborate her statements against Dra. Bonot.[15]

On April 8, 2013, the CSC, treating the motion for reconsideration filed by Prila as a petition for review to conform with the Revised Rules on Administrative Cases in the Civil Service, rendered its Decision[16] which affirmed the decision of the CSCRO5. In arriving at its conclusion that the complaint of Prila should be dismissed for want of merit, the CSC considered the statements of Prila and her witnesses vis-a-vis the refutation of said statements by Dra. Bonot and her own witnesses, and

---

[12] *Id.* at 24.

[13] *Id.* at 69-70.

[14] *Id.* at 71-74.

[15] *Id.* at 75-78.

[16] *Id.* at 84-87.

found that the evidence adduced by both parties were evenly balanced. In so ruling, the CSC applied the equipoise doctrine, which provides that when the evidence for the prosecution and defense are evenly balanced, the appreciation of such evidence calls for tilting of the scales in favor of the accused.[17]

Aggrieved, Prila filed a Verified Petition for Review[18] under Rule 43 of the Rules of Civil Procedure before the CA on May 22, 2013 to assail the decision of the CSC dismissing her complaint.

Ruling of the CA

On October 29, 2014, the CA promulgated its Decision[19] reversing the rulings of the CSC and the CSCRO5 and remanding the case to the latter to allow Prila the opportunity to substantiate her allegations in the complaint. The CA found that the CSC acted arbitrarily when it held that Prila did not substantiate her accusations against Dra. Bonot without giving the former the opportunity to do so. Moreover, the CA held that the CSC deprived Prila her constitutional right to due process while affording the same to Dra. Bonot by allowing her to answer and to be heard on the charges against her. The dispositive portion of the CA Decision reads:

> **WHEREFORE**, premises considered, the petition is **GRANTED**. Accordingly, the assailed Decisions dated 25 October 2012 and 8 April 2013 of the [CSC] are hereby **REVERSED AND SET ASIDE**. This case is remanded to the [CSCRO5], Rawis, Legazpi City, to afford [Prila] opportunity to substantiate her complaint against [Dra. Bonot]. No costs.
>
> **SO ORDERED**.[20]

---

[17] See *People v. Dela Iglesia*, 312 Phil. 842, 859 (1995); *People v. Ramilla*, 298 Phil. 372, 377 (1993).

[18] *Rollo*, pp. 88-94.

[19] *Id.* at 44-51.

[20] *Id.* at 50-51.

In a Resolution[21] dated June 26, 2015, the CA denied the motion for reconsideration filed by Dra. Bonot, finding no compelling reason stated therein to modify or reverse its earlier decision. Hence, this Petition for Review on *Certiorari*.

Issue

The sole issue to be resolved by this Court is whether the CA erred in finding that Prila was deprived her right to due process by the CSC.

Ruling of the Court

The petition is meritorious.

As can be gleaned from the assailed decision of the CA, the *ratio decidendi* in its reversal of the CSC's dismissal of the complaint lies in the supposed deprivation of Prila's fundamental right to due process. While We agree with the finding of the CA that fair and reasonable opportunity must be given to both parties to explain their respective sides of the controversy and present evidence in support thereof, the records show that the CSC had already taken the supporting evidence submitted by Prila (*i.e.*, the affidavits of Alanis and Rivero) into consideration when it rendered its Decision[22] dated April 8, 2013. In the last paragraph of the said decision, the CSC stated:

The accusatory allegation of Prila depend on the sworn statements of Alanis and Rivero, who alleged that [Dra.] Bonot personally uttered to Alanis defamatory statements directed at the private complainant. Traversing the claim of Prila and her witnesses, however, are the categorical statements of [Dra.] Bonot's own witnesses, who were one in saying that they never heard her speak, at any instance, slanderous remarks against Prila. **In this given circumstance, the Commission notes that the evidence respectively adduced by the contending parties appear to be evenly balanced.** That is, the evidence of [Dra.] Bonot stands in four-square as against Prila's evidence. On this score, the equipoise doctrine invariably

---

[21] *Id.* at 52-53.

[22] *Id.* at 84-87.

finds application. Essentially, this doctrine provides that when the evidence of the prosecution and the defense are so evenly balanced, the appreciation of such evidence calls for tilting of the scales in favor of the accused x x x. Following such doctrine, the instant complaint against [Dra.] Bonot must be struck down.[23] (Citations omitted and emphasis ours)

A perusal of the records of the case reveals that Prila already appended the affidavits of Alanis and Rivero to the motion for reconsideration she filed before the CSC in the hope of reversing the dismissal by the CSCRO5 of her complaint. These affidavits form part of the records of the case submitted by the CSC to the CA, and in turn, to this Court. Hence, taking into account the above-quoted portion of the CSC's decision, there is no other conclusion than that the CSC had indeed accepted the affidavits of Alanis and Rivero in evidence and took consideration of the same to arrive at its decision.

In *Vivo v. Phil. Amusement and Gaming Corporation*,[24] We had ruled that "[t]he essence of due process is to be heard, and, as applied to administrative proceedings, this means a fair and reasonable opportunity to explain one's side, or an opportunity to seek a reconsideration of the action or ruling complained of."[25] In administrative cases, "[a] formal or trial-type hearing is **not** always necessary."[26] It has long been settled that administrative due process only requires that "[t]he decision be rendered on the evidence presented at the hearing, or at least contained in the record and disclosed to the parties affected."[27] Otherwise stated, objections on the ground of due process violations do not lie against an administrative agency resolving

---

[23] *Id*. at 86.

[24] 721 Phil. 34 (2013).

[25] *Id*. at 39.

[26] See *Imperial, Jr. v. Government Service Insurance System*, 674 Phil. 286, 295 (2011).

[27] *Cuenca v. Atas*, 561 Phil. 186, 209 (2007), citing *Tibay v. Court of Industrial Relations*, 69 Phil. 635, 643 (1940).

a case solely on the basis of position papers, affidavits or documentary evidence submitted by the parties because affidavits of witnesses may take the place of their direct testimony.[28]

With the foregoing, We find that the CSC did not deprive nor violate the right of Prila to due process as she was given the opportunity to submit the affidavits of Alanis and Rivero to corroborate her accusations against Dra. Bonot, and that these pieces of evidence were already considered and weighed by the CSC in rendering its April 8, 2013 Decision.

On a final note, We reiterate "[t]he general rule is that where the findings of the administrative body are amply supported by substantial evidence, such findings are accorded not only respect but also finality, and are binding on this Court."[29] In this case, We find no cogent reason to deviate from the said rule. We affirm the findings of the CSC, as the administrative body tasked to investigate the incident involving the parties herein, and reinstate its Decision dated April 8, 2013.

WHEREFORE, the petition is **GRANTED**. The Decision dated October 29, 2014 and the Resolution dated June 26, 2015 of the Court of Appeals in CA-G.R. SP No. 130034 are **REVERSED and SET ASIDE**. The Decision dated April 8, 2013 of the Civil Service Commission dismissing the administrative complaint filed by respondent Eunice G. Prila is **REINSTATED**.

SO ORDERED.

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

---

[28] *Samalio v. Court of Appeals*, 494 Phil. 456, 465-466 (2005).

[29] *Nacu, et al. v. Civil Service Commission, et al.*, 650 Phil. 309, 325 (2010).

[*] Designated as Acting Chairperson per Special Order No. 2559 dated May 11, 2018.

[**] Designated as Acting Member per Special Order No. 2560 dated May 11, 2018.

SECOND DIVISION

[G.R. No. 224307. August 6, 2018]

THE MISSIONARY SISTERS OF OUR LADY OF FATIMA (PEACH SISTERS OF LAGUNA), represented by Rev. Mother Ma. Concepcion R. Realon, *et al.*, *petitioners, vs.* **AMANDO V. ALZONA, *et al.*,** *respondents.*

SYLLABUS

1. CIVIL LAW; OWNERSHIP; DONATION; ELEMENTS WHICH MUST BE PRESENT IN ORDER THAT A DONATION OF AN IMMOVABLE PROPERTY BE VALID, ENUMERATED.— In order that a donation of an immovable property be valid, the following elements must be present: (a) the essential reduction of the patrimony of the donor; (b) the increase in the patrimony of the donee; (c) the intent to do an act of liberality or *animus donandi;* (d) the donation must be contained in a public document; and e) that the acceptance thereof be made in the same deed or in a separate public instrument; if acceptance is made in a separate instrument, the donor must be notified thereof in an authentic form, to be noted in both instruments.

2. ID.; ID.; ID.; DONEE'S CAPACITY TO ACCEPT; THE LEGAL CAPACITY OR THE PERSONALITY OF THE DONEE, OR THE AUTHORITY OF THE LATTER'S REPRESENTATIVE IN CERTAIN CASES, IS DETERMINED AT THE TIME OF ACCEPTANCE OF THE DONATION.— Under Article 737 of the Civil Code, "[t]he donor's capacity shall be determined as of the time of the making of the donation." By analogy, the legal capacity or the personality of the donee, or the authority of the latter's representative, in certain cases, is determined at the time of acceptance of the donation. Article 738, in relation to Article 745, of the Civil Code provides that all those who are not specifically disqualified by law may accept donations either personally or through an authorized representative with a special power of attorney for the purpose or with a general and sufficient power.

3. MERCANTILE LAW; CORPORATION CODE; *DE FACTO* CORPORATION; IT IS THE ACT OF REGISTRATION WITH THE SECURITIES AND EXCHANGE COMMISSION (SEC) THROUGH THE ISSUANCE OF A CERTIFICATE OF INCORPORATION THAT MARKS THE BEGINNING OF AN ENTITY'S CORPORATE EXISTENCE; CASE AT BAR.— Jurisprudence settled that "[t]he filing of articles of incorporation **and** the issuance of the certificate of incorporation are essential for the existence of a *de facto* corporation." In fine, it is the act of registration with SEC through the issuance of a certificate of incorporation that marks the beginning of an entity's corporate existence. Petitioner filed its Articles of Incorporation and by-laws on August 28, 2001. However, the SEC issued the corresponding Certificate of Incorporation only on August 31, 2001, two (2) days after Purificacion executed a Deed of Donation on August 29, 2001. Clearly, at the time the donation was made, the Petitioner cannot be considered a corporation *de facto.*

4. ID.; ID.; DOCTRINE OF CORPORATION BY ESTOPPEL; THE DOCTRINE IS FOUNDED ON PRINCIPLES OF EQUITY AND IS DESIGNED TO PREVENT INJUSTICE AND UNFAIRNESS, IT APPLIES WHEN A NON-EXISTENT CORPORATION ENTERS INTO CONTRACTS OR DEALINGS WITH THIRD PERSON; ELUCIDATED.— The doctrine of corporation by estoppel is founded on principles of equity and is designed to prevent injustice and unfairness. It applies when a non-existent corporation enters into contracts or dealings with third persons. In which case, the person who has contracted or otherwise dealt with the non-existent corporation is estopped to deny the latter's legal existence in any action leading out of or involving such contract or dealing. While the doctrine is generally applied to protect the sanctity of dealings with the public, nothing prevents its application in the reverse, in fact the very wording of the law which sets forth the doctrine of corporation by estoppel permits such interpretation. Such that a person who has assumed an obligation in favor of a non-existent corporation, having transacted with the latter as if it was duly incorporated, is prevented from denying the existence of the latter to avoid the enforcement of the contract.

5. ID.; ID.; ID.; THE DOCTRINE RESTS ON THE IDEA THAT IF THE COURT WERE TO DISREGARD THE

EXISTENCE OF AN ENTITY WHICH ENTERED INTO A TRANSACTION WITH A THIRD PARTY, UNJUST ENRICHMENT WOULD RESULT AS SOME FORM OF BENEFIT HAVE ALREADY ACCRUED ON THE PART OF THE PARTIES; CASE AT BAR.— The doctrine of corporation by estoppel rests on the idea that if the Court were to disregard the existence of an entity which entered into a transaction with a third party, unjust enrichment would result as some form of benefit have already accrued on the part of one of the parties. Thus, in that instance, the Court affords upon the unorganized entity corporate fiction and juridical personality for the sole purpose of upholding the contract or transaction. In this case, while the underlying contract which is sought to be enforced is that of a donation, and thus rooted on liberality, it cannot be said that Purificacion, as the donor failed to acquire any benefit therefrom so as to prevent the application of the doctrine of corporation by estoppel. To recall, the subject properties were given by Purificacion, as a token of appreciation for the services rendered to her during her illness. In fine, the subject deed partakes of the nature of a remuneratory or compensatory donation, having been made "for the purpose of rewarding the donee for past services, which services do not amount to a demandable debt."

6. **CIVIL LAW; CONTRACTS; RATIFICATION OF CONTRACTS; EXPRESS OR IMPLIED; RATIFICATION CLEANSES OR PURGES THE CONTRACT FROM ITS DEFECTS FROM CONSTITUTION OR ESTABLISHMENT, RETROACTIVE TO THE DAY OF ITS CREATION.—** Express or implied ratification is recognized by law as a means to validate a defective contract. Ratification cleanses or purges the contract from its defects from constitution or establishment, retroactive to the day of its creation. By ratification, the infirmity of the act is obliterated thereby making it perfectly valid and enforceable.

7. **ID.; ID.; ID.; IMPLIED RATIFICATION; THE PRINCIPLE AND ESSENCE OF IMPLIED RATIFICATION REQUIRE THAT THE PRINCIPAL HAS FULL KNOWLEDGE AT THE TIME OF RATIFICATION OF ALL THE MATERIAL FACTS AND CIRCUMSTANCES RELATING TO THE ACT SOUGHT TO BE RATIFIED OR VALIDATED.—** The principle and essence of implied ratification require that the

> principal has full knowledge at the time of ratification of all the material facts and circumstances relating to the act sought to be ratified or validated. Also, it is important that the act constituting the ratification is unequivocal in that it is performed without the slightest hint of objection or protest from the donor or the donee, thus producing the inevitable conclusion that the donation and its acceptance were in fact confirmed and ratified by the donor and the donee.

APPEARANCES OF COUNSEL

Kasilag Arboladura Buan for petitioners.
Froilan M. Bacuñgan and Associates for respondents.

D E C I S I O N

A. REYES, JR., *J.*:

Before this Court 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 January 7, 2016 of the Court of Appeals (CA) in CA-G.R. CV No. 101944, and its Resolution[3] dated April 19, 2016, denying the motion for reconsideration thereof. The assailed decision partly granted the respondents' appeal and set aside the Decision[4] dated August 14, 2013 of the Regional Trial Court (RTC) of Calamba City, Branch 92 in Civil Case No. 3250-02-C.

The Antecedent Facts

The Missionary Sisters of Our Lady of Fatima (petitioner), otherwise known as the Peach Sisters of Laguna, is a religious

---

[1] *Rollo,* pp. 12-32.

[2] Penned by Associate Justice Ma. Luisa C. Quijano-Padilla, with Associate Justices Normandie B. Pizarro and Samuel H. Gaerlan, concurring; *id*. at 58-68.

[3] *Id*. at 69-71.

[4] Rendered by Judge Alberto F. Serrano; *id*. at 39-57.

and charitable group established under the patronage of the Roman Catholic Bishop of San Pablo on May 30, 1989. Its primary mission is to take care of the abandoned and neglected elderly persons. The petitioner came into being as a corporation by virtue of a Certificate issued by the Securities and Exchange Commission (SEC) on August 31, 2001.[5] Mother Ma. Concepcion R. Realon (Mother Concepcion) is the petitioner's Superior General.

The respondents, on the other hand, are the legal heirs of the late Purificacion Y. Alzona (Purificacion).

The facts giving rise to the instant controversy follow:

Purificacion, a spinster, is the registered owner of parcels of land covered by Transfer Certificate of Title (TCT) Nos. T-57820[*] and T-162375; and a co-owner of another property covered by TCT No. T-162380, all of which are located in Calamba City, Laguna.[6]

In 1996, Purificacion, impelled by her unmaterialized desire to be nun, decided to devote the rest of her life in helping others. In the same year, she then became a benefactor of the petitioner by giving support to the community and its works.[7]

In 1997, during a doctor's appointment, Purificacion then accompanied by Mother Concepcion, discovered that she has been suffering from lung cancer. Considering the restrictions in her movement, Purificacion requested Mother Concepcion to take care of her in her house, to which the latter agreed.[8]

In October 1999, Purificacion called Mother Concepcion and handed her a handwritten letter dated October 1999. Therein, Purificacion stated that she is donating her house and lot at F.

---

[5] *Id.* at 59.

[*] In some parts of the *rollo*, it is T-67820

[6] *Id.* at 43-44, 59.

[7] *Id.*

[8] *Id.* at 44, 59.

Mercado Street and Riceland at Banlic, both at Calamba, Laguna, to the petitioner through Mother Concepcion. On the same occasion, Purificacion introduced Mother Concepcion to her nephew, Francisco Del Mundo (Francisco), and niece, Ma. Lourdes Alzona Aguto-Africa (Lourdes). Purificacion, instructed Francisco to give a share of the harvest to Mother Concepcion, and informed Lourdes that she had given her house to Mother Concepcion.[9]

Sometime in August 2001, at the request of Purificacion, Mother Concepcion went to see Atty. Nonato Arcillas (Atty. Arcillas) in Los Baños, Laguna. During their meeting, Atty. Arcillas asked Mother Concepcion whether their group is registered with the SEC, to which the latter replied in the negative. Acting on the advice given by Atty. Arcillas, Mother Concepcion went to SEC and filed the corresponding registration application on August 28, 2001.[10]

On August 29, 2001, Purificacion executed a Deed of Donation *Inter Vivos* (Deed) in favor of the petitioner, conveying her properties covered by TCT Nos. T-67820 and T-162375, and her undivided share in the property covered by TCT No. T-162380. The Deed was notarized by Atty. Arcillas and witnessed by Purificacion's nephews Francisco and Diosdado Alzona, and grandnephew, Atty. Fernando M. Alonzo. The donation was accepted on even date by Mother Concepcion for and in behalf of the petitioner.[11]

Thereafter, Mother Concepcion filed an application before the Bureau of Internal Revenue (BIR) that the petitioner be exempted from donor's tax as a religious organization. The application was granted by the BIR through a letter dated January 14, 2002 of Acting Assistant Commissioner, Legal Service, Milagros Regalado.[12]

---

[9] *Id*. at 44, 59-60.

[10] *Id*. at 45, 60.

[11] *Id*.

[12] *Id*.

Subsequently, the Deed, together with the owner's duplicate copies of TCT Nos. T-57820, T-162375, and T-162380, and the exemption letter from the BIR was presented for registration. The Register of Deeds, however, denied the registration on account of the Affidavit of Adverse Claim dated September 26, 2001 filed by the brother of Purificacion, respondent Amando Y. Alzona (Amando).[13]

On October 30, 2001, Purificacion died without any issue, and survived only by her brother of full blood, Amando, who nonetheless died during the pendency of this case and is now represented and substituted by his legal heirs, joined as herein respondents.[14]

On April 9, 2002, Amando filed a Complaint before the RTC, seeking to annul the Deed executed between Purificacion and the petitioner, on the ground that at the time the donation was made, the latter was not registered with the SEC and therefore has no juridical personality and cannot legally accept the donation.[15]

After trial, on August 14, 2013, the RTC rendered its Decision[16] finding no merit in the complaint, thus ruling:

> WHEREFORE, the instant case is hereby DISMISSED with costs against the [respondents]. The Compulsory counterclaim of the [petitioner] is likewise dismissed for lack of evidence.
>
> SO ORDERED.[17]

In its decision, the RTC held that all the essential elements of a donation are present. The RTC set aside the allegation by the respondents relating to the incapacity of the parties to enter into a donation.[18]

---

[13] *Id*. at 45, 60-61.

[14] Id. at 39,45.

[15] *Id*. at 13, 39.

[16] *Id*. at 39-57.

[17] *Id*. at 57.

[18] *Id*. at 48-49.

In the case of Purificacion, the RTC held that apart from the self-serving allegations by the respondents, the records are bereft of evidence to prove that she did not possess the proper mental faculty in making the donation; as such the presumption that every person is of sound mind stands.[19]

On the capacity of the donee, the RTC held that at the time of the execution of the Deed, the petitioner was a *de facto* corporation and as such has the personality to be a beneficiary and has the power to acquire and possess property. Further then, the petitioner's incapacity cannot be questioned or assailed in the instant case as it constitutes a collateral attack which is prohibited by the Corporation Code of the Philippines.[20] In this regard, the RTC found that the recognition by the petitioner of Mother Concepcion's authority is sufficient to vest the latter of the capacity to accept the donation.[21]

Acting on the appeal filed by the respondents, the CA rendered the herein assailed Decision[22] on January 7, 2016, the dispositive portion of which reads:

> WHEREFORE, the appeal is PARTLY GRANTED. The assailed August 14, 2013 Decision of the RTC, Branch 92, Calamba City in Civil Case No. 3250-02 is SET ASIDE by declaring as VOID the deed of Donation dated August 14, 2013. [The respondents'] prayer for the award of moral and exemplary damages as well as attorney's fees is nevertheless DENIED.
>
> SO ORDERED.[23]

In so ruling, the CA, citing the case of *Seventh Day Adventist Conference Church of Southern Phils., Inc. v. Northeastern Mindanao Mission of Seventh Day Adventist, Inc.,*[24] held that

---

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

[20] *Id*. at 54.

[21] *Id*. at 56.

[22] *Id*. at 58-68.

[23] *Id*. at 67.

[24] 528 Phil. 647 (2006).

the petitioner cannot be considered as a *de facto* corporation considering that at the time of the donation, there was no *bona fide* attempt on its part to incorporate.[25] As an unregistered corporation, the CA concluded that the petitioner cannot exercise the powers, rights, and privileges expressly granted by the Corporation Code. Ultimately, bereft of juridical personality, the CA ruled that the petitioner cannot enter into a contract of Donation with Purificacion.[26]

Finally, the CA denied the respondents' claim for actual damages and attorney's fees for failure to substantiate the same.[27]

The petitioner sought a reconsideration of the Decision dated January 7, 2016, but the CA denied it in its Resolution[28] dated April 19, 2016.

In the instant petition, the petitioner submits the following arguments in support of its position:

a. The Donation *Inter Vivos* is valid and binding against the parties therein [Purificacion] and the [petitioner] and their respective successors in interest:

    1.) The [petitioner] has the requisite legal personality to accept donations as a religious institution under the Roman Catholic Bishop of San Pablo authorized to receive donations;

    2.) The [petitioner] has the requisite legal capacity to accept the donation as it may be considered a *de facto* corporation.

    3.) Regardless of the absence of the Certificate of Registration of [petitioner] at the time of the execution of the Deed of Donation, the same is still valid and binding having been accepted by a representative of the [petitioner] while the latter was still waiting for

---

[25] *Rollo*, p. 64.

[26] *Id*. at 66.

[27] *Id*. at 66-67.

[28] *Id*. at 69-70.

the issuance of the Certificate of Registration and which acceptance of the donation was duly ratified by the corporation.

4.) The intestate estate of Purificacion is estopped from questioning the legal personality of [the petitioner].

b. The Respondents lack the requisite legal capacity to question the legality of the deed of donation.[29]

In sum, the issue to be resolved by this Court in the instant case is whether or not the Deed executed by Purificacion in favor of the petitioner is valid and binding. In relation to this, the Court is called upon to determine the legal capacity of the petitioner, as donee, to accept the donation, and the authority Mother Concepcion to act on behalf of the petitioner in accepting the donation.

Ruling of the Court

The petition is meritorious.

The petitioner argues that it has the requisite legal personality to accept the donation as a religious institution organized under the Roman Catholic Bishop of San Pablo, a corporation sole.[30]

Regardless, the petitioner contends that it is a *de facto* corporation and therefore possessed of the requisite personality to enter into a contract of donation.

Assuming further that it cannot be considered as a *de facto* corporation, the petitioner submits that the acceptance by Mother Concepcion while the religious organization is still in the process of incorporation is valid as it then takes the form of a pre-incorporation contract governed by the rules on agency. The petitioner argues that their subsequent incorporation and acceptance perfected the subject contract of donation.[31]

---

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

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

[31] *Id*. at 26-27.

Ultimately, the petitioner argues that the intestate estate of Purificacion is estopped from questioning its legal personality considering the record is replete of evidence to prove that Purificacion at the time of the donation is fully aware of its status and yet was still resolved into giving her property.[32]

In response, the respondents submit that juridical personality to enter into a contract of donation is vested only upon the issuance of a Certificate of Incorporation from SEC.[33] Further, the respondents posit that the petitioner cannot even be considered as a *de facto* corporation considering that for more than 20 years, there was never any attempt on its part to incorporate, which decision came only after Atty. Arcillas' suggestion.[34]

In order that a donation of an immovable property be valid, the following elements must be present: (a) the essential reduction of the patrimony of the donor; (b) the increase in the patrimony of the donee; (c) the intent to do an act of liberality or *animus donandi*; (d) the donation must be contained in a public document; and e) that the acceptance thereof be made in the same deed or in a separate public instrument; if acceptance is made in a separate instrument, the donor must be notified thereof in an authentic form, to be noted in both instruments.[35]

There is no question that the true intent of Purificacion, the donor and the owner of the properties in question, was to give, out of liberality the subject house and lot, which she owned, to the petitioner. This act, was then contained in a public document, the deed having been acknowledged before Atty. Arcillas, a Notary Public.[36] The acceptance of the donation is made on the same date that the donation was made and contained in the same instrument as manifested by Mother Concepcion's

---

[32] *Id*. at 31.

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

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

[35] CIVIL CODE OF THE PHILIPPINES, Article 749; *Heirs of Florencio v. Heirs of De Leon*, 469 Phil. 459, 474 (2004).

[36] *Rollo,* pp. 47-48.

signature.[37] In fine, the remaining issue to be resolved is the capacity of the petitioner as donee to accept the donation, and the authority of Mother Concepcion to act on its behalf for this purpose.

Under Article 737 of the Civil Code, "[t]he donor's capacity shall be determined as of the time of the making of the donation." By analogy, the legal capacity or the personality of the donee, or the authority of the latter's representative, in certain cases, is determined at the time of acceptance of the donation.

Article 738, in relation to Article 745, of the Civil Code provides that all those who are not specifically disqualified by law may accept donations either personally or through an authorized representative with a special power of attorney for the purpose or with a general and sufficient power.

The Court finds that for the purpose of accepting the donation, the petitioner is deemed vested with personality to accept, and Mother Concepcion is clothed with authority to act on the latter's behalf.

At the outset, it must be stated that as correctly pointed out by the CA, the RTC erred in holding that the petitioner is a *de facto* corporation.

Jurisprudence settled that "[t]he filing of articles of incorporation **and** the issuance of the certificate of incorporation are essential for the existence of a *de facto* corporation."[38] In fine, it is the act of registration with SEC through the issuance of a certificate of incorporation that marks the beginning of an entity's corporate existence.[39]

Petitioner filed its Articles of Incorporation and by-laws on August 28, 2001. However, the SEC issued the corresponding

---

[37] *Id*. at 47.

[38] *Seventh Day Adventist Conference Church of Southern Philippines, Inc. v. Northeastern Mindanao Mission of Seventh Day Adventist, Inc.*, *supra* note 24, at 654.

[39] *Id*.

Certificate of Incorporation only on August 31, 2001, two (2) days after Purificacion executed a Deed of Donation on August 29, 2001. Clearly, at the time the donation was made, the Petitioner cannot be considered a corporation *de facto*.[40]

Rather, a review of the attendant circumstances reveals that it calls for the application of the doctrine of corporation by estoppel as provided for under Section 21 of the Corporation Code, *viz.*:

> **Sec. 21**. *Corporation by estoppel.* — All persons who assume to act as a corporation knowing it to be without authority to do so shall be liable as general partners for all debts, liabilities and damages incurred or arising as a result thereof: Provided, however, That when any such ostensible corporation is sued on any transaction entered by it as a corporation or on any tort committed by it as such, it shall not be allowed to use as a defense its lack of corporate personality.
>
> **One who assumes an obligation to an ostensible corporation as such, cannot resist performance thereof on the ground that there was in fact no corporation.** (Emphasis Ours)

The doctrine of corporation by estoppel is founded on principles of equity and is designed to prevent injustice and unfairness. It applies when a non-existent corporation enters into contracts or dealings with third persons.[41] In which case, the person who has contracted or otherwise dealt with the non-existent corporation is estopped to deny the latter's legal existence in any action leading out of or involving such contract or dealing. While the doctrine is generally applied to protect the sanctity of dealings with the public,[42] nothing prevents its application in the reverse, in fact the very wording of the law which sets forth the doctrine of corporation by estoppel permits such interpretation. Such that a person who has assumed an obligation in favor of a non-existent corporation, having transacted with

---

[40] *Rollo*, pp. 45, 64.

[41] *Lozano v. Hon. Delos Santos*, 340 Phil. 563, 570 (1997).

[42] *Asia Banking Corporation v. Standard Products Co.*, 46 Phil. 144, 145 (1924).

the latter as if it was duly incorporated, is prevented from denying the existence of the latter to avoid the enforcement of the contract.

Jurisprudence dictates that the doctrine of corporation by estoppel applies for as long as there is no fraud and when the existence of the association is attacked for causes attendant at the time the contract or dealing sought to be enforced was entered into, and not thereafter.[43]

In this controversy, Purificacion dealt with the petitioner as if it were a corporation. This is evident from the fact that Purificacion executed two (2) documents conveying her properties in favor of the petitioner – first, on October 11, 1999 *via* handwritten letter, and second, on August 29, 2001 through a Deed; the latter having been executed the day after the petitioner filed its application for registration with the SEC.[44]

The doctrine of corporation by estoppel rests on the idea that if the Court were to disregard the existence of an entity which entered into a transaction with a third party, unjust enrichment would result as some form of benefit have already accrued on the part of one of the parties. Thus, in that instance, the Court affords upon the unorganized entity corporate fiction and juridical personality for the sole purpose of upholding the contract or transaction.

In this case, while the underlying contract which is sought to be enforced is that of a donation, and thus rooted on liberality, it cannot be said that Purificacion, as the donor failed to acquire any benefit therefrom so as to prevent the application of the

---

[43] *Id*. at 146.

[44] See *Lim v. Phil. Fishing Gear Industries, Inc.*, 376 Phil. 76, 92 (1999), where the Court ruled that "a third party who, knowing an association to be unincorporated, nonetheless treated it as a corporation and received benefits from it, may be barred from denying its corporate existence in a suit brought against the alleged corporation. In such case, all those who benefited from the transaction made by the ostensible corporation, despite knowledge of its legal defects, may be held liable for contracts they impliedly assented to or took advantage of."

doctrine of corporation by estoppel.[45] To recall, the subject properties were given by Purificacion, as a token of appreciation for the services rendered to her during her illness.[46] In fine, the subject deed partakes of the nature of a remuneratory or compensatory donation, having been made "for the purpose of rewarding the donee for past services, which services do not amount to a demandable debt."[47]

As elucidated by the Court in *Pirovano, et al. v. De La Rama Steamship Co.*:[48]

> In donations made to a person for services rendered to the donor, the donor's will is moved by acts which directly benefit him. The motivating cause is gratitude, acknowledgment of a favor, a desire to compensate. A donation made to one who saved the donor's life, or a lawyer who renounced his fees for services rendered to the donor, would fall under this class of donations.[49]

Therefore, under the premises, past services constitutes consideration, which in turn can be regarded as "benefit" on

---

[45] See *Int'l. Express Travel and Tour Services, Inc. v. CA*, 397 Phil. 751, 761-762 (2000), whereby the Court ruled that "[t]he doctrine applies to a third party only when he tries to escape liability on a contract from which he has benefited on the irrelevant ground of defective incorporation." Thus, in that case, where the petitioner is not trying to escape liability from the contract but rather is the one claiming from the contract, the Court ruled that the doctrine does not apply.

[46] *Rollo*, p. 46. The Deed, denominated as Donation *Inter Vivos*, states:

> That, **for and in consideration of the love and affection of the DONOR for the DONEE and of the faithful services the latter has rendered in the past to the former,** the said DONOR by these presents, cedes, transfers and conveys by way of donation *inter vivos*, unto said DONEE, the two (2) parcels of land covered by Transfer Certificate of Title Nos. T-57820 and T-162375 and the undivided share as co-owner in a parcel of land covered by Transfer Certificate of Title No. T-162380 together with all the buildings and improvements existing thereon, free from all liens and encumbrances. (Emphasis Ours)

[47] *C-J Yulo & Sons, Inc. v. Roman Catholic Bishop of San Pablo, Inc.*, 494 Phil. 282, 292 (2005).

[48] 96 Phil. 335 (1954).

[49] *Id*. at 350.

the part of the donor, consequently, there exists no obstacle to the application of the doctrine of corporation by estoppel; although strictly speaking, the petitioner did not perform these services on the expectation of something in return.

Precisely, the existence of the petitioner as a corporate entity is upheld in this case for the purpose of validating the Deed to ensure that the primary objective for which the donation was intended is achieved, that is, to convey the property for the purpose of aiding the petitioner in the pursuit of its charitable objectives.

Further, apart from the foregoing, the subsequent act by Purificacion of re-conveying the property in favor of the petitioner is a ratification *by conduct* of the otherwise defective donation.[50]

Express or implied ratification is recognized by law as a means to validate a defective contract.[51] Ratification cleanses or purges the contract from its defects from constitution or establishment, retroactive to the day of its creation. By ratification, the infirmity of the act is obliterated thereby making it perfectly valid and enforceable.[52]

The principle and essence of implied ratification require that the principal has full knowledge at the time of ratification of all the material facts and circumstances relating to the act sought to be ratified or validated.[53] Also, it is important that the act

---

[50] CIVIL CODE OF THE PHILIPPINES, Article 1390.

[51] CIVIL CODE OF THE PHILIPPINES, Article 1393. **Ratification may be effected expressly or tacitly. It is understood that there is a tacit ratification if, with knowledge of the reason which renders the contract voidable and such reason having ceased, the person who has a right to invoke it should execute an act which necessarily implies an intention to waive his right.**

[52] *Cf. Pirovano, et al. v. De La Rama Steamship Co.*, *supra* note 48, at 359.

[53] *Felix Atacador v. Hilarion Silayan, Rosario Payumo and Eduardo Payumo*, 67 Phil. 674, 677 (1939). *Cf. Yasuma v. Heirs of Cecilio S. De Villa*, 531 Phil. 62, 68 (2006).

constituting the ratification is unequivocal in that it is performed without the slightest hint of objection or protest from the donor or the donee, thus producing the inevitable conclusion that the donation and its acceptance were in fact confirmed and ratified by the donor and the donee.[54]

In this controversy, while the initial conveyance is defective, the genuine intent of Purificacion to donate the subject properties in favor of the petitioner is indubitable. Also, while the petitioner is yet to be incorporated, it cannot be said that the initial conveyance was tainted with fraud or misrepresentation. Contrarily, Purificacion acted with full knowledge of circumstances of the Petitioner. This is evident from Purificacion's act of referring Mother Concepcion to Atty. Arcillas, who, in turn, advised the petitioner to apply for registration. Further, with the execution of two (2) documents of conveyance in favor of the petitioner, it is clear that what Purificacion intended was for the sisters comprising the petitioner to have ownership of her properties to aid them in the pursuit of their charitable activities, as a token of appreciation for the services they rendered to her during her illness.[55] To put it differently, the reference to the petitioner was merely a descriptive term used to refer to the sisters comprising the congregation collectively. Accordingly, the acceptance of Mother Concepcion for the sisters comprising the congregation is sufficient to perfect the donation and transfer title to the property to the petitioner. Ultimately, the subsequent incorporation of

---

[54] *Felix Atacador v. Hilarion Silayan, Rosario Payumo and Eduardo Payumo*, *id*. at 678.

[55] *Rollo*, p. 46. The Deed, denominated as Donation *Inter Vivos*, states:

That, **for and in consideration of the love and affection of the DONOR for the DONEE and of the faithful services the latter has rendered in the past to the former,** the said DONOR by these presents, cedes, transfers and conveys by way of donation *inter vivos*, unto said DONEE, the two (2) parcels of land covered by Transfer Certificate of Title Nos. T-57820 and T-162375 and the undivided share as co-owner in a parcel of land covered by Transfer Certificate of Title No. T-162380 together with all the buildings and improvements existing thereon, free from all liens and encumbrances. (Emphasis Ours)

the petitioner and its affirmation of Mother Concepcion's authority to accept on its behalf cured whatever defect that may have attended the acceptance of the donation.

The Deed sought to be enforced having been validly entered into by Purificacion, the respondents' predecessor-in-interest, binds the respondents who succeed the latter as heirs.[56] Simply, as they claim interest in their capacity as Purificacion's heirs, the respondents are considered as "privies" to the subject Deed; or are "those between whom an action is binding although they are not literally parties to the said action."[57] As discussed in *Constantino, et al. v. Heirs of Pedro Constantino, Jr.*:[58]

> [p]rivity in estate denotes the privity between assignor and assignee, donor and donee, grantor and grantee, joint tenant for life and remainderman or reversioner and their respective assignees, vendor by deed of warranty and a remote vendee or assignee. A privy in estate is one, it has been said, who derives his title to the property in question by purchase; one who takes by conveyance. In fine, respondents, as successors-in-interest, derive their right from and are in the same position as their predecessor in whose shoes they now stand.[59] (Citation omitted)

Anent the authority of Mother Concepcion to act as representative for and in behalf of the petitioner, the Court similarly upholds the same. Foremost, the authority of Mother Concepcion was never questioned by the petitioner. In fact, the latter affirms and supports the authority of Mother Concepcion to accept the donation on their behalf; as she is, after all the congregation's Superior General.[60] Furthermore, the petitioner's avowal of Mother Concepcion's authority after their SEC

---

[56] CIVIL CODE OF THE PHILIPPINES, Article 1311; *Heirs of Florencio v. Heirs of De Leon*, *supra* note 35, citing *San Agustin v. CA*, 422 Phil. 686, 697 (2001).

[57] *Constantino, et al. v. Heirs of Pedro Constantino, Jr.*, 718 Phil. 575, 589 (2013).

[58] 718 Phil. 575 (2013).

[59] *Id.*, citing *Correa v. Pascual, et al.*, 99 Phil. 696, 703 (1956).

[60] *Rollo,* p. 75.

registration is a ratification of the latter's authority to accept the subject donation as the petitioner's representative.[61]

In closing, it must be emphasized that the Court is *both* of law and of justice. Thus, the Court's mission and purpose is to apply the law *with* justice.[62]

Donation is an expression of our social conscience, an act rooted purely on the goodness of one's heart and intent to contribute.

Purificacion, the donor is worthy of praise for her works of charity. Likewise, the petitioner is worthy of admiration for with or without the promise of reward or consideration, the Court is certain that it is impelled by sincere desire to help the petitioner in overcoming her illness.

It is unfortunate that the will of a person moved by the desire to reciprocate the goodness shown to her during the lowest and culminating points of her life is questioned and herein sought to be nullified on strict legality, when the intent of the donor to give is beyond question.

The promotion of charitable works is a laudable objective. While not mentioned in the Constitution, the Court recognizes benevolent giving as an important social fabric that eliminates inequality. As such, charitable giving must be encouraged through support from society and the Court.

WHEREFORE, in consideration of the foregoing disquisitions, the instant petition for review on *certiorari* is **GRANTED**. Accordingly, the Decision dated January 7, 2016 and Resolution dated April 19, 2016 of the Court of Appeals in CA-G.R. CV No. 101944, are hereby **REVERSED and SET ASIDE.**

SO ORDERED.

Carpio (*Chairperson*), *Peralta, Perlas-Bernabe,* and *Caguioa, JJ.,* concur.

---

[61] CIVIL CODE OF THE PHILIPPINES, Article 1910.

[62] *Alonzo v. Intermediate Appellate Court*, 234 Phil. 267, 273 (1987).

SECOND DIVISION

[G.R. No. 229507. August 6, 2018]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **DOMINGO ASPA, JR.** ***y*** **RASIMO,** *accused-appellant.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; FINDINGS OF THE TRIAL COURT, WHICH ARE FACTUAL IN NATURE AND WHICH INVOLVE THE CREDIBILITY OF WITNESSES, ARE ACCORDED RESPECT WHEN NO GLARING ERRORS, GROSS MISAPPREHENSION OF FACTS OR SPECULATIVE, ARBITRARY AND UNSUPPORTED CONCLUSIONS CAN BE GATHERED FROM SUCH FINDINGS; RATIONALE.— [A]spa wants this Court to reevaluate and reexamine the credibility of the prosecution witnesses *vis-a-vis* defense witness. Fundamental is the rule that findings of the trial court, which are factual in nature and which involve the credibility of witnesses, are accorded respect when no glaring errors, gross misapprehension of facts or speculative, arbitrary and unsupported conclusions can be gathered from such findings. The reason is obvious. The trial court is in a better position to decide the credibility of witnesses, having heard their testimonies and observed their deportment and manner of testifying during the trial. We carefully examined the records of this case since what is at stake here is no less than the liberty of Aspa. Try as we might, however, this Court failed to identify any error committed by the RTC and the CA in the appreciation of the evidence as well as in the similar conclusions they reached. The courts *a quo* have not overlooked or disregarded arbitrarily any significant facts and circumstances in the case at bench.

2. ID.; ID.; ID.; UNLESS THERE IS A CLEAR AND CONVINCING EVIDENCE THAT THE MEMBERS OF THE BUY-BUST TEAM WERE INSPIRED BY ANY IMPROPER MOTIVE OR WERE NOT PROPERLY PERFORMING THEIR DUTY, THEIR TESTIMONIES WITH RESPECT TO THE OPERATION DESERVE FULL

FAITH AND CREDIT.— Buy-bust operations are recognized in this jurisdiction as a legitimate form of entrapment of the persons suspected of being involved in drug dealings. Unless there is a clear and convincing evidence that the members of the buy-bust team were inspired by any improper motive or were not properly performing their duty, their testimonies with respect to the operation deserve full faith and credit.

3. **CRIMINAL LAW; THE COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (REPUBLIC ACT NO. 9165); ILLEGAL SALE OF DANGEROUS DRUGS; ELEMENTS; PRESENT.—** In the prosecution of illegal sale of dangerous drugs in a buy-bust operation, there must be a concurrence of all the elements of the offense: (1) the identity of the buyer and the seller, the object, and the consideration; and (2) the delivery of the thing sold and the payment thereof. The prosecution must also prove the illegal sale of the dangerous drugs and present the *corpus delicti* in court as evidence. The commission of the offense of illegal sale of dangerous drugs requires merely the consummation of the selling transaction, which happens the moment the buyer receives the drug from the seller. The crime is considered consummated by the delivery of the goods. All the above elements are present in the case at bench.

4. **ID.; ID.; ARTICLE 21 OF R.A. NO. 9165; REQUIREMENTS OF PHYSICAL INVENTORY AND TAKING OF PHOTOGRAPH OF THE SEIZED DRUGS; THE PRESERVATION OF THE INTEGRITY AND THE EVIDENTIARY VALUE OF THE SEIZED ITEMS IS THE MOST IMPORTANT FACTOR AS THE SAME WILL BE USED TO DETERMINE THE GUILT OR INNOCENCE OF THE ACCUSED; HENCE, THE PROSECUTION'S FAILURE TO SUBMIT IN EVIDENCE THE PRESCRIBED PHYSICAL INVENTORY AND PHOTOGRAPHING OF THE SEIZED DRUGS IN THE PRESENCE OF THE ENUMERATED PERSONS WILL NOT RENDER THE ACCUSED'S ARREST ILLEGAL OR THE ITEMS SEIZED FROM HIM INADMISSIBLE.—** Evidence on record shows that the physical inventory of the seized marijuana leaves and the taking of the photograph thereof were immediately conducted at the place of the buy-bust operation by SPO1 Somera in the presence of Aspa, Michael Angelo Patron *(Patron),* a member

of the media from the *Bombo Radyo,* and Edgar Palos *(Palos),* a *barangay kagawad* of *Barangay* VIII. On cross-examination, PO1 Italin admitted that they did not have with them the representative from the Department of Justice at that time. While nowhere in the prosecution evidence disclose an explanation why the police operatives failed to secure the presence of a representative from the Department of Justice, such omission shall not render Aspa's arrest illegal or the items seized/ confiscated from him as inadmissible in evidence. In *People v. Dasigan,* the Court 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. In said case, no photographs were taken by the apprehending officers, and the inventory was not shown to have been made in the presence of selected public officials, yet we sustained the judgment of conviction. This Court explained: However, this 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. Hence, the prosecution's failure to submit in evidence the physical inventory and photograph of the seized drugs as required under Article 21 of R.A. No. 9165, will not render the accused's arrest illegal or the items seized from him inadmissible.

5. ID.; ID.; ID.; ID.; THE REQUIREMENTS OF MARKING THE SEIZED ITEMS, CONDUCT OF INVENTORY AND TAKING PHOTOGRAPH IN THE PRESENCE OF A REPRESENTATIVE FROM THE MEDIA OR THE DEPARTMENT OF JUSTICE AND A LOCAL ELECTIVE OFFICIAL, ARE POLICE INVESTIGATION PROCEDURES WHICH CALL FOR ADMINISTRATIVE SANCTIONS IN CASE OF NON-COMPLIANCE, HOWEVER, NON-OBSERVANCE OF SUCH POLICE ADMINISTRATIVE PROCEDURES SHOULD NOT AFFECT THE VALIDITY OF THE SEIZURE OF THE EVIDENCE, BECAUSE THE ISSUE OF CHAIN OF CUSTODY IS ULTIMATELY ANCHORED ON THE ADMISSIBILITY OF EVIDENCE, WHICH IS EXCLUSIVELY WITHIN THE

PREROGATIVE OF THE COURTS TO DECIDE IN ACCORDANCE WITH THE RULES ON EVIDENCE.— When the confiscated and/or seized drugs were not handled precisely in the manner prescribed by the chain of custody rule, particularly the making of inventory and the photographing of the drugs, its consequence would not relate to inadmissibility that would automatically destroy the prosecution's case but rather to the evidentiary merit or probative value to be given the evidence. More importantly in this connection, the Court, in the recent case of *People v. Vicente Sipin y De Castro,* wrote: The *ponente* further submits that the requirements of marking the seized items, conduct of inventory and taking photograph in the presence of a representative from the media or the DOJ and a local elective official, are Police investigation procedures which call for administrative sanctions in case of non-compliance. Violation of such procedure may even merit penalty under R.A. No. 9165, to wit: x x x However, non-observance of such Police administrative procedures should not affect the validity of the seizure of the evidence, because the issue of chain of custody is ultimately anchored on the admissibility of evidence, which is exclusively within the prerogative of the courts to decide in accordance with the rules on evidence. At any rate, the Court finds that the presence of mediaman Patron and *barangay kagawad* Palos during the conduct of the physical inventory and taking of photograph of the confiscated drugs has protected the credibility and trustworthiness of the September 2, 2011 buy-bust operation as well as the incrimination of Aspa.

6. ID.; ID.; ILLEGAL SALE OF DANGEROUS DRUGS; ACCUSED'S BARE DENIAL CANNOT PREVAIL OVER THE POSITIVE IDENTIFICATION MADE BY THE PROSECUTION WITNESSES WHO HARBORED NO ILL-WILL AGAINST HIM.— In comparison to the overwhelming evidence of the prosecution, all that Aspa could muster is the defense of denial. To begin with, we observe that he failed to proffer sufficient, competent and independent evidence to support and bolster his defense of denial. In any event, Aspa's denial must fail in the light of his positive identification by PO1 Italin, SPO2 Somera and PO2 Reoliquio in open court to be the same person they caught red-handed selling marijuana. His bare denial, therefore, cannot prevail over such positive identification made by the said prosecution witnesses who harbored no ill-will against

him. More telling was Aspa's own admission that he only met the prosecution witnesses when he was arrested and that he cannot think of any reason why said Police officers would charge him with such an offense. This goes to show that the prosecution witnesses were not impelled with improper motive to falsely testify against the appellant.

7. ID.; ID.; ID.; PENALTY OF LIFE IMPRISONMENT WITHOUT ANY QUALIFICATION IMPOSED FOR VIOLATION OF SECTION 5, ARTICLE II OF R.A. NO. 9165. — [T]he Court finds that the phrase *"without eligibility for parole"* need not be appended to qualify Aspa's prison term of life imprisonment in line with the instructions given by the Court in A.M. No. 15-08-02-SC and, hence, must be deleted. Besides, parole is extended only to those convicted of divisible penalties. Therefore, the dispositive portion of this decision should simply state that Aspa is sentenced to suffer the penalty of life imprisonment without any qualification.

APPEARANCES OF COUNSEL

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

D E C I S I O N

PERALTA, *J.*:

Assailed in this appeal is the January 14, 2016 Decision[1] of the Court of Appeals *(CA)* in CA-G.R. CR-HC No. 06767, which affirmed the April 2, 2014 Decision[2] of the Regional Trial Court, Branch 20, Vigan City, Ilocos Sur *(RTC),* finding accused-appellant Domingo Aspa, Jr. *y* Rasimo *(Aspa)* guilty beyond reasonable doubt of violation of Section 5, Article II of Republic

---

[1] Penned by Associate Justice Mario V. Lopez, with Associate Justices Rosmari D. Carandang and Myra V. Garcia-Fernandez, concurring; *rollo,* pp. 2-7.

[2] Penned by Judge Marita Balloguing; CA *rollo,* pp. 42-52.

Act No. 9165 *(R.A. No. 9165),* otherwise known as the *Comprehensive Dangerous Drugs Act of 2002.*

The antecedents are as follows:

A spa was indicted for violation of Section 5, Article II of R.A . No. 9165 in an Information,[3] dated September 3, 2011. The accusatory portion of which reads:

> That, on or about the 2nd day of September, 2011, in the City of Vigan, Province of Ilocos Sur, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, without having been authorized by law, did then and there willfully, unlawfully and feloniously sell and deliver to a poseur-buyer 7.8471 grams, more or less, of marijuana fruiting tops, a dangerous drug.
>
> Contrary to law.

When arraigned, Aspa pleaded not guilty to the charge. After pre-trial was terminated, trial on the merits ensued.

Version of the Prosecution

As summarized by the Office of the Solicitor General (OSG) in the Appellee's Brief,[4] the People's version of the event is as follows:

> On September 2, 2011 while on duty at the Vigan City Police Station, Deputy Chief of Police PCI Mar Louise Tamargo Bundoc received a report from a confidential informant that a certain Domingo Aspa, Jr. is selling marijuana. Thereafter, a buy-bust team against the suspect was constituted with PCI Mar Louise Bundoc, SPO4 Elpidio Ponce, SPO2 Dionisio Adela, SPO1 Amado Somera, Jr., PO2 Denni[s] Reoliquio and PO1 Mark Anthony Italin as members. PO1 Italin was briefed to act as the poseur-buyer and accompany the confidential informant.
>
> Later around 9:45 am, the buy-bust team proceeded to the northern part of the Vigan Public Market near Pardo's Lechon Manok, where the buy-bust operation will be conducted. They positioned themselves in front of Pardo's Lechon Manok and in front of the north portion

---

[3] Records, pp. 1-2.

[4] CA *rollo* pp. 59-69.

of the public market. After a few minutes, appellant Domingo Aspa arrived. PO1 Italin, along with the civilian informant, went to the alley beside Pardo's Lechon Manok. Then PO1 Italin heard the confidential informant asking Aspa whether he already has the marijuana, to which Aspa answered in the affirmative. After their conversation, Aspa handed over to the confidential informant three (3) heat-sealed plastic sachets allegedly containing dried marijuana leaves. In turn, the confidential informant handed over to Aspa the buy-bust money worth Php300.00, in three (3) Php100.00 bills. After the transaction, the confidential informant gave the pre-arranged signal, then Aspa was immediately arrested.

At the crime scene, the recovered evidence were inventoried and marked by SPO1 Somera, in front of appellant [and] in the presence of PO1 Italin, members of the media and councilor from Barangay VIII. Thereafter, PO1 Lopez photographed the evidence. The suspect was then turned over to the investigation section. The three (3) sachets of marijuana, on the other hand, were carried by SPO1 Somera who then proceeded to the Crime Laboratory at Ilocos Norte, together with the letter request for the confirmation and identification of the substance personally prepared and delivered by him, signed by PCI Mar Louise Bundoc. PSI Roanalaine B. Baligod received the said letter request and conducted a qualitative examination to determine the presence of marijuana after the examination. Consequently, she prepared the pertinent laboratory and chemistry reports finding that the specimen submitted yielded positive results to the test of marijuana, a dangerous drug.[5]

Version of the Defense

Aspa raised the defense of denial. He gave the following version in the Appellant's Brief[6] to support his plea for exoneration:

x x x x x x x x x

13. On 2 September 2011, at around 8:00 o'clock in the morning, DOMINGO R. ASPA, a tricycle driver by trade, was about to park his vehicle on the road along the Vigan City Public Market to await passengers when a fellow pedicab driver, Ernie Figuerres (Ernie),

---

[5] *Id.* at 63-64. (Citations omitted)

[6] *Id.* at 29-40.

asked him to spare Two Hundred Pesos (₱200.00) to purchase marijuana. Not having the exact amount, he gave him Five Hundred Pesos (₱500.00). Upon his return, Ernie handed the accused Three Hundred Pesos (₱300.00) together with three (3) plastic sachets containing marijuana leaves.

14. After parting ways, the accused walked towards his tricycle. However, he was unable to reach the same as he was *strangled* on his way to it. Barely able to breath, he fell down and was then asked where he secured the contraband by his assailant who later introduced himself as a policeman.

15. The police officer sat on him while placing a call on his cellular phone and after about twenty (20) to twenty-five (25) minutes, more policemen arrived. While waiting, the officer asked him the source of his marijuana in exchange for his liberty. The accused answered that the officer saw the exchange as it transpired. The accused then denied all the accusations leveled against him.[7]

After the trial, the RTC rendered judgment finding accused-appellant Aspa guilty beyond reasonable doubt of the crime charged. The dispositive portion of the RTC Decision, dated April 2, 2014, reads:

WHEREFORE, in view of the foregoing premises, the Court finds the accused DOMINGO ASPA, Jr., y RASIMO, GUILTY beyond reasonable doubt of the offense charged in the Information, hereby sentencing him to suffer LIFE IMPRISONMENT without eligibility of parole and to pay a fine of five hundred thousand pesos (Php500,000.00).

The 7.8471 grams of marijuana fruiting tops are hereby ordered confiscated in favor of the government for proper disposal.

The Branch Clerk of Court is hereby directed to prepare the MITTIMUS.

SO ORDERED.[8]

---

[7] *Id.* at 34-35. (Citations omitted)

[8] *Id.* at 52.

According to the RTC, all the elements of the crime of illegal sale of dangerous drugs were satisfactorily established by the prosecution. The RTC gave weight and credence on the testimonies of the prosecution witnesses PO1 Mark Anthony Italin *(PO1 Italin),* SPO1 Amado Somera, Jr. *(SPO1 Somera)* and PO2 Dennis Reoliquio *(PO2 Reoliquio)* which proved that Aspa was caught *in flagrante delicto* selling 7.8471 grams of marijuana during a legitimate buy-bust operation.

The RTC declared that the integrity and evidentiary value of the confiscated narcotics were duly preserved. It rejected the defense of denial interposed by the appellant because the same was not substantiated by clear and convincing evidence.

Undaunted, Aspa appealed his conviction for illegal sale of dangerous drugs before the CA.

The CA Ruling

On January 14, 2016, the CA rendered its assailed Decision affirming Aspa's conviction based on the same ratiocinations the RTC had rendered, the *fallo* of which states:

> FOR THESE REASONS, the appeal is DENIED.
>
> SO ORDERED.[9]

The CA ruled that the elements of illegal sale of dangerous drugs have been adequately proven by the prosecution. The appellate court declared that the absence of the representative from the Department of Justice during the buy-bust is of no moment and would not affect the guilt of Aspa because the chain of custody of the seized marijuana remains unbroken and evidentiary value thereof was duly preserved. Lastly, the CA brushed aside Aspa's defense of denial for being self-serving and unsupported by any plausible proof.

Maintaining his claim of innocence, Aspa filed the present appeal and posited the same assignment of errors he previously raised before the CA, to wit:

---

[9] *Rollo,* p. 7.

I

THE TRIAL COURT GRAVELY ERRED IN GIVING FULL CREDENCE TO THE PROSECUTION'S VERSION DESPITE THE PATENT IRREGULARITIES IN THE CONDUCT OF THE BUY-BUST OPERATION.

II

THE TRIAL COURT GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT OF THE CRIME CHARGED DESPITE THE PROSECUTION'S FAILURE TO ESTABLISH THE IDENTITY AND INTEGRITY OF THE ALLEGED CONFISCATED DRUGS CONSTITUTING THE *CORPUS DELICTI* OF THE CRIME.[10]

In its Resolution[11] dated March 20, 2017, the Court directed both parties to submit their Supplemental Briefs, if they so desire. On May 23, 2017, the OSG filed its Manifestation and Motion[12] stating that it will no longer file a supplemental brief as its Appellee's Brief had sufficiently ventilated the issues raised. On June 16, 2017, Aspa filed a Manifestation (In Lieu of Supplemental Brief)[13] averring that he would adopt all his arguments in his Appellant's Brief filed before the CA.

Aspa insists that his arrest has no legal anchor because no buy bust or entrapment operation was ever conducted against him. The three sachets of marijuana were given to him by a certain Ernie as payment for the ₱200.00 he earlier lent the latter.

The appeal is bereft of merit. Aspa's conviction for violation of Section 5, Article II of R.A. No. 9165 must stand.

In the main, Aspa wants this Court to reevaluate and reexamine the credibility of the prosecution witnesses *vis-a-vis* defense witness. Fundamental is the rule that findings of the trial court,

---

[10] CA *rollo,* p. 31.

[11] *Rollo,* pp. 13-14.

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

[13] *Id.* at 19-21.

which are factual in nature and which involve the credibility of witnesses, are accorded respect when no glaring errors, gross misapprehension of facts or speculative, arbitrary and unsupported conclusions can be gathered from such findings.[14] The reason is obvious. The trial court is in a better position to decide the credibility of witnesses, having heard their testimonies and observed their deportment and manner of testifying during the trial.[15]

We carefully examined the records of this case since what is at stake here is no less than the liberty of Aspa. Try as we might, however, this Court failed to identify any error committed by the RTC and the CA in the appreciation of the evidence as well as in the similar conclusions they reached. The courts *a quo* have not overlooked or disregarded arbitrarily any significant facts and circumstances in the case at bench.

Primarily, buy-bust operations are recognized in this jurisdiction as a legitimate form of entrapment of the persons suspected of being involved in drug dealings.[16] Unless there is a clear and convincing evidence that the members of the buy-bust team were inspired by any improper motive or were not properly performing their duty, their testimonies with respect to the operation deserve full faith and credit.[17] In the prosecution of illegal sale of dangerous drugs in a buy-bust operation, there must be a concurrence of all the elements of the offense: (1) the identity of the buyer and the seller, the object, and the consideration; and (2) the delivery of the thing sold and the payment thereof. The prosecution must also prove the illegal sale of the dangerous drugs and present the *corpus delicti* in court as evidence.[18] The commission of the offense of illegal sale of dangerous drugs requires merely the consummation of

---

[14] *People v. De Guzman,* 564 Phil. 282, 290 (2007).

[15] *People v. Villamin,* 625 Phil. 698, 713 (2010).

[16] *People v. Rebotazo,* 711 Phil. 150, 162 (2013).

[17] *People v. Miranda,* 560 Phil. 795, 806 (2007).

[18] *People v. Taculod,* 723 Phil. 627, 641 (2013).

the selling transaction, which happens the moment the buyer receives the drug from the seller. The crime is considered consummated by the delivery of the goods.[19]

All the above elements are present in the case at bench. PO1 Italin gave an unequivocal account of the sale that took place on September 2, 2011 leading to the arrest of the appellant. PO1 Italin testified that he was assigned to accompany the confidential informant who acted as the poseur-buyer in a buy-bust operation conducted at the northern part of the Vigan City Public Market; that upon reaching the target site, he and the confidential informant proceeded in front of Pardo's Lechon Manok, while the rest of the team strategically positioned themselves around the parking area of the market; that after a few minutes, Aspa arrived and led the informant to an alley; that he followed them closely as he was then only 2 to 3 meters away from the two; that he heard the informant asked Aspa if he has the marijuana, to which Aspa answered in the affirmative; and, that Aspa handed the three sachets containing dried marijuana leaves to the informant who, in turn, gave the buy-bust money consisting of three ₱100.00 bills with the marking "DR," the initials of PO2 Dennis Reoliquio, the one who prepared the buy-bust money. SPO1 Somera and PO2 Reoliquio corroborated the testimony of PO1 Italin in its material points having also seen how the transaction between Aspa and the confidential informant took place. This Court notes that the accounts of these Police operatives of the incident dovetailed each other and uniformly testified of having apprehended Aspa in the entrapment operation.

We find that the credible and positive testimonies of PO1 Italin, SPO1 Somera and PO2 Reoliquio are sufficient to prove that an illegal transaction or sale of marijuana took place. Also, when the *corpus delicti* (three plastic sachets containing 7.8471 grams of marijuana) were presented in court, PO1 Italin and SPO1 Somera positively identified the same as the sachets of marijuana leaves that Aspa sold to the confidential informant

---

[19] *People v. Dumlao,* 584 Phil. 732, 738 (2008).

during the entrapment operation. Each bears the marking of "AES", the initials of SPO1 Amado Somera, Jr. The totality of the evidence presented during trial clearly points to Aspa as being engaged in the illegal sale of marijuana at the time he was arrested.

Yet, Aspa wants us to undo his conviction. In his attempt at exculpation, He argues that the failure of the Police operatives to comply with the procedure laid down in Section 21(1) of R.A. No. 9165 because the representative from the Department of Justice was not present during the inventory of the alleged confiscated narcotics, is fatal to the prosecution's cause. In the light of his foregoing submission, Aspa maintains that he is entitled to an acquittal of the charge leveled against him.

The Court is not persuaded.

Evidence on record shows that the physical inventory of the seized marijuana leaves and the taking of the photograph thereof were immediately conducted at the place of the buy-bust operation by SPO1 Somera in the presence of Aspa, Michael Angelo Patron *(Patron),* a member of the media from the *Bombo Radyo,* and Edgar Palos *(Palos),* a *barangay kagawad* of *Barangay* VIII.[20] On cross-examination, PO1 Italin admitted that they did not have with them the representative from the Department of Justice at that time.[21] While nowhere in the prosecution evidence disclose an explanation why the Police operatives failed to secure the presence of a representative from the Department of Justice, such omission shall not render Aspa's arrest illegal or the items seized/confiscated from him as inadmissible in evidence.

In *People v. Dasigan,*[22] the Court declared that the chain of custody is not established solely by compliance with the prescribed physical inventory and photographing of the seized

---

[20] TSN, June 13, 2012, p. 6.

[21] *Id.* at 19.

[22] 753 Phil. 288, 300 (2015).

drugs in the presence of the enumerated persons. In said case, no photographs were taken by the apprehending officers, and the inventory was not shown to have been made in the presence of selected public officials, yet we sustained the judgment of conviction. This Court explained:

> However, this 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. Hence, the prosecution's failure to submit in evidence the physical inventory and photograph of the seized drugs as required under Article 21 of R.A. No. 9165, will not render the accused's arrest illegal or the items seized from him inadmissible.[23]

Also, in the more recent case of *People v. Teng Moner y Adam,*[24] we sustained accused-appellant's conviction despite the fact that 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. In that case, the Court wrote –

> 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.

When the confiscated and/or seized drugs were not handled precisely in the manner prescribed by the chain of custody rule, particularly the making of inventory and the photographing of

---

[23] *People v. Dasigan, supra.*

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

the drugs, its consequence would not relate to inadmissibility that would automatically destroy the prosecution's case but rather to the evidentiary merit or probative value to be given the evidence.[25] More importantly in this connection, the Court, in the recent case of *People v. Vicente Sipin y De Castro,*[26] wrote:

> The *ponente* further submits that the requirements of marking the seized items, conduct of inventory and taking photograph in the presence of a representative from the media or the DOJ and a local elective official, are Police investigation procedures which call for administrative sanctions in case of non-compliance. Violation of such procedure may even merit penalty under R.A. No. 9165, to wit:
>
> x x x x x x x x x
>
> However, non-observance of such Police administrative procedures should not affect the validity of the seizure of the evidence, because the issue of chain of custody is ultimately anchored on the admissibility of evidence, which is exclusively within the prerogative of the courts to decide in accordance with the rules on evidence.

At any rate, the Court finds that the presence of mediaman Patron and *barangay kagawad* Palos during the conduct of the physical inventory and taking of photograph of the confiscated drugs has protected the credibility and trustworthiness of the September 2, 2011 buy-bust operation as well as the incrimination of Aspa. Further, the Court is in complete accord with the findings of the RTC and the CA that the identity and probative value of the seized marijuana leaves have not been compromised. The prosecution had adequately shown the continuous and unbroken possession and subsequent transfers of the subject three plastic sachets of marijuana leaves, through the testimonies of PO1 Italin, SPO1 Somera, PO2 Reoliquio and Forensic Chemist PSI Roanalaine B. Baligod *(PSI Baligod),* as well as the documentary evidence adduced by the prosecution.

---

[25] *People v. Teng Moner y Adam, supra.*

[26] G.R No. 224290, June 11, 2018. (Underscoring ours)

Prosecution evidence tends to show that PO1 Italin seized the three (3) sachets of suspected marijuana leaves from accused-appellant Aspa and turned them over to SPO1 Somera, who immediately marked each sachet with AES (which stands for Amado Echalar Somera), his signature and the date of the buy-bust operation. SPO1 Somera prepared an inventory receipt of the items seized at the place of the buy-bust operation, while PO1 Bryan Lopez took pictures of the subject drugs and the inventory proceedings. PO1 Italin was still in the area but he was helping the other members of the PNP in controlling the crowd. SPO1 Somera retained possession and carried the confiscated drugs when the buy-bust team headed back to the PNP, Vigan City Police Station, where a request for laboratory examination was prepared and signed by PCI Mar Louise Bundoc. SPO1 Somera, together with PCI Bundoc, delivered the request and the three specimens at the Ilocos Norte Crime Laboratory, where they were received by Forensic Chemist PSI Baligod and it was the latter who, after a full qualitative examination, confirmed that the seized items were positive for marijuana, a dangerous drug. PSI Baligod reduced her findings in Chemistry Report No. D-043-2011.

In addition, PSI Baligod had shed light anent the post-examination custody of the subject marijuana leaves. She testified that after examining the seized narcotics, she placed them inside a brown envelope, sealed it with masking tape and placed her markings which consisted of the case number, her initials and date of examination. Thereafter, she turned over the possession of the specimens to SPO3 Teodoro Casela Floco, the Evidence Custodian of the Ilocos Norte Provincial Crime Laboratory, from whom she got the same specimens before coming to the RTC to testify.[27]

Verily, the foregoing prosecution evidence persuasively proved that the three plastic sachets of marijuana leaves presented in court were the same items seized from Aspa during the entrapment operation. The prosecution had unwaveringly established that the dangerous drug presented in court as evidence

---

[27] TSN, February 8, 2012, pp. 7-9.

against Aspa are the same as those seized from him in the first place. Moreover, it bears stressing that PO1 Italin and SPO1 Somera have positively identified the three plastic sachets of marijuana presented in court as the same narcotics which their confidential informant had purchased and received from Aspa during the September 2, 2011 entrapment operation. With regard to the handling of the confiscated marijuana leaves, it appears that there were no conflicting testimonies or glaring inconsistencies that would cast doubt on the integrity and identity thereof, as the evidence presented and scrutinized in the trial court. In fine, there is no question as to the integrity and identity of the subject three sachets of marijuana.

In comparison to the overwhelming evidence of the prosecution, all that Aspa could muster is the defense of denial. To begin with, we observe that he failed to proffer sufficient, competent and independent evidence to support and bolster his defense of denial. In any event, Aspa's denial must fail in the light of his positive identification by PO1 Italin, SPO2 Somera and PO2 Reoliquio in open court to be the same person they caught red-handed selling marijuana. His bare denial, therefore, cannot prevail over such positive identification made by the said prosecution witnesses[28] who harbored no ill-will against him. More telling was Aspa's own admission that he only met the prosecution witnesses when he was arrested and that he cannot think of any reason why said Police officers would charge him with such an offense.[29] This goes to show that the prosecution witnesses were not impelled with improper motive to falsely testify against the appellant.

Finally, the Court finds that the phrase *"without eligibility for parole"* need not be appended to qualify Aspa's prison term of life imprisonment in line with the instructions given by the Court in A.M. No. 15-08-02-SC[30] and, hence, must be deleted.

---

[28] *People v. Bongalon,* 425 Phil. 96, 115 (2002).

[29] TSN, July 17, 2013, pp. 14-15.

[30] Section II of A.M. No. 15-08-02-SC (Guidelines for the Proper Use of the Phrase "Without Eligibility for Parole" in Indivisible Penalties) states:

Besides, parole is extended only to those convicted of divisible penalties.[31] Therefore, the dispositive portion of this decision should simply state that Aspa is sentenced to suffer the penalty of life imprisonment without any qualification.

WHEREFORE, PREMISES CONSIDERED, the appeal is **DISMISSED.** The Court of Appeals Decision dated January 14, 2016 in CA-G.R. CR-HC No. 06767 is hereby **AFFIRMED** with **MODIFICATION.** Accused-appellant Domingo Aspa, Jr. y Rasimo is found **GUILTY** beyond reasonable doubt of violation of Section 5, Article II of Republic Act No. 9165 and is sentenced to suffer the penalty of Life Imprisonment and to pay a fine of Five Hundred Thousand Pesos (₱500,000.00).

SO ORDERED.

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

---

x x x x x x x x x

II.

In these lights, the following guidelines shall be observed in the imposition of penalties and in the use of the phrase *"without eligibility for parole"*:

(1) In cases where the death penalty is not warranted, there is no need to use the phrase "without eligibility for parole" to qualify the penalty of *reclusion perpetua;* it is understood that convicted persons penalized with an indivisible penalty are not eligible for parole; and

(2) When circumstances are present warranting the imposition of the death penalty, but this penalty is not imposed because of R.A. 9346, the qualification of"without eligibility for parole" *shall be used* to qualify *reclusion perpetua* in order to emphasize that the accused should have been sentenced to suffer the death penalty had it not been for R.A. No. 9346.

[31] *Id.,* August 4, 2015.

SECOND DIVISION

[G.R. No. 234052. August 6, 2018]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **MARICEL PATACSIL *y* MORENO**, *accused-appellant.*

SYLLABUS

1. REMEDIAL LAW; CRIMINAL PROCEDURE; APPEALS; 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.— Preliminarily, 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. "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 (COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002); ILLEGAL SALE/POSSESSION OF DANGEROUS DRUGS; ELEMENTS.— 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. 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.

3. ID.; ID.; ID.; CHAIN OF CUSTODY RULE; SECTION 21, ARTICLE II OF R.A. NO. 9165 OUTLINES THE

PROCEDURE WHICH THE POLICE OFFICERS MUST FOLLOW WHEN HANDLING SEIZED DRUGS IN ORDER TO PRESERVE THEIR INTEGRITY AND EVIDENTIARY VALUE; EXPLAINED.— 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. In this relation, 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, or his 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 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. In the case of *People v. Mendoza*, 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.

4. ID.; ID.; ID.; ID.; STRICT COMPLIANCE WITH THE REQUIREMENTS OF SECTION 21, ARTICLE II OF R.A.

NO. 9165 MAY NOT ALWAYS BE POSSIBLE; REQUIREMENTS WHEN NON-COMPLIANCE WITH THE PROCEDURE MAY BE ALLOWED; SUSTAINED.— 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 Implementing Rules and Regulations (IRR) of RA 9165 – which is now crystallized into statutory law with the passage of RA 10640 – provide that the said inventory and photography may be conducted at the nearest police station or office of the apprehending team in instances of warrantless seizure, and that **non-compliance with the requirements of Section 21, 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. In *People v. Almorfe*, **the Court explained that for the above-saving clause to apply, the prosecution must explain the reasons behind the procedural lapses, and that the integrity and 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.**

5. ID.; ID.; ID.; ID.; THE PROCEDURE IN SECTION 21, ARTICLE II OF R.A. NO. 9165 IS A MATTER OF SUBSTANTIVE LAW, AND CANNOT BE BRUSHED ASIDE AS A SIMPLE PROCEDURAL TECHNICALITY; VIOLATION IN CASE AT BAR.— 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, a justifiable reason for such failure or a **showing of any genuine and sufficient effort to secure the required witnesses** under Section 21, Article II of RA 9165 must be adduced. 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 police 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. In this case, PO3 Meniano himself admitted that no public elected official, *e.g.*, barangay officials, was present during the inventory because "they were not around" and that he simply forgot to let the media representatives sign the inventory receipt because he "forgot" to do so. Verily, these flimsy excuses do not justify a deviation from the required witnesses rule, hence, the Court is impelled to conclude that the integrity and evidentiary value of the items purportedly seized from Patacsil – which constitute the *corpus delicti* of the crimes charged – have been compromised. It is well-settled that the procedure in Section 21, Article II of RA 9165 is a matter of substantive law, and cannot be brushed aside as a simple procedural technicality; or worse, ignored as an impediment to the conviction of illegal drug suspects. As such, since the prosecution failed to provide justifiable grounds for non-compliance with the aforesaid procedure, Patacsil's acquittal is perforce in order.

PERALTA, *J.*, *separate concurring opinion*:

1. CRIMINAL LAW; REPUBLIC ACT NO. 9165, AS AMENDED BY REPUBLIC ACT NO. 10640 (COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002); CHAIN OF CUSTODY RULE; AS AMENDED, SECTION 21 OF R.A. NO. 9165 NOW ONLY REQUIRES TWO (2) WITNESSES TO BE PRESENT DURING THE CONDUCT OF THE PHYSICAL INVENTORY AND TAKING OF PHOTOGRAPH OF THE SEIZED ITEMS.— To properly guide law enforcement agents as to the proper handling of confiscated drugs, Section 21 (a), Article II of the Implementing Rules and Regulations *(IRR)* of R.A. No. 9165 filled in the details as to where the inventory and photographing of seized items had to be done, and added a saving clause in case the procedure is not followed: x x x It bears emphasis that R.A.

No. 10640, which amended Section 21 of R.A. No. 9165, now only requires **two (2) witnesses** to be present during the conduct of the physical inventory and taking of photograph of the seized items, namely: (a) an elected public official; **and** (b) either a representative from the National Prosecution Service **or** the media.

2. ID.; ID.; ID.; FAILURE TO FOLLOW THE MANDATED PROCEDURE LAID DOWN IN SECTION 21 OF R.A. NO. 9165, AS AMENDED MUST BE ADEQUATELY EXPLAINED, AND MUST BE PROVEN AS A FACT IN ACCORDANCE WITH THE RULES ON EVIDENCE; NOT ESTABLISHED IN CASE AT BAR.— The prosecution bears the burden of proving a valid cause for non-compliance with the procedure laid down in Section 21 of R.A. No. 9165, as amended. It has the positive duty to demonstrate observance thereto in such a way that during the trial proceedings, it must initiate in acknowledging and justifying any perceived deviations from the requirements of law. Its failure to follow the mandated procedure must be adequately explained, and must be proven as a fact in accordance with the rules on evidence. It should take note that the rules require that the apprehending officers do not simply mention a justifiable ground, but also clearly state this ground in their sworn affidavit, coupled with a statement on the steps they took to preserve the integrity of the seized items. Its strict adherence to Section 21 is required where the quantity of illegal drugs seized is miniscule to prevent incidents of planting, tampering or alteration of evidence. Here, the prosecution failed to discharge its burden. x x x Invocation of the disputable presumptions that the police officers regularly performed their official duty and that the integrity of the evidence is presumed to be preserved, will not suffice to uphold appellant's conviction. Judicial reliance on the presumption of regularity in the performance of official duty despite the lapses in the procedures undertaken by the agents of the law is fundamentally flawed because the lapses themselves are affirmative proofs of irregularity. The presumption may only arise when there is a showing that the apprehending officer/team followed the requirements of Section 21 or when the saving clause found in the IRR is successfully triggered. In this case, the presumption of regularity had been contradicted and overcome by evidence of non-compliance with the law.

APPEARANCES OF COUNSEL

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 Maricel Patacsil *y* Moreno (Patacsil) assailing the Decision[2] dated March 30, 2017 of the Court of Appeals (CA) in CA-G.R. CR-HC No. 07298, which affirmed the Joint Decision[3] dated February 5, 2015 of the Regional Trial Court of Dagupan City, Branch 44 (RTC) in Crim. Case Nos. 2012-0497-D and 2012-0498-D, finding Patacsil guilty beyond reasonable doubt of violating Sections 5 and 11, Article II of Republic Act No. (RA) 9165,[4] otherwise known as the "Comprehensive Dangerous Drugs Act of 2002."

The Facts

This case stemmed from two (2) Informations[5] filed before the RTC charging Patacsil with the crimes of Illegal Sale and Illegal Possession of Dangerous Drugs, the accusatory portions of which state:

---

[1] See Notice of Appeal dated April 20, 2017; *rollo*, pp. 17-18.

[2] *Id*. at 2-16. Penned by Associate Justice Leoncia Real-Dimagiba with Associate Justices Ramon R. Garcia and Henri Jean Paul B. Inting concurring.

[3] *CA Rollo*, pp. 48-56. Penned by Judge Genoveva Coching-Maramba.

[4] Entitled "AN ACT INSTITUTING THE COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002, REPEALING REPUBLIC ACT NO. 6425, OTHERWISE KNOWN AS THE DANGEROUS DRUGS ACT OF 1972, AS AMENDED, PROVIDING FUNDS THEREFOR, AND FOR OTHER PURPOSES," approved on June 7, 2002.

[5] Both dated September 29, 2012. Records (Crim. Case 2012-0497-D), pp. 1-2; and records (Crim. Case No. 2012-0498-D), pp. 1-2.

Criminal Case No. 2012-0497-D

That on or about the 28th of September 2012, in the City of Dagupan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, **MARICEL PATACSIL [*y*] MORENO**, did then and there, willfully, unlawfully and criminally, have in her possession, custody and control Methamphetamine Hydrochloride (*Shabu*) contained in five (5) sealed plastic sachets, all weighing .357 gram, without authority to possess the same.

Contrary to Article II, Section 11, R.A. 9165.[6]

Criminal Case No. 2012-0498-D

That on or about the 28th day of September 2012, in the City of Dagupan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused **MARICEL PATACSIL [*y*] MORENO**, did then and there, willfully, unlawfully and criminally, sell and deliver to a poseur-buyer Methamphetamine Hydrochloride (*Shabu*) contained in one (1) heat-sealed plastic sachet, weighing more or less 0.033 gram, in exchange for ₱300.00, without authority to do so.

Contrary to Article II, Section 5, R.A. 9165.[7]

The prosecution alleged that at around two (2) o'clock in the afternoon of September 28, 2012 and acting upon a tip of an asset regarding Patacsil's purported illegal drug activities at Torio's Compound, Sitio Silungan, Bonuan, Binloc, Dagupan City, the police officers of the Dagupan Police Station organized a buy-bust operation with PO3 Francisco S. Meniano, Jr. (PO3 Meniano) acting as the poseur-buyer. Upon arriving at the target area, the asset introduced PO3 Meniano to Patacsil as someone who wanted to buy *shabu*. When PO3 Meniano handed over the marked money to Patacsil, the latter took out one (1) plastic sachet containing suspected *shabu* from her cellphone pouch and gave the same to PO3 Meniano. As soon as PO3 Meniano ascertained the plastic sachet's contents, he performed the pre-arranged signal, prompting the buy-bust team to rush in and arrest Patacsil. During the arrest, the police officers inspected

---

[6] Records (Crim. Case 2012-0497-D), p. 1.

[7] Records (Crim. 2012-0498-D), p. 1.

Patacsil's cellphone pouch and recovered five (5) more plastic sachets containing white crystalline substance therefrom. The buy-bust team then took Patacsil and the seized plastic sachets, first to the hospital for medical examination, and thereafter, to the police station for marking and inventory procedures. Finally, the seized plastic sachets were taken to the PNP Crime Laboratory where it was confirmed that they indeed contain methamphetamine hydrochloride or *shabu*,[8] a dangerous drug.[9]

In her defense, Patacsil pleaded not guilty to the charges against her and offered her version of the events. She narrated that on the day she was arrested, she just arrived home after visiting her live-in partner in jail, when suddenly, six (6) men in civilian clothes appeared in front of her house, with two of them putting their hands around her shoulder, and at a gun point, told her to kneel down in front of her house. After the men briefly searched her abode, she was then taken to the police station where she was forbidden to talk to her relatives. She was then taken to a hospital for medical reasons, and subsequently charged with the aforesaid crimes.[10]

The RTC Ruling

In a Joint Decision[11] dated February 5, 2015, the RTC found Patacsil guilty beyond reasonable doubt of the crimes charged, and accordingly, sentenced her as follows: (*a*) in Criminal Case No. 2012-0497-D, to suffer the penalty of imprisonment for an indeterminate period of twelve (12) years and one (1) day to twenty (20) years, and to pay a fine in the amount of ₱300,000.00; and (*b*) in Criminal Case No. 2012-498-D to suffer the penalty of life imprisonment and to pay a fine in the amount of ₱500,000.00.[12]

---

[8] See Chemistry Report No. D-143-12L dated September 29, 2012; records (Crim. Case 2012-0497-D), p. 54.

[9] See *rollo*, pp. 3-5. See also CA *rollo*, pp. 50-52.

[10] See *rollo*, pp. 3 and 5-6. See also CA *rollo*, pp. 52-53.

[11] CA *rollo*, pp. 48-56.

[12] *Id*. at 56.

The RTC held that the prosecution was able to establish all the elements of the crimes charged as it was shown that Patacsil sold to PO3 Meniano one (1) plastic sachet of *shabu*, and that after her arrest, five (5) more plastic sachets of *shabu* were found in her possession. It found that Patacsil's bare denial cannot overcome the positive testimony of the police officers who conducted the buy bust operation. It likewise observed that Patacsil failed to advance ill motives on the part of the police officers to impute such grave crimes against her, as she even admitted during cross examination that she came to know PO3 Meniano only when the latter testified during trial.[13]

Aggrieved, Patacsil appealed[14] to the CA.

The CA Ruling

In a Decision[15] dated March 30, 2017, the CA affirmed the RTC ruling *in toto*.[16] It upheld Patacsil's conviction, holding that the prosecution had established beyond reasonable doubt all the elements of the crimes charged. It further ruled that PO3 Meniano's failure to immediately mark the seized items and to let the witnesses sign the confiscation receipt does not *ipso facto* result in unlawful arrest nor in the inadmissibility of evidence, as long as the integrity and evidentiary value of the seized items were preserved.[17] It found that contrary to Patacsil's claim, she was validly arrested *in flagrante delicto*, thereby, making the seized items admissible.[18]

Hence, this appeal.

---

[13] See *id*. at 53-55.

[14] See Notice of Appeal dated February 9, 2015; records (Crim. Case 2012-0497-D), pp. 139-140.

[15] *Rollo*, pp. 2-16.

[16] *Id*. at 15.

[17] See *id*. at 8-13.

[18] See *id*. at 13-15.

The Issue Before the Court

The issue for the Court's resolution is whether or not the CA correctly upheld Patacsil's conviction for the crimes charged.

The Court's Ruling

The appeal has merit.

Preliminarily, 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.[19] "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."[20]

Here, Patacsil 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.[21] 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.[22]

---

[19] See *People v. Dahil*, 750 Phil. 212, 225 (2015).

[20] *People v. Comboy*, G.R. No. 218399, March 2, 2016, 785 SCRA 512, 521.

[21] *People v. Sumili*, 753 Phil. 342, 348 (2015).

[22] *People v. Bio*, 753 Phil. 730, 736 (2015).

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.[23]

In this relation, 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.[24] Under the said section, prior to its amendment by RA 10640,[25] the apprehending team shall, among others, **immediately after seizure and confiscation conduct a physical inventory and photograph the seized items in the presence of the accused or the person from whom the items were seized, or his representative or counsel, a representative from the media and the Department of Justice (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.[26] In the case of *People v. Mendoza*,[27] the Court

---

[23] See *People v. Manansala*, G.R. No. 229092, February 21, 2018, citing *People v. Viterbo*, 739 Phil. 593, 601 (2014). See also *People v. Alivio*, 664 Phil. 565, 576-580 (2011) and *People v. Deniman*, 612 Phil. 1165, 1175 (2009).

[24] See *People v. Sumili*, *supra* note 21, at 349-350.

[25] 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 September 28, 2012.

[26] See Section 21 (1) and (2), Article II of RA 9165.

[27] 736 Phil. 749 (2014).

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."[28]

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.[29] In fact, the Implementing Rules and Regulations (IRR) of RA 9165 – which is now crystallized into statutory law with the passage of RA 10640[30] – provide that

---

[28] *Id*. at 764; emphases and underscoring supplied.

[29] See *People v. Sanchez*, 590 Phil. 214, 234 (2008).

[30] Section 1 of RA 10640 states:

SECTION 1. Section 21 of Republic Act No. 9165, otherwise known as the "Comprehensive Dangerous Drugs Act of 2002", is hereby amended to read as follows:

"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

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**.[31] 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.[32] In *People v. Almorfe*,[33] **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**.[34] Also, in *People v. De Guzman*,[35] it was emphasized that **the**

---

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 x x x x x x"

[31] See Section 21 (a), Article II of the IRR of RA 9165. See also *People v. Ceralde*, G.R. No. 228894, August 7, 2017.

[32] See *People v. Goco*, G.R. No. 219584, October 17, 2016, 806 SCRA 240, 252.

[33] 631 Phil. 51 (2010).

[34] *Id.* at 60.

[35] 630 Phil. 637 (2010).

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.[36]

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 Patacsil.

Here, a plain examination of PO3 Meniano's handwritten Confiscation Receipt[37] dated September 28, 2012 – which stood as the inventory receipt – shows that while PO3 Meniano claims that representatives from the media witnessed the conduct of inventory, no such representatives signed the document. Further, it also appears that no public elected official was present when such inventory was made. When asked about these procedural deviations by both the prosecution and defense lawyers, PO3 Meniano testified as follows:

[Prosecutor Ann Karen Go]: This confiscation receipt states the serial nos. as well as number of sachets that you were able to buy and confiscate from Maricel Patacsil, it also states that the witnesses are media representatives, **who were the media representatives because they are not named in this confiscation receipt?**

[PO3 Meniano]: There are two (2) media representatives present but I could no longer remember, they are from GMA and ABS-CBN.

Q: Can you tell this Honorable Court the reason why they did not sign this confiscation receipt, Mr. Witness?
A: Because I was in a hurry in submitting the confiscation receipt, I forgot to let them sign.

x x x x x x x x x

[Atty. Sylvania Vinoya-Gonzales]: Mr. Witness, you forgot to invite barangay officials and you forgot to ask the media

---

[36] *Id.* at 649.

[37] Records (Crim. Case No. 2012-0497-D), p. 112.

representatives to sign as witnesses. Why, how many were you during that time, where was the Investigator?

[PO3 Meniano]: I did not forget to call them. They were not around.

Q: Who were not around?
A: The barangay officials.

Q: What about the media representatives?
A: It is because the *shabu* was asked to be submitted so, we forgot to let the media representatives to sign.[38] (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.[39] However, a justifiable reason for such failure or a **showing of any genuine and sufficient effort to secure the required witnesses** under Section 21, Article II of RA 9165 must be adduced.[40] Mere statements of unavailability, absent actual serious attempts to contact the required witnesses are unacceptable as justified grounds for non-compliance.[41] These considerations arise from the fact that police 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.[42]

In this case, PO3 Meniano himself admitted that no public elected official, *e.g.*, barangay officials, was present during the inventory because "they were not around" and that he simply forgot to let the media representatives sign the inventory receipt

---

[38] TSN, February 24, 2014, pp. 11 and 18.

[39] *People v. Umipang*, 686 Phil. 1024, 1052 (2012).

[40] See *id*. at 1052-1053.

[41] See *id*. at 1053.

[42] See *People v. Crispo*, G.R. No. 230065, March 14, 2018.

because he "forgot" to do so. Verily, these flimsy excuses do not justify a deviation from the required witnesses rule, hence, the Court is impelled to conclude that the integrity and evidentiary value of the items purportedly seized from Patacsil – which constitute the *corpus delicti* of the crimes charged – have been compromised.[43] It is well-settled that the procedure in Section 21, Article II 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.[44] As such, since the prosecution failed to provide justifiable grounds for non-compliance with the aforesaid procedure, Patacsil's acquittal is perforce in order.

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. Order is too high a price for the loss of liberty. x x x.[45]

"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.

---

[43] See *People v. Sumili*, *supra* note 21, at 352.

[44] See *People v. Macapundag*, G.R. No. 225965, March 13, 2017, citing *People v. Umipang*, *supra* note 39, at 1038 (2012).

[45] See *People v. Mamangon*, G.R. No. 229102, January 29, 2018; and *People v. Go*, 457 Phil. 885, 925 (2003), citing *People v. Aminnudin*, 246 Phil. 424, 434-435 (1988).

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, the fate of the liberty of the accused, the fact that any issue regarding the same was not raised, 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."[46]

WHEREFORE, the appeal is **GRANTED**. The Decision dated March 30, 2017 of the Court of Appeals in CA-G.R. CR-HC No. 07298 is hereby **REVERSED** and **SET ASIDE**. Accordingly, accused-appellant Maricel Patacsil *y* Moreno is **ACQUITTED** from the crimes charged. The Director of the Bureau of Corrections is ordered to cause her immediate release, unless she is being lawfully held in custody for any other reason.

SO ORDERED.

Carpio (*Chairperson*), *Caguioa,* and *A.Reyes, Jr., JJ.,* concur.

Peralta, J., see separate concurring opinion.

SEPARATE CONCURRING OPINION

PERALTA, *J.:*

I concur with the *ponencia* in acquitting accused-appellant Maricel Patacsil *y* Moreno of the charges of illegal sale and illegal possession of dangerous drugs or violation of Sections 5

---

[46] See *People v. Miranda*, G.R. No. 229671, January 31, 2018.

and 11, Article II of Republic Act No. *(R.A. No.)* 9165,[1] respectively. The *ponencia* duly noted that while the police officer testified that representatives from the media witnessed the conduct of the inventory, no such representatives signed the confiscation receipt, and no elected public official was also present when such inventory was made. Moreover, the excuses that the *barangay* officials were not present during the inventory because "they were not around," and that the media representatives failed to sign the inventory receipt because they "forgot" to do so, hardly constitute justifiable reasons for the non-observance of Section 21[2] of R.A. No. 9165. Be that as it may, I would like to emphasize on important matters relative to Section 21 of R.A. No. 9165, as amended.

To properly guide law enforcement agents as to the proper handling of confiscated drugs, Section 21 (a), Article II of the Implementing Rules and Regulations *(IRR)* of R.A. No. 9165 filled in the details as to where the inventory and photographing of seized items had to be done, and added a saving clause in case the procedure is not followed:[3]

---

[1] *"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"*

[2] 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 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;

[3] *People v. Ramirez,* G.R. No. 225690, January 17, 2018. (Emphasis ours)

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

It bears emphasis that R.A. No. 10640,[4] which amended Section 21 of R.A. No. 9165, now only requires **two (2) witnesses** to be present during the conduct of the physical inventory and taking of photograph of the seized items, namely: (a) an elected public official; **and** (b) either a representative from the National Prosecution Service **or** the media.

In her Sponsorship Speech on Senate Bill No. 2273, which eventually became R.A. No. 10640, Senator Grace Poe conceded that "while Section 21 was enshrined in the Comprehensive Dangerous Drugs Act to safeguard the integrity of the evidence acquired and prevent planting of evidence, the application of said Section resulted in the ineffectiveness of the government's campaign to stop the increasing drug addiction and also, in the conflicting decisions of the courts."[5] Senator Poe stressed the necessity for the amendment of Section 21 based on the public

---

[4] *"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.

[5] Senate Journal, Session No. 80, 16th Congress, 1st Regular Session, June 4, 2014, p. 348.

hearing that the Senate Committee on Public Order and Dangerous Drugs had conducted, which revealed that "compliance with the rule on witnesses during the physical inventory is difficult. For one, media representatives are not always available in all corners of the Philippines, especially in the remote areas. For another there were instances where elected *barangay* officials themselves were involved in the punishable acts apprehended and thus, it is difficult to get the most grassroot-elected public official to be a witness as required by law."[6]

In his Co-sponsorship speech, Senator Vicente C. Sotto III said that in view of a substantial number of acquittals in drug-related cases due to the varying interpretations of prosecutors and judges on Section 21 of R.A. No. 9165, there is a need for "certain adjustments so that we can plug the loopholes in our existing law" and ensure [its] standard implementation."[7] Senator Sotto explained why the said provision should be amended:

> Numerous drug trafficking activities can be traced to operations of highly organized and powerful local and international syndicates. The presence of such syndicates that have the resources and the capability to mount a counter-assault to apprehending law enforcers makes the requirement of Section 21(a) impracticable for law enforcers to comply with. It makes the place of seizure extremely unsafe for the proper inventory and photograph of the seized illegal drugs.
>
> x x x x x x x x x
>
> Section 21(a) of RA 9165 need to be amended to address the foregoing situation. We did not realize this in 2002 where the safety of the law enforcers and other persons required to be present in the inventory and photography of seized illegal drugs and the preservation of the very existence of seized illegal drugs itself are threatened by an immediate retaliatory action of drug syndicates at the place of seizure. The place where the seized drugs may be inventoried and photographed has to include a location where the seized drugs as well as the persons who are required to be present during the inventory and photograph are safe and secure from extreme danger.

---

[6] *Id.*

[7] *Id.*

It is proposed that the physical inventory and taking of photographs of seized illegal drugs be allowed to be conducted either in the place of seizure of illegal drugs or at the nearest police station or office of the apprehending law enforcers. The proposal will provide effective measures to ensure the integrity of seized illegal drugs since a safe location makes it more probable for an inventory and photograph of seized illegal drugs to be properly conducted, thereby reducing the incidents of dismissal of drug cases due to technicalities.

Non-observance of the prescribed procedures should not automatically mean that the seizure or confiscation is invalid or illegal, as long as the law enforcement officers could justify the same and could prove that the integrity and the evidentiary value of the seized items are not tainted. This is the effect of the inclusion in the proposal to amend the phrase "justifiable grounds." There are instances where there are no media people or representatives from the DOJ available and the absence of these witnesses should not automatically invalidate the drug operation conducted. Even the presence of a public local elected official also is sometimes impossible especially if the elected official is afraid or scared.[8]

However, under the original provision of Section 21 and its IRR, which is applicable at the time the appellant committed the crimes charged, the apprehending team was required to immediately conduct a physical inventory and photograph the drugs after their seizure and confiscation in the presence of no less than **three (3) witnesses,** namely: (a) a representative from the media, **and** (b) the DOJ, **and;** (c) any elected public official who shall be required to sign copies of the inventory and be given copy thereof. The presence of the three witnesses was intended as a guarantee against planting of evidence and frame up, as they were "necessary to insulate the apprehension and incrimination proceedings from any taint of illegitimacy or irregularity."[9]

The prosecution bears the burden of proving a valid cause for non-compliance with the procedure laid down in Section 21 of R.A. No. 9165, as amended. It has the positive duty to demonstrate observance thereto in such a way that during the

---

[8] *Id.* at 349-350.

[9] *People v. Sagana,* G.R. No. 208471, August 2, 2017.

trial proceedings, it must initiate in acknowledging and justifying any perceived deviations from the requirements of law.[10] Its failure to follow the mandated procedure must be adequately explained, and must be proven as a fact in accordance with the rules on evidence. It should take note that the rules require that the apprehending officers do not simply mention a justifiable ground, but also clearly state this ground in their sworn affidavit, coupled with a statement on the steps they took to preserve the integrity of the seized items.[11] Its strict adherence to Section 21 is required where the quantity of illegal drugs seized is miniscule to prevent incidents of planting, tampering or alteration of evidence.[12] Here, the prosecution failed to discharge its burden.

With respect to the presence of all the required witnesses under Section 21 of R.A. No. 9165, the prosecution never alleged and proved any of the following reasons, such as: (1) **their attendance was impossible because the place of arrest was a remote area;** (2) **their safety during the inventory and photograph of the seized drugs was threatened by an immediate retaliatory action of the accused or any person/s acting for and in his/her behalf;** (3) **the elected official themselves were involved in the punishable acts sought to be apprehended;** (4) **earnest efforts to secure the presence of a DOJ or media representative and an elected public official within the period required under Article 125**[13] **of the Revised**

---

[10] *People v. Miranda,* G.R. No. 229671, January 31, 2018; *People v. Paz,* G.R. No. 229512, January 31, 2018; and *People v. Mamangon,* G.R. No. 229102, January 29, 2018.

[11] *People v. Saragena,* G.R. No. 210677, August 23, 2017.

[12] *Id.*

[13] Art. 125. ***Delay in the delivery of detained persons to the proper judicial authorities.*** — The penalties provided in the next preceding article shall be imposed upon the public officer or employee who shall detain any person for some legal ground and shall fail to deliver such person to the proper judicial authorities within the period of; twelve (12) hours, for crimes or offenses punishable by light penalties, or their equivalent; eighteen (18) hours, for crimes or offenses punishable by correctional penalties, or their equivalent and thirty-six (36) hours, for crimes, or offenses punishable by afflictive or capital penalties, their equivalent.

Penal Code prove futile through no fault of the arresting officers, who face the threat of being charged with arbitrary detention; or (5) **time constraints and urgency of the anti-drug operations, which often rely on tips of confidential assets, prevented the law enforcers from obtaining the presence of the required witnesses even before the offenders could escape.**

Invocation of the disputable presumptions that the police officers regularly performed their official duty and that the integrity of the evidence is presumed to be preserved, will not suffice to uphold appellant's conviction. Judicial reliance on the presumption of regularity in the performance of official duty despite the lapses in the procedures undertaken by the agents of the law is fundamentally flawed because the lapses themselves are affirmative proofs of irregularity.[14] The presumption may only arise when there is a showing that the apprehending officer/team followed the requirements of Section 21 or when the saving clause found in the IRR is successfully triggered. In this case, the presumption of regularity had been contradicted and overcome by evidence of non-compliance with the law.[15]

At this point, it is not amiss to express my position regarding the issue of which between the Congress and the Judiciary has jurisdiction to determine sufficiency of compliance with the rule on chain of custody, which essentially boils down to the application of procedural rules on admissibility of evidence. In this regard, I agree with the view of Hon. Associate Justice Teresita J. Leonardo-De Castro in *People v. Teng Moner y Adam*[16] that "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 to the weight of evidence presented for each particular case." As aptly pointed out by Justice Leonardo-De Castro, the Court's power

---

[14] *People v. Ramirez, supra* note 3.

[15] *People v. Gajo,* G.R. No. 217026, January 22, 2018.

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

to promulgate judicial rules, including rules of evidence, is no longer shared by the Court with Congress.

I subscribe to the view of Justice Leonardo-De Castro that the chain of custody rule is a matter of evidence and a rule of procedure, and that the Court has the last say regarding the appreciation of evidence. Evidentiary matters are indeed 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.

I further submit that **the requirements of marking the seized items, conduct of inventory and taking photograph in the presence of a representative from the media or the DOJ and a local elective official, are police investigation procedures which call for administrative sanctions in case of non-compliance. Violation of such procedure may even merit penalty under R.A. No. 9165,** to wit:

> Section 29. *Criminal Liability for Planting of Evidence.* – Any person who is found guilty of "planting" any dangerous drug and/or controlled precursor and essential chemical, regardless of quantity and purity, shall suffer the penalty of death.
>
> Section 32. *Liability to a Person Violating Any Regulation Issued by the Board.* – The penalty of imprisonment ranging from six (6) months and one (1) day to four (4) years and a fine ranging from Ten thousand pesos (₱10,000.00) to Fifty thousand pesos (₱50,000.00) shall be imposed upon any person found violating any regulation duly issued by the Board pursuant to this Act, in addition to the administrative sanctions imposed by the Board.

However, non-observance of such police administrative procedures should not affect the validity of the seizure of the evidence, because the issue of chain of custody is ultimately anchored on the admissibility of evidence, which is exclusively within the prerogative of the courts to decide in accordance with the rules on evidence.

SECOND DIVISION

[G.R. No. 235258. August 6, 2018]

FENIX (CEZA) INTERNATIONAL, INC., *petitioner, vs.* **HON. EXECUTIVE SECRETARY, HON. SECRETARY OF FINANCE, THE COMMISSIONER OF CUSTOMS, THE DISTRICT COLLECTOR OF CUSTOMS, HON. HEAD OF THE LAND TRANSPORTATION OFFICE, and THE CAGAYAN SPECIAL ECONOMIC ZONE AUTHORITY**, *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; ACTIONS; *RES JUDICATA*; DEFINED AND CONSTRUED.— *Res judicata* literally means "a matter adjudged; a thing judicially acted upon or decided; a thing or matter settled by judgment." It also refers to the rule that a final judgment or decree on the merits by a court of competent jurisdiction is conclusive of the rights of the parties or their privies in all later suits on points and matters determined in the former suit. It rests on the principle that parties should not to be permitted to litigate the same issue more than once; that, when a right or fact has been judicially tried and determined by a court of competent jurisdiction, or an opportunity for such trial has been given, the judgment of the court, so long as it remains unreversed, should be conclusive upon the parties and those in privity with them in law or estate. This judicially created doctrine exists as an obvious rule of reason, justice, fairness, expediency, practical necessity, and public tranquility. Moreover, public policy, judicial orderliness, economy of judicial time, and the interest of litigants, as well as the peace and order of society, all require that stability should be accorded judgments, that controversies once decided on their merits shall remain in repose, that inconsistent judicial decision shall not be made on the same set of facts, and that there be an end to litigation which, without the doctrine of *res judicata*, would be endless.

2. ID.; ID.; ID.; ID.; TWO (2) DISTINCT CONCEPTS OF *RES JUDICATA*: BAR BY FORMER JUDGMENT AND

CONCLUSIVENESS OF JUDGMENT; DISTINGUISHED.— The doctrine of *res judicata* is encapsulated in Section 47 (b) and (c), Rule 39 of the Rules of Court, x x x Under the aforequoted provision, there are two (2) distinct concepts of *res judicata*, namely: (*a*) bar by former judgment; and (*b*) conclusiveness of judgment. x x x The bar by prior judgment requires the following elements to be present for it to operate: (*a*) a former final judgment that was rendered on the merits; (*b*) the court in the former judgment had jurisdiction over the subject matter and the parties; and (*c*) identity of parties, subject matter and cause of action between the first and second actions. In contrast, the elements of conclusiveness of judgment are identity of: (*a*) parties; and (*b*) subject matter in the first and second cases.

3. **ID.; ID.; ID.; FORUM SHOPPING; FORUM SHOPPING IS AN ACT OF MALPRACTICE THAT IS PROHIBITED AND CONDEMNED BECAUSE IT TRIFLES WITH THE COURTS AND ABUSES THEIR PROCESSES.—** [T]here is forum shopping "when a party repetitively avails of several judicial remedies in different courts, simultaneously or successively, all substantially founded on the same transactions and the same essential facts and circumstances, and all raising substantially the same issues either pending in or already resolved adversely by some other court." Forum shopping is an act of malpractice that is prohibited and condemned because it trifles with the courts and abuses their processes. It degrades the administration of justice and adds to the already congested court dockets.

4. **ID.; ID.; ID.; ID.; ELEMENTS.—** In *Heirs of Sotto v. Palicte*, the Court provided the test to determine whether or not a party is guilty of forum shopping, to wit: The test to determine the existence of forum shopping is whether the elements of *litis pendentia* are present, or whether a final judgment in one case amounts to *res judicata* in the other. Thus, there is forum shopping when the following elements are present, namely: (a) identity of parties, or at least such parties as represent the same interests in both actions; (b) identity of rights asserted and reliefs prayed for, the relief being founded on the same facts; and (c) the identity of the two preceding particulars, such that any judgment rendered in the other action will, regardless

of which party is successful, amounts to *res judicata* in the action under consideration.

APPEARANCES OF COUNSEL

Ponce Enrile Reyes & Manalastas for petitioner.
The Solicitor General for respondents.

D E C I S I O N

PERLAS-BERNABE, *J.*:

Assailed in this petition for review on *certiorari*[1] are the Decision[2] dated November 29, 2016 and the Resolution[3] dated September 28, 2017 of the Court of Appeals (CA) in CA-G.R. CR No. 36899, which upheld the Resolutions dated May 7, 2014[4] and July 23, 2014[5] of the Regional Trial Court of Aparri, Cagayan, Branch 8 (RTC Br. 8) dismissing the petition for indirect contempt filed by petitioner Fenix (CEZA) International, Inc. (petitioner) on the ground of *res judicata* and forum shopping.

The Facts

On December 12, 2002, then President Gloria Macapagal Arroyo (PGMA) issued Executive Order No. (EO) 156,[6] which

---

[1] *Rollo*, pp. 3-31.

[2] *Id*. at 39-57. Penned by Associate Justice Noel G. Tijam (now a member of the Court) with Associate Justices Francisco P. Acosta and Eduardo B. Peralta, Jr. concurring.

[3] *Id*. at 59-62. Penned by Associate Justice Eduardo B. Peralta, Jr. with Associate Justices Priscilla J. Baltazar-Padilla and Marie Christine Azcarraga Jacob concurring.

[4] *Id*. at 63-70. Penned by Presiding Judge Nicanor S. Pascual, Jr.

[5] *Id*. at 71-73.

[6] Entitled "PROVIDING FOR A COMPREHENSIVE INDUSTRIAL POLICY AND DIRECTIONS FOR THE MOTOR VEHICLE DEVELOPMENT PROGRAM AND ITS IMPLEMENTING GUIDELINES" (December 12, 2002).

provided, among others, for the ban on importation of all types of used motor vehicles, except those that may be allowed under its provisions. The constitutionality of the said issuance was then questioned before the Court in *Hon. Executive Secretary v. Southwing Heavy Industries, Inc.*[7] (*Southwing*) where the Court held that Section 3.1 of EO 156 – which provided for the aforesaid ban – was "declared VALID insofar as it applies to the Philippine territory outside the presently fenced-in former Subic Naval Base area and VOID with respect to its application to the secured fenced-in former Subic Naval Base area."[8]

Meanwhile, on April 4, 2005, PGMA issued EO 418,[9] Section 2 of which provides a specific duty in the amount of ₱500,000.00 in addition to the regular rates of import duty imposed on the list of articles listed in Annex A of the EO, as classified under Section 104 of the Tariff and Customs Code,[10] as amended. This prompted petitioner – a domestic corporation engaged in, *inter alia*, the conversion, rebuilding, reconditioning, and maintenance of imported used motor vehicles – to file a petition for declaratory relief[11] against respondents the Hon. Executive Secretary, *et al.* (respondents) before the RTC Br. 8 (*Fenix Case*). Essentially, the *Fenix Case* sought for the nullity of EO 418 for being an invalid exercise of delegated legislative authority and for violating the due process and equal protection clauses in the Constitution. After due proceedings, the RTC Br. 8 promulgated a Decision[12] dated March 13, 2009 declaring EO 418 void and unconstitutional.

---

[7] 518 Phil. 103 (2006).

[8] *Id*. at 133.

[9] Entitled "MODIFYING THE TARIFF NOMENCLATURE AND RATES OF IMPORT DUTY ON USED MOTOR VEHICLES UNDER SECTION 104 OF THE TARIFF AND CUSTOMS CODE OF 1978 (PRESIDENTIAL DECREE NO. 1464, AS AMENDED)" (April 4, 2005).

[10] Republic Act No. 1937, entitled "AN ACT TO REVISE AND CODIFY THE TARIFF AND CUSTOMS LAWS OF THE PHILIPPINES," approved on June 22, 1957.

[11] Dated May 19, 2005. *Rollo*, pp. 88-107.

[12] *Id*. at 167-170. Penned by Presiding Judge Conrado F. Manauis.

On reconsideration, however, the RTC Br. 8 issued a Resolution[13] dated April 21, 2009 limiting its earlier declaration of nullity and unconstitutionality to Section 2 of EO 418 only. Respondents elevated the matter before the Court, which in turn, issued a Minute Resolution[14] dated November 15, 2010 affirming the RTC Br. 8 ruling. As the Court pronouncement became final and executory, the RTC Br. 8 issued a Writ of Execution[15] dated June 14, 2011 against respondents, resulting in the Bureau of Customs (BOC) allowing the importations made by petitioner.

In the meantime, another case questioning the validity of EO 156 was filed before the Regional Trial Court of Aparri, Cagayan, Branch 6 by Forerunner Multi Resources, Inc. (Forerunner). The issue of the propriety of the issuance of injunctive relief in that case was elevated all the way to the Court in *Executive Secretary v. Forerunner Multi Resources, Inc.*[16] (*Forerunner*). In ruling against the injunctive relief, the Court ruled that Forerunner did not have any legal right which entitles it to such relief, considering that EO 156 is a valid exercise of police power, as already declared with finality in *Southwing*. The ruling in *Forerunner* likewise mentioned that: (*a*) EO 418 did not repeal EO 156, as EO 156 is very explicit in prohibiting the importation of used motor vehicles, while EO 418 merely modified the tariff and nomenclature rates of import duty on used motor vehicles, without expressly revoking the importation ban; and (*b*) the ruling in the *Fenix Case* did not have any effect, much less reverse the pronouncements in *Southwing*, which upheld the ban on importations of used motor vehicles into the Philippines outside the fenced-in freeport export zones.[17]

---

[13] *Id*. at 182-184.

[14] See Minute Resolution in *Hon. Executive Secretary, Hon. Secretary of Finance, Commissioner of the Bureau of Customs and the District Collector of Customs v. Fenix [CEZA] International, Inc.*, G.R. No. 187475. See also *rollo*, pp. 213-216.

[15] *Id*. at 217-218.

[16] 701 Phil. 64 (2013).

[17] See *id*. at 71.

Alarmed by the seemingly clashing rulings of the Court, the Automotive Rebuilding Industry of Cagayan Valley sought for a dialogue with the BOC, which resulted in the enforcement of the provisions of EO 156 by the latter. According to petitioner, the BOC consequently disallowed its importations of used motor vehicles, over its vehement objections. Claiming that such disallowance is directly contradictory to the Writ of Execution issued in the *Fenix Case*, petitioner filed the instant petition for indirect contempt[18] against respondents before the RTC Br. 8, docketed as S.C.A. No. II-5557 (*Contempt Case*).[19]

For respondents' part,[20] they contend that: (*a*) the *Contempt Case* is already barred by prior judgment in *Southwing* and *Forerunner* which upheld the validity of EO 156 and further decreed that the same was not repealed by EO 418; (*b*) petitioner is guilty of forum shopping as it attempts to re-litigate an issue already settled in *Southwing* and *Forerunner*; and (*c*) there is nothing in the rulings of the RTC Br. 8 that EO 418 impliedly repealed EO 156.[21]

The RTC Ruling

In a Resolution[22] dated May 7, 2014, the RTC Br. 8 granted respondents' motion to dismiss. The RTC found that while *Southwing*, *Forerunner*, and the *Fenix Case* differ with respect to the parties involved, causes of action, and subject matter, they nevertheless involve the same issue, *i.e.*, the validity and applicability of EOs 156 and 418, as all cases refer to the importation of used motor vehicles. Thus, *res judicata* applies in the *Contempt Case*. Relatedly, the RTC Br. 8 concluded that since *res judicata* is applicable to the *Contempt Case*, then petitioner is guilty of forum shopping.[23]

---

[18] Dated January 23, 2014. *Rollo*, pp. 312-339.

[19] See *id*. at 10-13.

[20] See Comment dated May 10, 2018; *id*. at 512-539.

[21] *Id*. at 526-537.

[22] *Id*. at 63-70. Penned by Presiding Judge Nicanor S. Pascual, Jr.

[23] See *id*. at 66-68.

Further, the RTC Br. 8 pointed out that the *Fenix Case* did not rule on the repeal of EO 156 by EO 418 and that the Writ of Execution issued in connection therewith only enjoined respondents from implementing Section 2 of EO 418, and not EO 156.[24]

Petitioner moved for reconsideration[25] but the same was denied in a Resolution[26] dated July 23, 2014. Aggrieved, petitioner appealed[27] to the CA.

The CA Ruling

In a Decision[28] dated November 29, 2016, the CA affirmed the RTC ruling. It held that *res judicata* applies to this case since the validity and propriety of the prohibition against the importation of used motor vehicles were already settled in *Southwing* and *Forerunner*. As such, petitioner can no longer re-litigate the same issue in this *Contempt Case*, and petitioner is consequently guilty of forum shopping. Further, the CA held that respondents' act of prohibiting the importation of used motor vehicles is not contemptuous as they were only enforcing EO 156, which had already been sustained in *Southwing* and *Forerunner*.[29]

Undaunted, petitioner filed a motion for reconsideration,[30] which was, however, denied in a Resolution[31] dated September 28, 2017; hence, this petition.

The Issue Before the Court

The issue for the Court's resolution is whether or not the CA correctly upheld the RTC Br. 8's dismissal of the *Contempt Case* on the ground of *res judicata* and forum shopping.

---

[24] See *id*. at 68-69.

[25] Dated May 26, 2014. *Id*. at 384-404.

[26] *Id*. at 71-73.

[27] See Appellant's Brief dated May 14, 2015; *id*. at 414-446.

[28] *Id*. at 39-57.

[29] See *id*. at 49-56.

[30] Dated December 21, 2016; *id*. at 74-86.

[31] *Id*. at 59-62.

The Court's Ruling

The petition is meritorious.

Res judicata literally means "a matter adjudged; a thing judicially acted upon or decided; a thing or matter settled by judgment." It also refers to the rule that a final judgment or decree on the merits by a court of competent jurisdiction is conclusive of the rights of the parties or their privies in all later suits on points and matters determined in the former suit. It rests on the principle that parties should not to be permitted to litigate the same issue more than once; that, when a right or fact has been judicially tried and determined by a court of competent jurisdiction, or an opportunity for such trial has been given, the judgment of the court, so long as it remains unreversed, should be conclusive upon the parties and those in privity with them in law or estate.[32]

This judicially created doctrine exists as an obvious rule of reason, justice, fairness, expediency, practical necessity, and public tranquility. Moreover, public policy, judicial orderliness, economy of judicial time, and the interest of litigants, as well as the peace and order of society, all require that stability should be accorded judgments, that controversies once decided on their merits shall remain in repose, that inconsistent judicial decision shall not be made on the same set of facts, and that there be an end to litigation which, without the doctrine of *res judicata*, would be endless.[33]

The doctrine of *res judicata* is encapsulated in Section 47 (b) and (c), Rule 39 of the Rules of Court, which reads:

Section 47. *Effect of judgments or final orders.* — The effect of a judgment or final order rendered by a court of the Philippines, having jurisdiction to pronounce the judgment or final order, may be as follows:

---

[32] *Degayo v. Magbanua-Dinglasan*, 757 Phil. 376, 382 (2015); citations omitted.

[33] *Id.* at 382-383; citations omitted.

x x x x x x x x x

(b) In other cases, the judgment or final order is, with respect to the matter directly adjudged or as to any other matter that could have been raised in relation thereto, conclusive between the parties and their successors in interest by title subsequent to the commencement of the action or special proceeding, litigating for the same thing and under the same title and in the same capacity; and

(c) In any other litigation between the same parties or their successors in interest, that only is deemed to have been adjudged in a former judgment or final order which appears upon its face to have been so adjudged, or which was actually and necessarily included therein or necessary thereto.

Under the afore-quoted provision, there are two (2) distinct concepts of *res judicata*, namely: (*a*) bar by former judgment; and (*b*) conclusiveness of judgment. In *Spouses Ocampo v. Heirs of Dionisio*,[34] the Court eloquently discussed these concepts as follows:

There is "bar by prior judgment" when, as between the first case where the judgment was rendered and the second case that is sought to be barred, there is identity of parties, subject matter, and causes of action. In this instance, the judgment in the first case constitutes an absolute bar to the second action. Otherwise put, the judgment or decree of the court of competent jurisdiction on the merits concludes the litigation between the parties, as well as their privies, and constitutes a bar to a new action or suit involving the same cause of action before the same or other tribunal.

But where there is identity of parties in the first and second cases, but no identity of causes of action, the first judgment is conclusive only as to those matters actually and directly controverted and determined and not as to matters merely involved therein. This is the concept of *res judicata* known as "conclusiveness of judgment." Stated differently, any right, fact or matter in issue directly adjudicated or necessarily involved in the determination of an action before a competent court in which judgment is rendered on the merits is conclusively settled by the judgment therein and cannot again be

[34] 744 Phil. 716, 726-727 (2014).

litigated between the parties and their privies whether or not the claim, demand, purpose, or subject matter of the two actions is the same.

The bar by prior judgment requires the following elements to be present for it to operate: (*a*) a former final judgment that was rendered on the merits; (*b*) the court in the former judgment had jurisdiction over the subject matter and the parties; and (*c*) identity of parties, subject matter and cause of action between the first and second actions. In contrast, the elements of conclusiveness of judgment are identity of: (*a*) parties; and (*b*) subject matter in the first and second cases.[35]

Meanwhile, there is forum shopping "when a party repetitively avails of several judicial remedies in different courts, simultaneously or successively, all substantially founded on the same transactions and the same essential facts and circumstances, and all raising substantially the same issues either pending in or already resolved adversely by some other court." Forum shopping is an act of malpractice that is prohibited and condemned because it trifles with the courts and abuses their processes. It degrades the administration of justice and adds to the already congested court dockets. In *Heirs of Sotto v. Palicte*,[36] the Court provided the test to determine whether or not a party is guilty of forum shopping, to wit:

> The test to determine the existence of forum shopping is whether the elements of *litis pendentia* are present, or whether a final judgment in one case amounts to *res judicata* in the other. Thus, there is forum shopping when the following elements are present, namely: (a) identity of parties, or at least such parties as represent the same interests in both actions; (b) identity of rights asserted and reliefs prayed for, the relief being founded on the same facts; and (c) the identity of the two preceding particulars, such that any judgment rendered in the

---

[35] See *Ley Construction & Development Corporation v. Philippine Commercial & International Bank*, 635 Phil. 503, 511-512 (2010), citing *Alcantara v. Department of Environment and Natural Resources*, 582 Phil. 717, 734-735 (2008).

[36] 726 Phil. 651 (2014).

other action will, regardless of which party is successful, amounts to res judicata in the action under consideration.[37]

In this case, *res judicata*, whether through bar by prior judgment or through conclusiveness of judgment, does not apply. While the private parties in *Southwing*, *Forerunner*, and the *Fenix Case* are all importers of used motor vehicles, the cases filed before the Court dealt with different issues and causes of action. In particular, the *Southwing* and *Forerunner* cases dealt with the constitutionality of the ban on importation of used motor vehicles as provided under EO 156, while the *Fenix Case* dealt with the constitutionality of EO 418. On the other hand, the issue in the *Contempt Case* is limited to whether or not respondents committed indirect contempt by going against the wordings of the Writ of Execution in the *Fenix Case*. Clearly, *Southwing*, *Forerunner*, and the *Fenix Case* do not bar the *Contempt Case* from proceeding. In view of the inapplicability of *res judicata* in this case, it then necessarily follows that there was no forum shopping.

In fine, the courts *a quo* erred in ruling that the *Contempt Case* is barred by *res judicata* and/or forum shopping. Thus, it is only proper to remand the case for further proceedings.

WHEREFORE, the petition is **GRANTED**. The Decision dated November 29, 2016 and the Resolution dated September 28, 2017 of the Court of Appeals in CA-G.R. CR No. 36899 are **REVERSED** and **SET ASIDE**. Accordingly, S.C.A. No. II-5557 is hereby **REINSTATED** and **REMANDED** to the Regional Trial Court of Aparri, Cagayan, Branch 8 for further proceedings.

SO ORDERED.

Carpio (*Chairperson*), *Peralta, Caguioa,* and *A. Reyes, Jr., JJ.,* concur.

---

[37] *Id*. at 654.

EN BANC

[A.M. No. 12-6-18-SC. August 7, 2018]

RE: CONTRACTS WITH ARTES INTERNATIONAL, INC.

SYLLABUS

1. **CIVIL LAW; OBLIGATIONS AND CONTRACTS; CONTRACTS; WHEN THE LAW REQUIRES THAT A CONTRACT BE IN SOME FORM IN ORDER THAT IT MAY BE VALID OR BE ENFORCEABLE OR DEMANDS THAT A CONTRACT BE PROVED IN A CERTAIN WAY, THE REQUIREMENT OF A PARTICULAR FORM OR MANNER IS ABSOLUTE AND INDISPENSABLE.—** It is also true that a contract that has all the essential requisites for its validity is binding between the parties regardless of its form. But when the law requires that a contract be in some form in order that it may be valid or be enforceable, or demands that a contract be proved in a certain way, the requirement of a particular form or manner is absolute and indispensable. Once the formal requirement for the contract is absolute and indispensable, any procurement contract that does not adhere to the requirement can only be deemed invalid and unenforceable. As such, every letter-quotation signed by an unauthorized purchaser in behalf of a government agency in a manner contrary to the loan agreement with the foreign lender and contrary to the local procurement law can only be a mere scrap of paper that cannot by any means be accorded any validity or enforceability.

2. **POLITICAL LAW; REPUBLIC ACT NO. 9184 (GOVERNMENT PROCUREMENT ACT); SPLITTING OF CONTRACTS; DEFINED AS THE BREAKING UP OF CONTRACTS INTO SMALLER QUANTITIES AND AMOUNTS, OR DIVIDING CONTRACT IMPLEMENTATION INTO ARTIFICIAL PHASES OR SUBCONTRACTS, FOR THE PURPOSE OF MAKING THEM FALL BELOW THE THRESHOLD FOR SHOPPING OR SMALL VALUE PROCUREMENT, OR EVADING OR CIRCUMVENTING THE REQUIREMENT OF PUBLIC BIDDING.—** That Ms. Dumdum committed **splitting of contracts** was undeniable. **Splitting of contracts** means the breaking up of contracts into smaller quantities and

amounts, or dividing contract implementation into artificial phases or subcontracts, for the purpose of making them fall below the threshold for shopping or small value procurement, or evading or circumventing the requirement of public bidding. Public officers and agencies are called upon by the COA to ensure that no splitting of requisitions, purchase orders, vouchers, and the like, is resorted to in order to circumvent the control measures provided in the circulars it issued and other laws and regulations. In this connection, a project funded under a single obligating authority and implemented in several phases whether by the same or different contractors shall be deemed **splitting of contracts**. Under the general guidelines of the Government Procurement Policy Board (GPPB), **splitting of contracts** is strictly prohibited.

3. POLITICAL LAW; CONSTITUTIONAL LAW; CONSTITUTIONAL COMMISSIONS; COMMISSION ON AUDIT (COA); COA CIRCULAR NO. 76-41, DATED JULY 30, 1976; FORMS OF SPLITTING OF CONTRACTS.— COA Circular No. 76-41, dated July 30, 1976, is instructive on the matter of **splitting of contracts**, to wit: Forms of Splitting: 1) Splitting of Requisitions consists in the non-consolidation of requisitions for one or more items needed at or about the same time by the requisitioner. 2) Splitting of Purchase Orders consists in the issuance of two or more purchase orders based on two or more requisitions for the same or at about the same time by different requisitioners; and 3) Splitting of Payments consists in making two or more payments for one or more items involving one purchase order. The above-enumerated forms of splitting are usually resorted to in the following cases: 1) Splitting of requisitions and purchase orders to avoid inspection of deliveries; 2) **Splitting of requisitions and purchase orders to avoid action, review or approval by higher authorities**; and 3) Splitting of requisitions to avoid public bidding.

4. ID.; REPUBLIC ACT NO. 9184 (GOVERNMENT PROCUREMENT ACT); SPLITTING OF CONTRACTS; ELEMENTS; PENALTY.— The following elements constitute the act of splitting of contracts or procurement project, to wit: 1. That there is a government contract or procurement project; 2. That the requisitions, purchase orders, vouchers, and the like of the project are broken up into smaller quantities and amounts, or the implementation thereof is broken into subcontracts

or artificial phases; and 3. That the splitting of the contract falls under any of the following or similar purposes, namely: a. evading the conduct of a competitive bidding; b. circumventing the control measures provided in the circulars and other laws and regulations; or c. making the contract or project fall below the threshold for shopping or small value procurement. Applying the foregoing elements to Artes' contracts, we find that the JRSP WB loan was used to fund both the National Forum and the Global Forum in the respective amounts of ₱7.5 million and ₱20.6 million; but instead of conducting a public bidding for the two events, Ms. Dumdum entered into several **letter-contracts** or **quotation-contracts** with Artes for various phases of the events, each phase involving amounts that were well within her authority to approve under SC Administrative Circular No. 60-2003. Such **letter-contracts** or **quotation-contracts** were aimed not only at dispensing with competitive bidding but also at avoiding the control measures set in place under SC Administrative Circular No. 60-2003, the COA Circulars, R.A. No. 9184 and other relevant laws and regulations on government procurement. x x x **Splitting of contracts** is a serious transgression of the procurement rules of the Government. Section 65 (4) of R.A. No. 9184 penalizes public officers who commit "splitting of contracts which exceed procedural purchase limits and competitive bidding" with "imprisonment of not less than six (6) years and one (1) day but not more than fifteen years."

5. ID.; ID.; PRESIDENTIAL DECREE 1445 (GOVERNMENT AUDITING CODE OF THE PHILIPPINES); ACCOUNTABILITY AND RESPONSIBILITY FOR GOVERNMENT FUNDS AND PROPERTY; IT IS THE PERSONAL LIABILITY OF THE OFFICIAL OR EMPLOYEE FOUND TO BE DIRECTLY RESPONSIBLE FOR THE ILLEGAL EXPENDITURES OF GOVERNMENT FUNDS OR USES OF GOVERNMENT PROPERTY; CASE AT BAR.— Section 103 of the *Government Auditing Code of the Philippines declares th*at "[e]xpenditures of government funds or uses of government property in violation of law or regulations shall be the personal liability of the official or employee found to be directly responsible therefor." Considering that Artes already waived any and all claims it had against the Court pursuant to the several contracts entered into with Ms. Dumdum, there is no more need to make the latter personally liable for the reimbursement of any amounts that Artes was claiming.

CARPIO, *J.*, *separate opinion*:

1. POLITICAL LAW; STATUTES; REPUBLIC ACT NO. 9184 (GOVERNMENT PROCUREMENT REFORM ACT); DOES NOT APPLY TO EXECUTIVE AGREEMENTS, WHICH IS GOVERNED BY INTERNATIONAL LAW; CASE AT BAR.— There is no question that the Loan Agreement in this case is in the nature of an executive agreement. It was entered into by the Philippine government, as a subject of international law possessed of a treaty-making capacity, and the International Bank for Reconstruction and Development, which, as an international lending institution organized by world governments to provide loans conditioned upon the guarantee of repayment by the borrowing government, is also regarded a subject of international law and possessed of the capacity to enter into executive agreements with sovereign states. Considering that the Loan Agreement is an executive agreement, Republic Act No. 9184 (RA 9184), or the "Government Procurement Reform Act" does not apply. Section 4 of RA 9184 provides: SEC. 4. Scope and Application. This Act shall apply to the Procurement of Infrastructure Projects, Goods and Consulting Services, regardless of source of funds, whether local or foreign, by all branches and instrumentalities of government, its departments, offices and agencies, including government-owned and/or controlled corporations and local government units, subject to the provisions of Commonwealth Act No. 138. **Any treaty or international or executive agreement affecting the subject matter of this Act to which the Philippine government is a signatory shall be observed.** Section 4 of RA 9184 clearly recognizes the government's commitment to the terms and conditions of executive agreements, such as the Loan Agreement in this case. x x x Being an executive agreement, the Loan Agreement subject of this case is governed by international law. As the Court has consistently ruled in numerous cases, the Philippine government, particularly the implementing agency, in this case the Supreme Court, is therefore obligated to comply with the terms and conditions of the Loan Agreement under the international law principle of *pacta sunt servanda* which is embodied in Section 4 of RA 9184.

2. ID.; ADMINISTRATIVE LAW; PUBLIC OFFICERS AND EMPLOYEES; CLEARANCE CERTIFICATE; A

CERTIFICATE GIVEN TO THE OFFICIALS OR EMPLOYEES WITH PROPERLY DOCUMENTED TURNOVER OR SURRENDER, LIQUIDATION, AND TRANSFER OF THE MONEY/PROPERTY GRANTED TO THEM, OR FULFILLMENT OF CERTAIN OBLIGATIONS AS A CONDITION OF SUCH GRANT WHEN APPLYING FOR LEAVE OF ABSENCE OR PERSONNEL MOVEMENT; IT IS A REQUIREMENT FOR THE VOLUNTARY SEPARATION FROM THE SERVICE; CASE AT BAR.— [T]he Court, upon Dumdum's resignation, issued a Certificate of Clearance dated 7 January 2008, clearing Dumdum of all accountabilities enumerated therein insofar as the Court is concerned, including records and other accountabilities in the Project Management Office. Thereafter, then Chief Justice Reynato S. Puno approved Dumdum's application for terminal leave, which was filed on 15 February 2008. Attached as Annexes "D" and "E", respectively, are Dumdum's Certificate of Clearance and approved Application for Terminal Leave. x x x [A] Clearance Certificate is a certificate given to the officials or employees with properly documented turnover or surrender, liquidation, and transfer of the money/property granted to them, or fulfillment of certain obligations as a condition of such grant when applying for leave of absence or personnel movement. The Clearance is a requirement for the voluntary separation from the service (*i.e.* resignation, transfer, and optional retirement). As stated, the Court issued a Certificate of Clearance, which in no uncertain terms cleared Dumdum of ***all*** the accountabilities in the Court.

3. POLITICAL LAW; STATUTES; REPUBLIC ACT NO. 9184 (GOVERNMENT PROCUREMENT REFORM ACT); SPLITTING OF CONTRACTS; MEANS THE BREAKING UP OF CONTRACTS INTO SMALLER QUANTITIES AND AMOUNTS, OR DIVIDING CONTRACT IMPLEMENTATION INTO ARTIFICIAL PHASES OR SUBCONTRACTS, FOR THE PURPOSE OF MAKING IT FALL BELOW THE THRESHOLD FOR SHOPPING OR SMALL VALUE PROCUREMENT, OR EVADING OR CIRCUMVENTING THE REQUIREMENT OF PUBLIC BIDDING; NOT ESTABLISHED IN CASE AT BAR.— [C]ontrary to the Resolution, there was no splitting of contracts in this case. Splitting of contracts means the breaking up of contracts into smaller quantities and amounts, or dividing contract implementation

into artificial phases or subcontracts, for the purpose of making it fall below the threshold for shopping or small value procurement, or evading or circumventing the requirement of public bidding. The Resolution states that "the JRSP WB Loan was used to fund both the National Forum and Global Forum in the respective amounts of ₱7.5 million and ₱20.6 million; but instead of conducting a public bidding for the two events, Ms. Dumdum entered into several letter-contracts or quotation- contracts with Artes for various phases of the events, each phase involving amounts that were well within her authority to approve under SC Administrative Circular No. 60-2003. x x x." However, **there is no dispute that then Chief Justice Panganiban approved the budgets for the National Forum and the Global Forum in the respective amounts of ₱7.5 million and ₱20.6 million. The approval of these budgets was within the authority of then Chief Justice Panganiban**. The unconditional approval by the Chief Justice of the contracts with Artes entered into by Dumdum, on behalf of the Court, signifies clearly that the hosting of these events, as well as the corresponding expenses for these events embodied in the said contracts, was completely sanctioned by the Court. **More importantly, the World Bank has not found any irregularity in the several letter-contracts or quotation-contracts with Artes for the various phases of the National Forum and the Global Forum.**

R E S O L U T I O N

BERSAMIN, *J.*:

We hereby consider and resolve the issues pertaining to the matters covered by the Report of the Office of the Chief Attorney dated June 20, 2012 (Report) on the Court's several contracts with Artes International, Inc. (Artes) that Ms. Evelyn Toledo-Dumdum (Ms. Dumdum) entered into as the Administrator of the Court's Program Management Office (PMO) relative to the following events and activities, namely:

1. National Forum on Liberty and Prosperity (National Forum) held on August 24-25, 2006 at the Manila Hotel;
2. Global Forum on Liberty and Prosperity (Global Forum) undertaken on October 18-20, 2006 at the Makati Shangri-La Hotel, Makati City; and

3. Other activities relative to the retirement of Chief Justice Artemio V. Panganiban (Chief Justice Panganiban) consisting of: (a) Musical Interlude at the Cultural Center of the Philippines on November 30, 2006; (b) Commemorative Program on December 6, 2006 at the Fiesta Pavillon, Manila Hotel; (c) Retirement ceremonies on December 6, 2006 at the Supreme Court Hall; and (d) the Celebration of the Life, Love & Achievements of Chief Justice Panganiban Event at the Pan Pacific Hotel on December 7, 2006.

The Office of the Chief Attorney submitted the Report in compliance with the instruction of the Court's Management Committee for the Judicial Reform Support Project (JRSP) at its April 24, 2012 meeting in Baguio City to "summarize [the] facts on the circumstances with Artes International, Inc. (Artes)."[1] The Report was based on the files submitted by the PMO to the Management Committee in said meeting, as well as on the twin studies the OCAt had previously conducted on the Artes matter.[2]

Antecedents

On December 21, 2005, or shortly after his assumption of office, Chief Justice Panganiban announced his "judicial philosophy of safeguarding the liberty and nurturing the prosperity of the people under the rule of law."[3] Conformably with his philosophy, the National Forum and the Global Forum were conceptualized and launched.

In planning for the National Forum and the Global Forum, Ad Hoc Committees whose memberships consisted of officers and employees of the Court's various offices were created. It appears, however, that the PMO further engaged an event organizer to assist the Ad Hoc Committees. Ms. Dumdum expressly confirmed so Memorandum PMO JRPAO 09-14-2007:

---

[1] *Rollo,* Vol. I, p. 2 (*Report on Contracts with Artes International, Inc.,* June 20, 2012).

[2] *Id*. (see footnote 1 of the Report).

[3] *Id*.

2.2. **To assist the Ad Hoc Committees, specifically by addressing the creative, logistical, physical and technical requirements** of the Forum, the services of an event specialists (sic), namely, Artes International, Inc. was engaged **based on the lowest responsive canvass** made by this Office. Artes was the same events specialist engaged during the conduct of the International Conference and Showcase on Judicial Reforms (ICSJR) held last November 2005.[4]

The following matters were further spelled out in the certification dated November 23, 2006 issued by the PMO, signed by Dennis Russel D. Baldago, Chief Judicial Staff Officer of the PMO and Vice-Chairperson of the Forum Secretariat; and Dennis T. Velasco, Logistics Management Officer V of the PMO; and noted by Ms. Dumdum, as follows:

This is in relation to the services rendered by Artes International, Inc. for the Global Forum on Liberty and Prosperity held last October 18-20, 2006 at the Makati Shangri-La Hotel, Philippines.

The evolving ***requirements for the creative, physical and technical aspects of the Global Forum were finalized only after the conduct of the Academic and National Forum on Liberty and Prosperity last July 20 and August 24-25, 2006*** respectively, barely eight (8) weeks or two (2) months to prepare for an international conference which will be participated (sic) by Chief Justices and Judges from ninety five (95) countries, delegates from the executive and the legislative departments of government, international development agencies, members of the diplomatic corps, judicial institutes, leaders of the foreign academe, international bar associations, foreign business chambers and civil society.

Thereafter, the ***PMO solicited three (3) canvasses***, requested authorization from the Chief Justice to fund various activities during the Global Forum, and prepared the necessary Job Order to address the abovementioned requirements. The service provider with the lowest responsive proposal was also the same service provider during the International Conference and Showcase on Judicial Reforms held last November 28-30, 2005 at the Makati Shangri-La Hotel.

This is to further certify that there are limited providers for the abovementioned requirements of the Global Forum.

---

[4] *Id*.

This Certification is issued at the request of Mrs. Adoracion Yulo, SC Chief Judicial Staff Officer, Finance Division and Ms. Lilianne E. Ulgado, Chief Accountant, Accounting Division.[5]

The services of Artes were extended to other activities related to the retirement of Chief Justice Panganiban on December 6, 2007.

1.

The National Forum and the Global Forum

The PMO first engaged the services of Artes for the International Conference and Showcase for Judicial Reform (ICSJR) in 2005. Based on the records, the OCAt found that Ms. Dumdum as the Administrator of the PMO entered into the following contracts with Artes, represented by its Executive Producer Helen R. Dabao (Ms. Dabao), and directly took part in authorizing several disbursements, as follows:

(1) The **letter-contract** signed on July 18, 2006 by Ms. Dumdum and Ms. Dabao for two logo designs at the total cost of ₱53,200.00, inclusive of VAT of ₱5,700.00. The disbursement voucher showed that the VAT was increased to ₱9,500.00. Check No. 24690, which was eventually issued to Artes on September 25, 2006, indicated only the amount of ₱43,700.00, which was charged to the **SC-JRSP WB LOAN**.

(2) The **quotation offer** dated August 1, 2006 signed by Ms. Dabao offering the services of Artes to undertake the video coverage of the National Forum for the total amount of ₱180,320.00, inclusive of VAT of ₱19,320.00. Ms. Dumdum affixed her signature beneath the word *Conforme*. The disbursement voucher for the total amount of ₱180,320.00 was prepared and the amount was charged to the **SC-JRSP WB LOAN** with the recommending approval of Ms. Dumdum.

(3) The **quotation offer** dated August 1, 2006 signed by Ms. Dabao offering the services of Artes for the audio-visual

---

[5] *Id*. at 13.

presentation entitled *Blueprint for Change*, with 10 pieces of DVDs as deliverables, at the cost of ₱666,261.12, inclusive of VAT amounting to ₱71,385.00. Ms. Dumdum affixed her signature to the quotation offer beneath the word *Conforme*. Based on the disbursement voucher, the VAT was again increased to ₱118,975.20, such that the amount of Check No. 24691 issued on September 25, 2006 payable to Artes became only ₱547,285.92, which was paid to Artes on September 27, 2006. The disbursement voucher indicated that Ms. Dumdum recommended the expenditure to be charged to the **SC-JRSP WB LOAN.**

(4) The **letter-contract** between Ms. Dumdum and Ms. Dabao (for Artes) entered into on August 10, 2006 for the Conference Proper of the National Forum. The **letter-contract**, written on the stationery of Artes, provided:

10 August 2006

EVELYN TOLEDO-DUMDUM
Program Director
Program Management Office
6th Floor Centennial Bldg.
P. Faura Street, Ermita
Manila

Dear Ms. Dumdum,

Thank you for considering us to be able to serve your event requirements for the following:

Event Title:	National Forum on August 24 & 25, 2006 "Prosperity & Liberty: Goals of Judicial Reforms"
Venue:	Manila Hotel, Centennial Hall
Particulars:	**Conference Proper Requirements**

I. **Physical/Creative/Technical Management of the National Forum at Manila Hotel on August 24 & 25, 2006**.

Please be assured that Artes International, Inc. shall render the same quality work as the past ICSJR conference if not even more efficiently and professionally. We look forward to working with you again in this conference.

The following are areas that were discussed and agreed upon:

1. That Artes shall provide script for your guidance;
2. That your office shall provide all Emcees for the said events;
3. That you are requiring video coverage of the event; and
4. That Helen Dabao, Executive Director of Artes International, Inc. shall oversee the execution, coordination and supervision of the conference proper on August 24 & 25, 2006; 8am to 5pm. Our services include the following:
    1. Provision of creative, production and technical staff with HELEN R. DABAO as Over-All Director and Executive Producer; other areas of concern
    2. Provision of production staff to include Technical Director, Lights Director, Writers, Production Manager, Stage Managers, Production Assistants, technical crew and utility men;
    3. Provision of lights & sound system, the screen/projector at the Centennial Hall and Backdrop bearing the official logo. Artes shall manage all coordination & supervision of the venue needed for the conference except booking guests and participants at the hotel.

For and in consideration of the above services ARTES INTERNATIONAL, INC. submits a package cost of all requirements in the Conference Proper amounting to **NINE HUNDRED NINETY EIGHT THOUSAND EIGHT HUNDRED FIFTY FOUR & 78/ 100 PESOS (PhP998,854.78)**

Please find attached the **Budget Breakdown** x x x of the total package cost of the project.

TERMS:

50% downpayment to be paid upon signing of conforme.

50% balance to be paid upon completion of the project.

Termination of contract after signing is subject to **50% fee of the total project cost**

Additional requirements shall be charged accordingly.

Quoted price is valid only until 18 August 2005.

Note: Please make cheque payable to **Artes International, Inc.**

We look forward to working with you. Should you have any questions and concerns, please do not hesitate to get in touch with us.

Thank you very much for giving us the opportunity to offer our services.

Again thank you and more power to you and your office.

ARTES INTERNATIONAL, INC.	**SUPREME COURT OF THE PHILIPPINES**
By:	**By:**
(Sgd.) **HELEN R. DABAO** **Managing & Creative Director**	(Sgd.) **EVELYN TOLEDO-DUMDUM** **Program Director**

The disbursement voucher shows that Ms. Dumdum recommended approval of the payment in the amount of ₱998,854.78 charged to the "**SC-JRSP WB LOAN**."[6]

(5) About August 12, 2006, Ms. Dabao offered to supply 350 pieces of conference bags at ₱450.00/piece for a total of ₱176,400.00, inclusive of the ₱18,900.00 VAT, and 900 pieces of ID holder at ₱95.00/piece for the total price of ₱95,760.00, inclusive of the ₱10,260.00 VAT. The disbursement voucher disclosed that the total sum of ₱272,160.00 for the offered articles was charged to the **SC-JRSP WB LOAN** and the **JRSP (WB)-GOP Counterpart Funds** in the respective amounts of ₱243,160.00 and ₱29,160.00. Artes issued a "**Sales Invoice**" dated August 12, 2006 for both articles.[7]

(6) The **letter-contract** written on the stationery of Artes and signed on August 14, 2006 by Ms. Dumdum constituted the contract for services for the Closing Ceremonies of the

---

[6] *Id.* at 46.

[7] At the joint meeting on August 4, 2006 of the *Ad Hoc* Committees for the two forums, four representatives of events specialist Artes, namely: Dabao, Pauline Galino, Maricris Calilung, and Anna L. Ventura, attended. Paragraph 3.1.4. of the Minutes of the meeting stated:

BAGS AND SOUVENIR ITEMS – The Joint *Ad Hoc* Committee approved the design of the bags to be provided for the participants of the

National Forum held on August 24-25, 2006. The pertinent portions of the **letter-contract** stated:

> The following are areas that were discussed and agreed upon:
>
> 1. That we will provide script for your guidance;
> 2. That your office will provide all Emcees for the said events;
> 3. That you are requiring video coverage of the event; and
> 4. That Helen R. Dabao, Managing & Creative Director of Artes International, Inc. shall oversee the execution, coordination and supervision of the said event. Our services include the following:
>
>   a. Provision of production staff to include a Technical Director, Lights Director, Writers, Production Designer, Production Manager, Stage Managers, Production Assistants, technical crew;
>
>   b. Provision of lights and sound system for the Closing Ceremony.
>
> For and in consideration of the above services ARTES INTERNATIONAL, INC. submits a package cost of all requirements in the **CLOSING CEREMONY** amounting to **SIX HUNDRED NINETY ONE THOUSAND ONE HUNDRED EIGHTY NINE & 04/100 (PhP691,189.04)**
>
> TERMS:
>
> **50% downpayment** to be paid upon signing of conforme.
>
> **50% balance** to be paid upon completion of project.
>
> Termination of contract after signing is subject to **50% fee of the total project cost**.

---

two fora. For the National Forum, the Joint Committee chose the 'back-with-banig' design combination. The Supplier undertook to bring the finished samples of the souvenirs and bags in the next meeting.

As the only non-employees of the Court present at the meeting, the representatives of Artes could only be the "Supplier" referred to in the Minutes.

Additional requirements shall be charged accordingly.

Quote price is valid only until **18 August 2006**.

NOTE: Please make cheque payable to **Artes International, Inc**.[8]

The OCAt noted that the disbursement voucher for the expenditure was not among the records turned over by the PMO.

(7) The **letter-contract** for the "Welcome Dinner" was signed by Dabao and Ms. Dumdum on August 15, 2006. It had similar text as the letter-contract for the "Closing Ceremony," *viz.*:

The following are areas that were discussed and agreed upon:

1. That we will provide script for your guidance;
2. That your office will provide all Emcees for the said events;
3. That you are requiring video coverage of the event;
4. That Helen R. Dabao, Managing & Creative Director of Artes International, Inc. shall oversee the execution, coordination and supervision of the said event. Our services include the following:
    a) Provision of production staff to include a Technical Director, Lights Director, Writers, Production Designer, Production Manager, Stage Managers, Production Assistants, technical crew and utility men;
    b) Provision of lights & sound system & Backdrop
    c) Provision of food for staff and production people; and
    d) Artes shall manage all coordination with the venue needed for the said event.

For and in consideration of the above services ARTES INTERNATIONAL, INC. submits a package cost of all requirements in the WELCOME DINNER amounting to NINE HUNDRED SEVEN THOUSAND SEVEN HUNDRED SEVENTY SIX & 41/100 PESOS (Php907,776.41)

---

[8] *Rollo,* Vol. I, pp. 6-7.

TERMS:

50% downpayment to be paid upon signing of conforme.

50% balance to be paid upon completion of the project.

Termination of contract after signing is subject to **50% fee of the total project cost**.

Additional requirements shall be charged accordingly.

Quoted price is valid only until 18 August 2006.

NOTE: Please make cheque payable to **Artes International, Inc.**

A disbursement voucher for the two *letter-contracts* in the total amount of ₱1,598,965.46 chargeable to the "**SC-JRSP WB LOAN**" was thereafter prepared. Dumdum affixed her signature thereon to indicate her recommendation for said disbursement.[9]

(8) Through an undated **Abstract of Bids**, the PMO conducted a canvass for other items intended for the National Forum, and Artes emerged as the "winning bidder" in that canvass.

The **Abstract of Bids** is quoted below:

SUPREME COURT
PROGRAM MANAGEMENT OFFICE
NATIONAL FORUM ON LIBERTY AND PROSPERITY
ABSTRACT OF BIDS

SOUVENIR ITEMS FOR SPEAKERS & PANELISTS; AND PENS DURING THE NATIONAL FORUM ON LIBERTY AND PROSPERITY

Name of Bidders	Price Proposal (in PHP)	Compliance to Minimum Terms of Reference	REMARKS
ARTES INTERNATIONAL	35,224.00	Comply	Recommended for Award
OFFICEMAN	38,640.00	Comply	
CHATESU			
MANUFACTURING	39,480.00	Comply	

[9] *Id*. at 7.

Canvassed by:	Recommended by:	Approved by:
(Sgd.)	(Sgd.)	(Sgd.)
MA. CRISTINA M. AGUILAR	DENNIS RUSSEL D. BALDAGO	EVELYN TOLEDO-DUMDUM
Technical Assistant	Chief Judicial Staff Officer	Judicial Reform Program Administrator[10]

As the winning and awarded bidder, Artes, through Ms. Dabao, entered into the **"Quotation Contract"** dated August 14, 2006 and written on its stationery. Ms. Dumdum affixed her signature above her printed name and beneath the word *Conforme*.

The OCAt observed that "canvass #1" was handwritten instead of the date below the word *Conforme*. The **"Quotation Contract"** was for the supply of: (a) 25 pieces of jewelry boxes (tokens for the panelists) for ₱17,500.00; and (b) 450 pieces of ball pens (for the conference kits) for ₱13,950.00, at the total contract price of ₱35,224.00, including the 12% VAT of ₱3,774.00. The copy of the corresponding disbursement voucher for the **"Quotation Contract"** indicated that the expenditure was charged to **JR – ( ) – Counterpart Funds.** Ms. Dumdum affixed her signature on the disbursement voucher to recommend her approval thereof.

The OCAt further observed that it was only on August 18, 2006 that Ms. Dumdum recommended the approval of the budget of ₱7,500,000.00 for the National Forum to be charged "against the JRSP funds." The recommendation of Ms. Dumdum was received by the Office of Chief Justice Panganiban at 10:00 a.m. on August 22, 2006, and he affixed his signature on the same day to indicate the approval of the recommendation. After the National Forum, preparations were made for the Global Forum.

(9) The **letter-proposal** for technical services and equipment rental for the Global Forum submitted on September 16, 2006 by Ms. Dabao. Ms. Dumdum affixed her signature under the word *Conforme* for the following items and corresponding costs, including the rentals:

---

[10] *Id*. at 8.

ITEM #1-2 PROFESSIONAL CONFERENCE SYSTEM	
BRAHLER DIGIMIC CONFERENCE MICROPHONES with 40 units Microphones	₱370,000.00
BRAHLER SIMULTANEOUS INTERPRETATION with Portable Interpreters' Booth+Console System for FOUR (4) LANGUAGE TRANSLATIONS	380,000.00
Oakage Price (sic)	750,000.00
Management Fees (17.65%)	132,375.00
Total Package Price	₱882,375.00
12% Value Added Tax	105,885.00
TOTAL PACKAGE PRICE	₱988,260.00[11]

(10) On September 21, 2006, Ms. Dabao sent Ms. Dumdum a **quotation letter** for **Conference Proper Requirements** expressing gratitude for considering Artes to serve the event, the Global Forum, on October 18-20, 2006 at the Shangri-La Makati Hotel. The pertinent portions of the **quotation letter** ran as follows:

I. **Physical/Creative/Technical Management of the GLOBAL FORUM CONFERENCE PROPER**.

The following are areas that were discussed and agreed upon:

1. That Artes shall provide script for your guidance

2. That your office shall provide all Emcees for the said events;

3. That you are requiring video coverage of the event; and

4. THAT Helen R. Dabao, Executive Director of Artes International, Inc. shall oversee the execution, coordination and supervision of the conference proper on October 18-20; 8am to 5pm. Our services include the following:

---

[11] *Id*. at 9.

A.) Provision of creative, production and technical staff with HELEN R. DABAO as Over-all Director and Executive Producer; other areas of concern such as the secretariat, logistics & security, protocol, registration & documentation and the like are under the management of PMO.

B.) Provision of production staff to include Technical Director, Lights Director, Writers, Production Manager, Stage Managers, Production Assistants, technical crew and stage hands;

C.) Provision of lights & sound system, the screens/projectors at the Rizal Ballroom and Backdrop bearing the official logo and other non-technical requirements needed in the conference proper.

D.) Manage all coordination & supervision of all venue preparations needed for the conference except booking guests and participants at the hotel.

E.) Over-all direct the proceedings of the conference according to the approved program.

For and in consideration of the above services ARTES INTERNATIONAL, INC. submits a package cost of the above requirements at the Conference Proper amounting to **NINE HUNDRED NINETY SEVEN THOUSAND THREE HUNDRED FIFTY ONE 99/100 PESOS (PhP997,351.99).**

Please find attached the **Budget Breakdown (See Attachment A)** of the total package cost of the project.

TERMS:

50% downpayment to be paid upon signing of conforme.

50% balance to be paid upon completion of the project.

Termination of contract after signing is subject to **50% fee of the total project cost.**

Additional requirements shall be charged accordingly.

Note: Please make cheque payable to **Artes International, Inc.** (emphasis supplied.)[12]

---

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

Ms. Dabao and Ms. Dumdum signed the **quotation letter**.

(11) The **letter-contract** written on the stationery of Artes for the opening ceremony and welcome lunch for the Global Forum was signed on September 26, 2006 by Ms. Dumdum and Ms. Dabao. Its pertinent portions said:

> The following are areas that were discussed and agreed upon:
>
> 1. That Artes shall provide script for your guidance;
> 2. That your office shall provide all Emcees for the said events;
> 3. That you are requiring video coverage of the event; and
> 4. That Helen R. Dabao, Executive Director of Artes International, Inc. shall oversee the execution, coordination and supervision of the OPENING CEREMONY & WELCOME LUNCH of the Global Forum on October 18, 2006 at Makati Shangri-la Hotel.
>
> **I. Technical Requirements:**
>
1. Additional Sound & Lights for the Entrance of Color	Php25,000.00
2. Complete Lights & Sound System at Quezon Ballroom	45,000.00
3. 10 sets 2-Way Radio (3 day conference)	30,000.00
4. 2 Sets of Spot lights (frontal for Parade)	6,000.00
5. Additional Camera w/ Camera man	15,000.00
6. Backdrop for the Quezon Ballroom	30,000.00
7. 2 sets LCD Projectors/Screens	25,000.00
8. Raw materials (mini-dvd tapes)	12,000.00
9. Gen Set	15,000.00
>
> **II. Talents:**
>
a)	30 Cadets with Special Uniforms	PhP 80,000.00
b)	20 pc. Marching Bands (sic)	50,000.00
c)	20 pc. Banda Kawayan	45,000.00
d)	40 pc. Bayanihan Dancers	100,000.00
e)	Withholding Tax 10%	27,500.00

III. Technical/Prod./Creative Staff	PhP205,000.00
IV. Other Requirements:	
Food & Drinks for 110 talents and participants	
Breakfast & Lunch (Php 175.00/pax)	PhP 19,250.00
Misc. & Contingencies	15,000.00
TOTAL PACKAGE COST (I, II, III, IV.)	**PhP744,750.00**
Management Fees (17.65%)	**131,448.38**
12% VAT	**105,143.81**

GRAND TOTAL OF PACKAGE COST --- PHP981,342.18[13]

(12) The **letter-contract** printed on Artes' stationery signed on September 26, 2006 by Ms. Dabao and Ms. Dumdum to provide creative, technical and physical management for the closing ceremony of the Global Forum at the cost of **₱789,290.32**.

The OCAt noted, however, that it was only on October 9, 2006 when Ms. Dumdum requested authority to fund the Global Forum, as borne out by MEMORANDUM PMO JRPAO 10-09-2006, the relevant issuance, to wit:

Your honor:

1. The estimated budget for the conduct of the Global Forum on Liberty and Prosperity on October 18-20, 2006 at the Makati Shangri-La Hotel is **Twenty Million Six Hundred Thousand Pesos (Php20,600,000.00).**

2. Of this Php20.6M estimated budget, funding support will come from our various development partners in the form of grant proceeds as follows:

Amount of Funding Support (in Php)	Development Partner
17,000,000.00	JRP-FA Funds (Grant Proceeds). This represents the cumulative unused balance of previous years

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

500,000.00	ABA-Asia (new/incremental funds)
1,200,000.00	ADB (new/incremental funds)
300,000.00	CIDA (new/incremental funds)
400,000.00	TAF (new/incremental funds)
400,000.00	WB (new/incremental funds)

These new incremental funds will be administered (with the exemption of the World Bank) by our development partners.

3. In case of the JRP-FA Funds, may we request for Your Honor's approval to disburse these funds for the various expenditures related to the Global Forum, subject to the usual accounting and auditing rules and regulations.

4. We are pleased to report to your Honor that possible additional new funding support may come from AusAID, British Council, KAS and the UNDP.

5. For your Honor's kind consideration and approval, please.[14]

On October 10, 2006, Chief Justice Panganiban affixed his signature to approve Ms. Dumdum's request.

On October 13, 2006, Ms. Dumdum sought the authority from Chief Justice Panganiban "to process payment for services rendered of (sic) contractors" at the Global Forum. Her memorandum for that purpose was as follows:

Your Honor:

1. This is in relation to our Memorandum requesting authority to fund the Global Forum on Liberty and Prosperity on October 18-20, 2006 at the Makati Shangri-la Hotel which was approved by Your Honor. Copy of the approved Memorandum is attached for Your Honor's reference.

2. In this connection, may we also request for Your Honor's approval for partial payment for the following contractors of the Forum:

---

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

Makati Shangri-La Hotel Accommodation and Function Rooms	5,331,143.50
Cultural Center of the Philippines Production and Artist	517,158.40
Goldcraft and Fashion International	
Barong Tagalog for Foreign Delegate; Uniforms for Choir, Secretariat and Ushers	698,320.00
Artes International, Inc.	
Physical, Creative and Technical Management	997,351.99
Global Forum AVP and Book Launching AVP	997,483.76
Simultaneous Interpretation System (SIS)	988,260.00
Audiovisual Equipment Rental and Video Coverage	997,483.76
Opening Ceremony	981,342.18
Closing Ceremony	789,290.32
Forum Collaterals (Kits, IDs, Pens, Souvenir and Shell Leis)	693,626.75

3. For Your Honor's kind consideration and approval, please.[15]

Chief Justice Panganiban affixed his signature on October 16, 2006 at the lower left corner of the memorandum to signify approval of the request for authority to process partial payments for expenses incurred during the Global Forum.

(13) Ms. Dumdum signed a **disbursement voucher** around October 16, 2006 charging to the **JRP(FA)-GOP COUNTERPART FUNDS** the gross amount of ₱2,875,606.01, less the sum of ₱575,121.20 as taxes, leaving the net amount of ₱2,300,484.80 as **partial payment** to Artes in connection with the Global Forum. The gross amount of ₱2,875,606.01 was broken down thusly:

* Physical, Creatives and Technical Management ------ ₱498,676.00

* Global Forum AVP and Book Launching AVP --------- 498,741.88

---

[15] *Id*. at 12.

* Simultaneous Interpretation System (SIS) ----------	494,130.00
* Audiovisual Equipment Rental and Video Coverage ----	498,741.88
* Opening Ceremony ----------	490,671.09
* Closing Ceremony ----------	394,645.16
TOTAL ---------- ₱	**2,875,606.01**[16]

Check No. 29454 for the total net amount of **₱2,300,484.81** was issued to Artes on December 5, 2006 as final payment for the production of the Global Forum. Artes received the check on the following day.

Subsequently, the OCAt noted then Chief Accountant Lilian Ulgado's Memorandum dated February 27, 2007 addressed to the PMO Finance Division about the claim by the Makati Shangri-la Hotel for the unpaid amount of ₱651,000.00. The pertinent portion of the Memorandum was as follows:

> Per our records, **the total claim of Makati Shangri-La was already paid in full per voucher 06-11-33736.** Please attach an explanation why there is still an (sic) remaining balance of ₱651,000.00.
>
> Also, it appears that there is no basis in paying the said remaining balance of ₱651,000.00. Please attach authority to pay the said amount and charging it to Fiscal Autonomy.
>
> Further, in going over the supporting papers of the full payment to Makati Shangri-La per voucher 11-33736, we noted that **the Court paid for the accommodation of Ms. Helen Dabao in Room Nos. 512 and 516.** In the Articles of Incorporation submitted to this office, Ms. Helen Dabao is listed as one of the incorporators of Artes International. Is Ms. Dabao a participant to the said event? Is (sic) so, please attach copy of memo circular of those who are authorized to attend the Global Conference showing the inclusion of Ms. Dabao in the said list. (Emphasis supplied)[17]

In her responding Memorandum dated February 28, 2007, PMO Financial Management Analyst Paula Cheryl Dumlao

---

[16] *Id*. at 13.

[17] *Id*. at 14.

expressed that because the hotel accommodations for Ms. Dabao were being questioned, the expenses therefor should be treated as a "disputed item" that could be excluded from the bill to avoid further delays in the settlement of the obligations to Makati Shangri-La Hotel.

Thereafter, Chief Accountant Ulgado referred the matter to Judicial Staff Head Midas P. Marquez of the Office of Chief Justice Reynato Puno to resolve whether the "remaining balance" of ₱651,000.00 for the conduct of the Global Forum could be charged to **JR-FA GOP Counterpart Funds**.[18]

2.
Other activities relative to the retirement of Chief Justice Panganiban

The transactions between the PMO and Artes continued even after the holding of the National Forum and Global Forum.

In Memorandum PMO JRPAO 15-11-2006 dated November 15, 2006, Ms. Dumdum requested authority from Chief Justice Panganiban to "fund certain activities," thusly:

Your Honor:

1. May we request authority to fund the following activities:

ACTIVITIES	**AMOUNT (in Php)**
1. Musical Interlude at the Cultural Center of the Philippines on November 30, 2006	551,536.00
2. State of the Judiciary (*Audio-Visual Production*)	470,400.00
3. Leadership and Servanthood: The Labor and Legacy of Chief Justice Artemio V. Panganiban (*Audio-Visual Production*)	650,000.00
TOTAL	1,671,936.00

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

2. Should your Honor concur, may we request that the abovementioned amount be **charged to the JRP FA (Grant Proceeds)**, subject to the usual accounting and auditing rules and regulations.

3. May we also request for Your Honor's approval to issue a **Cash Advance in the amount of Eight Hundred Fifty Thousand Pesos (Php850,000.00)** to initially cover the cost of the abovementioned activities and other incidental expenses to Mrs. Araceli Bayuga, Chief, Cash Division, Fiscal Management and Budget Office (FMBO). The breakdown of the cash advance are as follows:

ACTIVITIES	AMOUNT (in Php)
Musical Interlude at the Cultural Center of the Philippines on November 30, 2006	350,000.00
State of the Judiciary (*Audio-Visual Production*)	250,000.00
Leadership and Servanthood: The Labor and Legacy of Chief Justice Artemio V. Panganiban (*Audio-Visual Production*)	250,000.00
TOTAL	**850,000.00**

4. For Your Honor's kind consideration and approval.[19]

The OCAt reported that Associate Justice Angelina Sandoval Gutierrez, as the Chairperson of the Committee on the Chief Justice's Valedictory, recommended the approval of the request. Chief Justice Panganiban later approved the same and affixed his signature on the left-hand corner of the Memorandum.

Having obtained the approval, Ms. Dumdum entered into the following contracts with Artes, namely:

(1) In a letter-quotation dated November 17, 2006, Ms. Dabao offered the services of Artes for 'Retirement AVP: Leadership and Servanthood' for the amount of ₱620,000.00 plus 12% VAT of ₱74,400.00 or the total 'AVP cost' of **₱694,400.00**. Ms. Dumdum affixed her signature to the letter-quotation under the word *conforme*. It appears that the downpayment of ₱250,000.00 was paid to Artes

[19] *Id*. at 25-26.

– this is evident from the Sales Invoice dated December 8, 2006 collecting the 'final payment' of ₱444,400.00. For the same project, Mindstorm Media, Inc. reportedly quoted the price of ₱1,025,155.04 while Graymatter offered their services for ₱1,100,000.00.

(2) Under *letter-quotation* dated November 22, 2006, Ms. Dabao offered the services of Artes for the 'Commemorative Program (Retirement of CJ Panganiban) on December 6, 2006 at the Fiesta Pavilion, Manila Hotel, 6:30 PM' for the package cost of **₱997,220.22**. Ms. Dumdum signed the letter-quotation for the Court and, in Attachment I thereto, affixed her signature under the word *conforme*. With the total withholding tax of ₱62,326.26 deducted from the package cost, the disbursement voucher in favor of Artes is for the net amount of ₱934,893.96.

(3) On November 25, 2006, Ms. Dabao quoted the contract price of **₱418,320.00** for the project entitled "Celebration of the Life, Love & Achievement of Chief Justice Panganiban Event" at the Pan Pacific Hotel at 12:00 noon of December 7, 2007. Similarly, Mindstorm Media, Inc. submitted a quoted price of ₱474,374.80 inclusive of 12% VAT for the same project, while Graymatter offered ₱450,000.00 inclusive of management fees and 12% VAT. Ms. Dumdum affixed her signature to the letter-quotation as "APJR Administrator." The disbursement voucher prepared for the contract shows that the "technical and non-technical support" services were rendered 'during (the) appreciation luncheon for the APJR non-development partners.' The net contract price of ₱392,175.00, after deducting taxes of ₱26,145.00, is to be charged to '**JRSP(WB)-GOP COUNTERPART FUNDS**,' as recommended by Ms. Dumdum.

x x x x x x x x x

(4) In an undated letter-quotation, Ms. Dabao offered the services of Artes for the retirement ceremonies in honor of Chief Justice Panganiban on December 6, 2006 at the 'Supreme Court Hall' for the price of ₱401,520.00, to which letter Ms. Dumdum affixed her signature. The disbursement voucher in favor of Artes shows that it is to be charged to '**JRSP(WB)-GOP COUNTERPART FUNDS**.'[20]

---

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

On November 27, 2006, Ms. Dumdum requested from Chief Justice Panganiban authority to provide additional funding for additional court-related activities, stating thereon in her Memorandum PMO JRPAO 27-11-2006, as follows:

> Your Honor:
>
> 1. This is further to our Memorandum requesting authority to conduct and fund the ***remaining activities for December which Your Honor approved.*** Copy of said Memorandum is attached for Your Honor's reference.
>
> 2. May we request additional authority to provide additional funding for the development and preparation of the **Audio-Video (sic) Presentations** entitled **'Liberty and Prosperity Under the Rule of Law' and 'Leadership and Servanthood: The Labor and Legacy of Chief Justice Artemio V. Panganiban, Jr.**' (sic) to the various internal and external stakeholders of the APJR. The presentation of these AVPs will commence on December 06, 2006. ***The total cost for the creative design, physical and technical production for the said activities is ₱1,817,060.22.***
>
> 3. Should Your Honor concur, may we request that the abovementioned amount be **charged to the JRP FA Grant Proceeds or JRSP Funds, whichever is appropriate**. May we likewise request authority to disburse and/or draw **cash advance** for the total amount to Mrs. Araceli Bayuga, Chief, Cash Division, Fiscal Management and Budget Office.
>
> 4. For Your Honor's kind consideration and approval.[21]

On November 28, 2006, Chief Justice Panganiban approved the request without specifying the fund source.

3.

Artes' requests for payment of unpaid contract price

Upon the conclusion of the Global Forum, the PMO forwarded to the FMBO pertinent documents relative to the items supplied by Artes (*i.e.*, 350 conference bags, 900 ID holders, 450 units

---

[21] *Id*. at 27.

of ball pens, and 25 jewelry boxes as souvenirs) in order to facilitate payment to the latter.

The FMBO declined to process the payment for lack of the necessary purchase orders (POs) as required by law.

Considering that no payment could be processed without the requisite POs, the PMO requested the Property Division of the Office of Administrative Services (OAS) to issue the POs for the supplies delivered by Artes. Being responsible for the determination of the reasonableness of the prices of supplies, the Property Division surveyed suppliers of the conference bags, the ID holders, and ball pens, but not the jewelry boxes which Artes claimed to have been sourced from Cebu. Based on its survey, the Property Division concluded that the following items were overpriced[22] and excessive,[23] to wit:

Qty.	Unit	Description	Unit Price		Total Amount	
			PMO	**Property Division**	**PMO**	**Property Division**
350	pcs.	Conference Bag	₱450	₱220	₱157,500.00	₱77,000.00
900	pcs.	I.D. Holder	95	35	85,000.00	34,200.00
450	pcs.	Ball Pens	31	13	13,950.00	5,850.00
25	pcs.	Jewelry Box	700	-	17,500.00	-

In the Memorandum dated January 22, 2007 submitted to the Office of Chief Justice Puno, SC Judicial Staff Head Felicitas D. Caunca (Ms. Caunca) of the Property Division declared that the PMO had itself conducted the canvassing for the supplies on the ground that it had already been pressed for time; that such canvassing could have been done through the Philippine Government Electronic Procurement System (Phil-GEPS)by the Property Division in no time at all; that if the amounts involved were within the Property Division's authority to canvass, it would have issued the requested POs regardless of whether

---

[22] *Id*. at 15.

[23] *Id*. at 16.

the canvassing had been done by the proper bids committee or by the Property Division itself; and that because the PMO did not observe the proper procurement procedure, what had resulted were "advance deliveries," which were disallowed by law.[24]

Ms. Caunca also clarified:

> This Division believes that the price for which the PMO obtained the aforestated supplies were **excessive**. In this respect, this Division finds pertinent the provision of Commission on Audit (COA) Circular No. 85-55-A which states that:
>
> > *'Price is excessive if it is more than the 10% allowable price variance between the price paid for the item bought and the price of the same item per canvass of the auditor.'*
>
> The matter was consulted by the undersigned with the COA Auditor assigned to the Court who expressed her opinion that the Purchased (sic) Order may still be prepared by this Division but the amount should be based on the quotation or canvass obtained by this Division and not that of the PMO. The COA Auditor even reminded (us on) the prohibition on antedating the PO if only to reflect or coincide the dates when the PMO concluded their transactions with the Artes International. Needless to state, the difference between the two (2) amounts is to be borne by the PMO or its responsible official, as the case may be.[25]

On January 23, 2007, Ms. Dabao wrote to Ms. Dumdum requesting that Artes be recognized as a "Supplier of Services" in order to "rectify the taxes that were unwittingly withheld from Artes," which were equivalent to 15% of the contract price. She justified her request by attaching a copy of BIR Ruling DAO75-07, which categorically stated that Artes was subject to "2% withholding tax on income payments made by the top 10,000 private corporations and government offices, national, or local, pursuant to section (sic) 3 (M) and (N) of Revenue No. 17-2001."[26]

---

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

[25] *Id*. at 16.

[26] *Id*. at 24.

On January 27, 2007, Chief Accountant Ulgado inquired from the Chief of the Withholding Tax Division of the BIR about the query of Ms. Dabao, thusly:

> This refers to the BIR Ruling DA-033-2007 dated January 23, 2007 issued to Ms. Helen R. Dabao of Artes International, Inc. The BIR ruling states that an event organizer, like Artes, is a supplier of service. Consequently, payments made by private corporation and/or government offices are subject to the two percent (2%) withholding tax.
>
> The Articles of Incorporation of Artes International, x x x, states that its primary purpose is Production and Management of Events and Entertainment.
>
> The Court withheld the 15% withholding tax from its payment to Artes International pursuant to Sections 3 and 4 of Revenue Regulations No. 30-2003 based on the entirety of the services rendered by said company. The creative, physical and technical aspects of the event required the hiring of Artes International as production manager providing management and technical services for the conduct of said event.
>
> May we respectfully request for an opinion from your office to clarify whether or not the services presented above were covered by Section 3 (M) and (N) of RR 17-2001 or among those enumerated in Sections (sic) 3 of RR 30-2003.
>
> Thank you for your immediate attention.

However, Chief Accountant Ulgado received no reply from the BIR.[27]

Subsequently, the FMBO requested the Office of the Chief Justice (OCJ) to refer to the OCAt the matter of "the propriety of collecting withholding tax of 15% totaling ₱1,342,637.26 from payments" made by the PMO to Artes "for services rendered" relative to the Global Forum. It appears that on June 6, 2007 the FMBO returned to the PMO four disbursement vouchers issued in the name of Artes "without action," specifically: ₱376,425.00; ₱392,175.00; ₱372,225.00; and ₱934,893.00, or

---

[27] *Id.* at 24.

a total of **₱2,071,664.10**, on the ground that the FMBO was still awaiting instructions from the OCJ.[28]

On August 22, 2007, the PMO, represented by Edilberto A. Davis, Dennis Russell D. Baldago and Atty. Sigrid Promentilla; the OCJ, represented by then Assistant Court Administrator (ACA) Jose Midas P. Marquez (now the Court Administrator); and Artes, represented by Ms. Dabao, met to "discuss the unpaid disbursement vouchers due to Artes International Inc. (sic) for the conduct of the National and Global Forum (sic) on Liberty and Prosperity, and the Retirement Ceremonies for Chief Justice Artemio V. Panganiban held last August, October and December 2007 (sic), respectively."[29]

When the Memorandum of the Property Division was referred to her, Ms. Dumdum maintained through her Memorandum dated September 14, 2007 that Artes had been an events organizer responsible for "outsourcing of supplies and materials used in the forum"; that its services had been engaged to take charge of the details of the Global Forum; that PMO was only involved in "overseeing that Artes took into consideration the important factors in selecting the suppliers, such as capacity to execute the design and timely delivery of such requirements"; that "it would be inaccurate to state that the selection of the canvassed suppliers was done by the PMO arbitrarily because it merely proceeded from the suppliers chosen by Artes;" and that the PMO had been merely instrumental in helping process payments to Artes by the conduct of its "ministerial duty of preparing the disbursement vouchers."[30]

Anent the non-observance of procurement rules, Ms. Dumdum contended that "the procurement of supplies and materials used in the forum need not pass through the Committee on Bids, nor follow the procurement procedures under R.A. 9184 because those were not actual procurement of goods;" and that "[t]hose

---

[28] *Id*. at 28.

[29] *Id*.

[30] *Id*. at 16.

items[,] for all intents and purposes[,] were to be treated as 'incidental' to the services provided by the events organizer, which in this case happens to be Artes."[31]

Under the circumstances, ACA Marquez, as Chief Justice Puno's Staff Head, referred the Artes matter regarding the "supplies for the National Forum" to the OCAt for study and report.

In the meantime, on November 12, 2007, Ms. Dabao transmitted to Ms. Dumdum a letter inquiring on the status of the following:

1. The taxes amounting to ₱1,162,850.00 withheld from the contract price of the National Forum and Global Forum;
2. The "collaterals" amounting to ₱693,626.75 incidental to the National Forum; and
3. The payment of the remaining balance of ₱2,261,460.22 for the Retirement Ceremonies of Chief Justice Panganiban.

In her letter dated November 13, 2007, Ms. Dumdum acknowledged the aforementioned letter of Ms. Dabao, and assured her that a follow-up meeting would be conducted, *viz.*:

> x x x [A]fter the following concerns have been addressed: (a) the x x x OCAT releases its comments to the Office of ACA Marquez regarding the taxes withheld during the conduct of the National and Global Forum (sic) on Liberty and Prosperity in the amount of Php1,162,850.00; (b) the PMO collaterals used during the conduct of the National Forum on Liberty and Prosperity in the amount of Php693,626.75; and (c) the Disbursement Vouchers concerning the remaining balance of Php2,261,460.22 for the conduct of the Retirement Ceremonies of Chief Justice Panganiban are forwarded to the Office of ACA Marquez x x x.[32]

---

[31] *Id*. at 17.

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

On August 20, 2008, Ms. Dabao sent another letter requesting that Mr. Davis, who had meanwhile taken over as Director of the PMO following the resignation of Ms. Dumdum, issued to her a "formal correspondence" on the unpaid balances.[33]

On September 23, 2008, Ms. Dabao followed up with Mr. Davis, this time threatening to expose the delay to the media.[34]

On October 6, 2008, Ms. Dabao met with ACA Marquez, Mr. Davis and Dennis Russell D. Baldago to thresh out matters relative to the claims of Artes.[35]

On May 26, 2009, Ms. Dabao wrote Chief Justice Puno to appeal for the settlement of the "aggregate overdue accounts" totaling ₱2,955,086.97 that Artes had been trying to collect since August 2007.[36]

On March 8, 2011, Ms. Dabao wrote Court Administrator Marquez pleading for an audience to discuss the collectibles of Artes.[37]

On April 28, 2011, Ms. Dabao wrote Chief Justice Renato C. Corona for help "in our three year old quest for justice," relevantly stating:

x x x x x x x x x

We appeal to you, CJ Corona, to aid us in our three year old quest for justice. We are a small events company and Php2.9 million is our entire rolling capital for the business. What pains us is we cannot find any reason nor could the OCAT find any reason for the Supreme Court to hold payment for our company, Artes International, Inc.[38]

On May 30, 2011, Ms. Dabao wrote Atty. Lourdes B. Lim, Department Auditor of the Commission on Audit (COA) assigned

---

[33] *Id.* at 29.

[34] *Id.*

[35] *Id.* at 30.

[36] *Id.* at 31.

[37] *Id.* at 32.

[38] *Id.*

to the Court, requesting a certification to the effect that "no audit (pre or post) has yet been conducted on the said collectibles."[39]

In her reply dated June 28, 2011, Atty. Lim responded thusly:

> Please be informed that we cannot issue a certification that no audit (pre or post) since no payment has been made yet nor disbursement voucher submitted to this Office (sic). Moreover, an Audit Observation Memorandum dated May 9, 2007 was issued by this Office which was received in the Office of the Chief Justice on May 21, 2007 during the time of the former Chief Justice Reynato S. Puno relative to the retirement activities in honor of the former Chief Justice Artemio V. Panganiban, Jr. (sic) wherein no comment/ reply was received by this Office.
>
> Further, pursuant to Section 2 of P.D. 1445, The Government Auditing Code of the Philippines which provides that 'It is the declared policy of the State that all resources of the government shall be managed, expended or utilized in accordance with law and regulations and safeguarded against loss or wastage through illegal or improper disposition, with a view to ensuring efficiency, economy and effectiveness in the operations of government. The responsibility to take care that such policy is faithfully adhered to rests directly with the chief or the head of the government agency concerned.
>
> For your appropriate action.[40]

By her own Memorandum dated February 21, 2012, then JRP Administrator Geraldine Faith Econg requested Atty. Corazon G. Ferrer-Flores, FMBO Chief, for an update on "the advice from the Office of the Chief Justice which you have waited for." However, no action was taken thereon.

4.
The response of the PMO

Chief Justice Puno referred the Report of the OCAt to the PMO for appropriate action or comment.

---

[39] *Id*.

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

Inasmuch as Ms. Dumdum had meanwhile resigned as the JRP Administrator effective February 19, 2008 and had immediately gone on terminal leave prior thereto, it was Mr. Davis, using the title of Judicial Reform Program Administrator, who submitted the comment dated February 18, 2008 in behalf of the PMO.[41]

Mr. Davis explained therein that the estimated budget of ₱7,500,000.00 for the National Forum superseded the approved budget of ₱6,800,000.00; and that the "latter (?) document was discarded without any intention to be used as an official document."[42]

Justifying why expenditures had been charged to the JRSP Fund even before Chief Justice Panganiban had approved the request for authority to use such fund, Mr. Davis expounded:

> The foregoing statement was nothing but obvious misrepresentation, Your Honor. Foremost, it must be considered that the alleged expenditures cited by the OCAT are expenses which were incidental to the **services of Artes as Events' specialist.** Since Artes procured those items in their own capacity as private contractor and in compliance with their obligations and responsibilities as events specialist, **those expenses will eventually be reimbursed by the Supreme Court to Artes.** The JRPA merely identified the funding source from which those expenses shall be charged. Thus, **those items are not subject of new contracts but are merely part of the services delivered by Artes.** Thus, it would be inaccurate to state that those expenses were incurred prior to the grant of approval by the Chief Justice.[43]

Mr. Davis cited the following provision of SC Administrative Circular No. 60-2003 to explain why the PMO had assisted in the procurement activities, to wit:

> 4.3 **All JRSP procurement activities** shall be done **through, or with the assistance of the PMO.** The Project Implementation

---

[41] *Id.* at 20.

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

[43] *Id.* at 21.

Monitoring and Evaluation Group of the PMO (PMO-PIMEG) will manage the specific procurement activities, and tract their baseline schedule and actual progress. The Program Director of the PMO will be responsible for the overall monitoring of the procurement process, particularly, the notification of the lagging activities and the responsible offices. Emphasis supplied.[44]

He insisted that the PMO, being the end-user, assisted Artes as the event's specialist, thusly:

The basis of the PMO's functions as an end-user unit was further affirmed by the subsequent issuance by the GPPB of the Generic Procurement Manuals (approved on 14 June 2008), whereby procuring entities are encouraged to create their respective Procurement Units (an organic unit of office within the agency). These procurement units were envisioned to perform the functions of the BAC Secretariat including the preparation of procurement documents. Considering that "request for quotations" or "canvassing documents" as loosely used, verily fall under the same category, then it may be properly inferred that the PMO, being the end-user unit validly conducted the canvass. Hence the allegation of usurpation of BAC functions in violation of the Administrative Circular on procurement as hastily alleged by OCAT was disputed.[45]

Commenting on the allegation of splitting of contracts, Mr. Davis, focusing only on the production of "a 10-minute Audio-Visual Highlights of International Conference and Showcase on Judicial Reforms (ICSJR) in DVD format and standard casing with 700 copies," denied that there had been any splitting of contracts because such services were distinct from those undertaken by Artes, which consisted of "translating the proceedings of the whole conference into an Audio-Visual Documentary Video Format, with four hundred (400) copies of cover booklets." He insisted that "Artes was engaged to focus on the substantive part of the conference and the important details which should be accurately documented for the purpose of maintaining an official record of the events that transpired

---

[44] *Id*.

[45] *Id*.

during the conference," and, consequently, the allegation of splitting of contracts was "baseless and without merit."[46]

Mr. Davis invoked the presumption of regularity in the performance of official functions, and the maxim *damnum absque injuria.* He manifested that "the OCAT cannot presume that PMO through the JRPA was in bad faith when it entered into the questioned transactions. Absent a clear evidence of bad faith, the same shall not be applied." He added:

> Likewise, we also wish to reiterate our previous statement in Memorandum PMO JRPAO 09-14-2007 that the PMO's involvement in the **said transaction was merely to facilitate the process by overseeing that Artes took into consideration the important factors in selecting the suppliers, particularly its capacity to execute the design and timely delivery of such requirements.** The canvass made by the PMO which reflected quotations from other suppliers (although not generally required due to the very nature of subject items), was in fact an exercise of due diligence because it exerted the effort to ensure that the prices charged by Artes were still within the reasonable market price, even after including a reasonable profit margin in exchange for the additional customized design inputted by Artes to the said items under consideration. **There was nothing irregular in the conduct of the PMO**, thus it should not be penalized for doing its responsibilities efficiently to ensure that the National and Global Forums were successfully hosted by the Court. (Emphasis supplied.)[47]

Mr. Davis denied the need to secure certificates of availability of funds (CAFs) prior to the execution of the contracts with Artes. He opined that the CAFs were required only for locally funded activities. He submitted that as long as the requirements stated in page 145 of the *Handbook on Understanding Foreign Assisted Projects* of the COA "are present, there is no reason to delay or disallow disbursement of funds."

The requirements prescribed by the *Handbook on Understanding Foreign Assisted Projects* adverted to are the following:

---

[46] *Id*. at 21-22.

[47] *Id*.

a) Documentation.

In general, the documentation required to support disbursements depends on the type of expenditures involved.

If the Bank needs full supporting documentation, two copies of contracts or purchase orders should be sent to the Bank to review by the designated task manager before submitting the first related application. One copy of each of the following supporting documents is normally given to the Bank with the withdrawal application:

b) **Supplier's** or **consultant's invoice,** or a summary statement of works performed signed by the supervising engineer or other authorized official

c) Evidence of shipment (for equipment and materials purchased). This can be one of the following:

- Copy of the bill of lading
- Forwarder's certificate

d) **Evidence of payment (for reimbursement).** This can be one of the following:

- **Receipted invoice or formal receipt**
- Commercial bank's report of payment

e) Performance security such as bank guarantee in the case of advance payments if required under the terms of the contract, or where an unusually are (sic) advance payment is made (Emphasis supplied.)

Mr. Davis affirmed that there was nothing irregular about "facilitating the conduct of alternative method of procurement of shopping" even though the JRP Administrator did not first seek authority to do so from the Chief Justice. He reminded that: "The act of facilitating and approving the quotations of the items being bought by Artes were mere exercise of the authority granted to it under Section 4.3 of Administrative Circular No. 60-2003."[48] He opined that neither the loan agreement nor the law necessitated the "formal requirements,"

[48] *Id*. at 23.

like the CAFs for the contracts. He reiterated that the CAFs applied only to locally funded projects; hence, the "quotation-contract" was "a valid government contract" that could not be questioned.[49] With respect to the authority issued by Ms. Dumdum to pay amounts beyond the threshold of her authority granted under SC Administrative Circular No. 60-2003, he posited that the observation of the OCAt thereon was a "matter of opinion" because "[t]o date, no audit observation has been made by COA to this effect."[50] Finally, he invoked Chief Justice's intervention "to put an end to all these harassments and desperate attempts to tarnish the reputation of the undersigned."[51]

It is noteworthy that in its letter of May 26, 2016, Artes, through Ms. Dabao, communicated to the Court, through the OCJ, that it no longer wished to pursue its claim; that its claim had been the result of a misunderstanding; and that its claim had been already settled to its complete satisfaction.[52]

Artes submitted simultaneously with its letter of May 26, 2016 the so-called *Release, Waiver & Quitclaim* in which it reiterated the contents to the effect that it was waiving any and all its rights and interests in the claim; and expressly stated that it was releasing the Court from any further liability.[53]

It is possible that the *Release, Waiver & Quitclaim* rendered moot and academic every issue regarding Artes' several contracts with the Court. An action is considered moot when it no longer presents a justiciable controversy because the issues involved have become academic or dead, or when the dispute has already been resolved and, hence, one is not entitled to judicial intervention unless the issue is likely to be raised again between the parties. As the consequence, nothing more needs to be

---

[49] *Id*.

[50] *Id*.

[51] *Id*.

[52] *Id*. at 83.

[53] *Id*. at 84-85.

resolved after its determination has been overtaken by subsequent events.[54]

However, the mootness principle bows to certain exceptions, such that mootness will not always deter further proceedings upon a matter until its resolution in due time if there is a valid reason to do so. In *David v. Macapagal-Arroyo*,[55] the Court has defined four instances in which the courts can still decide an otherwise moot case, namely: (a) there is a grave violation of the Constitution; (b) the exceptional character of the situation and the paramount public interest is involved; (c) when the constitutional issue raised requires formulation of controlling principles to guide the Bench, the Bar, and the public; and (d) the case is capable of repetition yet evading review.[56]

The extraordinary character of this case for involving the compliance with the law and rules on procurement as well as the public interest thereby necessarily involved override the applicability of the mootness principle. Based on the Report of the OCAt, liability of some form for violations of the law and rules on procurement already might have probably attached to the public officials involved. To still proceed herein clearly responds to the Constitutional declaration that public office is a public trust. Prudential wisdom also dictates that the Court should not immediately brush aside the irregularities committed in relation to the services rendered by Artes if only to serve the demand for transparency.

Ruling of the Court

The Court is not unmindful that Artes, prior to its submission of the *Release, Waiver & Quitclaim*, had been consistently and assiduously pleading for the payment of the total sum of **₱4,117,936.98**, itemized as follows:

---

[54] *Galicto v. Aquino III,* G.R. No. 193978, February 28, 2012, 667 SCRA 150, 177.

[55] G.R. Nos. 171396, 171409, 171485, 171483, 171400, 171489, and 171424, May 3, 2006, 489 SCRA 160.

[56] *Id*. at 214-215.

1. The taxes withheld on the "contract" price of the National Forum and Global Forum amounting to **₱1,162,850.00**;

2. The "collaterals" used in the National Forum amounting to **₱693,626.76**; and

3. The balance of the "contract" price of the "Retirement Ceremonies" of CJ Panganiban amounting to **₱2,261,460.22**.[57]

The Court, albeit fiscally autonomous, could not simply authorize and justify the release of funds to pay Artes' demand in view of the many questions that were raised against the contracts entered into with Artes by Ms. Dumdum as the PMO Administrator. To decide on whether to pay or not, the Court had to be guided by the law on the proper disbursement of public funds, whether emanating from the National Treasury or sourced from loans or credits extended by foreign funding partners.

The WB loan agreement and its implementation

The loan agreement between the Republic of the Philippines and the International Bank for Reconstruction and Development (IBRD), or the World Bank (WB), was signed on October 2, 2003 to fund the Judicial Reform Support Project (JRSP) whose objective was "to assist the Borrower in developing a more effective and accessible Judiciary that would foster public trust and confidence through the implementation of the Supreme Court's Action Program for Judicial Reform."[58]

The JRSP consisted of the following:

1. Improving Case Adjudication and Access to Justice;

2. Enhancing Institutional Integrity;

---

[57] *Rollo*, p. 28.

[58] *Rollo,* Vol. II, pp. 99-102 (Schedule 2, *Loan Agreement between the Republic of the Philippines and the International Bank for Reconstruction and Development*, October 2, 2003).

3. Strengthening the Institutional Capacity of the Judiciary; and

4. Support for the Reform of the Judicial System and Program Management Office (PMO)

Based on the foregoing, the "Globalization Lecture Series – Forum with Chief Justice" appeared in the JRSP WB Financial Monitoring Report CY 2006 under the second category, *i.e.*, Enhancing Institutional Integrity.

SC Administrative Circular No. 60-2003 entitled *Procurement Policy and Procedures for the Judicial Reform Support Project* was issued on November 18, 2003 "to ensure the effective implementation of the Judicial Reform Support Project (JRSP) through the timely procurement of Goods, Works, and Services, guide the concerned Supreme Court Offices in their respective roles in the procurement process, prescribe the allowed lead times for each procurement activity, and monitor and resolve bottlenecks and problem areas in the procurement process." Thus, SC Administrative Circular No. 60-2003 applied when procuring goods, works, and services in furtherance of the implementation of the JRSP, *viz.*:

3. SCOPE

3.1 This Administrative Order applies to the procurement of all types of works, goods, and services in the implementation of the JRSP.

x x x x x x x x x

5. LEGAL FRAMEWORK

5.1 These Guidelines are formulated in fulfillment of a major legal commitment of the Government of the Philippines (GOP) with the World Bank (WB) and therefore, have the force and effect of a legal instrument for compliance of all concerned with the implementation of the JRSP. The provisions of these guidelines are basically premised and substantially based on, and in some parts or instances, literally quoted or drawn from:

5.1.1 **JRSP LOAN AGREEMENT**. The Loan Agreement executed by and between the GOP and the WB on October 2, 2003 shall govern the legal relationship between the Bank and the Supreme Court as the Project's Implementing Agency. The terms and conditions set forth therein for the procurement of goods, works and consulting services shall be observed in consonance with the Bank Guidelines.

5.1.2 BANK GUIDELINES

5.1.2.1 For Works and Goods procurement, the Guidelines: Procurement under IBRD Loan and Credits, January 1995, revised January and August 1996, September 1997 and January 1999 shall be used.

5.1.2.2 For the selection of Consultants, the Guidelines: Selection and Employment of Consultants by World Bank Borrowers, January 1997, revised in September 1997, January 1999 and May 2002 shall be used.

5.1.2.3 More recent provisions and amendments of Bank Guidelines may be applicable subject to prior notice and clearance by the Bank.

5.1.3 REPUBLIC ACT NO. 9184 (An Act Providing for the Modernization, Standardization and Regulation of the Procurement Activities of the Government and for Other Purposes) and its Implementing Rules and Regulations (IRR).

5.2 In case of conflict, the Loan Agreement and the World Bank Guidelines take precedence over Government Guidelines.

Under the aforequoted guidelines set in SC Administrative Circular No. 60-2003, the procurement rules for the JRSP were

not exclusively culled from the IBRD Guidelines, but also from the provisions of R.A. No 9184, which were to be applied suppletorily. The OCAt noted that under the procurement rules the borrower, which was the Court itself, should identify the body that would conduct the procurement activities for the borrower. For the purpose, SC Administrative Circular No. 60-2003 adopted Article V of R.A. No. 9184 to establish the JRSP Bids and Awards Committee (JRSP BAC) to be in charge of the conduct of the procurement activities. In light of this, and given that the PMO Program Director was tasked with the overall monitoring of the procurement process, Ms. Dumdum and the PMO should not have engaged in actual procurement activities, as their doing so would mean that she and the PMO were risking not being able to perform the monitoring function properly.[59]

The IBRD Guidelines defined two modes of procurement: the **international competitive bidding** (ICB); and the **other methods of procurement**. The latter included **limited international bidding** (LIB); **national competitive bidding** (NCB); **shopping**; **direct contracting**; *etc*.[60]

Specifically, **shopping** was defined by the January 1999 IBRD Guidelines in the following manner:

> Shopping (International and National)
>
> 3.5 Shopping is a procurement method based on comparing price quotations obtained from several Suppliers, usually at least three, to assure competitive prices, and is an appropriate method for procuring readily available off-the-shelf goods or standard specification commodities that are small in value. Requests for quotations shall indicate the description and quantity of the goods, as well as desired delivery time and place. Quotations may be submitted by telex or facsimile. The evaluation of quotations shall follow sound public or private sector practices of the purchaser. **The terms of the accepted offer shall be incorporated in a purchase order**. (Emphasis Supplied)

---

[59] *Rollo,* Vol. I, p. 17 (*Report on Contracts with Artes International, Inc.,* June 20, 2012).

[60] *Rollo,* Vol. IV, p. 1471 (OCAt Report on Supplies for the National Forum on Liberty and Prosperity, December 21, 2007).

The PMO appeared to have resorted to **shopping** as the method of procurement in canvassing three suppliers for the goods and supplies intended for the National Forum.

Re: Supplies for the National Forum and the Global Forum on Liberty and Prosperity

Considering that the National Forum and the Global Forum were projects conceptualized under the aegis of the JRSP, SC Administrative Circular No. 60-2003 governed the procurement of goods, works and services.

By resorting to **national shopping**, however, the PMO ignored the last sentence of the IBRD Guidelines on such alternative method of procurement that required a **purchase order** (PO) in which the accepted offer should be indicated. The PO was akin to a "contract between the parties as it requires inputs showing the requisites of a contract of consent, object certain, and cause of obligation."[61] Instead of the PO, the PMO used and relied on **letter-quotations** to reflect and contain the agreements between the parties. All that Ms. Dumdum as the Program Director had to do was to affix her signature on the **letter-quotations** beneath the word *Conforme* to indicate conformity to the terms stated therein. This manner of contracting was yet again a clear violation of the IBRD Guidelines and the Standard Bidding Documents, Procurement of Goods.[62]

What were to be contained in the contracts was quite clearly stated in the law. In the 1999 version of the IBRD Guidelines, the following parameters were expressly written, to wit:

Conditions of Contract

2.37 The contract documents shall clearly define the scope of work to be performed, the goods to be supplied, the rights and obligations of the Borrower and of the supplier or contractor, and the functions and authority of the engineer, architect, or construction manager, if one is employed by the Borrower, in the supervision

---

[61] *Id*. at 1472.

[62] January 1995, Revised in March 2000, January 2001, and March 2002.

and administration of the contract. In addition to the general conditions of contract, any special conditions particular to the specific goods or works to be procured and the location of the project shall be included.[63]

Moreover, as the OCAt has correctly observed, the IBRD Guidelines mentioned of **contract documents** instead of a single document. This observation is consistent with the Generic Procurement Manual (GPM) that synchronized the provisions of R.A. No. 9184 with the procurement rules of the Asian Development Bank, Japan Bank for International Cooperation, and the World Bank itself by requiring that contracts resulting from procurement activities for goods should be supported not only by *a* contract document but by a *number* of documents, including the *bid documents*. Yet, based on the detailed study made by the OCAt, no proper bidding procedure pursuant to the guidelines of SC Administrative Circular No, 60-2003 was followed by the JRSP-BAC in choosing Artes as the service provider for the National Forum and the Global Forum. Consequently, the patent nullity of the contracts with Artes became the only legal consequence to be reached from the failure to comply with the proper procurement procedure.

We are not also prepared to find that the PMO conducted the canvassing for the supplies for having been already pressed for time. Such explanation was a feeble and implausible excuse in the face of the statement by Caunca of the Property Division to the effect that the Property Division could have done the canvassing *in time* through the Phil-GEPS despite time constraints. Indeed, the records revealed no immediate or compelling justification for dispensing with the requirement of public bidding in choosing the service provider for the procurement of the goods involved thereon. To insist that a public bidding would have unnecessarily delayed the implementation of the program was truly unacceptable. By conducting the canvass without prior coordination with the Property Division, Ms. Dumdum and the PMO ignored the proper

---

[63] *Rollo,* Vol. IV, p. 1472.

procurement procedure, and unavoidably caused the making of "advance deliveries" in contravention of the law.

The assertion by the JRP Administrator that Artes had itself conducted the canvassing of suppliers, and that the PMO had only facilitated the process was fundamentally discredited by the documents reviewed by the OCAt. The records disclosed that Ms. Dumdum as the JRP Administrator had approved the recommended award of contracts to Artes as the winning bidder despite Artes having itself conducted the bidding. We advert to the points cogently made by the OCAt thereon, *viz.*:

> ***If indeed it is true that the PMO merely facilitated the process as an overseer, and Artes was the actual canvasser, then a lot of questions are raised by the fact that Artes itself emerged the winner in the canvasses "facilitated" by the PMO, as evidenced by the undated Abstracts of Bids approved by the JRP Administrator.*** Notably, Artes emerged the firm with the "lowest quotation" for jewelry boxes and ball pens even though the JRP Administrator conformed to its quotation and Artes delivered the said goods *days before* OfficeMAN and Chateau offered their quotations for the same goods.
>
> Moreover, assuming that the PMO had been authorized as a special procurement body, it may not conduct shopping without authority from the Chief Justice as head of the procuring entity. Section 48 of Republic Act No. 9184 provides that, to promote economy and efficiency, an alternative method of procurement such as shopping may only be conducted upon prior approval by the Head of the Procuring Entity and "whenever justified by the conditions" provided by Republic Act No. 9184. The JRP Administrator, who does not appear to have been specially authorized by the Chief Justice for the purpose of approving the alternative method of procurement to competitive bidding to be adopted, *may not arrogate unto herself the responsibility of the Chief Justice to authorize the conduct of shopping*.(Italicized and bold emphases are part of the original)[64]

---

[64] *Rollo,* Vol. I, p. 18 (*Report on Contracts with Artes International, Inc.,* June 20, 2012), citing OCAt Memorandum of December 21, 2007, *rollo,* Vol. IV, pp. 1489-1490.

At the very least, the resulting situation of the canvasser later emerging as the winning bidder was highly irregular because of the plainly obvious conflict of interest.

Considering that most of the expenditures whose payments were sought by Ms. Dumdum as the authorized approving official came within the threshold allowed in SC Administrative Circular No. 06-2003 (*i.e.*, ₱1,000,000.00 and below), the payment of contracts on the goods, works, and services procured under the JRSP would have been presumed to have initially complied with the proper procurement procedure conducted by the JRSP-BAC. Yet, we cannot even presume regularity simply because of several indicia of non-compliance with the proper procurement procedure. The presumption of regularity vanished with the appearance of even just one irregularity. We agree with the OCAt that it was doubtful if the *actual* canvass had been conducted in view of the abstracts of canvass, particularly with respect to the jewelry boxes and the ball pens, being undated. The OCAt pertinently noted:

> Documents show that the JRP Administrator signed the letter-quotation of Artes dated August 14, 2006. The face of the letter-quotation does not show when she signed it. However, two days later or on August 16, 2006, Artes sent her Sales Invoice No. 360 for the full payment of ₱35,224.00 for the said goods. On August 20, 2006, or four days after Artes had presented Sales Invoice No. 360 to the PMO, OfficeMan and Chateau Manufacturing sent quotations for the same goods. Could there be canvassing of all three proponents under these circumstances? In all probability, the Abstract of Bids was prepared and included in the records only to justify the premature award of the contract to Artes.[65]

It is also true that a contract that has all the essential requisites for its validity is binding between the parties regardless of its form.[66] But when the law requires that a contract be in some form in order that it may be valid or be enforceable, or demands

---

[65] *Id*. at 1490.

[66] Article 1356, *Civil Code*.

that a contract be proved in a certain way, the requirement of a particular form or manner is absolute and indispensable.[67] Once the formal requirement for the contract is absolute and indispensable, any procurement contract that does not adhere to the requirement can only be deemed invalid and unenforceable. As such, every letter-quotation signed by an unauthorized purchaser in behalf of a government agency in a manner contrary to the loan agreement with the foreign lender and contrary to the local procurement law can only be a mere scrap of paper that cannot by any means be accorded any validity or enforceability.

We cannot but notice that the records do not show that the PMO had secured the CAF for each of the contracts. According to the OCAt, the CAFs were still required because the *Government Auditing Code of the Philippines*,[68] the *Administrative Code of 1987*,[69] and the General Provisions of the relevant *General Appropriations Act*[70] uniformly required expenditures of appropriated funds to be supported by CAFs. We hold that the loan proceeds were undoubtedly appropriated funds. In addition, R.A. No. 9184, which was definitely applicable, has specified "confirming the certification of availability of funds, as well as reviewing all relevant documents in relation to their adherence to law"[71] as parts of the assessment of the readiness of the procurement during the pre-procurement conference. With the requirement for the CAFs being *sine qua non* in government procurement and contracts, every contract without the corresponding CAF should be characterized as null and void.[72]

---

[67] *Id*.

[68] Presidential Decree No. 1445, Sec. 86.

[69] Book V, Title I, Subtitle B, Chapter 8, Sec. 47; Book VI, Chapter 5, Sec. 40.

[70] R.A. No. 9336, Sec. 73. It is noted that R.A. No. 9336 was deemed re-enacted for FY 2006.

[71] Section 20 (2), Article VII, R.A. No. 9184.

[72] *Commission on Election v. Quijano-Padilla*, G.R. No. 151992, September 18, 2002, 389 SCRA 353. Citing *Osmeña v. Commission on Audit,* G.R. No. 98355, March 2, 1994, 230 SCRA 585.

The transactions consummated by Ms. Dumdum for the PMO could not be classified as regular despite the lack of a contrary finding by the COA. Such contrary finding by the COA was not yet forthcoming because the Court had not yet settled the claim of Artes for the balance of the aggregate contract price in view of the material violations of SC Administrative Circular No. 60-2003 and the relevant procurement laws. Hence, there would be no disbursement of public funds to be disallowed or no expenditure to be declared illegal.

We also clarify that the contracts with Artes did not make it to the category of ineligible as determined by the WB, and this was due to the Court's continued refusal to settle the nearly ₱3 million supposedly owed to Artes. The refusal to pay was most likely the reason why the contracts with Artes were not included in the WB's list of ineligibles.

***Re*: Splitting of contracts**

That Ms. Dumdum committed **splitting of contracts** was undeniable.

Splitting of contracts means the breaking up of contracts into smaller quantities and amounts, or dividing contract implementation into artificial phases or subcontracts, for the purpose of making them fall below the threshold for shopping or small value procurement, or evading or circumventing the requirement of public bidding.[73] Public officers and agencies are called upon by the COA to ensure that no splitting of requisitions, purchase orders, vouchers, and the like, is resorted to in order to circumvent the control measures provided in the circulars it issued and other laws and regulations. In this connection, a project funded under a single obligating authority and implemented in several phases whether by the same or different contractors shall be deemed **splitting of contracts**.[74]

---

[73] Section 2 (b), *Guidelines for Shopping and Small Value Procurement*.

[74] COA Circular No. 2009-002, May 18, 2009.

Under the general guidelines of the Government Procurement Policy Board (GPPB), **splitting of contracts** is strictly prohibited.

COA Circular No. 76-41, dated July 30, 1976, is instructive on the matter of **splitting of contracts**, to wit:

Forms of Splitting:

1) Splitting of Requisitions consists in the non-consolidation of requisitions for one or more items needed at or about the same time by the requisitioner.

2) Splitting of Purchase Orders consists in the issuance of two or more purchase orders based on two or more requisitions for the same or at about the same time by different requisitioners; and

3) Splitting of Payments consists in making two or more payments for one or more items involving one purchase order.

The above-enumerated forms of splitting are usually resorted to in the following cases:

1) Splitting of requisitions and purchase orders to avoid inspection of deliveries;

2) **Splitting of requisitions and purchase orders to avoid action, review or approval by higher authorities**; and

3) Splitting of requisitions to avoid public bidding.

The foregoing enumeration of the forms of splitting is merely illustrative and by no means exhaustive. But in whatever form splitting has been resorted to, **the idea is to do away with and circumvent control measures promulgated by the government**. **It is immaterial whether or not loss or damage has been sustained by, or caused to, the government**. In a celebrated administrative case wherein a ranking official was charged with and found guilty of splitting of purchases, the Office of the President of the Philippines was quite emphatic when it ruled that "his **liability is not contingent on proof of loss to the Government because of said violations of rules on procurement**." For this reason, except "requisitions for supplies materials and equipment spare parts xxx acquired through emergency purchase from reputable firms xxx:" (Section 18, Letter of Implementation No. 44, dated April 8, 1976 of the President of the Philippines), Auditors should be on the lookout for cases of splitting

in varied forms such as splitting of requisitions and purchase orders to avoid inspection of deliveries; splitting of requisitions, purchase orders, and payments to avoid action, review or approval by higher authorities; and splitting of requisitions to avoid public bidding.

The Commission on Audit, therefore, cognizant of its responsibility under the Constitution to safeguard expenditures and uses of government funds and property hereby enjoins all concerned to strictly enforce and faithfully adhere to all laws, rules, regulations, and policies calculated to prevent or prohibit splitting in any or all forms for the protection of the government. (Emphasis supplied)

The foregoing COA circular is addressed to all heads of departments; chiefs of bureaus and offices; managing heads of government-owned or -controlled corporations; *etc*., and proscribes the splitting of requisitions, purchase orders, vouchers and others. The heads of the departments, bureaus or offices are expressly enjoined to observe prudence, accountability and transparency in ensuring that no such splitting of requisitions, POs, vouchers, *etc*. escape their attention or happen under their charge. With the increasing volume of transactions involving purchases of goods, equipment, supplies and materials, there arises the need to enforce control measures to insure that procurement is effected in a manner that is most advantageous to the Government. The control measures protect the Government from losing millions of pesos through irregularities in the procurement process.

The following elements constitute the act of splitting of contracts or procurement project, to wit:

1. That there is a government contract or procurement project;
2. That the requisitions, purchase orders, vouchers, and the like of the project are broken up into smaller quantities and amounts, or the implementation thereof is broken into subcontracts or artificial phases; and
3. That the splitting of the contract falls under any of the following or similar purposes, namely:

a. evading the conduct of a competitive bidding;[75]

b. circumventing the control measures provided in the circulars and other laws and regulations;[76] or

c. making the contract or project fall below the threshold for shopping or small value procurement.[77]

Applying the foregoing elements to Artes' contracts, we find that the JRSP WB loan was used to fund both the National Forum and the Global Forum in the respective amounts of ₱7.5 million and ₱20.6 million; but instead of conducting a public bidding for the two events, Ms. Dumdum entered into several **letter-contracts** or **quotation-contracts** with Artes for various phases of the events, each phase involving amounts that were well within her authority to approve under SC Administrative Circular No. 60-2003. Such **letter-contracts** or **quotation-contracts** were aimed not only at dispensing with competitive bidding but also at avoiding the control measures set in place under SC Administrative Circular No. 60-2003, the COA Circulars, R.A. No. 9184 and other relevant laws and regulations on government procurement.

In its Report, the OCAt cogently opined that —

On the claim of Ms. Dumdum that Artes was an "events" organizer, this Office pointed out that the Philippine Convention and Visitors Corporation (PCVC), a non-profit corporation that serves as the marketing arm of the Department of Tourism, was the events organizer under a Memorandum of Agreement that Ms. Dumdum herself signed for the Court.

The various contracts entered into with Artes for each of the two events, in light of the claim of Ms. Dumdum that Artes was an "events organizer," only led to the conclusion that there was splitting of contracts. If it were true that Artes was engaged as an events organizer,

---

[75] *Id*.

[76] *Baldebrin v. Sandiganbayan,* G.R. Nos. 144950-71, March 22, 2007, 518 SCRA 627, 631-632.

[77] *Id*.

a lump sum contract thereon should have covered all the details of holding the National Forum, including the needed supplies.[78]

Had the PMO engaged Artes as the events organizer of the two events, Ms. Dumdum should have executed with Artes a **lump sum contract** that covered *all* the details and incidentals of the events instead of the several **letter-contracts** and **quotation-contracts** for each and every phase of the events. That the value of each of the **letter-contracts** and **quotation-contracts** entered into by Ms. Dumdum was within her authority to approve (*i.e.*, ₱1 million and below) was another strong manifestation of **splitting of contracts**.

Splitting of contracts is a serious transgression of the procurement rules of the Government. Section 65(4) of R.A. No. 9184 penalizes public officers who commit "splitting of contracts which exceed procedural purchase limits and competitive bidding" with "imprisonment of not less than six (6) years and one (1) day but not more than fifteen years."

Personal liability of Ms. Dumdum

Section 103 of the *Government Auditing Code of the Philippines* declares that "[e]xpenditures of government funds or uses of government property in violation of law or regulations shall be the personal liability of the official or employee found to be directly responsible therefor."

Considering that Artes already waived any and all claims it had against the Court pursuant to the several contracts entered into with Ms. Dumdum, there is no more need to make the latter personally liable for the reimbursement of any amounts that Artes was claiming.

Her release from personal liability for reimbursement notwithstanding, Ms. Dumdum should be investigated for any administrative or criminal liability for acts done in connection with the following circumstances, namely:

---

[78] *Rollo,* Vol. I, p. 17 (*Report on Contracts with Artes International, Inc.,* June 20, 2012).

a. requesting authority to fund the National Forum twice on the same day for the separate amounts of ₱7,500,000.00 and ₱6,800,000.00 without indicating whether the first request is superseded or that the latter request was intended to be for an amount to be added to the first request;

b. entering into contracts even before the Chief Justice approved the use of funds from which the expenses for the contracts were drawn;

c. allowing her subordinates to conduct the alternative method of procurement of shopping without her having been duly authorized as the representative of the Chief Justice for the purpose of approving the alternative mode of procurement;

d. prematurely awarding to Artes the contract for the jewelry boxes and ball pens before actual receipt of offers of other proponents;

e. participating in procurement activities notwithstanding that her authority was to monitor such activities, in violation of the rule on conflict of interest;

f. allowing the conduct of activities that violate procurement rules such as the rule prohibiting splitting of contracts;

g. signing contracts prepared by private contracting parties as letter-quotations with no Certificate of Availability of Funds (CAF) attached thereto and hence in violation of formal requirements prescribed by law and the Loan Agreement; and

h. authorizing the payment of the amount of ₱1,313,435.00 (or ₱1,427,647.72 inclusive of tax), which is beyond her threshold of authority for payments of ₱1 million under Administrative Circular No. 60-2003.[79]

Even if the disciplinary procedure provided in Paragraph 9.4 of Administrative Circular No. 60-2003 is no longer applicable to Ms. Dumdum in view of her having meanwhile ceased to be connected with the Court, Paragraph 9.3 of Administrative Circular No. 60-2003 may apply, *viz.*:

---

[79] *Rollo,* p. 20.

9.3 Sanctions. Supreme Court officials, employees and private individuals **who shall fail to comply with the provisions of this Administrative Circular without just cause shall be held liable and subject to sanctions/penalties** provided under Articles XXI to XXIII of R.A. 9184 (see Annex J). [Emphasis supplied.]

In addition, the provisions of R.A. No. 3019 may be taken into consideration in order to ascertain whether or not any act or omission committed by any party, including Ms. Dumdum, resulted in or caused undue injury to the Government. However, it is not the Court but another office that should make the ascertainment in that regard.

No personal liability on the part of Chief Justice Panganiban

We have found nothing in the records that established former Chief Justice Panganiban's privity to the contracts entered into by Ms. Dumdum with Artes. Although he had approved, belatedly, the budgets for the holding of the National Forum and the Global Forum in the respective amounts of ₱7.5 million and ₱20.6 million, his approval was within his official authority to grant as the Chief Justice.

The documents presented for Chief Justice Panganiban's approval had undergone the presumed study and verification by the PMO under Ms. Dumdum as well as by the committee constituted for the purpose. He must have relied in utmost good faith on his subordinates, upon whom the primary responsibility of ensuring that all procurement of goods and services were within the limits required by the laws and the procurement rules. Such reliance in good faith absolved him from any personal liability in the absence of proof of any conspiracy between them.

Conclusion

Based on the OCAt's Report dated June 20, 2012, violations of law in the disbursement of funds of the Court as well as of funds derived from the loans extended by the World Bank appear to have been committed. The laws on procurement as well as

those on auditing and official accountability were also contravened. Although such violations would have resulted in the nullification of the contracts for services and supplies between the Court and Artes, the Court would have still authorized payments to Artes of any unpaid balances based on the equitable principle of *quantum meruit* in order not to be guilty of being unjustly enriched. The Court would then consequently move to seek from the concerned individuals the reimbursement of whatever amounts it would have thereby paid. That would not happen now because Artes meanwhile expressly released the Court from any further monetary liability upon its claim.

WHEREFORE, acting on the Report dated June 20, 2012 submitted by the Office of the Chief Attorney, the Court **RESOLVES** to:

1. **CONSIDER** the claim of Artes International, Inc. for payment extinguished in accordance to the unilateral *Release, Waiver & Quitclaim* executed and submitted by Artes International, Inc.; and

2. **FURNISH** a copy of this **RESOLUTION** to the **OFFICE OF THE OMBUDSMAN** and the **COMMISSION ON AUDIT** as basis for whatever further action may be warranted or necessary to be taken against **MS. EVELYN DUMDUM.**

The matter subject of this case is now considered **CLOSED** and **TERMINATED**.

SO ORDERED.

Leonardo-de Castro, Peralta, Leonen, Jardeleza, Martires, Tijam, A. Reyes, Jr., and *Gesmundo, JJ.,* concur.

Carpio, J., see separate opinion.

Velasco, Jr., del Castillo, and *Perlas-Bernabe, JJ.,* join the separate opinion of *J.* Carpio.

Caguioa, J., on official leave, joins the separate opinion of *J.* Carpio.

SEPARATE OPINION

CARPIO, *J.*:

This case involves a contractor who mistakenly claims payment for services rendered to the Court. During the pendency of the case, the contractor submitted a quitclaim, release and waiver informing the Court that there was merely a misunderstanding and the amount claimed is fully settled. Accordingly, the contractor released the Court from any liability whatsoever supposedly arising from the fully-settled contracts which the Court entered into more than a decade ago. Despite this positive development, the Resolution incorrectly finds fault for these mistaken claims and erroneously concludes that the contracts would have been annulled for violating procurement laws.

As narrated in the Resolution, on 21 December 2005, or shortly after then Chief Justice Artemio V. Panganiban took his oath, he declared his "judicial philosophy of safeguarding the liberty and nurturing the prosperity of the people under the rule of law."[1] Pursuant to this philosophy, the National Forum on Liberty and Prosperity (held on 24-25 August 2006) and the Global Forum on Liberty and Prosperity (held on 18-20 October 2006) were conceptualized and launched.

There is no dispute that the Court, through the Program Management Office with Evelyn Toledo-Dumdum (Dumdum) as then Administrator, entered into several contracts with Artes International, Inc. (Artes) relative to the said fora, as well as other activities relative to the Retirement Ceremony of then Chief Justice Panganiban. There is also no dispute that the Court successfully hosted these events, with Artes being the events specialist hired "[t]o assist the Ad Hoc Committees, specifically by addressing the creative, logistical, physical and technical requirements of the Forum, x x x."[2]

---

[1] Resolution, p. 2.

[2] *Id*.

Thereafter, Artes requested payment for allegedly unpaid balances arising from its contracts with the Court. However, Artes subsequently submitted a Release, Waiver & Quitclaim to the effect that "it was waiving any and all its rights and interests in the claim; and expressly stated that it was releasing the Court from any further financial liability."[3]

Notwithstanding, the Resolution cites the Report of the Office of the Chief Attorney on the contracts with Artes in concluding that "violations of law in the disbursement of funds of the Court as well as of funds derived from the loans extended by the World Bank appear to have been committed. The laws on procurement as well as those on auditing and official accountability were also contravened."[4]

The Chief Attorney is gravely mistaken.

First, Republic Act No. 9184 or **the Government Procurement Reform Act does not apply to executive agreements**.

In the Loan Agreement, dated 2 October 2003, between the Republic of the Philippines,[5] represented by then Secretary of Finance Jose Isidro N. Camacho, and the International Bank for Reconstruction and Development, the Bank has agreed to extend a Loan to the Philippine government in an amount equal to $21,900,000 to assist in the financing of the Judicial Reform Support Project (the Project or JRSP).

---

[3] *Id.* at 27.

[4] *Id.* at 41.

[5] For this Loan Agreement, then President Gloria Macapagal-Arroyo authorized then Secretary of Finance Jose Isidro N. Camacho "to conclude, sign, execute and deliver, in accordance with law, for and on behalf of the Republic of the Philippines, the Loan Agreement and any other documents relating to the Judicial Reform Support Project, x x x" and, together with then Ambassador of the Philippines to the USA Albert F. Del Rosario, were "granted full power and authority to do and perform every act and thing which may be requisite and necessary to be done for the accomplishment of the special power x x x as the President of the Philippines, might or could do if acting personally, x x x. (Special Authority, dated 9 May 2003)

There is no question that the Loan Agreement in this case is in the nature of an executive agreement. It was entered into by the Philippine government, as a subject of international law possessed of a treaty-making capacity, and the International Bank for Reconstruction and Development, which, as an international lending institution organized by world governments to provide loans conditioned upon the guarantee of repayment by the borrowing government, is also regarded a subject of international law and possessed of the capacity to enter into executive agreements with sovereign states.[6]

Considering that the Loan Agreement is an executive agreement, Republic Act No. 9184 (RA 9184), or the "Government Procurement Reform Act" does not apply. Section 4 of RA 9184 provides:

> SEC. 4. *Scope and Application*. This Act shall apply to the Procurement of Infrastructure Projects, Goods and Consulting Services, regardless of source of funds, whether local or foreign, by all branches and instrumentalities of government, its departments, offices and agencies, including government-owned and/or controlled corporations and local government units, subject to the provisions of Commonwealth Act No. 138. **Any treaty or international or executive agreement affecting the subject matter of this Act to which the Philippine government is a signatory shall be observed**. (Emphasis supplied)

Section 4 of RA 9184 clearly recognizes the government's commitment to the terms and conditions of executive agreements, such as the Loan Agreement in this case. In *Land Bank of the Philippines v. Atlanta Industries, Inc.*,[7] which involved a Loan Agreement between the IBRD and the Land Bank, the Court declared:

> While mandating adherence to the general policy of the government that contracts for the procurement of civil works or supply of goods and equipment shall be undertaken only after competitive public bidding, RA 9184 recognizes the country's commitment to abide by

---

[6] See *Land Bank of the Philippines v. Atlanta Industries, Inc.,* 738 Phil. 243, 259-260 (2014).

[7] 738 Phil. 243 (2014).

its obligations under any treaty or international or executive agreement. x x x.[8]

In the same case of *Land Bank of the Philippines v. Atlanta Industries, Inc.,*[9] the Court held that public bidding under RA 9184 does not apply to the procurement of goods to be financed from the proceeds of the Loan Agreement subject of that case, thus:

Considering that Loan Agreement No. 4833-PH expressly provides that the procurement of the goods to be financed from the loan proceeds shall be in accordance with the IBRD Guidelines and the provisions of Schedule 4, and that the accessory SLA contract merely follows its principal's terms and conditions, **the procedure for competitive public bidding prescribed under RA 9184 therefore finds no application to the procurement of goods** for the Iligan City Water Supply System Development and Expansion Project. The validity of similar stipulations in foreign loan agreements requiring the observance of IBRD Procurement Guidelines in the procurement process has, in fact, been previously upheld by the Court in the case of *Department of Budget and Management Procurement Service (DBMPS) v. Kolonwel Trading.* (Emphasis supplied)

In *Abaya v. Ebdane, Jr.,*[10] petitioners therein assailed the recommendation of the Department of Public Works and Highways, as the implementing agency of the projects in the Loan Agreement therein, to award the road improvement contract to China Road & Bridge Corporation for violating RA 9184. The Court ruled that Executive Order No. 40[11] was applicable

---

[8] *Id.* at 257.

[9] *Id.* at 261-262.

[10] 544 Phil. 645 (2007).

[11] Section 1 of EO 40 provides:

Section 1. Scope and Application. This Executive Order shall apply to the procurement of: (a) goods, supplies, materials and related services; (b) civil works; and (c) consulting services, by all National Government agencies, including State Universities and Colleges (SUCs), Government- Owned or – Controlled Corporations (GOCCs) and Government Financial Institutions (GFIs), hereby referred to as "Agencies." This Executive Order shall cover

since RA 9184 could not be applied retroactively. The Invitation to Prequalify and to Bid was published in November and December 2002. At the time, the law in effect was EO 40. RA 9184 took effect two months later or on 26 January 2003.

Even assuming that RA 9184 could be given retroactive effect, the Court declared that RA 9184 did not apply to the Loan Agreement. According to the Court, "the terms of the Exchange of Notes dated December 27, 1999 and Loan Agreement No. PH-P204 would still govern the procurement for the CP I project."[12]

In *DBM-PS v. Kolonwel Trading,*[13] citing *Abaya v. Ebdane, Jr.*,[14] the Court made a similar pronouncement. The Court held that the Loan Agreement therein is in the nature of an executive agreement whose terms and conditions govern the procurement of goods, thus:

> The question as to whether or not foreign loan agreements with international financial institutions, such as Loan No. 7118-PH, partake of an executive or international agreement within the purview of Section 4 of R.A. No. 9184, has been answered by the Court in the affirmative in *Abaya, supra.* Significantly, *Abaya* declared that the RP-JBIC loan agreement was to be of governing application over the CP I project and that the JBIC Procurement Guidelines, as stipulated in the loan agreement, shall primarily govern the procurement of goods necessary to implement the main project.

Being an executive agreement, the Loan Agreement subject of this case is governed by international law. As the Court has

---

the procurement process from the pre-procurement conference up to award of contract.

Nothing in this Order shall negate any existing and future government commitments with respect to the bidding and award of contracts financed partly or wholly with funds from international financing institutions as well as from bilateral and other similar foreign sources.

[12] *Supra* note 10, at 688.

[13] 551 Phil. 1030, 1049 (2007).

[14] *Supra* note 10.

consistently ruled in numerous cases, the Philippine government, particularly the implementing agency, in this case the Supreme Court, is therefore obligated to comply with the terms and conditions of the Loan Agreement under the international law principle of *pacta sunt servanda* which is embodied in Section 4 of RA 9184.

In dismissing the petition in *Abaya v. Ebdane, Jr.*,[15] the Court held thus:

> Under the fundamental principle of international law of *pacta sunt servanda*, which is, in fact, embodied in Section 4 of RA 9184 as it provides that "[a]ny treaty or international or executive agreement affecting the subject matter of this Act to which the Philippine government is a signatory shall be observed," the DPWH, as the executing agency of the projects financed by Loan Agreement No. PH-P204, rightfully awarded the contract for the implementation of civil works for the CP I project to private respondent China Road & Bridge Corporation.

Similarly, in *DBM-PS v. Kolonwel Trading,*[16] the Court held:

> Under the fundamental international law principle of *pacta sunt servanda,* which is in fact embodied in the afore-quoted Section 4 of R.A. No. 9184, the RP, as borrower, bound itself to perform in good faith its duties and obligation under Loan No. 7118- PH. Applying this postulate in the concrete to this case, the IABAC was legally obliged to comply with, or accord primacy to, the WB Guidelines on the conduct and implementation of the bidding/procurement process in question.

In *Land Bank of the Philippines v. Atlanta Industries, Inc.,*[17] the Court held:

> x x x. Being similar to a treaty but without requiring legislative concurrence, Loan Agreement No. 4833-PH - following the definition given in the *Bayan Muna* case — is an executive agreement and is,

---

[15] *Supra* note 10, at 693.

[16] *Supra* note 13, at 1049.

[17] *Supra* note 7, at 260.

thus, governed by international law. Owing to this classification, the Government of the Philippines is therefore obligated to observe its terms and conditions under the rule of *pacta sunt servanda*, a fundamental maxim of international law that requires the parties to keep their agreement in good faith. It bears pointing out that the *pacta sunt servanda* rule has become part of the law of the land through the incorporation clause found under Section 2, Article II of the 1987 Philippine Constitution, which states that the Philippines "adopts the generally accepted principles of international law as part of the law of the land and adheres to the policy of peace, equality, justice, freedom, cooperation, and amity with all nations."

To repeat, under Section 4 of RA 9184, the Government Procurement Reform Act does not apply to executive agreements such as the Loan Agreement in this case. Consequently, RA 9184 does not apply in the procurement of goods and services pursuant to the Loan Agreement between the Philippine government and the IBRD for the Judicial Reform Support Project.

Moreover, the Loan Agreement for the Project expressly provides that the procurement of goods and services shall be in accordance with World Bank guidelines.

Section 3.02 of the Loan Agreement provides: "Except as the Bank shall otherwise agree, procurement of goods, works and services required for the Project and to be financed out of the proceeds of the Loan shall be governed by the provisions of Schedule 4 to this Agreement."[18] Schedule 4, in turn, provides: **"Goods and works shall be procured in accordance with the provisions of Section I of the 'Guidelines for Procurement under IBRD Loans and IDA Credits' published by the Bank in January 1995 and revised in January and August 1996, September 1997 and January 1999 (the Guidelines) x x x."**[19]

---

[18] *Rollo,* p. 92. Page 5 of the Loan Agreement.

[19] *Id*. at 104. Page 18 of the Loan Agreement.

The Court's Administrative Circular No. 60-2003,[20] which has the force and effect of a legal instrument for compliance of all concerned with the implementation of the JRSP,[21] expressly provides that the terms and conditions of the Loan Agreement shall be observed in the procurement of goods, works, and consulting services **in accordance with World Bank guidelines**, thus:

> 5.1.1 **JRSP LOAN AGREEMENT.** The Loan Agreement executed by and between the GOP and the WB on October 2, 2003 shall govern the legal relationship between the Bank and the Supreme Court as the Project's Implementing Agency. **The terms and conditions set forth therein for the procurement of goods, works and consulting services shall be observed in consonance with the Bank Guidelines.** (Emphasis supplied)

Second, **the World Bank, from whom the funds for these events were charged, did not consider the expenses for these events ineligible**.

To implement the Project, the Philippine government "shall maintain until completion of the Project, a Program Management Office in the Supreme Court, responsible for overseeing the implementation of the Supreme Court's Action Program for Judicial Reform and the Project, chaired by a Director, and said Office to be provided at all times with adequate funds and other resources and staffed by qualified and experienced personnel in adequate numbers as shall be necessary to accomplish its objectives."[22]

In implementing the Project, the PMO, with the approval of the Court, procured the services of Artes through several contracts for the subject events. Significantly, during and after the implementation of the Project, the PMO never received any notice from the World Bank classifying the contracts with Artes,

---

[20] Entitled "Procurement Policy Guidelines and Procedures For the Judicial Reform Support Project." Dated 18 November 2003.

[21] Section 5.1 of SC Administrative Circular No. 60-2003.

[22] *Rollo,* p. 112. Page 25 of the Loan Agreement.

including the incurred expenses for the subject events, as ineligible expenditures. Neither did the World Bank question in any forum the procurement procedures undertaken by the PMO with respect to these contracts. In other words, the World Bank considered these expenditures as eligible, which are defined as "expenditures in respect of the reasonable cost of goods, works and services required for the Project and to be financed out of the proceeds of the Loan allocated from time to time to the eligible Categories x x x."[23]

On the other hand, based on the PMO Memorandum dated 18 June 2012, the World Bank's list of ineligible transactions consisted of five major activities, to wit: (1) Conduct of the distinguished lecture series; (2) Conduct of the seminar on "Revisiting the Code of Conduct for Court Personnel; (3) Conduct of and attendance of SC and Judiciary officials to local and international training, seminars and workshops on court administration, international commercial law and facilitating workshops and trainings; (4) Printing of the Reporter's Case Index for the use of justices, judges, court attorneys and legal researchers, and (5) Procurement of IT equipment for various SC offices. The World Bank considered these as ineligible transactions for being (1) not connected with the project development objective; (2) not agreed with the World Bank; or (3) not reflected in the procurement plan. Attached hereto as Annex "A" is the PMO Memorandum, as well as the list of the ineligible expenditures.

A review of the list of ineligible expenditures shows that there is absolutely no item of expenditure which is even remotely related to the questioned contracts with Artes. In fact, the name Artes or Dumdum does not appear in the list of the names of officials, contractors or suppliers of the ineligible expenditures. Notably, the ineligible expenditures referred to various activities conducted in the years 2010 and 2011, or at least four years after the questioned events were held.

---

[23] *Id.* at 115. Page 28 of the Loan Agreement.

While the PMO in the same Memorandum claims that the listed ineligible transactions were "in fact, incurred in furtherance of the project development objectives of the JRSP" and were "actually regular and eligible transactions undertaken in the course of the JRSP's implementation," the PMO adjusted the total amount to US$115,416.00, instead of US$132,766.00, and recommended the refund for the first four transactions from the JRSP-GOP Counterpart Fund and for the procurement of IT equipment from the Court's Fiscal Autonomy Fund.

To repeat, the questioned contracts with Artes and the expenses related to the subject fora and retirement ceremony have not been identified as ineligible expenditures by the World Bank, and in fact, were not among those ineligible expenditures which the PMO recommended to be refunded by the Court using the JRSP-GOP Counterpart Fund or the Court's Fiscal Autonomy Fund. Suffice to state, if there indeed were any violation of the terms and conditions of the Loan Agreement, or any of its procurement procedures, then the World Bank would have categorized such expenses as ineligible and required the Supreme Court to refund the amount of the ineligible expenditures, as what it did for the expenditures in 2010 and 2011 enumerated in its Aide Memoire, covering the period during the incumbency of then Chief Justice Renato C. Corona.

In fact, if the World Bank has found any irregularity or misprocurement related to the subject events, it would have cancelled that portion of the loan allocated to such misprocured goods or services. This is clearly spelled out in the IBRD Guidelines,[24] thus:

Misprocurement

1.12 The Bank does not finance expenditures for goods and works which have not been procured in accordance with the agreed provisions

---

[24] GUIDELINES PROCUREMENT UNDER IBRD LOANS AND IDA CREDITS. Dated November 2003. <http://siteresources.worldbank.org/INTPROCUREMENT/Resources/Procurement-Guidelines-November-2003.pdf > (visited 14 April 2018).

in the Loan Agreement and as further elaborated in the Procurement Plan. In such cases, the Bank will declare misprocurement, and it is the policy of the Bank to cancel that portion of the loan allocated to the goods and works that have been misprocured.

However, no finding of misprocurement or declaration to that effect, with respect to the subject contracts, was ever made by the World Bank.

Third, **the COA's Annual Audit Reports on the Supreme Court from 2006 to 2008 and the COA's Annual Audit Reports on the Judicial Reform Support Project from 2004 to 2011 do not contain any finding or observation of irregularity or anomaly as to the Court's contracts with Artes.**

In COA's Annual Audit Report on the Supreme Court for calendar year 2006, when the subject events were conducted, there was no finding, observation or recommendation regarding the subject contracts with Artes. Notably, among the deficiencies for 2006 which the COA found was the splitting of contracts in the procurement of steel filing safe cabinets.

Paragraph 4 of the Executive Summary of COA's Annual Audit Report on the Supreme Court for calendar year 2007[25] states that "Commitment Fees in the amount of ₱13,754,859.51 were incurred due to slow utilization of the proceeds of Loan No. 7191-PH with International Bank for Reconstruction and Development (IBRD)." Accordingly, the COA recommended "that management implement the programs and projects of the JRSP strictly in accordance with timetables and to speed up the procurement of works, goods and services to avoid incurrence of commitment fees." Aside from this observation regarding the slow utilization of the loan proceeds, there was no COA finding, observation or recommendation regarding the subject contracts with Artes.

Paragraph 17 of the Executive Summary of COA's Annual Audit Report on the Supreme Court for calendar year 2008[26]

---

[25] Page iii of the Audit Report.

[26] Page vii of the Audit Report.

states that "[t]he government paid a commitment fee amounting to ₱1,509,043.62 for the unwithdrawn principal amount of the International Bank for Reconstruction and Development (IBRD) Loan No. 7191-PH for the Judicial Reform Support Project (JRSP) due to low utilization rate of the loan." Accordingly, the COA recommended that "management fully implement the reforms and measures instituted by the Court to fast-track the procurement of works, goods and services and finally, to stop the incurrence of commitment fees." Similar to the 2006 and 2007 COA Audit Reports, there was no COA finding, observation or recommendation regarding the subject contracts with Artes.

The COA Annual Audit Reports on the Judicial Reform Support Project for the years 2004 to 2011 yielded the same observation. There was no specific report on the contracts with Artes, much less any finding of irregularity with respect to the expenditures for the subject events.

In COA's Annual Audit Report on the JRSP for calendar year 2009, the COA reported that "[t]he government paid the amount of ₱1,320,124.97 due to commitment fees incurred for the unwithdrawn principal amount of the loan"[27] and recommended that "management should immediately resolve the implementation issues that arose during the year and to fully implement the reforms and measures instituted by the Court to fast-track the procurement of works, goods and services and finally, to stop the incurrence of commitment fees."[28]

Paragraph 10 of the 2009 Executive Summary on the status of the implementation of prior year's recommendation states that "the audit recommendation for CY 2007 to adopt measures to avoid the incurrence of commitment fees was fully implemented by Management, however, the audit recommendation for CY 2008 to fully implement the reforms and measures to fast-track the procurement of works, goods and services was only partially implemented."[29] There was no observation or

---

[27] *Rollo,* p. 257.

[28] *Id*.

[29] *Id*.

recommendation regarding the contracts with Artes for the subject events.

For calendar year 2010, the COA made a similar observation of slow/low availment/utilization rate of the loan for the Project which resulted in the payment of commitment fees.[30] The COA also found, among others, a discrepancy of ₱40,893,091.88 in reporting the balances of the Property, Plant & Equipment (PPE) accounts between the actual physical count and the accounting records in the PPE account. There was no observation or recommendation regarding the contracts with Artes for the subject events.

In the 2011 Annual Audit Report on the JRSP, the COA observed, among others, that:

1. Procurement of IT equipment in CY totaling ₱3,850,257.87 was not included in the JRSP Implementation Procurement Plan contrary to the agreement between the Supreme Court and the World Bank. Purchases of IT Equipment were done mostly through shopping instead of competitive public bidding. x x x.

2. Various expenses amounting to ₱3,038,812.17 incurred were not related to the project/program objectives and not agreed upon in writing with the World Bank. x x x.

3 Out of the four contracts for tri-media monitoring services entered into by the Supreme Court and the Mediabanc Manila Monitoring Services, Inc., two contracts x x x were irregular due to the absence of a signed contract to cover the undertaking. Contracts were signed two to four months after consultancy services had been rendered. x x x.

4 Payment of ₱982,960.00 to twenty contractual personnel under retroactive Contracts of Services of the Lapu-Lapu Trial Courts were not duly supported with individual work accomplishment report x x x.

5 The Judicial Reform Support Project – Government of the Philippines (GOP) Counterpart Fund temporarily borrowed

---

[30] *Id*. at 292.

> from the Fiscal Autonomy (FA) Fund the amount of ₱150,000.00 for the conduct of the Media Forum on Judiciary Coverage x x x but the same was refunded twice resulting in the overstatement of traveling expenses x x x.[31]

Again, **there was no observation or recommendation regarding the contracts with Artes for the subject events**.

Indeed, were the contracts with Artes irregular or unlawful, or violative of procurement laws and regulations, the COA could have made such a finding in its Audit Reports, as what the COA did in its 2011 Annual Audit Report on the Project. However, there was none, clearly establishing that the contracts were legal and the expenditures were in accordance with the World Bank guidelines and the terms of the Loan Agreement. Attached hereto as Annexes "B" and "C", respectively, are the Executive Summaries of the COA Annual Audit Reports on the Supreme Court for the years 2006 to 2008, as well as the Executive Summaries of the COA Annual Audit Reports on the JRSP for 2004 to 2011.

Fourth, **the Court, upon Dumdum's resignation, issued a Certificate of Clearance dated 7 January 2008, clearing Dumdum of all accountabilities enumerated therein insofar as the Court is concerned, including records and other accountabilities in the Project Management Office**. Thereafter, then Chief Justice Reynato S. Puno approved Dumdum's application for terminal leave, which was filed on 15 February 2008. Attached as Annexes "D" and "E", respectively, are Dumdum's Certificate of Clearance and approved Application for Terminal Leave.

Clearance from money and property accountability refers to the act of releasing an official or employee from responsibility and/or liability due to the money and property granted and/or entrusted to officials/employees.[32]

---

[31] *Id*. at 330-331.

[32] See <http://dotr.gov.ph/images/issuances/DO/2012/department %20 order%202012-02.pdf> (visited 13 April 2018).

On the other hand, a Clearance Certificate is a certificate given to the officials or employees with properly documented turnover or surrender, liquidation, and transfer of the money/property granted to them, or fulfillment of certain obligations as a condition of such grant when applying for leave of absence or personnel movement. The Clearance is a requirement for the voluntary separation from the service (i.e. resignation, transfer, and optional retirement).[33]

As stated, the Court issued a Certificate of Clearance, which in no uncertain terms cleared Dumdum of ***all*** accountabilities in the Court.

Fifth, contrary to the Resolution, there was no splitting of contracts in this case.

Splitting of contracts means the breaking up of contracts into smaller quantities and amounts, or dividing contract implementation into artificial phases or subcontracts, for the purpose of making it fall below the threshold for shopping or small value procurement, or evading or circumventing the requirement of public bidding.[34]

The Resolution states that "the JRSP WB Loan was used to fund both the National Forum and Global Forum in the respective amounts of ₱7.5 million and ₱20.6 million; but instead of conducting a public bidding for the two events, Ms. Dumdum entered into several letter-contracts or quotation-contracts with Artes for various phases of the events, each phase involving amounts that were well within her authority to approve under SC Administrative Circular No. 60-2003. x x x."[35]

However, **there is no dispute that then Chief Justice Panganiban approved the budgets for the National Forum**

---

[33] *Id*.

[34] Guidelines for Shopping and Small Value Procurement <http://www.gppb.gov.ph/issuances/Guidelines/09-ShoppingSmallValue.pdf> (visited 14 April 2018).

[35] Resolution, p. 38.

and the Global Forum in the respective amounts of ₱7.5 million and ₱20.6 million. **The approval of these budgets was within the authority of then Chief Justice Panganiban**. The unconditional approval by the Chief Justice of the contracts with Artes entered into by Dumdum, on behalf of the Court, signifies clearly that the hosting of these events, as well as the corresponding expenses for these events embodied in the said contracts, was completely sanctioned by the Court. **More importantly, the World Bank has not found any irregularity in the several letter-contracts or quotation-contracts with Artes for the various phases of the National Forum and the Global Forum**.

ACCORDINGLY, I vote that this case be considered closed and terminated. Since the contracts with Artes were entered into in accordance with the Loan Agreement, an international executive agreement between the Republic of the Philippines and the International Bank for Reconstruction and Development, and the contracts complied with the terms and conditions of the Loan Agreement, the contracts with Artes are therefore legal and valid under Section 4 of the Government Procurement Reform Act (RA 9184).

SECOND DIVISION

[G.R. No. 201800. August 8, 2018]

GOVERNOR MARIA GRACIA CIELO M. PADACA, *petitioner, vs.* **HONORABLE OMBUDSMAN CONCHITA CARPIO MORALES and SANTIAGO RESPICIO,** *respondents.*

[G.R. Nos. 204007-08. August 8, 2019]

SERVANDO SORIANO and DIONISIO PINE, *petitioners, vs.* **HONORABLE SANDIGANBAYAN, OFFICE OF THE OMBUDSMAN and SANTIAGO RESPICIO,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; AS A GENERAL RULE, THE COURT DOES NOT INTRUDE IN THE OMBUDSMAN'S DETERMINATION OF PROBABLE CAUSE; EXCEPT WHEN THERE IS A CHARGE OF GRAVE ABUSE OF DISCRETION.— The Court does not, as a general rule, intrude in the Ombudsman's determination of probable cause. In *Dichaves vs. Office of the Ombudsman and the Special Division of the Sandiganbayan*, it was held: As a general rule, this Court does not interfere with the Office of the Ombudsman's exercise of its constitutional mandate. Both the Constitution and Republic Act No. 6770 (The Ombudsman Act of 1989) give the Ombudsman wide latitude to act on criminal complaints against public officials and government employees. The rule on non-interference is based on the "respect for the investigatory and prosecutory powers granted by the Constitution to the Office of the Ombudsman. As an exception however, "the Court is not precluded from reviewing the Ombudsman's action when there is a charge of grave abuse of discretion. Grave abuse of discretion implies a capricious and whimsical exercise of judgment tantamount to lack of jurisdiction." "The Ombudsman's exercise of power must have been done in an arbitrary or despotic manner which must be so patent and gross as to amount to an evasion of a positive duty or a virtual refusal to perform the duty enjoined or to act at all in contemplation of law." Otherwise, there is no basis for the Court to intervene in the Ombudsman's exercise of its investigatory and prosecutory powers.

2. POLITICAL LAW; OFFICE OF THE OMBUDSMAN; IN DETERMINING THE EXISTENCE OF PROBABLE CAUSE, THE OMBUDSMAN DOES NOT TOUCH ON THE ISSUE OF GUILT OR INNOCENCE OF THE ACCUSED;

THERE IS NO GRAVE ABUSE OF DISCRETION IN CASE AT BAR.— In determining the existence of probable cause, "the Ombudsman does not touch on the issue of guilt or innocence of the accused." It is not the function of the Office of the Ombudsman to rule on such issue. Being merely based on opinion and belief, "a finding of probable cause does not require an inquiry as to whether there is sufficient evidence to secure a conviction." x x x Based on its investigation, the Ombudsman found that Padaca engaged the services of EDWINLFI to manage Isabela's provincial rice program without due regard to the rules on government procurement and notwithstanding that the MOA was yet to be ratified by the SP. x x x The Ombudsman also found probable cause to charge the petitioners for Malversation of Public Funds. It discussed that based on Section 340 of the Local Government Code, Padaca is accountable for public funds through her individual participation in the use and application thereof.

R E S O L U T I O N

A. REYES, JR., *J.*:

Before the Court are two consolidated cases: (1) G.R. No. 201800, a petition for *certiorari* under Rule 65 filed by then Governor Maria Gracia Cielo M. Padaca (Padaca) seeking to nullify and set aside the Resolutions dated January 11, 2011 and February 17, 2012 of the Office of the Ombudsman, which found probable cause to indict her for violation of Section 3(e) of Republic Act (R.A.) No. 3019),[1] otherwise known as the

---

[1] **Section 3.** *Corrupt practices of public officers.* In addition to acts or omissions of public officers already penalized by existing law, the following shall constitute corrupt practices of any public officer and are hereby declared to be unlawful:

x x x x x x x x x

(e) Causing any undue injury to any party, including the Government, or giving any private party any unwarranted benefits, advantage or preference in the discharge of his official administrative or judicial functions through manifest partiality, evident bad faith or gross inexcusable negligence. This provision shall apply to officers and employees of offices or government corporations charged with the grant of licenses or permits or other concessions.

Anti-Graft and Corrupt Practices Act,and for Malversation of Public Funds; and (2)G.R. Nos. 204007-08, a petition for *certiorari* under Rule 65 filed by Servando Soriano (Soriano) and Dionisio Pine (Pine),[2] assailing the Resolution[3] dated September 13, 2012 of the Sandiganbayan, which denied their Omnibus Motion to recall the warrant of arrest and motion to dismiss for lack of probable cause.

On December 5, 2012, the Court dismissed Soriano and Pine's petition (G.R. Nos. 204007-08) for failure to sufficiently show that the Sandiganbayan committed grave abuse of discretion amounting to lack or excess of jurisdiction in issuing Resolution dated September 13, 2012.[4] Soriano and Pine filed a motion for reconsideration and motion to consolidate their petition with G.R. No. 201800. On August 28, 2013, the Court directed the consolidation of G.R. Nos. 204007-08 with G.R. No. 201800.[5] Thereafter, the petition for *certiorari* in G.R. Nos. 204007-08 was reinstated pursuant to the Court's Resolution[6] dated January 15, 2014.

These are the facts of the instant consolidated petitions.

In his Complaint[7] dated February 26, 2007, Santiago Respicio (Respicio) alleged that in January 2006, the Provincial Government of Isabela (Provincial Government) obtained a loan from the Development Bank of the Philippines (DBP), Ilagan, Isabela Branch, in the amount of 35 Million for the purpose of funding the Priority Agricultural Modernization Project of the province of Isabela.From the said amount, ₱25 Million was released to Economic Development for Western Isabela and

---

[2] Per Manifestation dated December 13, 2017, Atty. Rodolfo V. Tagapan, Jr. informed the Court of Servando Soriano's and Salvador Pine's death.

[3] *Rollo* (G.R. Nos. 204007-08), pp. 45-53.

[4] *Id.* at 182.

[5] *Id.* at 202.

[6] *Rollo* (G.R. Nos. 204007-08), p. 203.

[7] *Rollo* (G.R. No. 201800), pp. 73-76.

Northern Luzon Foundation, Inc., (EDWINLFI), a private foundation headed by Municipal Councilor Servando Soriano (Soriano) as Chairman, Dionisio Pine (Pine) as Manager, and Provincial Government Legal Officer, Atty. Johnas Lamorena (Atty. Lamorena) as Director.[8] The full amount of the loan, along with the interests and documentary stamp taxes,was paid using the Economic Development Fund of the province.[9]

Respicio further stated that,to replenish the amount taken from the Economic Development Fund, Padaca caused the release of the same amount from the unreleased approved loans of the provincial government from the previous administration.[10]Hence, the complaint against Provincial Administrator Ma. Theresa Flores, then Provincial Treasurer William Nicolas, Atty. Lamorena, Padaca, Soriano, and Pine for violation of Section 3 (e) of R.A. No. 3019, Illegal Use of Funds, and Malversation of Public Funds.[11]

In her Counter-Affidavit,[12] Padaca alleged that the Sangguniang Panlalawigan (SP) issued Resolution No. 061,[13] which granted her authority to enter into a loan contract with the Land Bank of the Philippines under the hold-out on special savings deposit scheme from the DBP. This is to finance the Priority Agricultural Program of the province. She also claimed that the SP'ssubsequent ratification[14] of the Memorandum of Agreement[15] between the provincial government and EDWINLFI, is an express affirmation not only of the program's legality and propriety, but that it was carried out in accordance with the mandate of the SP.[16]

---

[8] *Id*. at 73.

[9] *Id*. at 74.

[10] *Id*.

[11] *Id*.

[12] *Id*. at 217-220.

[13] *Id*. at 221-222.

[14] *Id*. at 216.

[15] *Id*. at 101-103.

[16] *Id*. at 218.

Soriano and Pine, in their Joint Counter-Affidavit[17] denied Respicio's allegations. While Soriano admitted that he is a member of the Sangguniang Bayan,[18]he claimed that he is not a member of the SP that ratified the transaction with EDWINLFI.[19] For his part, Pine contended that he is a private individual who cannot be held as a conspirator in the absence of evidence proving the same.[20]

On January 11, 2011, the Office of the Ombudsman, through Overall Deputy Ombudsman Orlando C. Casimiro (Deputy Ombudsman),issued a Resolution,[21] recommending that:

1. Information for the crime defined in and penalized under Section 3(e), [R.A. No. 3019] be FILED in the Sandiganbayan against GOVERNOR MARIA GRACIA CIELO M. PADACA, Province of Isabela, ATTY. JOHNAS M. LAMONERA, Provincial Legal Officer, MUNICIPAL COUNCILOR SERVANDO SORIANO, and DIONISIO PINE of the Economic Development for Western Isabela and Northern Luzon Foundation, Inc. (EDWINLFI);

2. Information for Malversation of Public Funds be FILED in the Sandiganbayan against GOVERNOR MARIA GRACIA CIELO M. PADACA, Province of Isabela, ATTY. JOHNAS M. LAMONERA, Provincial Legal Officer, MUNICIPAL COUNCILOR SERVANDO SORIANO, and DIONISIO PINE of the Economic Development for Western Isabela and Northern Luzon Foundation, Inc. (EDWINLFI);

3. The charges of Malversation of Public Funds and the crime defined in and penalized under Section 3(e) of Republic Act No. 3019 against MA. THERESA FLORES and WILLIAM NICOLAS in their capacity as Provincial Treasurer, be DISMISSED for lack of evidence;

4. The charge of Illegal Use of Public Funds against all the respondents be DISMISSED for lack of evidence.

---

[17] *Id*. at 233-240.

[18] *Id*. at 234.

[19] *Id*. at 235.

[20] *Id*.

[21] *Id*. at 54-71.

SO RESOLVED.[22]

Padaca, Pine, and Soriano (petitioners) filed their respective motion for reconsideration.[23] Meanwhile, the corresponding Informations[24] for Malversation of Public Funds and Violation of R.A. No. 3019(e) were filed against them.Upon the joint motion of the petitioners, the Sandiganbayan ordered the deferral of the proceedings pending the resolution of the motion for reconsideration.[25]

On December 9, 2011, Assistant Special Prosecutor II May Ann T. Vela (ASP Vela) of the Office of the Special Prosecutor (OSP)issued a Memorandum,[26]recommending that the Resolution dated January 11, 2011 be set aside for lack of probable cause to hold the petitioners liable for Malversation of Public Funds and Violation of Section 3(e) of R.A. No. 3019.[27] In her Memorandum, ASP Vela referred to a previously denied recommendation of Prosecutor Pilarita T.Lapitan (Prosecutor Lapitan)to conduct further investigation to ascertain some factual issues.[28]

On February 17, 2012, Assistant Special Prosecutor III/ Acting Director Omar L. Sagadal (Acting Director Sagadal) issued a Memorandum[29]stating that no sufficient basis to reverse the finding of probable cause for the following reasons:

1. Accused [Padaca] entered into a memorandum of agreement (MOA) with EDWINLFI and gave [₱]25 Million to the latter even as the MOA was not yet ratified by the [SP]. About a

---

[22] *Id*. at 70-71.

[23] *Id*. at 133-149, 157-168, 281-286.

[24] *Id*. at 289-294.

[25] *Rollo* (G.R. No. 201800), pp. 401-402, 116.

[26] *Id*. at 116-130.

[27] *Id*. at 129.

[28] *Id*. at 118-119.

[29] *Id*. at 132.

year later, SP ratified the MOA but only after the Commission on Audit (COA) requested for a copy of the required SP resolution ratifying the transaction with EDWINLFI. Even so, the irregularities were already committed.

2. The amount released to EDWINLFI has not been fully accounted for according to COA. Furthermore, there is no showing that the farmers benefited from the agreement.

3. Accused [Lamonera], who is the Provincial Legal Officer, is also a Director of EDWINLFI. A case of conflict of interest is present.

4. Accused [Padaca] was given general authorization to negotiate and enter into agreements, subject to SP ratification, with people's organizations and non-governmental organizations to implement the Hybrid Rice Program of the Province. The agreement entered into by [Padaca] with EDWINLFI, however, does not even mention the *Hybrid Rice Program*. It appears, instead, that the agreement was for a *Supervised Credit facility* with no provisions dealing on repayments to the province, etc.

5. The services supposed to be rendered by EDWINLFI are akin to management or consulting services which, under R.A. No. 9184, require public bidding. No bidding was conducted.[30]

Acting Director Sagadal's Memorandum was approved byOmbudsman Conchita Carpio Morales, prompting Padaca to file the present petition for *certiorari* (G.R. No. 201800).

In her petition, Padaca argues that: a public bidding was not required under the circumstances and that the absence of the same did not result to undue injury to the Provincial Government nor did it create unwarranted benefits in favor of EDWINLFI;[31] the MOA created sufficient safeguards to protect the Provincial Government from being injured or disadvantaged;[32] she acted within the bounds of her authority and in good faith; she had

[30] *Id*.

[31] *Id*. at 21.

[32] *Id*. at 29.

no custody of the public funds, nor is she the accountable officer for the same;[33] there is no showing that she derived any benefit from the loan proceeds;[34] and there is no showing that she negligently caused or consented to any appropriation, taking, or misappropriation of public funds.[35]

Meanwhile, in its Resolution dated March 23, 2012, the Sandiganbayan found probable cause against the petitioners and ordered the issuance of warrants of arrest against them.[36]Soriano and Pine filed an Omnibus Motion[37] to: (1) recall the warrant of arrest issued against them; and (2) motion to dismiss for lack of probable cause.

On September 13, 2012, the Sandiganbayan issued the assailed Resolution[38] denying Soriano and Pine's Omnibus Motion. According to the Sandiganbayan, the fact that it already ordered the arrest of the petitioners shows that it found the Informations charging them with the crimes of Malversation of Public Funds and Violation of Section 3(e), valid on their faces and that the Ombudsman did not commit any manifest error or grave abuse of discretion in filing the same.[39] Moreover, the Sandiganbayan resolved that the arguments of Pine and Soriano are matters of defense which are properly threshed out in trial.[40] The decretal portion of the Resolution reads:

WHEREFORE, accused Servando Soriano and Dionisio Pine's Omnibus Motion (Re: [a] motion to recall the warrant of arrest issued against Servando Soriano and Dionsio Pine; [b] Motion to Dismiss

---

[33] *Id*. at 34.

[34] *Id*. at 37.

[35] *Id*. at 41.

[36] *Rollo* (G.R. Nos. 204007-08), p. 48.

[37] *Id*. at 54-63.

[38] *Id*. at 45-53.

[39] *Id*. at 48.

[40] *Id*. at 58.

for Lack of Probable Cause dated April 26, 2012 is hereby DENIED for utter lack of merit.[41]

Undaunted, Soriano and Pine filed the present petition for *certiorari* (G.R. Nos. 204007-08), challenging the Resolution dated September 13, 2012 of the Sandiganbayan. They maintain that the offense of Violation of Section 3(e) of R.A. No. 3019 can only be committed by public officers in the performance of their official duties or in relation to their public position.[42] As regards the charge for Malversation of Public Funds, they insist that they did not appropriate, misappropriate or take public funds, and that the release of the funds was legal.[43] They also assert that the conflicting decisions of the Ombudsman and of the Special Prosecutor should not be taken lightly, and that the arguments they raise are not matters of defense but the very essence of the purpose of preliminary investigation.[44]

ISSUE

Whether the Ombudsman and/or theSandiganbayan committed any grave abuse of discretion amounting to lack or excess in jurisdiction in rendering the assailed resolutions finding probable cause to charge the petitioners with Violation of Section 3(e) of R.A. No. 3019 and Malversation of Public Funds

RULING OF THE COURT

The Court does not, as a general rule, intrude in the Ombudsman's determination of probable cause.[45] In *Dichaves vs. Office of the Ombudsman and the Special Division of the Sandiganbayan*,[46] it was held:

---

[41] *Id*. at 53.

[42] *Id*. at 23-24.

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

[44] *Id*. at 34.

[45] *Casing v. Ombudsman*, 687 Phil. 468, 475 (2012).

[46] G.R. Nos. 206310-11 (OMB-0-01-0211 and OMB-0-01 0291; Sandiganbayan Special Division-Criminal Case No. 26558), December 07, 2016, 813 SCRA 273.

As a general rule, this Court does not interfere with the Office of the Ombudsman's exercise of its constitutional mandate.Both the Constitutionand Republic Act No. 6770 (The Ombudsman Act of 1989) give the Ombudsman wide latitude to act on criminal complaints against public officials and government employees. The rule on non-interference is based on the "respect for the investigatory and prosecutory powers granted by the Constitution to the Office of the Ombudsman.[47]

As an exception however, "the Court is not precluded from reviewing the Ombudsman's action when there is a charge of grave abuse of discretion. Grave abuse of discretion implies a capricious and whimsical exercise of judgment tantamount to lack of jurisdiction."[48] "The Ombudsman's exercise of power must have been done in an arbitrary or despotic manner which must be so patent and gross as to amount to an evasion of a positive duty or a virtual refusal to perform the duty enjoined or to act at all in contemplation of law."[49] Otherwise, there is no basis for the Court to intervene in the Ombudsman's exercise of its investigatory and prosecutory powers.

In determining the existence of probable cause, "the Ombudsman does not touch on the issue of guilt or innocence of the accused."[50] It is not the function of the Office of the Ombudsman to rule on such issue. Being merely based on opinion and belief, "a finding of probable cause does not require an inquiry as to whether there is sufficient evidence to secure a conviction."[51] In *Galario vs. Office of the Ombudsman (Mindanao)*,[52] the Court explained:

---

[47] *Id*. at 297-298.

[48] *Presidential Commission on Good Government v. Gutierrez*, 772 Phil. 91, 99(2015).

[49] *Reyes v. Ombudsman*, 783 Phil. 304, 332-333 (2016).

[50] *Ganaden, et al. v. Honorable Office of the Ombudsman and Humiwat*, 665 Phil. 224, 231 (2011).

[51] *Supra* note 49, at 333.

[52] 554 Phil. 86(2007).

A finding of probable cause needs only to rest on evidence showing that more likely than not a crime has been committed and there is enough reason to believe that it was committed by the accused. It need not be based on clear and convincing evidence of guilt, neither on evidence establishing absolute certainty of guilt. A finding of probable cause merely binds over the suspect to stand trial. It is not a pronouncement of guilt.[53]

Based on its investigation, the Ombudsman found that Padaca engaged the services of EDWINLFI to manage Isabela's provincial rice program without due regard to the rules on government procurement and notwithstanding that the MOA was yet to be ratified by the SP.[54]The Ombudsman also noted that the fact that EDWINLFI's officers include Soriano (Municipal Councilor) and Atty. Lamorena (Provincial Government's Legal Officer), engenders a suspicion as to the regularity of the transaction.[55] Thus, the Ombudsman concluded that there is probable cause to believe that through manifest partiality, Padaca gave unwarranted preference and benefits to EDWINLFI in the discharge of her official function as governor of the Province of Isabela, which is penalized under Section 3(e) of R.A. No. 3019. Concomitantly, Soriano and Pine were charged based on their collaborative actions in the implementation of the Provincial Rice Program,which according to the Ombudsman, indicate the existence of common design to obtain unwarranted benefits at the expense of the Provincial Government.[56]

The Ombudsman also foundprobable cause to charge the petitioners for Malversation of Public Funds. It discussed that based on Section 340 of the Local Government Code, Padaca isaccountable for public funds through her individual participation in the use and application thereof.[57] The Ombudsman held that Padaca's giving preference to EDWINLFI in the release of

---

[53] *Id*. at 101.

[54] *Rollo* (G.R. No. 201800), p. 64.

[55] *Id*. at 64.

[56] *Id*. at 65.

[57] *Id*. at 67.

₱25 Million without stipulations in the MOA as to the amount of the contract, the cost estimates, and terms of reference with respect to the scope of services for the implementation of the provincial rice program, including terms of repayment of the funds in favor of the provincial government and accountability of EDWINLFI for such funds, is as good as permitting, through abandonment or negligence, the latter to take such funds.Again, the charge against Soriano and Pine was due to their personal and deliberate participation in the transaction.[58]

With the foregoing, the Court concurs with the Sandiganbayan that no grave abuse of discretion amounting to lack or excess in jurisdiction can be attributed to the Ombudsman, as the latter's finding of probable cause rests on substantial basis. The Sandiganbayan, citing *People vs. Castillo*, correctly pointed out that absent a finding that an information is invalid on its face or that the prosecutor committed manifest error or grave abuse of discretion, a judge's determination of probable cause is limited only to the judicial kind or for the purpose of deciding whether the arrest warrants should be issued against the accused.[59]

Consequently, the Court finds that no grave abuse of discretion amounting to lack or excess in jurisdiction was committed by the Sandiganbayan in denying Soriano and Pine's Omnibus Motion. The Omnibus Motion clearly calls for a determination of the propriety of the issuance of the Informations against them,[60] which as stated earlier, is a function that belongs to the Ombudsman. The Sandiganbayanaptly limited its determination of probable cause to resolve whether arrest warrants should be issued against the petitioners. There is no allegation, much less proof, how thisjudicial determination was exercised in a capricious, whimsical or arbitrary manner.

With regard to the Ombudsman's affirmance of Acting Director Sagadal's Memorandum, the Court notes that he raised

---

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

[59] *Rollo* (G.R. Nos. 204007-008), p. 48.

[60] *Id*. at 22.

legitimate concerns whereas the petitioners' defenses are factual in nature, which are best ventilated in a trial of the case on the merits. Besides, in *Nava vs. National Bureau of Investigation*,[61] the Court held that "if the Ombudsman may dismiss a complaint outright for lack of merit, it necessarily follows that it is also within his discretion to determine whether the evidence before him is sufficient to establish probable cause."Since the Office of the Special Prosecutor is under the supervision and control of the Ombudsman, the latter's decision shall prevail in case of conflict between the decision of the Ombudsman and the Special Prosecutor.[62]

In sum, there is no cogent reason to disturb the Ombudsman's finding of probable cause and the Sandiganbayan's denial of Soriano and Pine's Omnibus Motion. "[T]he Court cannot and will not nullify the Ombudsman's factual findings on the sole ground that the complainant does not agree with such findings."[63]

WHEREFORE, premises considered, the consolidated petitions are hereby **DISMISSED** for lack of merit. The Resolutions dated January 11, 2011 and February 17, 2012 of the Office of the Ombudsman in OMB-L-C-07-0224-B, and Resolution dated September 13, 2012 of the Sandiganbayanin SB-11-CRM-0282-0283 are **AFFIRMED**. The Sandiganbayan, as trial court, is **DIRECTED** to commence/continue with the necessary proceedings in these cases with deliberate dispatch.

SO ORDERED.

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

Caguioa, J., on wellness leave.

---

[61] 495 Phil. 354 (2005).

[62] *Id*. at 367-368.

[63] *Artex Development Co., Inc. v. Office of the Ombudsman*, *et al*., G.R. No. 203538, June 27, 2016, 794 SCRA 530, 546.

FIRST DIVISION

[G.R. No. 208213. August 8, 2018]

AYALA LAND, INC., *petitioner, vs.* **THE (ALLEGED) HEIRS OF THE LATE LUCAS LACTAO AND SILVESTRA AQUINO, NAMELY, DIONISIO LACTAO-BARTOLAY, DOMINGO LACTAO, ELADIO LACTAO, ERNESTO LACTAO, MA. TERESA LACTAO ROZON-TARNATE, LUCILA L. LACTAO, MAMERTO R. LACTAO, PROCESO LACTAO, CARMEN LACTAO-MARCELO, HELARDO LACTAO MARCELO, PIO LACTAO MARCELO and SERGIO LACTAO MARCELO (ALL REPRESENTED BY MARCIANA LACTAO-GARCIA),** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; DISMISSAL OF ACTION, NOT PROPER; AN ORDER GRANTING A PARTY'S MOTION TO LITIGATE AS PAUPER DOES NOT RENDER THE ISSUE OF PAYMENT OF ADDITIONAL DOCKET FEES MOOT AND ACADEMIC.—** The CA was mistaken in holding that the RTC's May 4, 2012 Order granting respondents' motion to litigate as indigent parties rendered the issue of payment of additional filing fees moot and academic. A case or issue is considered moot and academic when it ceases to present a justiciable controversy because of supervening events, rendering the adjudication of the case or the resolution of the issue without any practical use or value. Records show that petitioner moved for the reconsideration of the May 4, 2014 Order and said motion "remains pending resolution." Thus, respondents' indigence remains a litigated issue. With the mere possibility of its reversal, the Order cannot be regarded as a supervening event that would automatically moot the issues in CA-G.R. SP No. 122999.

2. **ID.; ID.; ID.; FAILURE TO PAY ADDITIONAL DOCKET FEES; A FINAL ORDER TO ASSESS AND DETERMINE THE CORRECT AMOUNT OF DOCKET FEES DOES NOT**

PRECLUDE A MOTION FOR EXEMPTION TO PAY DOCKET FEES BY REASON OF INDIGENCE; A PARTY WHO INITIALLY PAID MINIMAL AMOUNT OF FILING FEES IS NOT ESTOPPED FROM CLAIMING INDIGENCE SHOULD HE SUBSEQUENTLY BE REQUIRED TO PAY ADDITIONAL FEES.— There is no dispute that the judgment in CA-G.R. SP No. 99631 had become final and executory. It ordered the Clerk of Court of the RTC to reassess and determine the correct amount of docket fees and the RTC to direct respondents to pay the same. The directive, however, does not preclude a motion for exemption from paying the additional fees by reason of indigence. In *Pilipinas Shell Petroleum Corporation v. CA*, where the plaintiff was required to pay additional docket fees, the Court directed that the proceedings before the trial court resume "upon payment of all lawful fees (as assessed by the Clerk of Court of said Court) by (the plaintiff) **or upon exemption from payment thereof upon proper application to litigate as pauper**." The Court held that said plaintiff's right to free access to the courts is not denied by the correct application of the rules on legal fees because he could apply for the privilege to litigate his case as pauper if he is so entitled. x x x A party who was assessed a minimal amount in filing fees may opt to simply pay the same although he may qualify as a pauper litigant. He is not, by such initial payment, estopped from claiming indigence should he subsequently be required to pay additional fees.

3. **ID.; ID.; ID.; FILING A MOTION TO DETERMINE THE FACTUAL AND LEGAL BASIS FOR THE COMPUTATION OF ADDITIONAL DOCKET FEES AFTER FIVE MONTHS FROM THE COURT'S DIRECTIVE TO PAY THE SAME WAS CONSIDERED REASONABLE.—** Considering that the CA did not specify the period within which respondents should comply with its ruling, it is understood that payment of the additional docket fee, or the motion for exemption therefrom due to indigence, must be made within a reasonable period of time. What constitutes a reasonable period is relative and depends on the factual circumstances of the case. In this case, the Court finds that respondents sought to be considered as pauper litigants within an acceptable period. The CA's ruling, which attained finality on June 16, 2009, ordered the RTC to direct respondents to

pay the correct filing fees as reassessed by the Clerk of Court. On January 6, 2010, after the case was remanded to it, the RTC directed respondents to pay the fees. x x x [I]n an Omnibus Motion dated May 24, 2010, respondents asked the RTC to set a hearing to determine the factual and legal basis for the computation of the additional filing fee, particularly whether it should be based on the market value of the property prior to the alleged taking or its current market value. In the same motion, respondents averred that even as they were willing to pay the additional docket fees, they could not do so because they were already pauper litigants, and accordingly, moved to have the additional docket fee constitute a lien on the judgment. Under these circumstances, the filing of respondents' May 24, 2010 Omnibus Motion roughly five (5) months after the RTC's January 2010 directive to pay the additional filing fee was reasonable.

APPEARANCES OF COUNSEL

Poblador Bautista & Reyes for petitioner.
Patrocino S. Palanog for respondents.

D E C I S I O N

TIJAM, *J.*:

This is a Petition for Review on *Certiorari*[1] over the March 6, 2013 Decision[2] rendered by the Court of Appeals (CA) in CA-G.R. SP No. 122999, which considered the issue of payment of additional docket fees moot and academic by reason of the May 4, 2012 Order[3] issued by the Regional Trial Court (RTC) of Quezon City, Branch 96 in Civil Case No. Q-05-56296 allowing respondents to litigate as pauper litigants, and the CA's

[1] *Rollo*, pp. 9-33.

[2] Penned by Associate Justice Agnes Reyes-Carpio and concurred in by Associate Justices Rosalinda Asuncion-Vicente and Priscilla J. Baltazar-Padilla. *Id*. at 40-48.

[3] *Id*. at 360.

July 16, 2013 Resolution[4] which denied petitioner's Motion for Reconsideration.

The Facts

Civil Case No. 05-56296

On September 9, 2005, respondents filed a Complaint[5] before the RTC, against petitioner and Capitol Hills Golf and Country Club, Inc. (Capitol Hills) as principal defendants and the Register of Deeds of Quezon City as a nominal party, for quieting of title and for annulment and cancellation of titles with the alternative remedy of reconveyance of possession and ownership, involving a parcel of land known as Lot 42-B-1, Pcs-13, located in Barangay Culiat (Balara), Caloocan (now Quezon City), with an approximate area of 215,464 square meters.[6]

Docketed as Civil Case No. 05-56296, the Complaint alleged that the land had been owned and possessed by respondents' grandparents, Lucas Lactao and Silvestra Aquino, who died during World War II. Upon their demise, the land was transferred by way of succession to respondents' parents and predecessors-in-interest who built their houses and planted trees on the property. In the latter part of 1996, petitioner and Capitol Hills entered into a Joint Development Project over the property south of the subject land. Subsequently, petitioner and Capitol Hills allegedly entered respondents' land by force and bulldozed a portion thereof, destroying their houses and trees. Respondents claimed that they were eventually driven away from the property as they were constantly harassed by armed men hired by petitioner and Capitol Hills. With the remaining 15 hectares of their land allegedly under threat of further land-grabbing, respondents also prayed for a temporary restraining order (TRO) and a writ of preliminary injunction to enjoin petitioner and Capitol Hills from taking said portion.[7]

---

[4] *Id.* at 50-51.

[5] *Id.* at 52-64.

[6] *Id.* at 41, 54 and 94-97.

[7] *Id.* at 41, 56-57, 60 and 96.

Respondents paid ₱6,828.80 in docket fees, as assessed by the Office of the Clerk of Court and executed an Affidavit of Undertaking that in the event of deficiency in the payment of filing fees, they would settle the same through a first lien on any monetary judgment rendered in their favor.[8]

Petitioner and Capitol Hills jointly moved for the dismissal of the Complaint on the grounds of prescription, laches, failure to state a cause of action, and lack of jurisdiction for respondents' failure to disclose the fair market value of the subject property which resulted in the Clerk of Court not being able to properly compute, and the respondents falling short of paying, the necessary filing fees.[9] Petitioner alleged that the assessed value of the property in the amount of ₱193,920.00 under the 1978 Tax Declaration in the name of respondents' predecessor-in-interest, Lucas Lactao, could not be the proper basis for the computation of the filing fees, as such fees should be based on the fair market value derived from the current tax declaration or the current zonal valuation of the Bureau of Internal Revenue (BIR), whichever is higher, or if there is none, the stated value of the property, pursuant to Section 7(a), Rule 141 of the Rules of Court, as amended. They claimed that the total filing fee (exclusive of JDF and other components) should have been assessed at ₱62,903,240.00.[10]

The RTC[11] subsequently denied the joint motion to dismiss and granted respondents' application for TRO. Petitioner moved for reconsideration, later manifesting that the 1978 Tax Declaration in Lucas Lactao's name did not exist in the files of the Quezon City Assessor's Office, and the Property Index Number indicated therein did not correspond to his alleged property.[12]

---

[8] *Id*. at 99.

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

[10] *Id*. at 78-79.

[11] Through then Presiding Judge Marlene B. Gonzales-Sison of RTC Branch 58. *Id*. at 13, 15 and 97.

[12] *Id*. at 43 and 87-88.

CA-G.R. SP No. 99631

When the RTC[13] denied reconsideration, petitioner and Capitol Hills filed a petition for *certiorari*, docketed as CA-G.R. SP No. 99631.[14] They maintained that the RTC never acquired jurisdiction over the case, following the rule set in *Manchester Development Corporation, et al. v. CA*.[15]

In a Decision[16] dated May 2, 2008, the CA denied the petition. Anent the issue of docket fees, it held that:

> The docket fees were computed on the basis of what was legally quantifiable at the time of the filing of the complaint. Upon proof of payment of the assessed fees by the respondent(s), the trial court properly acquired jurisdiction over the complaint. Jurisdiction once acquired is never lost, it continues until the case is terminated. The respondent(s) relied on the assessment made by the docket clerk which turned out to be incorrect. The payment of the docket fees, as assessed, negates any imputation of bad faith or an intent to defraud the government by the respondent(s). Thus, when insufficient filing fees were initially paid by the respondent [sic] and there was no intention to defraud the government, the *Manchester* rule does not apply. Hence, the trial court properly acquired jurisdiction over the instant suit.[17]

The CA, however, required the RTC Clerk of Court to determine the correct amount of docket fees based on Section 7(a), Rule 141 of the Rules of Court since the case is a real action involving cancellation of titles and reconveyance of properties.[18] The dispositive portion of its May 2, 2008 Decision thus reads:

---

[13] Through Presiding Judge Bayani V. Vargas of RTC Branch 219 to whom the case was re-raffled after then Presiding Judge Gonzales-Sison was appointed to the CA. *Id*. at 15 and 100.

[14] *Id*. at 43.

[15] 233 Phil. 579 (1987). *Rollo*, p. 102.

[16] Penned by Associate Justice Celia C. Librea-Leagogo and concurred in by Associate Justices Regalado E. Maambong and Agustin S. Dizon. *Rollo*, pp. 93-115.

[17] *Id*. at 108-109.

[18] Citing *Fil-Estate Golf and Development, Inc. v. Navarro*, 553 Phil. 48 (2007). *Rollo*, pp. 109-110.

WHEREFORE, premises considered, the Petition is **DENIED** for lack of merit. However, the Clerk of Court of the Regional Trial Court of Quezon City, or his du1y authorized representative, is hereby **ORDERED** to reassess and determine the correct amount of docket fees to be paid by private respondents in *Civil Case No. Q-05-56296*, pursuant to Section 7 (a), Rule 141 of the Rules of Court, as amended by A.M. No. 04-2-04-SC, and for the RTC of Quezon City, Branch 219, to direct respondents to pay the same. Costs against petitioners.

SO ORDERED.

Both parties to CA-G.R. SP No. 99631 moved for reconsideration, with respondents seeking clarification or modification such that the additional docket fees to be paid would constitute a first lien on the judgment and that they would be based on the value of the property at the time they were deprived of possession thereof. The CA, however, denied both motions for reconsideration.[19]

G.R. No. 184376

Separate petitions for review were filed by petitioner (G.R. No. 184388) and respondents (G.R. No. 184376) over the CA's ruling.[20] On January 19, 2009, the Court denied both petitions, in part for failure to sufficiently show any reversible error in the assailed decision.[21] The parties' respective motions for reconsideration were denied with finality and entry of judgment was made on June 16, 2009.[22]

Remand to the RTC

On January 6, 2010, the RTC ordered the payment of the docket fees as reassessed by the RTC's Clerk of Court pursuant to the CA's decision in CA-G.R. SP No. 99631.[23] On March

---

[19] *Id*. at 44 and 118 to 120.

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

[21] *Id*. at44 and 139-140.

[22] *Id*. at 44 and 154-158.

[23] *Id*. at 17, 44 and 159.

15,2010, noting that the Clerk of Court had not yet determined the correct amount of filing fees, the RTC directed that the latter be furnished a copy of the decision in CA-G.R. SP No. 99631 for the purpose of reassessment of the correct amount of docket fees, and for respondents to pay the recomputed filing fees.[24] In its March 22, 2010 Order, the RTC directed respondents anew to pay the reassessed docket fees.[25] On March 26, 2010, after the Clerk of Court manifested that respondents had not yet provided the tax declaration over, or information on the zonal value of, the land, the RTC ordered respondents to furnish the Clerk of Court the required documents as basis for computation of the required fees.[26]

Petitioner subsequently filed a Manifestation[27] reiterating that the total filing fee (exclusive of the JDF and other components) was at least ₱62,903,240.00.

In its May 6, 2010 Order, the RTC noted petitioner's Manifestation and ordered respondents, for the last time, to comply with its March 22 and March 26, 2010 Orders or its case would be dismissed.[28]

However, in an Omnibus Motion dated May 24, 2010, respondents asked the RTC to set a hearing to determine the factual and legal basis for the computation of the additional filing fees (the market value prior to the alleged taking or the current market value), and to rule that the additional filing fee would constitute a lien on the judgment.[29]

In support of said motion, respondents averred that while they were willing to pay the additional docket fees, they could

---

[24] *Id*. at 17 and 160.

[25] *Id*. at 17 and 161.

[26] *Id*. at 17 and 162.

[27] *Id*. at 163-168.

[28] *Id*. at 18 and 176.

[29] *Id*. at 44 and 177 to 183.

not do so because they were already pauper litigants, having neither business nor remaining property, with the exception of respondents Eladio Lactao, Pio Marcelo and Sergio Marcelo whose properties had a combined market value that did not even exceed ₱1.5 Million. They further averred that in a personal appeal to the Clerk of Court, they explained that they could not pay the additional docket fee of ₱39,172,020.00 except by having the same constitute a lien on the judgment on the strength of the Court's ruling in *Sun Insurance Office, Ltd. v. Hon. Maximiano C. Asuncion*[30] and Section 11 of the Bill of Rights which provides that free access to courts shall not be denied any person by reason of poverty. They also asserted that petitioner's computation of the docket fees was based on the appreciated market value of the property after its forcible taking and development, thus, to impose the same on respondents would constitute a penalty and add insult to injury as they already lost possession of the property to the petitioner.[31]

Petitioner opposed the motion,[32] arguing that the Court's ruling in *Sun Insurance* refers only to damages which arise after the filing of the complaint or similar pleading such that the additional filing fee therefor will constitute a lien on the judgment. Petitioner averred that respondents already invoked *Sun Insurance* before the CA which nonetheless directed them to pay the correct docket fees (after reassessment) thereby rejecting petitioner's plea for a lien. Petitioner stressed that said directive had attained finality.[33]

Petitioner eventually moved for the dismissal of the case with prejudice based on Section 3,[34] Rule 17 of the Rules of

---

[30] 252 Phil. 280 (1989).

[31] *Rollo*, pp. 178-180.

[32] *Id*. at 44 and 195-200.

[33] *Id*. at 197-199.

[34] Section 3. *Dismissal due to fault of plaintiff.* — If, for no justifiable cause, the plaintiff fails to appear on the date of the presentation of his evidence in chief on the complaint, or to prosecute his action for an

Court, for respondents' failure to pay the additional docket fees as directed by the RTC, and alternatively, for lack of jurisdiction.[35]

The RTC Ruling

On August 18, 2011, the RTC[36] rendered a Resolution,[37] the dispositive portion of which reads:

WHEREFORE, in light of the foregoing, in the interest of justice and fair play, the plaintiff's Omnibus Motion is hereby GRANTED. On the other hand, the defendant's Motion to Dismiss is DENIED Due Course.

Let the pre-trial conference of this case be set on 29 September 2011 at 8:30 o'clock in the morning.

SO ORDERED.

Holding that the additional filing fee could constitute a lien on the judgment, the RTC considered respondents as indigent

---

unreasonable length of time, or to comply with these Rules or any order of the court, the complaint may be dismissed upon motion of the defendant or upon the court's own motion, without prejudice to the right of the defendant to prosecute his counterclaim in the same or in a separate action. This dismissal shall have the effect of an adjudication upon the merits, unless otherwise declared by the court.

[35] *Rollo*, pp. 44 and 202-209.

[36] Through Presiding Judge Afable E. Cajigal of RTC Branch 96 to whom the case was re-raffled after Judge Vargas granted respondents' motion for inhibition. Respondents sought Judge Vargas' recusal because his Branch Clerk allegedly announced at the scheduled hearing of their Omnibus Motion that they should pay the additional filing fee, otherwise he would dismiss the case. Respondents averred that this was a pre-judgment of their Omnibus Motion as the issues thereon had not yet been joined and they had asked for time to file a Reply to petitioner's Opposition. Judge Vargas voluntarily recused himself to remove any suspicion of unfairness but explained that respondents had misquoted his Branch Clerk as his directive was for the resolution of the Omnibus Motion to be deferred until respondents complied with his orders to pay the additional docket fees. *Id*. at 19, 211-218 and 219-220.

[37] *Id*. at 221-222.

litigants, with no property to cover the additional fees. The RTC also noted that filing fees, albeit insufficient, were initially paid by respondents and there was no intention on their part to defraud the government. These circumstances, according to the RTC, justified the relaxation of the *Manchester* rule and called for the application of the following pronouncement in *Sun Insurance*:

> Plainly, while the payment of prescribed docket fee is a jurisdictional requirement, even its non-payment at the time of filing does not automatically cause the dismissal of the case, as long as the fee is paid within the applicable prescriptive or reglementary period, more so when the party involved demonstrates a willingness to abide by the rules prescribing such payment. Thus, when insufficient filing fees were initially paid by the plaintiffs and there was no intention to defraud the government, the Manchester rule does not apply.[38]

In its November 21, 2011 Resolution, the RTC denied petitioner's motion for reconsideration, but in view of the CA's May 20, 2008 Decision in CA-G.R. SP No. 99631, it directed the RTC Clerk of Court to reassess and determine the correct amount of docket fees to be paid by respondents.[39]

CA-G.R. SP No. 122999

Consequently, petitioner, on January 24, 2012, filed a petition for *certiorari* before the CA, docketed as CA-G.R. SP No. 122999, ascribing grave abuse of discretion to the RTC for issuing its August 18, 2011 and November 21, 2011 Resolutions.[40]

Meanwhile, respondents filed a motion before the RTC to be allowed to prosecute the case as indigent litigants. Invoking the right to free access to courts under the Constitution, respondents claimed that they were all suffering from "poverty of the lowest form," with no decent shelter and relying on alms from neighbors for daily sustenance. They submitted Barangay

---

[38] *Id*. at 222.

[39] *Id*. at 19, 45 and 236-237.

[40] *Id*. at 19, 45 and 238-271.

Certificates of Indigency and certifications from the local government that no business permit had been issued to them.[41]

In an Order dated May 4, 2012,[42] the RTC granted respondents' motion to be declared as pauper litigants over the opposition filed by petitioner and Capitol Hills.[43] The pertinent portion of the Order reads:

> Although the movants are claimants of a sizeable portion of the subject property, they are not in possession thereof. As such could not derive income therefore such is the reason for their inability to pay the case cost. [sic]
>
> Wherefore, this Court finds the motion to be meritorious and grants the same. Plaintiffs are allowed to litigate as pauper litigants.
>
> **SO ORDERED**.
>
> Given in open Court this 4th day of May, 2012 at Quezon City, Philippines.

Respondents argued before the CA that said Order rendered CA-G.R. SP No. 122999 moot. Petitioner, however, countered that no such Order was issued during the May 4, 2012 hearing, and to prove this, submitted a copy of the Transcript of Stenographic Notes[44] (TSN) on the hearing. Petitioner alleged that during said hearing set for the pre-trial conference, the RTC merely referred the case for judicial dispute resolution on June 1, 2012 and considered pending incidents, including the motion to prosecute as indigent litigants, submitted for resolution. Petitioner further manifested that it had since moved for the reconsideration of the aforesaid Order,[45] arguing that it contravened the final ruling in CA-G.R. SP No. 99631 and respondents had not established their indigence.[46]

---

[41] *Id*. at 500-543.

[42] *Id*. at 360.

[43] *Id*. at 46, 360 and 382.

[44] *Id*. at 377-385.

[45] *Id*. at 20, 46-47 and 361-362.

[46] *Id*. at 366.

The CA Ruling

On March 6, 2013, the CA rendered the assailed Decision,[47] the dispositive portion of which reads:

> **WHEREFORE**, in view of the foregoing, the Petition for Certiorari is **DISMISSED** for being moot and academic. Consequently, there is no need to resolve petitioner's application for the issuance of a temporary restraining order.
>
> **SO ORDERED.**

According to the CA, the court stenographer's certification at the end of the TSN stated that the incidents recorded therein were according to the best of her ability, knowledge and hearing, implying that there might have been events during or after the trial that were not included in the transcript, such as the Order declaring respondents as pauper litigants. The CA held that even assuming that the trial court did not make such a declaration at the May 4, 2012 hearing, the Order itself provided sufficient legal basis therefor as it explained the court's reasons for its ruling, the place where the Order was given being a mere formality.[48]

The CA thus held that the May 4, 2012 Order was valid and the issue of payment of additional filing fees was thereby rendered moot and academic. The CA, however, declared that said fees, which respondents were exempted from paying as pauper litigants, shall be a lien on any judgment in their favor.[49]

Petitioner's motion for reconsideration was denied in the assailed July 16, 2013 Resolution.[50]

Hence, this petition seeking the dismissal of Civil Case No. Q-05-56296 with prejudice.

---

[47] *Id*.at 40-48.

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

[49] *Id*. at 47.

[50] *Id*. at 50-51.

Petitioner contends that the additional filing fees cannot simply constitute a first lien on the judgment as this idea had been rejected with finality in CA-G.R. SP No. 99631 and G.R. No. 184376. It argues that the May 4, 2012 Order granting respondents' belated motion to be declared as pauper litigants could not be valid because it failed to establish the latter's indigence in accordance with the Rules of Court.[51]

Petitioner, thus, asserts that the case should have already been dismissed for respondents' failure to comply with previous directives to pay the additional docket fees. Such failure, according to the petitioner, demonstrated an obvious design to evade payment and should not merit the liberal interpretation of the rules.[52]

The Court's Ruling

The CA was mistaken in holding that the RTC's May 4, 2012 Order granting respondents' motion to litigate as indigent parties rendered the issue of payment of additional filing fees moot and academic.

A case or issue is considered moot and academic when it ceases to present a justiciable controversy because of supervening events, rendering the adjudication of the case or the resolution of the issue without any practical use or value.[53]

Records show that petitioner moved for the reconsideration of the May 4, 2014 Order and said motion "remains pending resolution."[54] Thus, respondents' indigence remains a litigated issue. With the mere possibility of its reversal, the Order cannot be regarded as a supervening event that would automatically moot the issues in CA-G.R. SP No. 122999.

---

[51] *Id*. at 24-30.

[52] *Id*. at 22-25.

[53] *Regulus Development, Inc. v. Dela Cruz*, G.R. No. 198172, January 25, 2016.

[54] As manifested by petitioner in his Reply filed on March 5, 2014. *Rollo*, p. 567.

However, even as We hold that the CA erred in dismissing CA-G.R. SP No. 122999 for being moot and academic, We are not disposed to grant petitioner's prayer for a judgment dismissing the Complaint.

First. There is no dispute that the judgment in CA-G.R. SP No. 99631 had become final and executory. It ordered the Clerk of Court of the RTC to reassess and determine the correct amount of docket fees and the RTC to direct respondents to pay the same. The directive, however, does not preclude a motion for exemption from paying the additional fees by reason of indigence.

In *Pilipinas Shell Petroleum Corporation v. CA*,[55] where the plaintiff was required to pay additional docket fees, the Court directed that the proceedings before the trial court resume "upon payment of all lawful fees (as assessed by the Clerk of Court of said Court) by (the plaintiff) **or upon exemption from payment thereof upon proper application to litigate as pauper**." The Court held that said plaintiff's right to free access to the courts is not denied by the correct application of the rules on legal fees because he could apply for the privilege to litigate his case as pauper if he is so entitled.

Second. There is nothing in CA-G.R. SP No. 99631 (as upheld in G.R. No. 184376) which stated that petitioner should pay the additional docket fee, otherwise the lower court would dismiss the Complaint for lack of jurisdiction.[56] Considering that the CA did not specify the period within which respondents should comply with its ruling, it is understood that payment of the additional docket fee, or the motion for exemption therefrom due to indigence, must be made within a reasonable period of time. What constitutes a reasonable period is relative and depends on the factual circumstances of the case.[57] In this case, the Court finds that respondents sought to be considered as pauper litigants within an acceptable period.

---

[55] 253 Phil. 660 (1989).

[56] See *De la Paz v. Court of Appeals*, 385 Phil. 441 (2000).

[57] *Id*.

The CA's ruling, which attained finality on June 16, 2009, ordered the RTC to direct respondents to pay the correct filing fees as reassessed by the Clerk of Court. On January 6, 2010, after the case was remanded to it, the RTC directed respondents to pay the fees. It appeared, however, that the fees had not yet been reassessed by the Clerk of Court and respondents were required to provide her with basis for the re-computation. Respondents, through representatives and counsel, proceeded to the office of the Clerk of Court, appealing to her that they could not pay the filing fees of ₱39,172,020.00 except by having the same constitute a lien on the judgment. Petitioner submitted its own computation, fixing the total filing fee at no less than ₱62,903,240.00, which respondents opposed for having been based on the appreciated market value of the property after its forcible taking and development. Thus, in an Omnibus Motion dated May 24, 2010, respondents asked the RTC to set a hearing to determine the factual and legal basis for the computation of the additional filing fee, particularly whether it should be based on the market value of the property prior to the alleged taking or its current market value. In the same motion, respondents averred that even as they were willing to pay the additional docket fees, they could not do so because they were already pauper litigants, and accordingly, moved to have the additional docket fee constitute a lien on the judgment.

Under these circumstances, the filing of respondents' May 24, 2010 Omnibus Motion roughly five (5) months after the RTC's January 2010 directive to pay the additional filing fee was reasonable.

Notably, in *De La Paz v. CA*,[58] the plaintiff, who had been directed by final judgment to pay additional docket fees, amended his complaint to reduce his claims and accommodate his finances for the payment of said fees. The Court allowed the amendment, made two (2) years after the final judgment and beyond the alleged prescriptive period for his claim.

---

[58] *Supra*, note 55.

Third. The Court finds no merit in petitioner's argument that respondents' claim of indigence was an afterthought because they did not ask to litigate as indigent parties when they filed the Complaint, or when petitioner moved for its dismissal for non-payment of the correct filing fees, or even when the higher courts passed upon petitioner's motion to dismiss.[59]

Upon filing their Complaint, respondents paid a docket fee of ₱6,828.80. Compared to ₱39,172,020.00 (as allegedly reassessed by the Clerk of Court)[60] and ₱62,903,240.00 (as computed by petitioner), ₱6,828.80 is evidently minimal, especially considering that there are 13 individual respondents paying said fee.

A party who was assessed a minimal amount in filing fees may opt to simply pay the same although he may qualify as a pauper litigant. He is not, by such initial payment, estopped from claiming indigence should he subsequently be required to pay additional fees.

Respondents cannot likewise be faulted for not raising their indigence in CA-G.R. SP No. 99631 and G.R. No. 184376. They were of the view and thus asserted in these proceedings that they had paid the correct filing fees, and any additional docket fees should constitute a lien on the judgment by virtue of their Affidavit of Undertaking and on the strength of this Court's ruling in *Sun Insurance*.[61] If sustained, these contentions rendered unnecessary a claim for exemption on account of poverty. In any event, when respondents were in fact made to pay additional docket fees pursuant to a final judgment, they sought to be declared as pauper litigants.

The Court accordingly finds no cogent reason to hold that indigence was belatedly raised by respondents. As *Pilipinas Shell* demonstrates, an application to litigate as an indigent party

---

[59] *Rollo*, p. 24.

[60] *Id*. at 423.

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

may be made when additional filing fees are imposed subsequent to the filing of the complaint and even after the issue of docket fees had undergone appellate review.

Fourth. The amount of additional docket fees is unclear. While respondents alleged that the filing fees had been recomputed by the Clerk of Court at ₱39,172,020.00, it appears from the RTC's November 21, 2011 Resolution that the additional filing fee is still undetermined as it directed the Clerk of Court to reassess the correct amount of docket fees to be paid by respondents. Petitioner itself has submitted a figure nearly 40% more than the alleged reassessment of the Clerk of Court.

Fifth. Access to justice by the impoverished is held sacrosanct under Article III, Section 11 of the 1987 Constitution.[62] The idea of paying docket fees at ₱39,172,020.00, as alleged by respondents, or ₱62,903,240.00, as computed by petitioner, is enough to give anyone pause. To an indigent, it is scarcely within the realm of possibility. The Court, thus, finds it more in keeping with the free access clause under the Bill of Rights to accord respondents a chance to establish their indigence. Besides, the court will still have to be convinced that they qualify for exemption as indigent parties based on the standards set in Section 21,[63] Rule 3 and Section 19,[64] Rule 141 of the Rules of Court. Should the authority to litigate as indigent parties be granted, the legal

---

[62] *Algura v. The Local Government Unit of the City of Naga*, 536 Phil. 819, 837 (2006).

[63] **Section 21.** *Indigent party*. A party may be authorized to litigate his action, claim or defense as an indigent if the court, upon an *ex parte* application and hearing, is satisfied that the party is one who has no money or property sufficient and available for food, shelter and basic necessities for himself and his family.

Such authority shall include an exemption from payment of docket and other lawful fees, and of transcripts of stenographic notes which the court may order to be furnished him. The amount of the docket and other lawful fees which the indigent was exempted from paying shall be a lien on any judgment rendered in the case favorable to the indigent, unless the court otherwise provides.

Any adverse party may contest the grant of such authority at any time before judgment is rendered by the trial court. If the court should determine

fees will still be a lien on any judgment favorable to them unless the court directs otherwise.[65]

Furthermore, Section 21 of Rule 3 provides that the adverse party may later still contest the grant of such privilege at any time before judgment is rendered by the trial court, possibly based on newly discovered evidence not obtained at the time the application was heard. Should the trial court, after hearing, determine that the party declared as an indigent is in fact a person with sufficient income or property, the clerk of court shall assess and collect the proper docket and other lawful fees. If the fees so assessed are not paid within the time fixed by the trial court, execution shall issue or the payment of the prescribed fees shall be made, without prejudice to other sanctions that may be imposed by the trial court.[66]

---

after hearing that the party declared as an indigent is in fact a person with sufficient income or property, the proper docket and other lawful fees shall be assessed and collected by the clerk of court. If payment is not made within the time fixed by the court, execution shall issue for the payment thereof, without prejudice to such other sanctions as the court may impose.

[64] **Section 19.** *Indigent litigants exempt from payment of legal fees*. Indigent litigants (a) whose gross income and that of their immediate family do not exceed an amount double the monthly minimum wage of an employee and (b) who do not own real property with a fair market value as stated in the current tax declaration of more than three hundred thousand (₱300,000.00) pesos shall be exempt from payment of legal fees.

The legal fees shall be a lien on any judgment rendered in the case favorable to the indigent litigant unless the court otherwise provides.

To be entitled to the exemption herein provided, the litigant shall execute an affidavit that he and his immediate family do not earn a gross income abovementioned, nor they own any real property with the fair value aforementioned, supported by an affidavit of a disinterested person attesting to the truth of the litigant's affidavit. The current tax declaration, if any, shall be attached to the litigant's affidavit.

Any falsity in the affidavit of litigant or disinterested person shall be sufficient cause to dismiss the complaint or action or to strike out the pleading of that party, without prejudice to whatever criminal liability may have been incurred.

[65] Section 21, Rule 3 and Section 19, Rule 141 of the Rules of Court.

[66] *Pangcatan v. Maghuyop and Bankiao*, G.R. Nos. 194412 & 194566, November 16, 2016.

Sixth. Respondents' motion to be allowed to litigate as indigent parties was granted by the RTC in its Order of May 4, 2012, and petitioner's motion for reconsideration[67] thereof is still pending resolution.

Petitioner argues that respondents cannot be allowed to litigate as indigents because they failed to comply with the evidentiary requirements of Section 19 of Rule 141. Whether respondents qualify as indigent litigants is however, a question of fact. Since this Court is not a trier of facts, and more importantly, because this question, raised in petitioner's motion for reconsideration of the May 4, 2012 Order is still pending resolution, the Court will have to remand the case to the RTC with a directive to resolve said issue with dispatch and under the guidelines set in *Algura v. The Local Government Unit of the City of Naga*.[68]

WHEREFORE, the assailed March 6, 2013 Decision and July 16, 2013 Resolution of the Court of Appeals in CA-G.R. SP No. 122999 are **SET ASIDE**. The Petition for Review on *Certiorari* is nonetheless **DENIED** for the reasons stated in the Decision. The Regional Trial Court of Quezon City, Branch 96 is ordered to resolve with dispatch the issue of whether respondents qualify as indigent litigants, as raised in petitioner's Motion for Reconsideration of the May 4, 2012 Order in Civil Case No. Q-05-56296.

SO ORDERED.

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

---

[67] *Rollo*, pp. 365-375.

[68] *Supra*, note 61.

[*] Designated additional Member vice Associate Justice Francis H. Jardeleza per Raffle dated August 1, 2018.

[**] Designated Acting Member per Special Order No. 2560 dated May 11, 2018.

FIRST DIVISION

[G.R. No. 216756. August 8, 2018]

GENOVEVA P. TAN, deceased, substituted by Melchor P. Tan as the legal representative of the deceased petitioner, *petitioner, vs.* **REPUBLIC OF THE PHILIPPINES, REPRESENTED BY THE BUREAU OF CUSTOMS,** *respondent.*

SYLLABUS

1. **REMEDIAL LAW; ACTIONS; THE ACTION AGAINST THE DECEASED PETITIONER SURVIVES AS IT IS ONE TO RECOVER DAMAGES FOR AN INJURY TO THE STATE; ACTIONS THAT SURVIVE AGAINST DECEDENT'S EXECUTORS OR ADMINISTRATORS, ENUMERATED.—** With Genoveva's death, Civil Case No. 02-102639 need not be dismissed. The action against her survives as it is one to recover damages for an injury to the State. Rule 87, Section 1 of the Rules of Court enumerates actions that survive against a decedent's executors or administrators, and they are: (1) actions to recover real and personal property from the estate; (2) actions to enforce a lien thereon; and (3) actions to recover damages for an injury to person or property.

2. **ID.; ID.; WHEN THE PETITIONER TOOK NO ACTION TO QUESTION THE REINSTATEMENT OF THE CASE AGAINST HER BEFORE THE COURT OF APPEALS AND ALLOWED THE PROCEEDINGS TO CONTINUE, SHE CANNOT NOW QUESTION THE DISPOSITION THEREIN WHEN IT TURNS OUT TO BE UNFAVORABLE TO HER CAUSE.—** The facts reveal that when the CA overturned its own March 30, 2011 Resolution dismissing respondent's Petition for *Certiorari* for being tardy and lacking in the requisite attachments and thus reinstated the same, petitioner took no action to question the reinstatement. She did not move to reconsider; nor did she come to this Court for succor. Instead, she allowed the proceedings before the CA to continue, and is only now — at this stage — raising the propriety

of the reinstatement, after participating in the whole process before the CA. This cannot be countenanced. As correctly ruled by the CA, petitioner may not, after participating in the proceedings before it, later question its disposition when it turns out to be unfavorable to her cause.

3. REMEDIAL LAW; APPEALS; FACTUAL FINDINGS OF THE COURT OF APPEALS, ACCORDED RESPECT.— As for petitioner's contention that the instant Petition should be granted for the reason that she has a meritorious case, suffice it to state that the Court adopts the appellate court's pronouncement on the matter. The CA denied petitioner's plea to be dropped as defendant in Civil Case No. 02-102639 because it found — by meticulous consideration of the extant evidence — that Genoveva was "the principal orchestrator" of the scheme to use spurious TCCs to pay Mannequin's 1995-1997 duties and taxes; that such a finding was based on positive testimony of a witness presented in court; that documentary evidence pointed to Genoveva's significant participation in Mannequin's affairs during the time material to the suit; and that all the other defendants to the case seemed to have absconded and suspiciously waived all their rights and properties in the country in favor of Genoveva, who was then dropped from the suit. x x x Adopting the CA's finding that Genoveva appears to have been the principal figure in the illegal scheme, this Court cannot but reach the logical conclusion that she should not have been excluded from the case.

APPEARANCES OF COUNSEL

J.R. Simbillo & Associates for petitioner.

Bureau of Customs Legal Service, Prosecution & Litigation Division for respondent.

D E C I S I O N

DEL CASTILLO, *J.*:

Assailed in this Petition for Review[1] on *Certiorari* are the July 29, 2013 Decision[2] and February 5, 2015 Resolution[3] of the Court of Appeals (CA) which granted the Petition for *Certiorari* in CA-G.R. SP No. 118442 and denied herein petitioner's Motion for Reconsideration, respectively.

In 2002, the herein respondent, through the Bureau of Customs, filed an Amended Complaint[4] for collection of sum of money with damages and prayer for injunctive writ against Mannequin International Corporation (Mannequin) before the Regional Trial Court (RTC) of Manila, on the cause of action that Mannequin paid its 1995-1997 duties and taxes using spurious Tax Credit Certificates (TCCs) amounting to ₱55,664,027.00. The case was docketed as Civil Case No. 02-102639 and assigned to Branch 8 of the Manila RTC. The original complaint was amended to include other individuals — among them herein petitioner Genoveva P. Tan (Genoveva) — as one of the defendants.

After the respondent rested its case, petitioner filed a demurrer to evidence followed by an urgent manifestation with leave of court to allow her to change the caption of her demurrer to that of a motion to exclude and drop her from the case and/or dismiss the same as against her.

The Manila RTC granted petitioner's urgent manifestation and treated her demurrer as a motion to exclude/drop her from the case.

---

[1] *Rollo*, pp. 12-36.

[2] *Id*. at 45-53; penned by Associate Justice Rodil V. Zalameda and concurred in by Presiding Justice Andres B. Reyes, Jr. (now a Member of this Court) and Associate Justice Ramon M. Bato, Jr.

[3] *Id*. at 55-62.

[4] *Id*. at 190-196.

Subsequently, in a July 1, 2010 Order, the trial court resolved to grant petitioner's motion to exclude, thus:

> WHEREFORE, Motion to Exclude is GRANTED. Defendant Genoveva Tan is hereby EXCLUDED/DROPPED as one of the defendants in this case. The Writ of Preliminary Injunction issued by this Court on September 11, 2002 is hereby LIFTED/CANCELLED ONLY WITH RESPECT TO the properties of Genoveva Tan.
>
> SO ORDERED.[5]

Respondent moved to reconsider, but was rebuffed.

Ruling of the Court of Appeals

Respondent thus filed an original Petition for *Certiorari* with the CA, docketed as CA-G.R. SP No. 118442, on the contention that the Manila RTC committed grave abuse of discretion in granting petitioner's motion to exclude/drop her from the case.

In a March 30, 2011 Resolution,[6] the CA dismissed the petition for being tardy and for failing to attach thereto relevant documents and pleadings. But, on motion for reconsideration, the petition was reinstated. Petitioner took no action to question the reinstatement.

On July 29, 2013, the CA issued the assailed Decision granting respondent's Petition for *Certiorari*, ruling as follows:

> As gleaned from the records, petitioner[7] accuses the public respondent judge of gravely abusing his discretion by allowing private respondent Genoveva to present evidence in support of her Demurrer to Evidence and to formally offer her exhibits, contrary to the provision of Section 1, Rule 33 of the Rules of Court. Petitioner also argues that the move of x x x Genoveva to amend the caption of her Demurrer to Evidence into a Motion to Exclude was merely a legal maneuver to avoid the consequence of a possible denial of her demurrer.

---

[5] *Id*. at 150.

[6] *Id*. at 38-43; penned by Associate Justice Rodil V. Zalameda and concurred in by Associate Justices Amelita G. Tolentino and Normandie B. Pizarro.

[7] Herein respondent.

On another issue, petitioner posits that assuming, for the sake of argument, that what x x x Genoveva filed was a Motion to Exclude and not a Demurrer to Evidence, it was still gravely erroneous x x x for the public respondent to grant the Motion to Exclude since the same should have been filed before the filing of an Answer and not at that late stage of the proceedings. Furthermore, petitioner posits that the grant of the Motion to Exclude is devoid of factual and legal basis.

Insofar as the public respondent's decision to treat x x x Genoveva's Motion as a Motion to Exclude, We are of the considered view that no grave abuse of discretion may be imputed against the public respondent. It is already settled that it is not the caption but the allegations that are controlling. Furthermore, it is evident from the records that x x x Genoveva was able to amend her motion before the public respondent could have resolved the same.

We also dismiss petitioner's contention that the Motion to Exclude was no longer appropriate at the late stage of the proceedings since it is categorically provided under Section 11, Rule 3 of the 1997 Rules of Civil Procedure, that a misjoined party may be dropped by the court at any stage of the proceedings and such act does not even require a motion from any party since it may be done by the court on its motion x x x

x x x x x x x x x

All these notwithstanding, We hold that the public respondent gravely abused his discretion in granting x x x Genoveva's Motion to Exclude.

As may be seen from the records, petitioner, in its effort to prove x x x Genoveva's liability, even employed as its own witness, Lourdes Briones Bhandari, a co defendant of x x x Genoveva, who then testified in court that x x x Genoveva was supposedly the principal orchestrator of the fraudulent activies that gave rise to this suit. Despite this, however, the court a quo granted x x x Genoveva's Motion to Exclude mainly, if not solely, on the basis of the latter's argument that she was no longer part of private respondent Mannequin at the time the supposed fraudulent transactions occurred, as supposedly established by the pieces of evidence submitted by x x x Genoveva. Since these pieces of evidence are in the custody of the Securities and Exchange Commission, the public respondent accorded them full faith and credence in line with the principle of regularity of public documents.

There should be no dispute that a public document enjoys the presumption of regularity. It is a *prima facie* evidence of the truth of the facts stated therein and a conclusive presumption of its existence and due execution. It must be stressed, however, that this is not an absolute and inflexible rule since the presumption in favor of public documents is merely disputable and is satisfactory only if uncontradicted, and may be overcome by other evidence to the contrary.

In this case, the Director's Certificate attached to the Amended Articles of Incorporation of x x x Mannequin shows that x x x Genoveva signed the same in her capacity as member of the board of directors of said corporation. Said Director's Certificate indicates that it was executed by x x x Genoveva, along with the other members of the board, on 01 April 1992 x x x

x x x x x x x x x

This document alone already casts serious doubt as to the truth of x x x Genoveva's claim that she was no longer part of the corporation as early as September 1991.

In addition to the foregoing, a perusal of the Assignment of Shares reveals that x x x Genoveva purportedly assigned her shares to a certain Edgardo C. Olandez. Interestingly, there was nothing in said document to determine as to when exactly said shares were assigned, except that it was purportedly notarized on 24 September 1991. Notably, though, the board of directors of private respondents had already convened as early as 16 September 1991 for the purpose of approving and authorizing the transfer of x x x Genoveva's shares to x x x Olandez. Obviously, it is a highly questionable circumstance that the board of directors would already approve an act that has not yet even been performed.

It also comes as highly questionable that a change in the composition of the board of directors which unfolded as far back as 1991 would not have been immediately reported by x x x Mannequin to the Securities and Exchange Commission. As the records show, it was only in February 1995 that x x x Mannequin reported the transfers of shares made by its directors. It all becomes more dubious when such report coincided with the release of the first two (2) Tax Credit Certificates in favor of x x x Mannequin amounting to x x x (Php7,120,032.00).

All the foregoing factual findings convince Us that petitioner was able to successfully overcome the presumption of regularity accorded to the documents submitted by x x x Genoveva. To be sure, with all the nagging questions that are left unanswered, it becomes difficult to give credence to x x x Genoveva's claim that she was already divested of her shares from x x x Mannequin when the pieces of evidence she relies on to prove the truth of her allegation contradict her claim. Of course, this is not to say that petitioner's victory is a cinch. It only means that although the pieces of evidence submitted by x x x Genoveva are public documents, the presumption in their favor had been severely diminished, if not totally shattered.

Petitioner has shown basis to implead x x x Genoveva and it now behooves x x x Genoveva to satisfactorily explain and reconcile the discrepancies that were uncovered in court by the prosecution to prove that she was, indeed, no longer part of x x x Mannequin, in whatever capacity, from 1995 and beyond. Accordingly, it was gravely erroneous to have her excluded in the proceedings below.

So much has been essayed about the trial court's plenary control over the proceedings before it. It should not be forgotten, however, that the discretion conferred upon the courts is not a willful, arbitrary, capricious and uncontrolled discretion. It is a sound, judicial discretion which should always be exercised with due regard to the rights of the parties and the demands of equity and justice.

In the instant case, the recovery of a huge amount of money that was fraudulently taken from the coffers of the government is at stake. However, it is already established that x x x Mannequin had long ceased its operation and is no longer in existence. Petitioner has also been adamant in stressing that all the other defendants are already outside the country, seemingly without intention to return. What is more, these other defendants, who are x x x Genoveva's descendants, even went as far as waiving, during the pendency of the case, their respective rights in all their properties in the Philippines in favor of x x x Genoveva. Given all these facts, it is starkly clear that petitioner is only left with x x x Genoveva for the full satisfaction of its claim.

It goes without saying then that x x x Genoveva's exclusion would virtually render the entire proceedings a futile recourse as far as the petitioner is concerned. **Verily, even if petitioner Republic of the Philippines wins this case, the government will end up with a pyrrhic victory as it cannot recover even a single centavo from**

the other defendants. On the other hand, it would be the height of injustice, and surely unacceptable, that those who were responsible for this grand fraud and benefited therefrom would laugh their way to the bank and enjoy their loot with impunity. It was, thus, essential for the public respondent to exercise extreme caution in dealing with x x x Genoveva's Motion to Exclude. In the end, though, the public respondent chose to mechanically and blindly adhere to the presumption of regularity of public documents without due regard and consideration to the palpable inconsistencies that those public documents, themselves, reveal. There was obviously a failure to exercise sound, judicial discretion on the part of the public respondent in this respect.

WHEREFORE, premises considered, the instant Petition for *Certiorari* is **GRANTED** and the assailed Orders dated 29 October 2010 and 01 July 2010 both issued by public respondent are **ANNULLED AND SET ASIDE**.

Accordingly, the Motion to Exclude Genoveva P. Tan as One Among the Defendants filed by private respondent Genoveva P. Tan is **DENIED** and the Writ of Preliminary Attachment issued by the court a quo dated 11 September 2002 is **REINSTATED** with respect to the properties of said private respondent.

The public respondent Judge is directed to proceed with, and dispose of, the case with utmost dispatch.

SO ORDERED.[8] (Emphasis in the original)

Petitioner filed a Motion for Reconsideration, but the CA denied the same as well, ruling as follows:

On 29 July 2013, the Court issued a Decision granting the Petition filed by the petitioner Republic of the Philippines by annulling and setting aside the assailed Orders dated 29 October 2010 and 01 July 2010 issued by the court *a quo*.

Thereafter, x x x Genoveva x x x, through Atty. Rizalino T. Simbillo, filed a Very Urgent and Vital Motion and Manifestation with Prayer to Defer Proceedings with Leave of Court, praying that x x x Genoveva be allowed to be represented by the aforesaid counsel in filing a

---

[8] *Rollo*, pp. 47-53.

Motion for Reconsideration and for this Court to toll the running of period to file said Motion in the meantime. As an alternative prayer, x x x Genoveva prays for this Court to rule for the outright dismissal of this case, even without a motion for reconsideration x x x.

In the ensuing events, Atty. Simbillo filed a Formal Entry of Appearance on 05 September 2013 while x x x Genoveva, through said counsel, filed a Motion for Reconsideration, seeking reconsideration of Our Decision. Meanwhile, Atty. Carmelita Reyes-Eleazar, the counsel for x x x Genoveva as appearing on the records before Us, submitted her Motion to Withdraw dated August 27, 2013.

As per said Motion for Reconsideration, Atty. Simbillo claims to be the exclusive counsel of record of x x x Genoveva in the proceedings below but he was supposedly left in the dark as to the existence of the Petition before Us. Allegedly, he was neither notified of the Petition nor was he sent any notice or pleading relative thereto. He was only allegedly made aware of the proceedings before Us on 24 August 2013, when the househelper of x x x Genoveva delivered to his office a copy of Our Decision; thereupon, he went to the Division Clerk of Court on 28 August 2013 to obtain an official copy, but to no avail.

Based on the preceding allegations, x x x Genoveva, through Atty. Simbillo, now asserts that the prescriptive period for her to file a Motion for Reconsideration should only be reckoned from 28 August 2013 as it was the time that her alleged exclusive counsel was actually notified of the Court's ruling. x x x Genoveva likewise claimed that it would be the height of injustice and a violation of her right to due process if her Motion for Reconsideration filed by Atty. Simbillo were not given due course, especially considering that she has a meritorious defense.

Subsequently, this Court issued a Resolution dated 25 September 2013 directing Atty. Reyes-Eleazar to comment and submit within ten (10) days from notice any document showing that she was authorized to represent x x x Genoveva. We also issued a Resolution requiring Atty. Reyes-Eleazar to submit the conformity of x x x Genoveva on her withdrawal of appearance. Atty. Reyes- Eleazar, in compliance with said Resolutions, filed her Compliance, along with a Withdrawal of Appearance with the conforme of x x x Genoveva, both of which were duly noted by this Court in its Resolution date[d] 06 June 2014.

Now, insofar as the pending Motions filed by x x x Genoveva, through Atty. Simbillo, this Court finds them without merit and thus resolve[s] to deny the same.

From the [start] until the rendition of the assailed Decision by this Court, Atty. Reyes-Eleazar actively and vigorously represented x x x Genoveva It is significant to point out also that x x x Genoveva, all throughout, never bothered to deny such ostensible authority of Atty. Reyes-Eleazar, leading this Court to rely on Atty. Reyes-Eleazar's authority to represent said litigant. As a matter of fact, x x x Genoveva even impliedly admitted Atty. Reyes-Eleazar's right to represent her in this case when she gave her conforme to the withdrawal of appearance submitted by said counsel to this Court. Needless to say, x x x Genoveva would not have signed that withdrawal if she did not recognize and admit Atty. Reyes-Eleazar's authority.

It bears to underscore in this vein that '[t]he presumption in favor of the counsel's authority to appear in behalf of a client is a strong one. A lawyer is not even required to present a written authorization from the client. In fact, the absence of a formal notice of entry of appearance will not invalidate the acts performed by the counsel in his client's name.'

For all intents and purposes, therefore, this Court properly cannot be faulted for recognizing Atty. Reyes-Eleazar as the acting counsel of x x x Genoveva insofar as this Petition is concerned. Corollarily, since x x x Genoveva had proper representation in this case she cannot now claim to have been denied due process of law.

Notably, Atty. Simbillo tries so hard to impress upon this Court of his exclusive authority to protect the interest of x x x Genoveva in this case — he being supposedly the counsel of record in the proceedings below. This claim, however, is completely belied by the facts on record.

First, as we have already emphasized above; x x x Genoveva herself had impliedly admitted the authority of Atty. Reyes-Eleazar to act as her counsel in this Petition. Second, — and this is worthy of emphasis — there is unrefuted information from Atty. Reyes-Eleazar that Atty. Simbillo is, in fact, a collaborating counsel and not an exclusive one, as claimed by him. As Atty. Reyes-Eleazar narrated in her Manifestation —

'x x x x x x x x x

> The above-entitled case which originally emanated from the Regional Trial Court of Manila, Branch 8, x x x. Except for defendant Lourdes Bhandari, the defendant corporation and the individual defendants Tan were all initially represented by the law offices of Defensor Villamor Villamor Bahia and Tolentino x x x. Said law office had not drawn its appearance even up to the present time.
>
> Subsequently, the undersigned counsel entered her appearance as collaborating counsel for the individual defendants, Tan. In 2010, however, after the plaintiff had terminated the presentation of its evidence, a certain Atty. Rizalino T. Simbillo filed a Demurrer to Evidence in behalf of Genoveva Tan. For the record, the undersigned counsel had not seen nor met with Atty. Simbillo since he entered is [sic] appearance in 2010. Meantime, since Mrs. Genoveva Tan was always out of the country, the undersigned's communication with her regressed from seldom to almost once or twice for the last three years. All the undersigned's verbal communications were transmitted through the household with little chances of reliability. x x x.
>
> x x x x x x x x x'

Considering that Atty. Simbillo was merely a collaborating counsel, there was absolutely no need for the Court to likewise inform Atty. Simbillo of the developments of this case as notices sent to Atty. Reyes-Eleazar indubitably sufficed to meet the due process requirement. Indeed, the rule is that when a party is represented by two (2) or more lawyers, notice to one (1) suffices as a notice to the party represented by him.

Atty. Simbillo may argue that he ought to be considered as the counsel of record as he was the latest hire of x x x Genoveva and that his name appeared in most of the notices, orders or rulings issued by the court below. However, since x x x Genoveva had not yet terminated the services of Atty. Reyes-Eleazar at that time, the latter could very well act in representation of x x x Genoveva until her authority is properly withdrawn which, in this case, transpired only after We have rendered the assailed Decision. To be sure, in the absence of compliance with the essential requirements for valid substitution of counsel of record, this Court can safely presume that Atty. Reyes-Eleazar continuously and actively represents [her] client. Furthermore, '[a] party may have two or more lawyers working in collaboration in a given litigation, but the fact that a second attorney

enters his appearance for the same party does not necessarily raise the presumption that the authority of the first attorney has been withdrawn. The second counsel should only be treated as a collaborating counsel despite his appearance as 'the new counsel of record.'

Given the fact that x x x Genoveva was properly represented by Atty. Reyes-Eleazar in this Petition, it is certainly clear that the Very Urgent and Vital Motion and Manifestation with Prayer to Defer Proceedings with Leave of Court filed by Atty. Simbillo has no leg to stand on and thus must be denied. Accordingly, the Motion for Reconsideration subsequently filed by Atty. Simbillo ought to be denied outright for being filed out of time. For what it is worth, though, even if We give due consideration to the Motion for Reconsideration filed by x x x Genoveva through Atty. Simbillo, the said Motion merits denial just the same for lack of merit.

As gleaned from the records, x x x Genoveva, through Atty. Simbillo, incessantly argues that this Court should have sustained its dismissal of the Petition for being filed way beyond the prescriptive period provided under the Rules of Court. Furthermore, x x x Genoveva contends that an appeal and not a Petition for Certiorari was the proper remedy to seek for the reversal of the ruling of the court *a quo* on the reason that evidentiary matters or matters of fact are not proper grounds in x x x certiorari proceedings; since petitioner failed to file an appeal, the questioned ruling, according to x x x Genoveva, had become final and executory, as a matter of law.

Given the prevailing facts, however, it suffices to say that x x x Genoveva should already be considered estopped from questioning Our decision to give due course to the Petition. To state once more, x x x Genoveva was ably represented by Atty. Reyes-Eleazar during the course of the proceedings before Us. That being so, it can be fairly presumed that x x x Genoveva understood the legal implication of the reversal of Our previous ruling. If she really thought that Our ruling was erroneous, she should have seasonably made the necessary move to contest the same, [e]specially that nothing prevented her from doing so. She kept quiet for so long, however, and did not do anything about the matter. It is only now that she suddenly howls in protest just because Our Decision on the merits of the Petition turned out to be adverse to her.

As x x x Genoveva actively participated in the proceedings before Us, she cannot, on a whim, repudiate Our jurisdiction over the Petition. Be it emphasized that '[i]f a party invokes the jurisdiction of a court, he cannot thereafter challenge the court's jurisdiction in the same case. To rule otherwise would amount to speculating on the fortune of litigation, which is against the policy of the Court.'

It is thus too late in the day for x x x Genoveva to assail Our ruling to reinstate the Petition for *Certiorari* as she was considered to have accepted the same. This is true even if she claims that her other lawyer, Atty. Simbillo, was not given the opportunity to defend her in this Petition. Frankly, this is an overused pretext that will not be countenanced by this Court. Besides, it is not the fault of this Court that there was no coordination and cooperation between private respondent's lawyers.

Finally, this Court finds no compelling reason to depart from, modify, much less reverse, Our Decision dated 29 July 2013, the same being based on the facts and prevailing jurisprudence on the matter.

WHEREFORE, premises considered, the Very Urgent and Vital Motion and Manifestation with Prayer to Defer Proceedings with Leave of Court and the subsequent Motion for Reconsideration filed by private respondent Genoveva P. Tan, through Atty. Rizalino T. Simbillo, are both **DENIED** and the Decision dated 29 July 2013 stands.

The Motion to Withdraw of Atty. Carmelita Reyes-Eleazar is **GRANTED** and she is hereby discharged of her duties as counsel for private respondent Genoveva Tan.

SO ORDERED.[9] (Emphasis in the original)

The instant Petition was thus instituted.

On December 31, 2016, Genoveva passed away at the age of 82.[10] Her heirs are thus properly substituted in these proceedings.[11]

---

[9] *Id*. at 55-62.

[10] *Id*. at 277.

[11] *Id*. at 278-279.

Issues

In an August 1, 2016 Resolution,[12] this Court resolved to give due course to the Petition, which contains the following assignment of errors:

I.

THE COURT OF APPEALS CANNOT MODIFY IF NOT OUTRIGHT[LY] REVERSE A.M. NO. 07-7-12 SC AS IT (CA) CANNOT ARROGATE TO ITSELF A POWER IT DID NOT POSSESS, A POWER ONLY THE SUPREME COURT MAY EXERCISE.

II.

A JUDGMENT BECOMES FINAL AND EXECUTORY BY OPERATION OF LAW. AS A CONSEQUENCE[,] NO COURT[,] NOT EVEN THE SUPREME COURT[,] CAN EXERCISE APPELLATE JURISDICTION TO REVIEW OR MODIFY THE DECISION THAT HAS BECOME FINAL.

III.

THAT AN INVALID OR VOID JUDGMENT NEVER ACQUIRES FINALITY.[13]

Petitioner's Arguments

In praying that the assailed CA dispositions be set aside and that, instead, the Court reinstate the CA's original March 30, 2011 Resolution[14] dismissing respondent's Petition for *Certiorari* filed before it, petitioner argues in her Petition and Reply[15] that, as was originally held, respondent's Petition for *Certiorari* before the CA was filed out of time; that rules of procedure prescribing the time for performing specific acts or for taking

---

[12] *Id*. at 204-205.

[13] *Id*. at 20.

[14] *Id.* at 38-43; penned by Associate Justice Rodil V. Zalameda and concurred in by Associate Justices Amelita G. Tolentino and Normandie B. Pizarro.

[15] *Id.* at 165-188; captioned as Rejoinder/Opposition.

certain proceedings are indispensable and mandatory, and thus must be faithfully complied with and not discarded; that, pursuant to A.M. No. 07-7-12-SC which amended Section 4 of Rule 65 prescribing the reglementary period within which to file an original petition for *certiorari*, a petitioner is given an inextendible period of 60 days within which to file such petition; that since respondent's petition was filed 59 days after the lapse of the mandatory 60-day period allotted to it, the said petition should have been dismissed outright — and as a result, the trial court's July 1, 2010 Order became final and executory; that a final and executory judgment or order may not be corrected by the special civil action of *certiorari*; and finally, that the assailed CA dispositions are thus null and void and issued beyond its jurisdiction and authority, because they are erroneous and refer to the trial court's disposition that was already final and executory.

Petitioner adds in her Reply that the facts of the case, the law, and jurisprudence do not support respondent's claim that she must be held personally liable for Mannequin's corporate liability, in the absence of proof of bad faith or wrongdoing on her part.

Respondent's Arguments

Respondent, on the other hand, counters in its Comment[16] that the Petition should be dismissed as the assailed CA dispositions have become final and executory since the motion for reconsideration filed by Atty. Simbillo as collaborating counsel — without the knowledge and approval of Genoveva's counsel of record, Atty. Reyes-Eleazar — was unauthorized and filed out of time; that the CA's reinstatement of its Petition for *Certiorari* was correct as the merits of its case in Civil Case No. 02-102639 outweigh the procedural lapses it committed in filing the CA petition; that dismissal of petitions or appeals on technical grounds is frowned upon by the Court, because the policy is to encourage full adjudication of cases on their merits and not to apply procedural rules in a very rigid, technical sense since they were adopted to help secure — not override

---

[16] *Id*. at 149-160.

— substantial justice and not defeat their very aims; and that even so, since the CA's reinstatement of its Petition for *Certiorari* was never timely contested by petitioner, the latter is thus estopped from questioning the same.

Our Ruling

The Court denies the Petition.

With Genoveva's death, Civil Case No. 02-102639 need not be dismissed. The action against her survives as it is one to recover damages for an injury to the State. Rule 87, Section 1 of the Rules of Court[17] enumerates actions that survive against a decedent's executors or administrators, and they are: (1) actions to recover real and personal property from the estate; (2) actions to enforce a lien thereon; and (3) actions to recover damages for an injury to person or property.

In effect, the only issue raised by petitioner relates to the CA's reinstatement of respondent's Petition for *Certiorari* which it initially dismissed — with petitioner arguing that the reinstatement was erroneous, and in her reply, attempts to impress upon this Court that her case was meritorious — such that she may not be held personally liable for Mannequin's corporate liability, absent proof of bad faith or wrongdoing on her part.

Notably, petitioner did not at all squarely address the CA's assailed pronouncements — particularly its ruling that the trial court was guilty of grave abuse of discretion in excluding/dropping Genoveva from the case, the tardiness of her motion for reconsideration of its July 29, 2013 Decision, and the propriety of Atty. Simbillo's representation— which should be the very

---

[17] Rule 87 ACTIONS BY AND AGAINST EXECUTORS AND ADMINISTRATORS

Section 1. Actions which may and which may not be brought against executor or administrator. — No action upon a claim for the recovery of money or debt or interest thereon shall be commenced against the executor or administrator; but actions to recover real or personal property, or an interest therein, from the estate, or to enforce a lien thereon, and actions to recover damages for an injury to person or property, real or personal, may be commenced against him.

subjects of the instant petition. This being the case, the Court cannot rule on these issues, because it is a general rule of procedure that courts can take cognizance only of the issues pleaded by the parties.[18]

The facts reveal that when the CA overturned its own March 30, 2011 Resolution dismissing respondent's Petition for *Certiorari* for being tardy and lacking in the requisite attachments and thus reinstated the same, petitioner took no action to question the reinstatement. She did not move to reconsider; nor did she come to this Court for succor. Instead, she allowed the proceedings before the CA to continue, and is only now — at this stage — raising the propriety of the reinstatement, after participating in the whole process before the CA. This cannot be countenanced. As correctly ruled by the CA, petitioner may not, after participating in the proceedings before it, later question its disposition when it turns out to be unfavorable to her cause.

> x x x. The active participation of the party against whom the action was brought, coupled with his failure to object to the jurisdiction of the court or quasi-judicial body where the action is pending, is tantamount to an invocation of that jurisdiction and a willingness to abide by the resolution of the case and will bar said party from later on impugning the court or body's jurisdiction.[19]

As for petitioner's contention that the instant Petition should be granted for the reason that she has a meritorious case, suffice it to state that the Court adopts the appellate court's pronouncement on the matter. The CA denied petitioner's plea to be dropped as defendant in Civil Case No. 02-102639 because it found — by meticulous consideration of the extant evidence — that Genoveva was "the principal orchestrator" of the scheme to use spurious TCCs to pay Mannequin's 1995-1997 duties and taxes; that such a finding was based on positive testimony of a witness presented in court; that documentary evidence pointed to Genoveva's significant participation in Mannequin's affairs during the time material to the suit; and that all the other

---

[18] See *Logronio v. Taleseo*, 370 Phil. 907, 910 (1999).

[19] *Marquez v. Secretary of Labor*, 253 Phil. 329, 336 (1989).

defendants to the case seemed to have absconded and suspiciously waived all their rights and properties in the country in favor of Genoveva, who was then dropped from the suit. To repeat the appellate court's pronouncement:

> It goes without saying then that x x x Genoveva's exclusion would virtually render the entire proceedings a futile recourse as far as the petitioner is concerned. **Verily, even if petitioner Republic of the Philippines wins this case, the government will end up with a pyrrhic victory as it cannot recover even a single centavo from the other defendants. On the other hand, it would be the height of injustice, and surely unacceptable, that those who were responsible for this grand fraud and benefited therefrom would laugh their way to the bank and enjoy their loot with impunity.** It was, thus, essential for the public respondent to exercise extreme caution in dealing with x x x Genoveva's Motion to Exclude. In the end, though, the public respondent chose to mechanically and blindly adhere to the presumption of regularity of public documents without due regard and consideration to the palpable inconsistencies that those public documents, themselves, reveal. There was obviously a failure to exercise sound, judicial discretion on the part of the public respondent in this respect.[20] (Emphasis in the original)

Adopting the CA's finding that Genoveva appears to have been the principal figure in the illegal scheme, this Court cannot but reach the logical conclusion that she should not have been excluded from the case.

WHEREFORE, the Petition is **DENIED**. The July 29, 2013 Decision and February 5, 2015 Resolution of the Court of Appeals in CA-G.R. SP No. 118442 are **AFFIRMED *in toto***.

SO ORDERED.

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

---

[20] *Rollo*, p. 52.

[*] Per Special Order No. 2559 dated May 11, 2018.

[**] Per Special Order No. 2560 dated May 11, 2018.

SECOND DIVISION

[G.R. No. 219324. August 8, 2018]

DEBRA ANN P. GAITE, *petitioner, vs.* **FILIPINO SOCIETY OF COMPOSERS, AUTHORS AND PUBLISHERS, INC., ARTURO LUI PIO, NOEL G. CABANGON, ALVIN F. DE VERA, LEOCADIO ERNESTO A. SANCHEZ III, ADORACION SATURNO and CEASAR[*] APOSTOL,** *respondents.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; DISMISSAL OF EMPLOYEE; JUST CAUSES FOR TERMINATION OF EMPLOYMENT.— Basic is the rule that an employer may validly terminate the services of an employee for any of the just causes enumerated under Article 296 (formerly Article 282) of the Labor Code, namely: (a) *Serious misconduct* or willful disobedience by the employee of the lawful orders of his employer or representative in connection with his work; (b) Gross and habitual neglect by the employee of his duties; (c) *Fraud or willful breach by the employee of the trust reposed in him by his employer or duly authorized representative*; (d) Commission of a crime or offense by the employee against the person of his employer or any immediate member of his family or his duly authorized representatives; and (e) Other causes analogous to the foregoing.

2. ID.; ID.; ID.; ID.; MISCONDUCT, DEFINED; ELEMENTS THAT MUST CONCUR FOR MISCONDUCT TO BE A VALID CAUSE FOR DISMISSAL OF AN EMPLOYEE.— [C]ase law characterizes "misconduct" as an improper or wrong conduct; it is the transgression of some established and definite rule of action, a forbidden act, a dereliction of duty, willful in character, and implies wrongful intent and not mere error in judgment. The misconduct, to be serious within the meaning of the Labor Code, must be of such a grave and aggravated character and not merely trivial or unimportant. Thus, for

[*] Also spelled as "CAESAR" in some parts of the *rollo*.

misconduct or improper behavior to be a just cause for dismissal, (a) it must be serious; (b) it must relate to the performance of the employee's duties; and (c) it must show that the employee has become unfit to continue working for the employer.

3. **ID.; ID.; ID.; ID.; PETITIONER'S ACTS AMOUNTED TO SERIOUS MISCONDUCT WARRANTING HER DISMISSAL.—** [T]he Court finds that Gaite's actuations constitutes serious misconduct. *First*, the seriousness of the same cannot be denied. Not only is the amount involved herein a staggering amount of ₱17,720,455.77, the alleged reallocation violated an express provision of the company's Distribution Rules and was accomplished without the knowledge, consent, or authorization of the Board. *Second*, Gaite committed said transfer in the performance of her duties as General Manager of FILSCAP who is responsible for the overall operations thereof, including the regular review and updating of its distribution guidelines to facilitate royalty distribution to FILSCAP members and foreign affiliates. *Third*, because of this grave infraction causing the depletion of the company's Special Accounts held in trust for the rightful copyright owners, Gaite's ability to duly perform and accomplish her duties and responsibilities as General Manager has been seriously put into question. It is clear, therefore, that Gaite's acts amounted to serious misconduct warranting her dismissal.

4. **ID.; ID.; ID.; ID.; ELEMENTS OF LOSS OF TRUST AND CONFIDENCE TO VALIDATE EMPLOYEE'S DISMISSAL, PRESENT IN CASE AT BAR.—** [T]he Court has held that "loss of trust and confidence" will validate an employee's dismissal when it is shown that: (a) the employee concerned holds a position of trust and confidence; and (b) he performs an act that would justify such loss of trust and confidence. Moreover, certain guidelines must be observed for the employer to cite loss of trust and confidence as a ground for termination. It is never intended to provide the employer with a blank check for terminating its employees. Neither should it be loosely applied in justifying the termination of an employee nor should it be used as a subterfuge for causes which are improper, illegal, or unjustified. Here, the Court finds that FILSCAP validly terminated Gaite's employment on the ground of loss of trust and confidence.

5. ID.; ID.; ID.; ID.; ID.; FOR A MANAGERIAL EMPLOYEE TO BE VALIDLY DISMISSED ON THE GROUND OF LOSS OF TRUST AND CONFIDENCE, MERE EXISTENCE OF A BASIS FOR BELIEVING THAT EMPLOYEE BREACHED THE TRUST OF THE EMPLOYER IS SUFFICIENT.— It bears stressing that as managerial employee, Gaite could be terminated on the ground of loss of confidence by mere existence of a basis for believing that she had breached the trust of her employer, which in this case is FILSCAP. Proof beyond reasonable doubt is not required. It would already be sufficient that there is some basis for such loss of confidence, such as when the employer has reasonable ground to believe that the concerned employee is responsible for the purported misconduct and the nature of his participation therein. This distinguishes a managerial employee from a fiduciary rank-and-file where loss of trust and confidence, as ground for valid dismissal, requires proof of involvement in the alleged events in question, and that mere uncorroborated assertion and accusation by the employer will not be sufficient. x x x [T]he mere fact that she authorized said transfer without the knowledge or consent of the Board and in direct contravention of the company's Distribution Rules constitutes valid and legal ground sufficient enough to warrant her dismissal. Otherwise stated, regardless of whether FILSCAP has sufficiently proven actual damage to FILSCAP or that she personally benefited from her actuations, the mere existence of a basis for believing that she breached FILSCAP's trust and confidence suffices as grounds for her dismissal.

APPEARANCES OF COUNSEL

Gordon Dario Reyes Buted Hocson Viado & Blanco Law Offices for petitioner.

Abellara & Calica Law Office for respondents.

D E C I S I O N

PERALTA, *J.*:

Before the Court is a petition for review on *certiorari* under Rule 45 of the Rules of Court seeking to reverse and set aside

the Decision[1] dated November 24, 2014 and the Resolution[2] dated July 1, 2015 of the Court of Appeals (*CA*) in CA-G.R. SP No. 133559.

The antecedent facts are as follows:

On May 16, 2006, respondent Filipino Society of Composers, Authors, and Publishers, Inc. (*FILSCAP*), incorporated in 1965 as a non-stock, non-profit association of composers, lyricists, and music publishers that collectively enforces the public performance rights granted by law to copyright owners of musical works, employed petitioner Debra Ann P. Gaite as its General Manager. Its primary purpose includes: (i) the acquisition of representation and performance rights on music compositions of its members and similar affiliate societies; and (ii) the grant of licenses and collection of royalties for the representation and performance rights on music compositions of its members and similar affiliate foreign societies. In consideration for its authorization of the public performance of copyright works through the issuance of licenses, FILSCAP collects license fees which it then distributes to its members and affiliate foreign societies.

In 2012, several issues pertaining to Gaite were brought to the attention of FILSCAP's Board of Trustees which include the following: (1) the erroneous filing of a case against a records company without prior notice to the Board, which eventually resulted in FILSCAP being ordered to pay ₱1,000,000.00 in damages; (2) her non-disclosure of her receipt of an e-mail inviting one of the board members to a regional digital licensing conference in Taipei; (3) her willful delay in taking action on the collection of proxy forms from members for the May 28, 2011 FILSCAP elections and, consequently, collection of an insufficient number of proxy forms for the said election; (4) her non-disclosure of the complete list of members to a board

---

[1] Penned by Associate Justice Mariflor P. Punzalan Castillo, with Associate Justices Amy C. Lazaro-Javier and Zenaida T. Galapate-Laguilles, concurring; *rollo*, pp. 14-33.

[2] *Id*. at 35-38.

member who wanted to help in securing the proxy forms; and (5) the appropriation for her personal benefit of show tickets given to FILSCAP, which were supposed to be used for monitoring purposes.[3]

Before conducting administrative disciplinary proceedings against Gaite, the Board sought the legal opinion of FILSCAP's external counsel. Thereafter, learning of the issues between FILSCAP and Gaite, the International Confederation of Societies of Authors and Composers (*CISAC*), the umbrella organization of copyright societies around the world, advised FILSCAP to settle the matter amicably. Thus, FILSCAP discussed a graceful exit and separation package with Gaite and scheduled the signing of a Release, Waiver, and Quitclaim on June 26, 2012 which provided that FILSCAP would release, waive and discharge Gaite from any and all actions, whether civil, criminal or administrative, or from any and all claims of any kind or character arising out of or in connection with her employment with FILSCAP in exchange for ₱1,440,386.01.

Days before the scheduled signing, however, FILSCAP discovered that for several fiscal years already, specifically from 2009 to 2011, Gaite had been allowing funds from its Special Accounts to be used to cover the company's Operating Expenses without the knowledge, consent, or authorization of the Board and in contravention of FILSCAP's Distribution Rules. FILSCAP pointed out that it is a non-stock, non-profit organization established to protect the interests of composers, lyricists, and music publishers and that from the royalties it receives, it maintained a Special Accounts for undistributed collections. Under its Distribution Rules, these Special Accounts were intended to be held for a certain period until such time that the conditions for their release to a particular person or entity or to a general membership, as the case may be, have been met. In other words, these funds were held in trust by FILSCAP for the benefit of the rightful owners. But as FILSCAP claimed, it discovered that said Special Accounts were being

---

[3] *Id.* at 15.

transferred and credited to cover the shortage in the Operating Expenses resulting in the dwindling of the same, depriving the rightful beneficiaries of the amount appropriately due them. Because of this discovery, FILSCAP decided to defer the settlement with Gaite and in lieu of the Quitclaim-signing scheduled on June 26, 2012, FILSCAP commenced a specific inquiry into the matter.[4]

During said investigation, FILSCAP confirmed Gaite's unauthorized misappropriation or reallocation, which she committed together with the then Distribution Manager, Mr. Genor Kasiguran, amounting to ₱17,720,455.77. In fact, she even admitted the same in her email to Board member, Mr. Gary Granada, on June 22, 2012, where she said in part that:

> Rox, Genor and I discussed it and made a decision which we thought was in the best interest of the Society. I agree with you that it is mainly an accounting concern. But it was a collegial decision based on reports made by accounting and distribution, distribution rules as approved by the Board, and sound accounting principles (otherwise Rox would have said so). **Whether or not the Board was made fully aware of this (which I heard is now the main issue) does not make the decision wrong**.[5]

In view of said discovery, FILSCAP issued a Show Cause Notice to Gaite dated July 10, 2012 requiring her to explain why no disciplinary sanctions should be imposed on her and likewise placed her under preventive suspension with pay, pending the administrative investigation. In her reply, Gaite denied any misappropriation and informed the Board that she had already filed a case for constructive dismissal against FILSCAP on June 28, 2012, or two (2) days after the cancelled signing of the Quitclaim and even before the July 10, 2012 show-cause notice was sent to her.

In her Position Paper, Gaite alleged that her termination was premeditated and that as early as 2010, she was already

---

[4] *Id*. at 16-17.

[5] *Id*. at 17. (Emphasis ours)

confronted about certain matters such as her out-of-town trips, entitlement to complimentary concert tickets, and her remarks about having too many board meetings. She alleged that it is because FILSCAP and its counsel doubted the validity of their proposed grounds for termination that they instead negotiated with her for a separation package in exchange for her resignation. But belatedly, they reneged on their offer and simulated the charge of loss of confidence to justify her termination. According to Gaite, she did not misappropriate any fund nor is there proof that she utilized the same for her personal use. As regards the alleged reallocation from the Special Accounts to the Operating Expenses, Gaite claimed that such was done in accordance with the company's Distribution Rules which provide that the distributable revenue is calculated by subtracting from the company's gross revenue, among others, all expenses arising from and incidental to the management and operation thereof. Also, she pointed out that, besides, said reallocation redounded to the benefit of the company.[6]

On April 24, 2013, the Labor Arbiter (*LA*) rendered a Decision ordering FILSCAP to pay Gaite ₱1,440,386.10 representing the amount stated in the Quitclaim declaring that there was already a perfected and binding contract between the parties when they negotiated and wrote the final draft of the Quitclaim.[7]

On October 29, 2013, the National Labor Relations Commission (*NLRC*) partially set aside the LA Decision and declared that Gaite was constructively dismissed, ordering FILSCAP to pay her backwages, separation pay, moral and exemplary damages and attorney's fees. According to the NLRC, the acts of FILSCAP prior to terminating Gaite's services amounted to constructive dismissal. *First*, they sought the legal opinion of their counsel as to how they could terminate her employment. Apparently unconvinced with the soundness of their grounds, they negotiated with Gaite for a separation package. But they reneged on their promise and instead belatedly came

---

[6] *Id.* at 18-19.

[7] *Id.* at 20.

up with the charge of reallocation/misappropriation, which is a mere afterthought. To the NLRC, these acts constituted discrimination, insensibility, and disdain towards Gaite amounting to constructive dismissal.[8]

In a Decision dated November 24, 2014, however, the CA reversed and set aside the NLRC Decision. It held that contrary to the NLRC's findings, the acts of FILSCAP in seeking the opinion of its counsel, foregoing the signing of the Quitclaim, and conducting an administrative hearing cannot be considered as acts of discrimination, insensibility, and disdain for it was merely exercising prudence and due diligence in good faith to ensure that Gaite's dismissal would be proper and based on valid grounds.[9] Besides, it was stressed that the said Quitclaim was not perfected as the parties did not sign the same.

As for her actual dismissal, the CA ruled that Gaite was validly dismissed for serious misconduct and loss of trust and confidence. This is because as provided by the company's Distribution Rule, the Board has sole authority to allocate or appropriate FILSCAP's revenues consisting of royalties and license fees. Thus, her act of transferring the staggering amount from the Special Accounts to augment the alleged Operating Expenses deficit without the consent of the Board is serious in that not only did she violate the rules, she depleted the special funds which FILSCAP merely held in trust for the rightful copyright owners, putting FILSCAP in a bad light. In fact, the appellate court noted that to correct Gaite's anomaly, FILSCAP even had to take out a loan to cover the royalties due for distribution but were unavailable because of her reallocation.

The CA also ruled that contrary to Gaite's claim, FILSCAP was able to sufficiently prove with convincing evidence the fact of the reallocation. Besides, her claim that there is no reallocation is inconsistent with her subsequent arguments that the reallocation was made pursuant to the Distribution Rules

---

[8] *Id.* at 21.

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

and that the same even redounded to the benefit of the company. The fact remains that Gaite's culpable acts amounted to loss of trust and confidence justifying her dismissal because as General Manager of FILSCAP, she held a fiduciary position entrusted with the overall operation thereof.[10]

In its Resolution dated July 1, 2015, the CA further rejected Gaite's contention that the accounting report and email correspondence are inadmissible as they were never authenticated, verified or sworn to. First of all, technical rules of evidence are not binding in labor cases. Second of all, Gaite never questioned the authenticity/admissibility thereof before the labor tribunals. Thus, any objection thereto must be deemed waived.[11]

Unfazed, Gaite filed the instant petition on September 7, 2015 invoking the following arguments:

I.

THE COURT OF APPEALS GRAVELY ERRED IN IGNORING THE FACTUAL FINDINGS OF THE NATIONAL LABOR RELATIONS COMMISSION WHICH WERE CLEARLY SUBSTANTIATED BY EVIDENCE ON RECORD.

II.

THE CONCLUSIONS OF THE COURT OF APPEALS WERE GROUNDED ENTIRELY ON SPECULATIONS, SURMISES, AND A MISAPPREHENSION OF FACTS.

III.

THE GROUND UPON WHICH PETITIONER WAS DISMISSED WAS BASELESS, UNFOUNDED, AND CONTRIVED.[12]

In her petition, Gaite posits that the CA erred in reversing the ruling of the NLRC for the same was clearly supported by substantial evidence, particularly, the legal opinion of FILSCAP's

---

[10] *Id*. at 25-32.

[11] *Id*. at 36-37.

[12] *Id.* at 64.

counsel, the minutes of the special meeting of the Board, and the draft of the Quitclaim. These documents evince the premeditated scheme of FILSCAP to oust Gaite from her employment. Clearly, the supposed "reallocation or misappropriation of funds" purportedly committed by Gaite was a belated accusation to forestall the execution of the Quitclaim. Thus, the findings of fact of the NLRC should be respected.[13]

Gaite also claims that the CA erred when it ruled that she was validly dismissed. *First*, the documents presented by FILSCAP as evidence were neither authenticated, identified nor sworn to. As such, they have no probative value and are merely hearsay and self-serving. *Second*, the June 22, 2012 email where Gaite supposedly admitted that there was a "reallocation" of funds was conveniently taken out of context for the CA merely relied on its last paragraph. She invites Us to consider the pertinent portions of the same below:

"Hi Gary. It seems that the brief I prepared was not read or forwarded. Baka that might explain things better.

The ratios reported annually are correct, but based on totals. The distribution is done in pools, with varying percentages of administration cost (specifically for mechanicals and foreign pools) – a practice that has been in place since the beginning. That is causing the deficiencies.

The amounts were not "borrowed." The expense was already made the previous year. (i.e., last year's opex) based on the approved budgets and all disbursements over 50,000 are cleared with the Board. The budgets were not changed at all. But these were expenses already incurred for the previous year's operating expense, and the amount should be deducted from the following year's distribution as specified in our distribution rules. It is simply an issue of the amount not being fully deducted from the following year's distributable amount.

x x x x x x x x x

[13] *Id*. at 64-72.

Genor and I discussed this with Mars and then Rox because it is an accounting concern more than a distribution concern. When the auditor (Bing) discussed the audit findings with us, one issue he mentioned was the lack of reconciliation between the accounting and the distribution. I agreed and said we will direct the two to make a reconciliation. Rox and I then explained the problem of unrecovered costs to him and what we thought of doing to correct the previous years. He said it was "ok" naman especially since these funds can no longer be attributable to any specific recipient.

Rox, Genor and I discussed it and made a decision which we thought was in the best interest of the Society. I agree with you that it is mainly an accounting concern. But it was a collegial decision based on reports made by accounting and distribution, distribution rules as approved by the board, and sound accounting principles (otherwise Rox would have said so). Whether or not the Board was made fully aware of this (which I heard is the main issue) does not make the decision wrong." (Underscoring supplied)[14]

Thus, Gaite claims that "the distribution is done in pools, with varying percentages of administration cost (specifically for mechanicals and foreign pools) – a practice that has been in place since the beginning" and that "the expense was already made the previous year. (*i.e.*, last year's opex) based on the approved budgets and all disbursements over 50,000 are cleared with the Board." Clearly, therefore, this allegation of reallocation is merely an afterthought for had there been irregularities since 2009, the same should have already been discovered in the course of the audit.

Third, to defend her case, Gaite explains that Section 3.1 of the Distribution Rules of the company provides that all expenses arising from and incidental to the conduct, management and operation of the company, which includes Operating Expenses, are first to be deducted from the company's gross revenue, to wit:

3. General Principles Governing Royalty Distribution

---

[14] *Id*. at 74-75.

3.1 Distributable revenue is calculated by subtracting from the Society's gross revenue:

a) ***all expenses arising from and incidental to the conduct, management and operation of the Society;***

b) provision for reserves, if any; and

c) moneys applied by the Board for development and promotion of Filipino Music and culture." (Underscoring supplied)[15]

Thus, Gaite concludes that the monies were used for operating expenses which were used for the company. *Fourth*, Gaite asseverates that the statement of the CA that FILSCAP was constrained to take out a loan to "cover royalties due" is based on conjecture, speculation, and guesswork. This is because the purported bank loan application submitted by FILSCAP does not indicate the purpose the same is to be used other than "capital."[16] *Finally,* Gaite contends that the only offense she appears to be guilty of is that she withheld the disbursement of funds from a Special Fund for the company's Operating Expenses without the knowledge, consent or authorization of the Board. She is not, however, guilty of misappropriation since she did not utilize said funds for her personal use. In fact, it was clearly shown that the disbursement of funds redounded to the benefit of the company.[17]

The Court does not agree.

Ultimately, the bone of contention in the instant case is the legality of Gaite's dismissal.

Basic is the rule that an employer may validly terminate the services of an employee for any of the just causes enumerated under Article 296 (formerly Article 282) of the Labor Code, namely:

---

[15] *Id*. at 76.

[16] *Id*. at 76-77.

[17] *Id*. at 79.

(a) *Serious misconduct* or willful disobedience by the employee of the lawful orders of his employer or representative in connection with his work;

(b) Gross and habitual neglect by the employee of his duties;

(c) *Fraud or willful breach by the employee of the trust reposed in him by his employer or duly authorized representative*;

(d) Commission of a crime or offense by the employee against the person of his employer or any immediate member of his family or his duly authorized representatives; and

(e) Other causes analogous to the foregoing.

Here, the Notice of Termination shows that FILSCAP terminated Gaite's employment due to the fact that her actuations constituted serious misconduct and caused loss of trust and confidence in her as General Manager of the company.[18]

On the first ground for termination, case law characterizes "misconduct" as an improper or wrong conduct; it is the transgression of some established and definite rule of action, a forbidden act, a dereliction of duty, willful in character, and implies wrongful intent and not mere error in judgment. The misconduct, to be serious within the meaning of the Labor Code, must be of such a grave and aggravated character and not merely trivial or unimportant. Thus, for misconduct or improper behavior to be a just cause for dismissal, (a) it must be serious; (b) it must relate to the performance of the employee's duties; and (c) it must show that the employee has become unfit to continue working for the employer.[19]

In the instant case, the Court finds that Gaite's actuations constitutes serious misconduct. *First*, the seriousness of the same cannot be denied. Not only is the amount involved herein a staggering amount of ₱17,720,455.77, the alleged reallocation violated an express provision of the company's Distribution

---

[18] *Id*. at 209.

[19] *Maula v. Ximex Delivery Express, Inc*., G.R. No. 207838, January 25, 2017, 816 SCRA 1, 17-18.

Rules and was accomplished without the knowledge, consent, or authorization of the Board. *Second*, Gaite committed said transfer in the performance of her duties as General Manager of FILSCAP who is responsible for the overall operations thereof, including the regular review and updating of its distribution guidelines to facilitate royalty distribution to FILSCAP members and foreign affiliates. *Third*, because of this grave infraction causing the depletion of the company's Special Accounts held in trust for the rightful copyright owners, Gaite's ability to duly perform and accomplish her duties and responsibilities as General Manager has been seriously put into question. It is clear, therefore, that Gaite's acts amounted to serious misconduct warranting her dismissal.

On the second ground for termination, the Court has held that "loss of trust and confidence" will validate an employee's dismissal when it is shown that: (a) the employee concerned holds a position of trust and confidence; and (b) he performs an act that would justify such loss of trust and confidence. Moreover, certain guidelines must be observed for the employer to cite loss of trust and confidence as a ground for termination. It is never intended to provide the employer with a blank check for terminating its employees. Neither should it be loosely applied in justifying the termination of an employee nor should it be used as a subterfuge for causes which are improper, illegal, or unjustified.[20]

Here, the Court finds that FILSCAP validly terminated Gaite's employment on the ground of loss of trust and confidence. *First*, there is no doubt that she held a position of trust and confidence. The law contemplates two (2) classes of positions of trust. The first class consists of managerial employees. They are as those who are vested with the power or prerogative to lay down management policies and to hire, transfer, suspend, layoff, recall, discharge, assign or discipline employees or effectively recommend such managerial actions. The second class consists

[20] *PJ Lhuillier, Inc. v. Camacho*, G.R. No. 223073, February 22, 2017.

of cashiers, auditors, property custodians, etc. who, in the normal and routine exercise of their functions, regularly handle significant amounts of money or property.[21] As General Manager of the company, Gaite clearly falls under the first class of employee for as earlier pointed out, she was responsible for the overall operations thereof, including the regular review and updating of its distribution guidelines to facilitate royalty distribution to FILSCAP members and foreign affiliates. Specifically, her duties include: (1) preparation of the annual and 3-5 year FILSCAP Programs and budgets, ensuring that the same are implemented effectively and judiciously; and (ii) regular reviews and updating of FILSCAP's distribution guidelines to facilitate royalty distribution to FILSCAP members and foreign affiliates.[22] Hence, the first requisite is present in this case.

Second, it is rather obvious to the Court that the act of transferring the aforementioned staggering amount from the Special Accounts to cover the company's Operating Expenses, without the knowledge and consent of the Board of Directors, and in direct contravention of FILSCAP's Distribution Rules is sufficient reason for the loss of trust and confidence in Gaite. It bears stressing that as managerial employee, Gaite could be terminated on the ground of loss of confidence by mere existence of a basis for believing that she had breached the trust of her employer, which in this case is FILSCAP. Proof beyond reasonable doubt is not required. It would already be sufficient that there is some basis for such loss of confidence, such as when the employer has reasonable ground to believe that the concerned employee is responsible for the purported misconduct and the nature of his participation therein. This distinguishes a managerial employee from a fiduciary rank-and-file where loss of trust and confidence, as ground for valid dismissal, requires proof of involvement in the alleged events in question,

---

[21] *Id*.

[22] *Rollo*, p. 630.

and that mere uncorroborated assertion and accusation by the employer will not be sufficient.[23]

In the present case, the Court agrees with the appellate court in ruling that FILSCAP has sufficiently proven Gaite's unauthorized reallocation or transfer of funds from the company's Special Accounts to its Operating Expenses. For one, the report of FILSCAP's Accounting Officer, Melinda Lenon, dated July 18, 2012 adequately showed that the funds were taken from the distribution pool to cover the operating expenses deficit.[24] For another, such report was, in fact, duly corroborated by Gaite's June 22, 2012 email to Board member, Mr. Gary Granada.

On this matter, Gaite contends that said June 22, 2012 email, where she allegedly admitted to the reallocation, was taken out of context. The Court is not convinced. In the first place, nowhere in said e-mail did she expressly or impliedly deny having reallocated funds from the Special Accounts to the Operating Expenses. In the second place, nowhere in said email did she even address the issue of her unauthorized reallocation. At most, she merely explained therein that "the operating expenses were already incurred based on approved budgets" and that "the same was not deducted from the following year's funds." But the email tells Us nothing about the source from which these expenses were actually paid. Neither does it provide any explanation for FILSCAP's finding that these operating costs were in fact paid using the funds from the Special Accounts. The fact that the issue here is mainly an "accounting concern" has no bearing on the allegations proven in the present case.

Unfortunately for Gaite, moreover, her arguments in the instant petition are just as elusive. There, Gaite merely declared that the CA conveniently took her email out of context and simply relied on its last paragraph but did not particularly illustrate how this was done. Instead, she merely quoted the NLRC's ruling which found that the allegation of reallocation is an

---

[23] *PJ Lhuillier, Inc. v. Camacho, supra* note 20.

[24] *Rollo*, p. 27.

afterthought for had there been irregularities since 2009, the same should have already been discovered in the course of the audit. But again, this finding does not explain how her admission in her email was misinterpreted. The allegation that the reallocation issue is a mere afterthought does not instantly render Gaite innocent of the same. Besides, even if We are to assume that the same was indeed taken out of context, the fact remains that as pointed out by the CA, her claim that there was no reallocation is belied by her subsequent arguments that the reallocation was made pursuant to the Distribution Rules and that the same even redounded to the benefit of FILSCAP.

In her belated attempt to refute the charges against her, Gaite claims that the documents presented by FILSCAP as evidence have no probative value for being neither authenticated, identified, nor sworn to. But the Court affirms the ruling of the appellate court that technical rules of evidence are not binding in labor cases. In addition, any objection to said evidence must be deemed waived for Gaite never questioned the authenticity or admissibility thereof before the labor tribunals.

Contrary to Gaite's expectations, moreover, it has not escaped the Court's attention that while she persistently insists that her act of reallocating funds was sanctioned by the company's Distribution Rules, she unfortunately failed to cite any relevant provision that supposedly authorizes her to do so. To support her claim, she cites Section 3.1 of the Distribution Rules. But all said provision states is that all expenses arising from and incidental to the conduct, management and operation of the company, which includes the Operating Expenses, are first to be deducted from the gross income. Nowhere in the rules cited by Gaite was it provided, either expressly or impliedly, that she, as General Manager of FILSCAP, is authorized to transfer funds from the Special Accounts to cover the Operating Expenses without the knowledge or consent of the Board. As the CA points out, it is true that the Operating Expenses must first be deducted from gross revenue to arrive at the distributable revenue. But the Distribution Rules expressly provide that part of the distributable revenue, *after operating and other expenses have*

been deducted, are to be held in suspense under special accounts for certain works to be distributed later to the rightful owners or to the general membership, as the case may be.[25] Thus, Gaite should not have used the funds from the Special Accounts to cover Operating Expenses because in the first place, the Operating Expenses should have already been deducted from the gross revenue before part of the distributable royalties may be set aside under the Special Accounts. In fact, it bears stressing that Paragraph 1.2 of the Distribution Rules even provides that *the Board has the sole authority to allocate or appropriate FILSCAP's revenues consisting of royalties and license fees*.[26] It is therefore clear that not only did Gaite anchor her defense on an inapplicable and irrelevant provision of the company's Distribution Rules, her commission of the subject reallocation goes against the express prohibitions provided thereunder.

The Court finds it worthy to state further that Gaite seems to be missing the point in insisting that there is no showing that an interested person had suffered any damage or injury as a result of the perceived 'reallocation.' That she did not use the funds for her personal gain and that the transfer thereof redounded to the benefit of the company is of no moment. To the Court, the mere fact that she authorized said transfer without the knowledge or consent of the Board and in direct contravention of the company's Distribution Rules constitutes valid and legal ground sufficient enough to warrant her dismissal. Otherwise stated, regardless of whether FILSCAP has sufficiently proven actual damage to FILSCAP or that she personally benefited from her actuations, the mere existence of a basis for believing that she breached FILSCAP's trust and confidence suffices as grounds for her dismissal.

At this juncture, it must be noted that the Court, in *Kasiguran v. FILSCAP, et al.,* had already issued a Resolution[27] dated

---

[25] *Id*. at 28.

[26] *Id*. at 26.

[27] *Id*. at 825-829.

April 6, 2015, where it ruled upon the illegal dismissal suit filed against FILSCAP by Mr. Genor Kasiguran, the Distribution Manager of FILSCAP with whom Gaite allegedly conspired in committing the same unauthorized act of reallocation charged herein. There, the Court upheld the validity of Kasiguran's dismissal on the grounds of serious misconduct and loss of trust and confidence, *viz.*:

> In this case, the LA and the NLRC were uniform in their findings that the ₱17,720,455.77 subject amount was transferred from Special Accounts to the Operating Expenses without the required Board approval. The NLRC did not consider this as sufficient reason to justify Kasiguran's dismissal because: (1) the respondents failed to prove that they were defrauded which to it was an essential element of misappropriation; and (2) hence, while there was "transfer," the dismissal was too harsh a penalty.
>
> It should be noted, however, that **the damage to the respondents or whether or not the respondents were defrauded is not a necessary element and consideration in determining whether sufficient basis exists to justify the employee's dismissal on grounds of serious misconduct or loss of trust. To reiterate, the employer need only to entertain the moral conviction or such reasonable grounds to believe, that the employee is responsible for the misconduct and the nature of the latter's participation renders him unworthy of the trust and confidence demanded by the position; that the act resulting in the loss of trust or the misconduct is established by facts; and that the act or misconduct is willfully made, *i.e.,* the employee voluntarily and willfully committed the act, although he may not have intended the wrongful consequence**.[28]

Prescinding from the foregoing, it is evident from the facts of this case that Gaite was validly dismissed on the grounds of serious misconduct and loss of trust and confidence for her unauthorized reallocation of funds from FILSCAP's Special Accounts to cover the deficit in its Operating Expense without the required knowledge, consent, or authorization of the

---

[28] *Id*. at 828. (Emphasis ours)

company's Board of Directors. Time and again, the Court has emphasized that an employer has the right to exercise its management prerogative in dealing with its company's affairs including its right to dismiss its erring employees. We recognized the right of the employer to regulate all aspects of employment, such as the freedom to prescribe work assignments, working methods, processes to be followed, regulation regarding transfer of employees, supervision of their work, lay-off and discipline, and dismissal and recall of workers. In fact, it is a general principle of labor law to discourage interference with an employer's judgment in the conduct of his business. Even as the law is solicitous of the welfare of the employees, it also recognizes employer's exercise of management prerogatives. Thus, for as long as the company's exercise of judgment is in good faith to advance its interest and not for the purpose of defeating or circumventing the rights of employees under the laws or valid agreements, such exercise will be upheld.[29]

WHEREFORE, premises considered, the instant petition is **DENIED.** The assailed Decision dated November 24, 2014 and Resolution dated July 1, 2015 of the Court of Appeals are **AFFIRMED.**

SO ORDERED.

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

Caguioa, J., on wellness leave.

---

[29] *Moya v. First Solid Rubber Industries, Inc.,* 718 Phil. 77, 87 (2013).

FIRST DIVISION

[G.R. No. 228886. August 8, 2018]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **CHARLIE FLORES, DANIEL FLORES and SAMMY FLORES,** *accused-appellants.*

SYLLABUS

1. CRIMINAL LAW; REVISED PENAL CODE; MURDER; ELEMENTS THEREOF, CLEARLY ESTABLISHED IN CASE AT BAR.— To successfully prosecute the crime of murder under Article 248 of the Revised Penal Code (RPC), the following elements must be established: "(1) that a person was killed; (2) that the accused killed him or her; (3) that the killing was attended by any of the qualifying circumstances mentioned in Article 248 of the [RPC]; and (4) that the killing is not parricide or infanticide." In this case, the prosecution was able to clearly establish all the elements.

2. ID.; ID.; ID.; QUALIFYING CIRCUMSTANCE OF ABUSE OF SUPERIOR STRENGTH, PROVEN BY THE PROSECUTION.— In the instant case, the prosecution clearly established that the accused-appellants, taking advantage of their number, purposely resorted to holding Larry by the armpit so that all the knife-wielders would be free to stab him, albeit successively. In *People v. Garchitorena*, the Court *en banc* appreciated the qualifying circumstance of abuse of superior strength after finding that therein "accused-appellants, armed with a deadly weapon, immobilized the victim and stabbed him successively using the same deadly weapon." Moreover, in terms of numbers, Larry was with his lone companion, Eduardo, while the assailants, totaling five, participated in the attack. A disparity in strength and size was thus apparent.

3. ID.; ID.; ID.; PENALTY AND CIVIL LIABILITY.— Anent the penalty, there being no other circumstance other than the qualifying circumstance of abuse of superior strength, the trial

court had imposed the penalty of *reclusion perpetua* which the CA properly affirmed. As to the award of damages to Larry's heirs, prevailing jurisprudence directs the payment to the heirs of the victim the amounts of ₱75,000.00 as moral damages; ₱75,000.00 as civil indemnity; ₱75,000.00 as exemplary damages; and ₱50,000.00 as temperate damages as well as the payment of 6% interest *per annum* on all amounts from finality of this Decision until full payment.

APPEARANCES OF COUNSEL

The Solicitor General for plaintiff-appellee.
Public Attorney's Office for accused-appellants.

D E C I S I O N

DEL CASTILLO, *J.*:

This is an appeal[1] from the June 16, 2016 Decision[2] of the Court of Appeals (CA) in CA-G.R. CR-HC No. 07219 which affirmed with modification the Decision[3] of the Regional Trial Court (RTC) of Infanta, Quezon, Branch 65, in Criminal Case No. 1738-I.

The Facts

Accused-appellants Charlie Flores alias "Alit[4] Flores" (Charlie), Daniel Flores alias "Jover Violata" (Daniel), and Sammy Flores alias "Ricky Violata" (Sammy),[5] along with their

---

[1] *Rollo*, pp. 11-12.

[2] *Id*. at 2-10; penned by Associate Justice Socorro B. Inting and concurred in by Associate Justices Remedios A. Salazar-Fernando and Priscilla J. Baltazar-Padilla.

[3] Records, pp. 413-431; penned by Presiding Judge Arnelo C. Mesa.

[4] Also referred to as Alid and Bong in some parts of the records.

[5] The formal amendment to the Information was granted in the Order dated March 24, 2009. (Records, p. 30)

co-accused, Gary Badeviso (Gary) and Rodel Torestre (Rodel), who remain at large, were charged with murder in an Information[6] which reads:

> That on or about the 25th day of December, 2002, at Barangay Tignoan, in the Municipality of Real, Province of Quezon, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused armed with bladed weapons, with intent to kill and qualified by abuse of superior strength, conspiring, confederating together and mutually helping one another, did then and there, willfully, unlawfully and feloniously attack, assault and simultaneously gang up upon a certain Larry Parcon and stab him several times with the use of said bladed weapons, thereby inflicting upon him multiple fatal stabbed wounds on the different vital parts of his body which directly caused his death.
>
> Contrary to law.[7]

Upon arraignment, accused-appellants pleaded not guilty.[8] After the conduct and termination of the pre-trial,[9] trial ensued.

The Version of the Prosecution

The evidence for the prosecution revealed that, at around 8:45 p.m. on December 25, 2002, the victim, Larry Parcon (Larry) and Eduardo Mabini (Eduardo) were on their way home aboard a motorcycle when it ran out of fuel right in front of a videoke bar in *Barangay* Tignoan, Real, Quezon.[10] After telling Eduardo to buy fuel and giving him money, Larry went inside the videoke bar.[11] When he was about to go in, Eduardo, who was an arm's length away from the door of the videoke bar, heard a commotion coming from inside the bar.[12] He decided to go inside and climb

---

[6] *Id*. at 2.

[7] *Id*.

[8] *Id*. at 32.

[9] *Id*. at 38-40.

[10] TSN, October 1, 2009, pp. 3-4.

[11] *Id*. at 4.

[12] *Id*.

the stairs, located in front of the bar,[13] to check.[14] There he saw Larry pacifying Sammy and Daniel who were fighting and Larry telling them, "*bakit kayo nag aaway, paskong pasko*."[15] Then suddenly, Rodel ran towards Larry and stabbed him.[16] Eduardo shouted, "Why did you hit my boss?"[17] Sammy, Daniel, and Rodel then turned to Eduardo and took turns punching him.[18] Sammy tried to stab Eduardo but the latter failed because Eduardo had fallen down the stairs.[19] Sammy and Daniel went back to Larry and, using seven-inch double-blade knives, alternately stabbed him on the lower right and left sides of his body while Charlie held him by the armpits.[20] Gary also stabbed Larry on the head while another one, identified as Belgar, likewise stabbed him on his right side.[21] When the assailants had fled through the back door, Eduardo sought help at the *barangay* hall.[22] Larry was boarded on one of the *barangay tanod's* vehicle and rushed to the hospital.[23] Unfortunately, he was pronounced dead on arrival after suffering five fatal stab wounds.[24] Beverly, the wife of Larry, testified regarding the burial expenses as well as to the moral damages caused by the death of her husband.[25] She likewise stated that Larry was a Philippine Army corporal earning ₱8,000.00 a month.[26]

---

[13] TSN, December 3, 2009, p. 4.

[14] TSN, October 1, 2009, p. 4.

[15] *Id*. at 5.

[16] *Id.* at 5-6.

[17] *Id*. at 6.

[18] *Id*.

[19] *Id*. at 7.

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

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

[22] TSN, October 13, 2009, pp. 3-4.

[23] *Id*. at 7.

[24] TSN, June 9, 2011, p. 3; Medical Certificate dated January 3, 2003 and signed by Dr. Jolly Grace Sta. Lucia (Records, p. 215).

[25] TSN, July 1, 2010, pp. 3-7.

[26] *Id*. at 8.

The Version of the Defense

Accused-appellants denied the allegations.[27] Sammy and Daniel — who are cousins[28] — claimed that they were at the house of the manager of their logging business, Sheryl Orozco (Sheryl), in *Barangay* Pagsanghan, General Nakar, Quezon at 9:00 p.m. and Sammy went home around midnight to sleep.[29] Sheryl testified to corroborate their claim that, on that night, Sammy and Daniel were at her house.[30] Meanwhile, Charlie, brother of Sammy,[31] claimed being with his wife, Lonelyn Bantigue (Lonelyn), and brother-in-law, Jesus Bantigue (Jesus), in Sitio Pagitna, Rizal, Burdeos, Quezon.[32] Lonelyn corroborated the testimony of her husband that, at the time of the incident, Charlie was with her and her brother, Jesus.[33]

The Ruling of the Regional Trial Court

The RTC of Infanta, Quezon, Branch 65, rendered a Decision finding accused-appellants guilty of the charge. It found that there was abuse of superior strength which qualified the crime to murder.[34] The trial court also gave credence to the testimony of the lone prosecution witness who was able to see the incident since the bar was well-lit[35] and who was not shown to have any ill motive in testifying against accused-appellants.[36] Finding

---

[27] TSN, September 1, 2011, p. 3; TSN, April 19, 2012, p. 3; TSN, December 4, 2012, p. 3.

[28] TSN, September 12, 2012, p. 2.

[29] TSN, April 19, 2012, p. 4; TSN, July 10, 2012, p. 3; TSN, December 4, 2012, p. 3.

[30] TSN, July 25, 2013, p. 4.

[31] TSN, November 22, 2011, p. 5.

[32] TSN, September 1, 2011, p. 4.

[33] TSN, January 17, 2012, p. 4.

[34] Records, p. 424.

[35] *Id*. at 427; TSN, December 3, 2009, p. 3.

[36] *Id.*

that only ₱15,000.00 of the actual expenses was duly proven by receipts and with no evidence presented on the earning capacity of the victim other than the testimony of the widow, the RTC instead awarded temperate damages in the amount of ₱25,000.00.[37] The dispositive portion of the Decision reads:

> IN LIGHT OF THE FOREGOING, judgment is hereby rendered against accused SAMMY FLORES alias "Ricky Violata," CHARLIE FLORES alias "Alit Flores," and DANIEL FLORES alias "Jover Violata" finding them guilty beyond reasonable doubt of the crime of murder, and the provisions of Indeterminate Sentence Law being not applicable, the fact that the penalty [imposable] upon them is x x x indivisible, and accordingly, the penalty of reclusion perpetua pursuant [to] Article 248 of the Revised Penal Code, is hereby imposed upon all said accused, for them to suffer all the accessory penalties, and to pay jointly and solidarily the heirs of victim Larry Parcon the following, to wit:
>
> a) ₱75,000.00 as civil indemnity by reason of victim's death
> b) ₱50,000.00 as moral damages
> c) ₱25,000.00 as temperate damages
> d) ₱30,000.00 as exemplary damages[;] and[,]
>
> to pay the costs of suit.
>
> This case insofar as accused Gary Badeviso and Rodel Torestre are concerned, who are still at large, is ordered archived to be revived as soon as the said accused are apprehended.
>
> SO ORDERED.[38]

Accused-appellants filed their appeal[39] assailing their conviction. They specifically assailed their identification by the lone witness for the prosecution.[40] They also imputed error on the trial court for having qualified the crime as murder after it had ruled that they abused their superior strength.[41]

---

[37] *Id*. at 430.

[38] *Id*. at 430-431.

[39] *Id*. at 435.

[40] CA *rollo*, pp. 37-38.

[41] *Id*. at 43.

The People of the Philippines, through the Office of the Solicitor General, on the other hand, posited that accused-appellants were guilty beyond reasonable doubt of the crime of murder.[42] Specifically, plaintiff-appellee argued that the defense of denial could not outweigh the positive identification of accused-appellants as the perpetrators of the crime and the trial court committed no error in giving full faith and credence to the testimony of the lone prosecution eyewitness.[43]

The Ruling of the Court of Appeals

The appellate court affirmed the conviction of accused-appellants subject only to minor modifications in the penalty as follows:

> WHEREFORE, the Decision dated 16 October 2014 of the Regional Trial Court (RTC) of Infanta, Quezon, Branch 65, in Criminal Case No. 1738-I is AFFIRMED with the following MODIFICATION:
>
> (1) Accused-appellants are not eligible for parole;
> (2) That an interest, at the rate of six percent (6%) per annum shall be imposed on all the damages awarded in this case from the date of finality of this judgment until they are fully paid.
>
> SO ORDERED.[44]

Hence, the present appeal.[45] After being asked to file supplemental briefs if they so desired,[46] the parties instead submitted Manifestations[47] in which they stated that they were adopting their Briefs[48] submitted earlier before the appellate court and were dispensing with the filing of Supplemental Briefs.[49]

---

[42] *Id.* at 79.

[43] *Id*. at 79-80.

[44] *Rollo*, pp. 9-10.

[45] *Id*. at 11.

[46] *Id*. at 16-17.

[47] *Id*. at 23-25 and 28-29.

[48] CA *rollo*, pp. 35-46 and 74-96.

[49] *Rollo*, pp. 23 and 28.

Our Ruling

There is no merit in the appeal.

To successfully prosecute the crime of murder under Article 248[50] of the Revised Penal Code (RPC), the following elements must be established: "(1) that a person was killed; (2) that the accused killed him or her; (3) that the killing was attended by any of the qualifying circumstances mentioned in Article 248 of the [RPC]; and (4) that the killing is not parricide or infanticide."[51]

In this case, the prosecution was able to clearly establish all the elements. The lone witness for the prosecution, Eduardo, was able to categorically identify accused-appellants. His testimony was clear, as follows:

Q: After your boss said "*bakit kayo nag-aaway, paskong-pasko*," what transpired next if there was any?
A: After he said that, [a man suddenly came] running from outside, ma'am.

Q: From your location, was it right side or left side?
A: Right side, ma'am.

Q: Where did this person go coming from the right side?
A: Going to my boss, ma'am.

Q: Was he able to reach your boss?
A: Yes, ma'am.

---

[50] Article 248. *Murder.* — Any person who, not falling within the provisions of Article 246, shall kill another, shall be guilty of murder and shall be punished by *reclusion perpetua*, to death if committed with any of the following attendant circumstances:

1. With treachery, **taking advantage of superior strength**, with the aid of armed men, or employing means to weaken the defense or of means or persons to insure or afford impunity[.] (emphasis supplied)

[51] *People v. Gaborne*, 791 Phil. 581, 592 (2016), citing *People v. Dela Cruz*, 626 Phil. 631, 639 (2010).

Q: What [did] this person do to your boss if there was any?
A: "*Parang sinuntok po nya ang boss ko sa kaliwang dibdib*." (Witness is pointing to his left chest).

Q: Was he hit?
A: Yes, ma'am.

Q: Were you able to [identify] this person who hit your boss on his left chest?
A: Yes, ma'am.

Q: Who was this person?
A: Rodel Flores, ma'am.[52]

x x x x x x x x x

Q: After you fell [down] the stairs, what transpired next if there was any?
A: They went back to my boss, ma'am.

Q: Who [were] you x x x referring to?
A: Sammy Flores and Daniel Flores, ma'am.

Q: Were they able to get back to your boss?
A: Yes, ma'am.

Q: What did they do to your boss if there was any?
A: They stabbed him, both of them stabbed him, ma'am.

COURT

Q: Who stabbed first your boss?
A: Sammy Flores, ma'am.

Q: How many times [did] Sammy [stab] your boss?
A: Only [once], Your Honor.

COURT: Proceed, Fiscal.

FISCAL AVELLANO

Q: Was [your] boss hit by Sammy Flores?

A: Yes, ma'am.

---

[52] TSN, October 1, 2009, pp. 5-6.

Q: [W]hich part of his body x x x was hit?

A: Right side of his body, ma'am.

Q: Was it the upper part of his body or lower part of his body?

A: Lower right side, ma'am.

COURT:

Q: How about Daniel Flores, how many times [did] he [stab] your boss Larry Parcon?
A: Only [once], Your Honor.

COURT: Proceed, Fiscal.

FISCAL AVELLANO:

Q: Was your boss hit by Daniel Flores?
A: Yes, ma'am.

Q: Which part of the body of Larry Parcon was hit by Daniel Flores?
A: Left side, ma'am.

Q: Was it upper or lower part of his body?
A: Lower left side, ma'am. (Witness is pointing to his left side of his body.)

x x x x x x x x x

Q: After Larry Parcon was stabbed by Sammy Flores and Daniel Flores, what happened to him if there was any?
A: He was just lying, ma'am.

x x x x x x x x x

Q: While Sammy Flores and Daniel Flores were stabbing Larry Parcon, where was Charlie Flores then?
A: Charlie Flores [was holding] my boss Larry Parcon, ma'am.

Q: Where did this Charlie Flores hold your boss?
A: "*Sa dalawang kili-kili po*," ma'am. (In [sic] his two armpits.)

Q: When did Charlie Flores hold the armpit of your boss, was it before x x x or after Sammy Flores and Danny Flores stabbed him.
A: Before they stabbed him, ma'am.

Q: While Charlie Flores was holding your boss, what did Sammy Flores and Daniel Flores do to your boss?
A: They stabbed him, ma'am.

Q: [Were] Sammy Flores and Daniel Flores the only [persons who] stabbed your boss during that time?
A: No, ma'am.

Q: Who else stabbed your boss?
A: Gary Badeviso and one Belgar, ma'am.[53]

Q: Now, Mr. Witness, when these Sammy Flores and Daniel Flores ran away to the direction of the back of the x x x bar, what transpired next, if there was any?
A: Gary ran towards my boss, ma'am.

Q: And when Gary Badeviso ran towards your boss, what transpired next?
A: He stabbed my boss on his head, ma'am.

COURT:

Q: Was his head hit by the stabbing of Gary Badeviso?
A: Yes, Your Honor.

Q: And what part of his head was hit by the stabbing of Gary Badeviso?
A: Here, Your Honor. (Witness is pointing to the top of his head.)

FISCAL AVELLANO:

x x x x x x x x x

Q: After Gary stabbed your boss on his head, what transpired next, if there was any?
A: His head bled, ma'am.

x x x x x x x x x

Q: And after this Gary Badeviso ran away, what transpired next, if there was any?
A: It was Belgar who approached my boss, ma'am.

---

[53] *Id*. at 7-11.

x x x x x x x x x

Q: After Belgar went to your boss, what transpired next?
A: Belgar also stabbed him on his side, ma'am.

Q: And was your boss hit by the stabbing of Belgar?
A: Yes, ma'am.

x x x x x x x x x

Q: To which side of his body?
A: On his ride side, ma'am. (Witness pointed to his right side just below the armpit.)[54]

At the time of the incident, the videoke bar was well lighted by three fluorescent lamps while a fourth lamp illuminated the counter.[55] No ill motive was also shown for the lone prosecution eyewitness to testify against accused--appellants. This Court thus finds no error in the affirmance by the appellate court of the trial court's finding of guilt of the accused-appellants based on the sole testimony of the prosecution witness who positively identified the perpetrators.

Meanwhile, the qualifying circumstance of abuse of superior strength was proven by the prosecution. *People v. Beduya*[56] is instructive on the notion of abuse of superior strength.

> Abuse of superior strength is present whenever there is a notorious inequality of forces between the victim and the aggressor, assuming a situation of superiority of strength notoriously advantageous for the aggressor selected or taken advantage of by him in the commission of the crime. The fact that there were two persons who attacked the victim does not per se establish that the crime was committed with abuse of superior strength, there being no proof of the relative strength of the aggressors and the victim. The evidence must establish that the assailants purposely sought the advantage, or that they had the deliberate intent to use this advantage. To take advantage of superior strength means to purposely use excessive force out of proportion to

---

[54] TSN, October 13, 2009, pp. 4-7.

[55] TSN, December 3, 2009, p. 4.

[56] 641 Phil. 399 (2010).

the means of defense available to the person attacked. The appreciation of this aggravating circumstance depends on the age, size, and strength of the parties.[57] (Citations omitted)

In the instant case, the prosecution clearly established that the accused-appellants, taking advantage of their number, purposely resorted to holding Larry by the armpit so that all the knife-wielders would be free to stab him, albeit successively. In *People v. Garchitorena*,[58] the Court *en banc* appreciated the qualifying circumstance of abuse of superior strength after finding that therein "accused-appellants, armed with a deadly weapon, immobilized the victim and stabbed him successively using the same deadly weapon." Moreover, in terms of numbers, Larry was with his lone companion, Eduardo, while the assailants, totaling five, participated in the attack. A disparity in strength and size was thus apparent.

Anent the penalty, there being no other circumstance other than the qualifying circumstance of abuse of superior strength, the trial court had imposed the penalty of *reclusion perpetua* which the CA properly affirmed.

As to the award of damages to Larry's heirs, prevailing jurisprudence[59] directs the payment to the heirs of the victim the amounts of ₱75,000.00 as moral damages; ₱75,000.00 as civil indemnity; ₱75,000.00 as exemplary damages; and ₱50,000.00 as temperate damages as well as the payment of 6% interest *per annum* on all amounts from finality of this Decision until full payment.

WHEREFORE, the appeal is **DISMISSED**. The June 16, 2016 Decision of the Court of Appeals in CA-G.R. CR-HC No. 07219 is hereby **AFFIRMED with MODIFICATIONS**.

---

[57] *Id*. at 410-411.

[58] 614 Phil. 66, 91 (2009).

[59] *People v. Jugueta*, 783 Phil. 806 (2016); *Nacar v. Gallery Frames*, 716 Phil. 267 (2013).

Accused-appellants Charlie Flores alias "Alit Flores", Daniel Flores alias "Jover Violata", and Sammy Flores alias "Ricky Violata" are hereby found guilty of murder. They are hereby sentenced to suffer the penalty of *reclusion perpetua* and ordered to pay, jointly and severally, the heirs of Larry Parcon the following: (a) ₱75,000.00 as civil indemnity; (b) ₱75,000.00 as moral damages; (c) ₱75,000.00 as exemplary damages; (d) ₱50,000.00 as temperate damages; and (e) interest at the rate of 6% *per annum* on all amounts from the finality of this Decision until fully paid.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 203587. August 13, 2018]

DIWA ASIA PUBLISHING, INC. and SATURNINO BELEN, *petitioners, vs.* **MARY GRACE U. DE LEON** *respondent.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; TERMINATION OF EMPLOYMENT BY EMPLOYER; CONSTRUCTIVE DISMISSAL; DEFINED; THE TEST OF CONSTRUCTIVE DISMISSAL IS WHETHER A REASONABLE PERSON IN THE EMPLOYEE'S POSITION WOULD HAVE FELT COMPELLED TO GIVE

---

[*] Per Special Order No. 2559 dated May 11, 2018.

[**] Per Special Order No. 2560 dated May 11, 2018.

UP HIS POSITION UNDER THE CIRCUMSTANCES.— "[C]onstructive dismissal [is] a cessation of work because continued employment is rendered impossible, unreasonable or unlikely; when there is a demotion in rank or diminution in pay or both; or when a clear discrimination, insensibility, or disdain by an employer becomes unbearable to the employee." It is an act amounting to dismissal but made to appear as if it were not. In other words, it is a dismissal in disguise. The test of constructive dismissal is whether a reasonable person in the employee's position would have felt compelled to give up his position under the circumstances. Considering the facts of this case, the Court agrees with the CA that respondent was constructively dismissed.

2. **ID.; ID.; ID.; ID.; THE REDUCTION IN THE EMPLOYEE'S DUTIES AND RESPONSIBILITIES AMOUNTING TO A DEMOTION IS TANTAMOUNT TO CONSTRUCTIVE DISMISSAL; ESTABLISHED IN CASE AT BAR.—** Respondent was excluded from important HR decisions which she was expected not only to be privy to, but also to have a say in, by virtue of her position in the company. x x x Respondent has likewise submitted evidence in the form of e-mails from Asuncion showing that although her job designation remained the same, she was relegated to performing mundane or clerical tasks such as preparing drafts of termination notices based on a standard format and ensuring that the last pay of employees was released and that termination notices were received by the Department of Labor and Employment. As this Court previously held: There is constructive dismissal when an employee's functions, which were originally supervisory in nature, were reduced; and such reduction is not grounded on valid grounds such as genuine business necessity. The reduction in respondent's duties and responsibilities as HR Manager amounted to a demotion that was tantamount to constructive dismissal.

3. **ID.; ID.; ID.; ID.; ILLEGAL DISMISSAL; FULL BACKWAGES AND SEPARATION PAY; AN UNJUSTLY DISMISSED EMPLOYEE IS ENTITLED TO SEPARATION PAY WHEN REINSTATEMENT IS NO LONGER FEASIBLE GIVEN THE STRAINED RELATIONS BETWEEN THE DISMISSED EMPLOYEE AND HIS/HER EMPLOYER; CASE AT BAR.—** Under Article 279 of the Labor Code, an employee who is unjustly

dismissed from work shall be entitled to reinstatement without loss of seniority rights and other privileges and to his full backwages, inclusive of allowances, and to his other benefits or their monetary equivalent computed from the time his compensation was withheld from him up to the time of his actual reinstatement. Furthermore, inasmuch as reinstatement is no longer feasible given the strained relations between petitioners and respondent, the award of separation pay equivalent to one (1) month's salary for every year of service was just and reasonable as an alternative to reinstatement.

4. ID.; ID.; ID.; ID.; BOTH THE SEPARATION PAY AND BACKWAGES SHALL BE COMPUTED UP TO THE FINALITY OF THE DECISION AS IT IS AT THAT POINT THAT THE EMPLOYMENT RELATIONSHIP IS EFFECTIVELY ENDED; CASE AT BAR.— Both the separation pay and backwages shall be computed up to the finality of the decision as it is at that point that the employment relationship is effectively ended. Respondent's backwages shall be paid with interest at twelve percent (12%) *per annum* from June 23, 2004 to June 30, 2013 and at six percent (6%) *per annum* from July 1, 2013 until their full satisfaction. Her separation pay, in lieu of reinstatement, shall earn interest at six percent (6%) *per annum* from the finality of this Decision until full payment. Backwages are aimed to replenish the income that was lost by reason of the unlawful dismissal. Together with the remedy of reinstatement, they make the dismissed employee whole who can then look forward to continued employment, thereby giving meaning and substance to the constitutional right of labor to security of tenure. For this reason, the Court cannot sustain petitioners' argument that the award of backwages must be reduced owing to the period spent in reconstituting the CA's records of the case. x x x Having caused the unlawful dismissal, petitioners must assume the consequences of the application of the law and jurisprudence, no matter how unfavorable to them.

APPEARANCES OF COUNSEL

Nograles Law Office for petitioners.
Librada Law Office for respondent.

D E C I S I O N

TIJAM, *J.*:

This is a petition for review[1] under Rule 45 of the Rules of Court filed by petitioners Diwa Asia Publishing, Inc. (Diwa) and Saturnino Belen, assailing the Decision[2] dated July 2, 2012 and the Resolution[3] dated September 20, 2012 of the Court of Appeals (CA) in CA-G.R. SP No. 99055, which reversed and set aside the Decision[4] dated November 29, 2006 and the Resolution[5] dated February 28, 2007 of the National Labor Relations Commission (NLRC) in NLRC NCR 06-07521-04 (CA No. 046593-05) which, in turn, affirmed the Decision[6] dated October 7, 2005 of the Labor Arbiter (LA) in NLRC NCR Case No. 06-07521-2004 dismissing the complaint filed by Mary Grace U. De Leon (respondent) for constructive dismissal.

The Facts

Diwa Learning Systems, Inc. (DLSI) is a subsidiary of Diwa.[7] It is part of a conglomeration of companies that include First Asia Ventures Company, Inc. (FAVCI) and Fastech Advanced

---

[1] *Rollo*, pp. 16-93.

[2] Penned by Presiding Justice Andres B. Reyes, Jr. (now a Member of this Court), concurred in by Associate Justices Sesinando E. Villon and Amy C. Lazaro-Javier; *id*. at 850-868.

[3] *Id*. at 945-947.

[4] Penned by Presiding Commissioner Raul T. Aquino, concurred in by Commissioner Victoriano R. Calaycay. Commissioner Angelita A. Gacutan was on leave; *id*. at 477-487.

[5] Penned by Presiding Commissioner Raul T. Aquino, concurred in by Commissioner Angelita A. Gacutan; *id*. at 510-512.

[6] Rendered by Labor Arbiter Lutricia F. Quitevis-Alconcel; *id*. at 363-370.

[7] Also named as Diwa Asia Publishing Group, Inc. by respondent; *id*. at 120 and 407.

Assembly, Inc. (Fastech).[8] Petitioner Saturnino Belen[9] is the Chairman of Diwa's Board of Directors.[10]

Respondent was invited to join Fastech, but was not eventually hired due to a freeze order against the corporation. Gemma P. Asuncion (Asuncion), then Vice-President (VP) of Fastech, endorsed her to Diwa.[11]

Respondent was subsequently hired by DLSI and began working as its Human Resource (HR) Manager on August 2, 2001, becoming a regular employee on February 2, 2002. Although her contract was under DLSI, her work encompassed handling the HR Department of the other companies in the conglomeration.[12]

On June 23, 2004, respondent filed a Complaint against petitioners for constructive dismissal, docketed as NLRC NCR Case No. 06-07521-2004.[13]

Respondent's Averments

According to respondent, in March 2002, the employment status of Jayde Salvan (Salvan), an editor who had been working for Diwa for two (2) continuous years, was converted into "contractual status for the sole reason of 'incompetence.'" As HR Manager, she gave her opinion on the matter. The management found her opinion unacceptable and even construed it as an insult. From then on, her working relationship with the company turned sour. The management even made imputations that she took part in inciting employees to file labor cases against Diwa.[14]

---

[8] *Id*. at 851-852.

[9] Also identified as Saturnino G. Belen, Jr. by respondent; *id*. at 120-121 and 407.

[10] *Id.* at 121.

[11] *Id*. at 124 and 852.

[12] *Id*. at 97 and 852-853.

[13] *Id*. at 363 and 856.

[14] *Id*. at 203-205 and 853.

In July 2003, respondent was informed that the FAVCI Executive Director for HR, Asuncion, would forthwith be regularly present in the former's office to provide guidance for six (6) months in the management of employees which was then perceived as pro-labor. On August 11, 2003, Asuncion informed respondent that the former would assume the position of Diwa's President, Amada J. Javellana (Javellana), as her immediate supervisor. However, the company's hierarchical structure showed that she was under the supervision of no officer other than the President, and such was the situation for the past two years, before the incident involving Salvan.[15]

Respondent perceived that she was being demoted as Asuncion instructed her to submit all work and decisions, which she previously had the liberty to handle and make, for Asuncion's review and evaluation.[16]

Respondent nonetheless carried on with her job but management remained hostile towards her, blowing even the smallest issue out of proportion, faulting her for situations she had nothing to do with or beyond her control, and giving her directives which management would later deny.[17] Furthermore, she was unfairly accused of failing to properly perform her job, bypassed in important HR-related decisions, berated in front of her staff, and held accountable for the mistakes of others. These incidents are allegedly well-outlined in the exchanges of electronic mails (e-mails) among Asuncion, respondent and other parties. Respondent also averred that Asuncion would shout at her and would more often than not give sarcastic comments for everything she did and said.[18]

In support of her claim of a hostile and unbearable work environment, respondent submitted the affidavit of one Mary Grace A. Lusterio (Lusterio), a former Diwa employee.[19]

---

[15] *Id*. at 33, 205-207, 335 and 853-854.

[16] *ld*. at 207 and 854.

[17] *Id*. at 208-210.

[18] *Id*. at 208-211 and 855.

[19] *Id*. at 250-252 and 276.

On October 2, 2003, while respondent was on a five (5)-day authorized sick leave, Mary Ann Noreen Dulig (Dulig), Fastech's Compensation and Information System Manager, was assigned to Diwa's HR Department to help respondent with the completion of the job evaluation. When respondent returned and even after the job evaluation was completed, Dulig continued to be involved in, and performed, respondent's tasks.[20]

Respondent also claimed that Javellana tried to give her a failing mark in her performance appraisal for June to December 2003. On March 15, 2004, Asuncion advised her that the management wanted her out because things were "not working out," but it was willing to give her separation pay. She rejected the offer, convinced she did nothing to warrant the termination of her employment. Asuncion then told respondent that she could go on vacation leave to think about the management's offer, but respondent declined.[21]

On March 15, 2004, respondent learned that the management was willing to give her ₱75,000.00 as separation pay, but because it did not give any justifiable reason to sever her employment, she continued to work as HR Manager even as she experienced cold treatment and verbal abuse from the management. In April 2004, she was bypassed when the company decided to terminate the employment of two employees.[22]

On May 7, 2004, Asuncion once again made an offer of separation pay, this time in the amount of ₱150,000.00, the additional ₱75,000.00 to be taken out of her own pocket, but respondent still refused to quit her employment.[23]

On June 22, 2004, she was informed by Dulig that Asuncion would like to discuss some matters with her and an IT personnel. When she arrived in Asuncion's office, nobody else was around

---

[20] *Id*. at 211-212, 300 and 854.

[21] *Id*. at 212-216 and 855.

[22] *Id*. at 216-218.

[23] *Id*. at 219.

except for Asuncion who had been reading a list of names on her laptop. As respondent could not recall all the names of the applicants set for interview, she leaned close to the laptop to have a clearer view of the screen. Finding the letters too small, she intimated to Asuncion that she could not read the names. Asuncion, however, rudely shoved the laptop to her and in an angry and high-pitched tone said, "*O sige, eto! Eto! Tingnan mo!*" As she could no longer stand the situation, she left the room while Asuncion angrily shouted for her to come back, saying that her act amounted to insubordination. The following day, respondent filed her complaint.[24]

Petitioners' Counter-Averments

Petitioners countered that respondent was dismissed for cause, *i.e.*, for her unauthorized absences from June 23, 2004 to August 6, 2004, effective August 7, 2004.[25]

Petitioners argued that the e-mails submitted by respondent did not prove a hostile attitude of management towards her. They described the communications as mere replies to queries, opinions, advice, instructions, comments and a few reprimands couched in mild terms in response to respondent's oversight in the course of her work as HR Manager. They asserted that the occasional reprimands should be viewed as constructive criticisms that came with respondent's position which commanded great responsibility.[26]

Petitioners denied that respondent was demoted when Asuncion became her supervisor as the latter held a higher position in FAVCI and, in the exercise of management prerogative, was merely seconded to Diwa to improve its HR's functions. They further averred that respondent was never relegated to a lower position or suffered a diminution of benefits.[27]

---

[24] *Id*. at 220-221 and 856.

[25] *Id*. at 856.

[26] *Id*. at 131-132 and 856.

[27] *Id*. at 271-272 and 856.

Petitioners explained that Dulig was assigned to assist in the job evaluation project in Diwa because of her similar work experience in Fastech. She never performed any of respondent's tasks and was made to assume the functions of the HR Manager only after respondent left the company.[28]

Petitioners offered a different account of the incidents cited in Lusterio's affidavit, indicating that Lusterio's attack on Asuncion was too personal as to indicate that she had an axe to grind against the latter.[29]

Petitioners denied that Asuncion shoved her laptop to respondent on June 22, 2004, alleging that Asuncion merely turned the laptop "fronting" respondent so the latter could have a better view of the screen.[30]

Petitioners also denied offering monetary consideration to respondent.[31] According to petitioners, following the management's evaluation of her performance, respondent became overly sensitive, with a propensity to blow issues out of proportion. Her hostile attitude towards her work and co-employees affected the discharge of her functions, prompting Asuncion to call her to a meeting to discuss these problems.[32]

During their conversation, respondent claimed that it had become difficult and unbearable for her to work in such a hostile environment. Asuncion confirmed to her that the company was also not happy with her performance but reassured her that the comments on her were not meant as a direct and personal attack, but as an objective and well-meaning assessment of the problems besetting her department. When respondent insisted that she would not tolerate the hostile work environment, Asuncion told

---

[28] *Id*. at 277 and 856.

[29] *Id*. at 276 and 285-286.

[30] *Id*. at 220-221 and 278.

[31] *Id*. at 856.

[32] *Id*. at 121-122.

her that since both parties were no longer happy, parting ways was always an option.[33]

Respondent then told Asuncion to make her an offer. After Asuncion advised respondent to evaluate her financial requirements, respondent quoted the amount of ₱300,000.00 to represent her guaranteed salary up to the end of the year as she expected that it would not be easy to find another job. Asuncion told her that there was no basis for the amount as respondent merely speculated that her employment had been intolerable. Asuncion, however, stated that she could give respondent something from her personal funds as she felt "morally responsible" for the fact that respondent resigned from her previous job after she invited the latter to join Fastech but was not hired for economic reasons.[34]

Asuncion eventually informed respondent that the management refused to accede to her demand. From then on, respondent became even more defensive when dealing with the management.[35]

On June 23, 2004, respondent took flight from the office and no longer reported for work.[36]

Ruling of the LA

On October 7, 2005, the LA dismissed respondent's complaint for constructive dismissal for lack of merit.[37] She sustained petitioners' argument that if negative feedbacks and reprimand were a form of harassment, an employer would virtually be powerless to call the attention of and correct their officers.[38]

---

[33] *Id*. at 122-123.

[34] *Id*. at 123-124.

[35] *Id*. at 147.

[36] *Id*. at 124.

[37] *Id*. at 363-370.

[38] *Id.* at 857.

Ruling of the NLRC

Respondent's appeal, docketed as NLRC NCR 06-07521-04 (CA No. 046593-05), was initially granted in the NLRC Decision[39] dated August 22, 2006, the dispositive portion of the Decision reads:

> WHEREFORE, premises considered, the decision under review is hereby REVERSED and SET ASIDE, and another entered, declaring the complainant ILLEGALLY DISMISSED from her employment.
>
> Accordingly, respondent Diwa Asia Publishing, Inc. is ordered to pay the complainant FULL BACKWAGES from June 23, 2004 up to the finality of this decision, and SEPARATION PAY at the rate of ONE MONTH for every year of complainant's service from August [2], 2001 until finality of this decision.
>
> SO ORDERED.[40] (Citation omitted)

Petitioners sought reconsideration[41] and on November 29, 2006, the NLRC rendered another Decision[42] which set aside its August 22, 2006 ruling and affirmed the LA's dismissal of the complaint.[43] Respondent's motion for reconsideration[44] was denied in the NLRC Resolution[45] dated February 28, 2007.

Ruling of the CA

Respondent elevated the case to the CA via a petition for *certiorari*, docketed as CA-G.R. SP No. 99055, which was granted in the assailed Decision[46] dated July 2, 2012, the dispositive portion of the Decision reads:

---

[39] *Id*. at 436-452 and 856-857.

[40] *Id*. at 451.

[41] *Id*. at 453-464.

[42] *Id*. at 477-487.

[43] *Id*. at 857-858.

[44] *Id*. at 488-503.

[45] *Id*. at 510-512.

[46] *Id*. at 850-868.

WHEREFORE, premises considered, the present petition is hereby **GRANTED**. Accordingly, the assailed Decision of the NLRC dated 29 November 2006 is hereby **SET ASIDE** and its earlier Decision dated 22 August 2006 is ordered **REINSTATED**.

SO ORDERED.[47]

In a Resolution[48] dated September 20, 2012, the CA denied petitioners' motion for reconsideration for lack of merit. The CA ratiocinated that:

> [T]he evidence submitted proving the hostility brought about by the SALVA issue, the [respondent's] humiliation by ASUNCION as corroborated by the sworn statement of [respondent's] co-employee, the offer of separation pay to the [respondent], the conversation threads in the electronic mails of the parties involved, the disregard of the [respondent's] input in effecting policies despite being the human resource manager, and [petitioners'] allegation that the [respondent] abandoned her work, without proving the requirements set forth by law and jurisprudence, all point to no conclusion other than that reached in the NLRC Decision dated 22 August 2006.[49]

Hence, this petition, grounded on the following arguments: (1) the issuance of communications to reprimand and/or correct an erring employee forms part of the employer's management prerogatives and is not tantamount to harassment, let alone illegal dismissal; and (2) the award of backwages should be deleted, if not minimized, given the company's good faith, or adjusted since, because of the fire that gutted the CA's records, said amount has ballooned through the years before the case could be resolved.[50]

Ruling of the Court

The petition lacks merit.

---

[47] *Id*. at 868.

[48] *Id*. at 945-947.

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

[50] *Id*. at 61-62.

"[C]onstructive dismissal [is] a cessation of work because continued employment is rendered impossible, unreasonable or unlikely; when there is a demotion in rank or diminution in pay or both; or when a clear discrimination, insensibility, or disdain by an employer becomes unbearable to the employee."[51] It is an act amounting to dismissal but made to appear as if it were not. In other words, it is a dismissal in disguise.[52]

The test of constructive dismissal is whether a reasonable person in the employee's position would have felt compelled to give up his position under the circumstances.[53] Considering the facts of this case, the Court agrees with the CA that respondent was constructively dismissed.

Asuncion's e-mails

We begin with the e-mails received by respondent from Asuncion. Petitioners would have this Court believe that they were mere replies, instructions and comments couched in "mild terms," to be viewed as constructive criticisms, but the communications, both as to language and tone, indicate a pattern of fault-finding and nitpicking, and an attitude of disdain. The correspondence between respondent and Asuncion also reveals that Asuncion had purposely left respondent out on HR matters.

When respondent at one time e-mailed a project manager, copy furnished (cc) Asuncion and others, Asuncion directed her to observe proper protocol by discussing the matter with her first because the project manager was also a VP of the company and respondent was merely a manager.[54] When respondent explained that she communicated directly to the VP as project manager because it was agreed in a meeting that all project concerns should be addressed directly to the latter

---

[51] *McMer Corporation, Inc., et al. v. NLRC, et al.*, 735 Phil. 204, 213 (2014).

[52] *Id*. at 214.

[53] *Id*.

[54] *Rollo*, pp. 35 and 970.

to ensure swift response,[55] Asuncion replied by accusing her of simply "quibbling," thus:

> JTT is a VP no matter what project he undertakes. Being called a Change Manager is just a nomenclature. He is VP by virtue of his employment contract. **You are quibbling** Grace.
>
> He is a VP therefore it should only be proper that you raise whatever concern you may have to your immediate superior instead of addressing it to him. If time was a consideration then all you had to do was pick up the phone and call me which you prefer not to do nowadays – you ask your staff to ask me.[56] (Emphasis ours)

Answering the foregoing e-mail, respondent reiterated that it had been understood that anyone could go directly to the project manager, adding that:

> In fact, it was also discouraged to pass the concerns from one person to another as JDE is time bounded. That's what others did before and there was no issue about it. After all, that was the primary reason why the position of Change Manager was established.
>
> On your remarks that I prefer not to call you nowadays and I asked my staff to call you directly instead:
>
> **My staff were wondering why you sent and addressed your e-mail to them and not to me, not even a cc**, which you usually do. Specifically, after we talked of your offer of separation, which left me uncertain (until this time, I have not received any updates from you), I allowed my staff to go directly to you instead.
>
> Honestly, communicating with you has become rather awkward. We are both from HR, and as colleagues so we should be more better [sic] in our remarks. It does no good to hear blunt and insensitive criticisms, instead of constructive ones.
>
> I have no other purpose writing this reply but for clarification. I just hope that this would be taken in good light.[57] (Emphasis ours)

---

[55] *Id*. at 970-971.

[56] *Id*. at 971.

[57] *Id*.

Five days before the May 10 elections of 2004, respondent submitted to Asuncion a draft of a memorandum regarding the "May 10 holiday," telling her that she had been hanging on to said draft until the right announcement from Malacañang on whether it would be a legal or special holiday and *indicating that HR had just inquired with Malacañang but still received no update*. In response, Asuncion faulted her, first for not indicating her name, and then for submitting the memorandum knowing that it might be wrong, telling her to be more resourceful and proactive by checking the DOLE or Malacanang's website and to ask HR practitioners.[58] Respondent consequently replied that HR had in fact made the inquiries, thus:

> Yesterday, DOLE referred us to Malacañang. Up to this time, Malacañang has no declaration about the May 10 holiday. Also yesterday, I inquired to [sic] a number of HR practitioners. Likewise, they have no exact information. Despite the lack of announcement, others already declared May 10 as a special holiday, and others are still waiting for the exact announcement.[59]

Interestingly, petitioners, in arguing that Asuncion's comments were a mere reaction to respondent's alleged failure to properly discharge her duties, omitted to indicate the above-quoted e-mails in their petition.

On another occasion, Asuncion faulted respondent for not submitting two assigned tasks on time. In reply, respondent "beg[ged] to disagree" and forwarded to Asuncion the work she previously e-mailed, asking her to note that the tasks were submitted to her on the due date.[60] Despite this, Asuncion insisted that respondent did not meet the deadline and accused respondent of "quibbling." Asuncion wrote:

> I am the sole recipient. I did not receive it.

---

[58] *Id.* at 975-976.

[59] *Id*. at 976.

[60] *Id*. at 977-979.

As long as there is no proof that you sent it then you are considered not in compliance with the Monday deadline.

Let us avoid quibbling since there is no proof that you sent it. Just begging to disagree is not enough.[61]

It has not escaped this Court's attention that once again, petitioners failed to indicate in their petition material portions of the e-mail thread, particularly the e-mails respondent forwarded to correct Asuncion's claim that she failed to meet the deadline.[62]

We also note of another task assigned by Asuncion to respondent for accomplishment on a particular date, June 15, 2004. The petition itself shows that respondent e-mailed the assignment — a draft-memo on the attendance of managers and supervisors — on June 15, 2004 for Asuncion's review. This notwithstanding, Asuncion claimed that the draft was given one day late.[63]

On yet another occasion, Asuncion faulted respondent for not submitting her performance appraisal form, prompting respondent to point out that she had in fact e-mailed the form the day before.[64]

At one point, too, Asuncion admonished respondent for delay in the submission of an assigned work. Respondent explained that she had e-mailed her work on time but discovered the next day that her e-mail had remained in her Outbox. Upon such discovery, she re-sent the e-mail to Asuncion and asked another HR personnel, "Cholet," to do the same on her computer to be sure that it was delivered. The same HR personnel, according to respondent, saw that her message to Asuncion had still been in her Outbox.[65] Respondent's explanation, however, merited the following response from Asuncion:

---

[61] *Id*. at 979.

[62] *Id*. at 977-979.

[63] *Id*. at 25-27.

[64] *Id*. at 679-680 and 983-984.

[65] *Id*. at 985-986.

Well, what can I say? Again, you have an excuse.

But it is not acceptable. You know why? I suggest you go through a briefing with IT regarding email use. If the message is in your Outbox and you turn your PC off then there is no way that the message will be sent. I am assuming that you turned your PC off because we have a rule on leaving PCs turned on.

Do you have to be told to wait for the message to pop up in your Sent Items to ensure that it was indeed sent? If yes, then I may have erred in assuming that you know how to use the email.

Consider this a warning for not complying with a deadline. Please review how to use your email.[66]

Not content with the foregoing reproof, Asuncion added:

P.S. I have to cc Cholet since you told me that she has been assigned to handle Records. **I want this filed in your 201 file**.[67] (Emphasis ours)

There was also the instance where Asuncion e-mailed respondent, faulting her for proceeding with the Job Evaluation without having the managers accomplish the Role Clarification. As it turned out, however, Asuncion had sent an e-mail advising respondent to go on with the job evaluation even without the role clarification requirements.[68]

Furthermore, when an HR consultant e-mailed respondent, cc Asuncion and other Diwa officers, in part thanking respondent for "following up the slotting of non-benchmark positions" and setting a revised timeline for the submission of evaluation forms,[69] Asuncion sent the following e-mail to respondent:

I find Ethel's email funny. Are you giving her the impression that you are just supposed to follow it up with me? Well, if this is true then we really have a problem. Me, and especially you are "owners"

---

[66] *Id*. at 986.

[67] *Id.*

[68] *Id*. at 981-982.

[69] *Id*. at 982-983.

of this project together with Mads and the DIWA officers. I think you better correct this impression asap.

On the non-benchmark positions, please send me an update. How many are still pending? And, please do not tell me that you are conducting an orientation or taking a break or have to go home early. LFL and RMC said that they have already submitted everything. Try to email the update within today. Let us discuss the details tomorrow.[70]

Asuncion's e-mail prompted respondent to reply:

Regarding Ethel's email to you following up the slotting of the non-benchmark positions, I have not in any way given her the impression that you will be providing me or her with the evaluation forms. She was advised by AJJ that you will be handling the slotting of the non-benchmark position, thus her constant emails to you for updates. I have also forwarded her emails to you as requested by her for reasons that her emails bounced back or that she has not been receiving replies from you.

Furthermore, Ethel is also aware that I am the one following-up the submission of the evaluation forms from all the officers. In fact, I have already submitted the forms of six departments to her yesterday, Oct. 2. I will be sending you exchange of emails for your information.

If there are still other concerns that need further clarifications, I would be more than willing to discuss them in a meeting at your convenience.[71]

On another occasion, Asuncion faulted respondent for sending her the same e-mail twice with different attachments. It turned out, however, that respondent had been having difficulty with her computer and the IT technician erroneously attached the wrong file to her first e-mail. Respondent sent an SMS message to Asuncion precisely to inform her of the mistake and subsequently e-mailed the correct attachment. Asuncion, however, saw only the mistake, admonishing respondent and asking her which attachment was correct, despite the latter's prior notice and rectification.[72]

---

[70] *Id.* at 983.

[71] *Id.*

[72] *Id*. at 208.

Records also show Asuncion admonishing respondent for not requiring an approved "MRF" for certain manpower requests, writing:

> And, what is the remark, "*as we have thought that all of ELR's manpower requirements are urgent*" for? All manpower requirements are deemed important and urgent. But there should always be an approved MRF. It has to start with you.[73] (Italics in the original)

Asuncion's prior e-mail, however, clearly indicated that HR need not wait for an MRF for critical positions:

> Treat like RSS. There should be qualified applicants available all year round. We should not wait for an MRF since it is a critical position.[74]

Furthermore, when respondent made a recommendation of penalties which did not sit well with Asuncion, the latter sent her the following e-mail:

> Please. Are you not from HR? What would be the basis for the reprimand? Is it reasonable to reprimand the employee for failing the exams? What did the employee violate?
>
> I hope I have triggered something in your thought process. Please review your recommendation again.[75]

Notably, the penalty of reprimand was itself suggested by a VP of Diwa.[76]

Even when respondent has shown initiative at work, Asuncion could not contain her sarcasm, stating in her e-mail: "Initiative is good. But it seems not worth highlighting." When

---

[73] *Id*. at 985.

[74] *Id*. at 984.

[75] *Id*. at 41.

[76] *Id*. at 41-42.

respondent correctly pointed out an error in the payroll adjustment, Asuncion retorted: "Yup. You are right. Finally, you are able to contribute."[77]

Petitioners' efforts to discredit respondent are at once apparent in the foregoing e-mails. They are made even more evident by petitioners' selective reference to the e-mail correspondence between Asuncion and respondent. The above-cited circumstances clearly depict an atmosphere of "open disdain and hostility"[78] towards respondent, which is further established by the Affidavit[79] of respondent's co-employee, Lusterio, who corroborated respondent's assertion that the management made work difficult and unbearable for her.

Lusterio's Affidavit

Lusterio, who cited three specific instances of mistreatment, prefaced her Affidavit[80] by stating that there were other instances when Asuncion berated respondent in front of her or others; that she knew how difficult it was for respondent to bear everything that Asuncion was doing to her; and that Asuncion had been "cruel" to them.

Lusterio described an incident where Asuncion accused respondent of engaging the services of an online job posting site (Jobstreet) without her knowledge. At the meeting where Asuncion made the accusation in Lusterio's presence, respondent tried to explain to Asuncion that she approved the engagement, but Asuncion refused to listen and interrupted respondent's every sentence, telling respondent that she was a liar. Lusterio attested that Asuncion had, in fact, given her approval and even revised Diwa's posting format and approved the positions to be posted.[81]

---

[77] *Id*. at 987-988.

[78] *Id*. at 861.

[79] *Id*. at 250-252.

[80] *Id*. at 250-252.

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

At another time, said Lusterio, Asuncion accused her and respondent of giving Diwa's password to Jobstreet to an outsider. Asuncion also faulted respondent for posting a vacancy for a Magazine Editor and for publishing the wrong job requirements on the site. Lusterio and respondent denied disclosing the password to an outsider. Respondent also explained to Asuncion that she had e-mailed her approval of the posting, but Asuncion retorted: "*wala kang pinadadala sa akin!* And don't tell me that you don't know what's going on to [sic] your department! You always twist the story!" Respondent tried to explain herself once more but Asuncion interrupted her and instructed Lusterio to submit incident reports regarding the password and the job posting. Lusterio conferred with Jobstreet on the password and in her incident report explained that anyone could have seen the online posting as Jobstreet's website was open to the public. Lusterio also reported that she had, in fact, seen Asuncion's e-mail approving said posting.[82]

The third incident Lusterio described took place in the company's get-together party. Respondent was tasked to give away the raffle prizes but the singing contest had taken a long time to finish. Respondent told Lusterio that she would just go to the comfort room to urinate. Respondent had been gone for about six minutes when the singing contest ended and the host called on her to do the raffle. When respondent returned, Asuncion was already announcing the winners of the raffle. When the raffle was over, Asuncion approached respondent asking why she was nowhere to be found. Respondent apologized and told Asuncion that she had gone to the comfort room, but the latter berated respondent in front of Lusterio and other employees, telling her "*next time pigilan mo pag punta mo sa CR.*"[83]

Petitioners argue that Lusterio was not credible because she supposedly had an axe to grind against Asuncion. The Court does not agree.

---

[82] *Id*. at 251-252.

[83] *Id*. at 252.

Lusterio had been forthright in stating in her Affidavit that she resigned from Diwa because of Asuncion whom she described as a "liar," a "back-passer" and "cruel." Her statements, however, cannot be discredited simply for this reason. The Court notes that Lusterio's Affidavit was based on her own knowledge of the incidents she described, having personally witnessed them. Asuncion, in her own Affidavits, did not deny that Lusterio was privy to these incidents or that she was present during the meetings alluded to. Furthermore, the Court notes that Lusterio's statements, which were made under oath, were replete with consistent and positive details which were not substantially refuted by Asuncion.

As regards the engagement of Jobstreet, Asuncion, in her October 20, 2004 Affidavit,[84] claimed that she was merely clarifying some details with respondent in her e-mail, but she never particularly denied that her meeting with respondent and Lusterio took place or that she behaved towards respondent in the manner described by Lusterio.

Anent the password and online posting issues, Asuncion did not deny that she accused respondent and Lusterio of improperly disclosing their Jobstreet password to an outsider. While Asuncion denied berating respondent, claiming she merely told her and Lusterio that they could all just move on and learn from their mistake, the Court notes that Lusterio had particularly mentioned receiving Asuncion's instruction to submit separate explanations or incident reports on the password and posting issues – a claim Asuncion never specifically denied. Requiring such incident reports seems antithetical to the idea of simply moving on.

Asuncion averred that she did not shout at or berate respondent during the get-together party and that she used a requesting tone when she told respondent: "*Kung pwede next time pigilan mo muna ang paninigarilyo mo at least while the awarding is going on*." According to her, respondent was nowhere to be

---

[84] *Id.* at 285-286.

found every time she would look for her, and other employees informed her that respondent was smoking by the comfort room (CR). She claimed that she must have spoken at the top of her voice considering that the music was being loudly played at the time. The Court notes, however, that even as Asuncion claimed that "other employees told [her] that [respondent] was near the CR puffing a cigarette," petitioners submitted no corroborating statement from any of them.

"In constructive dismissal cases, the employer is, concededly, charged with the burden of proving that its conduct and actions were for valid and legitimate grounds."[85] "[Petitioners] must not rely on the weakness of [respondent's] evidence but must stand on the merits of [their] own defense."[86]

Absent convincing evidence showing any cogent reason why Lusterio should falsely testify, her testimony may be accorded full faith and credit. Besides, in judging the legality of an employee's dismissal, proof beyond reasonable doubt is not required. Neither is preponderance of evidence expected. It is sufficient that the finding of illegal dismissal is established by substantial evidence which is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.[87]

The talk about separation

Petitioners averred that in a conversation with respondent, Asuncion acknowledged that the company was no longer happy with respondent and suggested parting ways.[88] By respondent's account, however, the conversation dealt with not just an option to leave but "management's decision of [her] separation from the company."[89] In either case, petitioners evidently preferred

---

[85] *Meatworld International, Inc. v. Dominique A. Hechanova*, G.R. No. 208053, October 18, 2017.

[86] *Arboleda v. NLRC*, 362 Phil. 383, 389-390 (1999).

[87] *Id.* at 391.

[88] *Rollo*, pp. 79, 122-123 and 145.

[89] *Id.* at 1004.

that respondent no longer worked for Diwa. Whether or not there was in fact an offer of separation pay which respondent refused, it is clear that respondent had then chosen to stay. These circumstances, when viewed alongside petitioners' open disdain and hostility towards respondent, confirm that petitioners had been impelled by a desire to ease her out of employment.

Dulig's work at Diwa's HR

The Court also notes respondent's claim that when assigned to Diwa's HR, Dulig was performing functions that properly belonged to her as HR Manager, including representing HR in company meetings and handling the separation of Diwa employees.[90] Petitioners deny this, saying that even the HR staff could attest that Dulig was not discharging respondent's duties.[91] Curiously, however, not one testimony from such employees has been produced by petitioners. Not even a statement from Dulig herself was presented to directly refute respondent's claim. The absence of such corroborating statements despite the facility with which they could have been obtained, as well as petitioners' professed dissatisfaction with respondent, and the fact that Dulig assumed the position of HR Manager shortly after respondent left[92] serve to lend credence to respondent's assertion that petitioners placed Dulig in Diwa's HR Department to carry out functions pertaining to her position.

Respondent's demotion

Respondent was excluded from important HR decisions which she was expected not only to be privy to, but also to have a say in, by virtue of her position in the company.

Records show that petitioners made the decision to terminate the services of two (2) employees, Sheila Montemayor and Elline Pereys, without respondent's knowledge or participation.[93] The

---

[90] *Id*. at 863-864 and 1000.

[91] *Id*. at 277.

[92] *Id*. at 266, 277 and 863.

[93] *Id*. at 331.

Court cannot sustain petitioners' claim that respondent's act of signing the Notice of Termination and her execution of affidavits for submission in the labor case, subsequently filed by said employees, constitute proof that she was given "substantial participation" and was aware of the facts and issues surrounding the termination.[94] Said actions were undertaken after the management already reached its decision to terminate.

The signing or issuance of the Notice of Termination was thus a ministerial function that simply conveyed said decision; it does not establish that respondent took part in the deliberation. In the same vein, respondent's execution of the affidavits does not by itself prove that she had been part of the decision-making process. In fact, petitioners have not pointed to any statement therein indicating that respondent had been involved or consulted pre-termination. For all petitioners' assertions that respondent knew of the facts and issues surrounding the termination, they never categorically declared that she was included in the deliberation. Besides, mere knowledge of such facts and issues does not equate to involvement in the decision as it could have been derived from records or secondhand information.

When Diwa subsequently considered and decided to terminate the services of two (2) more employees, respondent was once again excluded. This is clear from the following e-mail correspondence[95] between Asuncion and respondent.

Respondent wrote:

Re: Termination of:

Serrano, Jacqueline — November 17, 2003 (Probi) Nicolas, Nicole-November 01, 2003 (Probi)

Both employees were terminated.

Jacqueline approached me this morning and asked if HR was aware of her termination and its procedures. **Since I really have no idea**

---

[94] *Id*. at 416-417.

[95] *Id*. at 997-998.

and such was not discussed with me, I simply answered "no" and advised her to talk to HVS, her supervisor, instead, FYI.[96] (Emphasis ours)

To this e-mail, Asuncion replied:

I am aware of it Grace and so is EAC. It seems that Meng preferred to just discuss it with the 2 of us.

So technically, someone in HR is aware of it. Not you, personally. You may want to check with Cholet the copies of the termination letter Meng gave her for filing in the 201.[97] (Emphasis ours)

Respondent e-mailed back to say:

It is not really a surprise, Miss. It's just an FYI anyway.[98] (Emphasis ours)

to which Asuncion's responded:

You just need to be careful about the statement that you issue.

Based on your email, her question was, "Is HR aware of it?" and that you said no.

Maybe it would have been better if you answered that you are not aware of it personally. And that you will check if I or any other employee in HR is aware of it. Or, simply say that you will look into it because you do not have personal knowledge of it.

Just a suggestion.[99] (Emphasis ours)

Respondent has likewise submitted evidence in the form of e-mails from Asuncion showing that although her job designation remained the same, she was relegated to performing mundane or clerical tasks such as preparing drafts of termination notices based on a standard format and ensuring that the last pay of

---

[96] *Id*. at 997.

[97] *Id*. at 998.

[98] *Id*.

[99] *Id*.

employees was released and that termination notices were received by the Department of Labor and Employment.[100] As this Court previously held:

> There is constructive dismissal when an employee's functions, which were originally supervisory in nature, were reduced; and such reduction is not grounded on valid grounds such as genuine business necessity.[101]

The reduction in respondent's duties and responsibilities as HR Manager amounted to a demotion that was tantamount to constructive dismissal.[102]

The laptop-shoving incident

Respondent averred that Asuncion shoved her laptop to her when she leaned to have a better view of the screen. Petitioners denied this, explaining that Asuncion merely turned the laptop "fronting" respondent. Petitioners' explanation, however, is unsupported by any testimony or evidence. Asuncion notably executed no less than two affidavits[103] but neither contained petitioners' version of the incident. In the calibration of evidence, petitioners' bare denial cannot outweigh respondent's sworn account. Respondent also filed her case for constructive dismissal the day after the incident took place, which further persuades this Court to believe that it was of such gravity as respondent described it to be.

The above-cited circumstances indubitably present a hostile and unbearable working environment that reasonably compelled respondent to leave her employment. Respondent, therefore, was constructively dismissed.

---

[100] *Id*. at 328-329.

[101] *Norkis Trading Co., Inc. and/or Albos, Jr. v. Gnilo*, 568 Phil. 256, 268 (2008).

[102] *Globe Telecom, Inc. v. Florendo-Flores*, 438 Phil. 756, 769 (2002).

[103] *Rollo*, pp. 145-148 and 285-286.

Granting, as petitioners claimed, that respondent's performance had been deficient or unsatisfactory, the management's actuations cannot be excused. As this Court previously held, no employee should be subjected to constant harassment and ridicule on the basis of management prerogative or even for poor performance at work.[104]

The CA's award of full backwages and separation pay is sustained. Under Article 279[105] of the Labor Code, an employee who is unjustly dismissed from work shall be entitled to reinstatement without loss of seniority rights and other privileges and to his full backwages, inclusive of allowances, and to his other benefits or their monetary equivalent computed from the time his compensation was withheld from him up to the time of his actual reinstatement. Furthermore, inasmuch as reinstatement is no longer feasible given the strained relations between petitioners and respondent, the award of separation pay equivalent to one (1) month's salary for every year of service was just and reasonable as an alternative to reinstatement. As this Court previously held:

> [O]ver and again, this Court has recognized that strained relations between the employer and employee is an exception to the rule requiring actual reinstatement for illegally dismissed employees for the practical reason that the already existing antagonism will only fester and deteriorate, and will only worsen with possible adverse effects on the parties if we shall compel reinstatement; thus, the use of a viable substitute that protects the interests of both parties while ensuring that the law is respected.[106]

---

[104] *McMer Corporation, Inc., et al. v. NLRC, et al*., *supra* note 51, at 221.

[105] ART. 279. *Security of tenure*. — In cases of regular employment, the employer shall not terminate the services of an employee except for a just cause or when authorized by this Title. An employee who is unjustly dismissed from work shall be entitled to reinstatement without loss of seniority rights and other privileges and to his full backwages, inclusive of allowances, and to his other benefits or their monetary equivalent computed from the time his compensation was withheld from him up to the time of his actual reinstatement.

[106] *McMer Corporation, Inc. v. NLRC*, *supra* note 51, at 222.

Both the separation pay and backwages shall be computed up to the finality of the decision as it is at that point that the employment relationship is effectively ended.[107]

Respondent's backwages shall be paid with interest at twelve percent (12%) *per annum* from June 23, 2004 to June 30, 2013 and at six percent (6%) *per annum* from July 1, 2013 until their full satisfaction.[108] Her separation pay, in lieu of reinstatement, shall earn interest at six percent (6%) *per annum* from the finality of this Decision until full payment.[109]

Backwages are aimed to replenish the income that was lost by reason of the unlawful dismissal.[110] Together with the remedy of reinstatement, they make the dismissed employee whole who can then look forward to continued employment, thereby giving meaning and substance to the constitutional right of labor to security of tenure.[111] For this reason, the Court cannot sustain petitioners' argument that the award of backwages must be reduced owing to the period spent in reconstituting the CA's records of the case. In *Reyes v. NLRC, et al.*,[112] the Court held:

> One of the natural consequences of a finding that an employee has been illegally dismissed is the payment of backwages corresponding to the period from his dismissal up to actual reinstatement. The statutory intent of this matter is clearly discernible. The payment of backwages allows the employee to recover from the employer that which he has lost by way of wages as a result of his dismissal. Logically, it must be computed from the date of petitioners illegal dismissal up to the time of actual reinstatement. **There can be no gap or interruption,**

---

[107] *U-Bix Corporation, et al. v. Hollero*, 763 Phil. 668, 685 (2015), citing *Bani Rural Bank, Inc., et al. v. De Guzman, et al.*, 721 Phil. 84, 102 (2013).

[108] *Laya, Jr. v. Court of Appeals*, G.R. No. 205813, January 10, 2018, citing *Nacar v. Gallery Frames, et al.*, 716 Phil. 267 (2013); *ICT Marketing Services, Inc. v. Sales*, 769 Phil. 498, 525 (2015).

[109] *Nacar v. Gallery Frames, et al.*, *supra* at 283.

[110] *PNCC v. NLRC*, 349 Phil. 986, 992 (1998).

[111] *Flordaliza Llanes Grande v. Philippine Nautical Training College*, G.R. No. 213137, March 1, 2017.

[112] 598 Phil. 145 (2009).

lest we defeat the very reason of the law in granting the same. x x x.[113] (Citation omitted and emphasis ours)

Having caused the unlawful dismissal, petitioners must assume the consequences of the application of the law and jurisprudence, no matter how unfavorable to them. The following pronouncement in *C.I.C.M. Mission Seminaries (Maryhurst, Maryheights, Maryshore and Maryhill) School of Theology, Inc. v. Perez*,[114] thus, finds relevance:

> The petitioners, nonetheless, claim that it was not their fault why the amounts due ballooned to the present level. They are mistaken. Suffice it to state that had they not illegally dismissed respondent, they will not be where they are today. They took the risk and must suffer the consequences.[115]

WHEREFORE, the petition is **DENIED**. The Decision dated July 2, 2012 and the Resolution dated September 20, 2012 of the Court of Appeals in CA-G.R. SP No. 99055 are hereby **AFFIRMED with MODIFICATION**, in that respondent Mary Grace U. De Leon's full backwages shall be paid with interest at twelve percent (12%) *per annum* from June 23, 2004 to June 30, 2013 and at six percent (6%) *per annum* from July 1, 2013 until their full satisfaction, and her separation pay, in lieu of reinstatement, shall earn interest at six percent (6%) *per annum* from the finality of this Decision until full payment.

SO ORDERED.

Peralta[*] *(Acting Chairperson)*, *del Castillo, Jardeleza*, and *Gesmundo,*[**] *JJ.*, concur.

---

[113] *Id.* at 161-162.

[114] G.R. No. 220506, January 18, 2017, 815 SCRA 35.

[115] *Id.* at 46.

[*] Designated Acting Chairperson per Special Order No. 2582 (Revised) dated August 8, 2018.

[**] Designated Acting Member per Special Order No. 2560 (Revised) dated May 11, 2018.

SECOND DIVISION

[G.R. No. 226645. August 13, 2018]

ISABEL G. RAMONES, *petitioner, vs.* **SPOUSES TEODORICO GUIMOC, JR., and ELENITA GUIMOC**, *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; EFFECTS OF FAILURE TO PAY DOCKET FEES; THE LIBERAL DOCTRINE ENUNCIATED IN *SUN INSURANCE* WILL APPLY WHERE INSUFFICIENT FILING FEES WERE PAID BASED ON THE ASSESSMENT OF THE CLERK OF COURT AND THERE WAS NO INTENTION TO DEFRAUD THE GOVERNMENT; THE COURT *A QUO* PROPERLY ACQUIRED JURISDICTION BUT PETITIONER SHOULD PAY THE DEFICIENCY WHICH SHALL BE CONSIDERED AS A LIEN ON THE MONETARY AWARDS IN HER FAVOR.— In [several] cases, the Court held that the liberal doctrine in the matter of paying docket fees enunciated in *Sun Insurance*, and not the strict regulations set in *Manchester*, will apply in cases where insufficient filing fees were paid based on the assessment made by the clerk of court, provided that there was no intention to defraud the government. In so ruling, the Court explained that when there is underpayment of docket fees, the clerk of court or his duly authorized deputy has the responsibility of making a deficiency assessment, and the party filing the action would be required to pay the deficiency which shall constitute a lien on the judgment. In this case, it is undisputed that the amount of ₱500.00 paid by petitioner was insufficient to cover the required filing fees for her *estafa* case under the premises of Section 21, Rule 141 of the Rules of Court, as amended by A.M. No. 04-2-04-SC. Nonetheless, it is equally undisputed that she paid the *full amount of docket fees* **as assessed by the Clerk of Court of the MTC**, which is evidenced by a certification dated April 11, 2016 issued therefor. In addition, petitioner consistently manifested her willingness to pay

additional docket fees when required. In her petition, she claims that she is "very much willing to pay the correct docket fees which is the reason why she immediately went to the clerks of court[,] and records show that she paid the [MTC] of the amount assessed from her." Indeed, the foregoing actuations negate any bad faith on petitioner's part, much more belie any intent to defraud the government. As such, applying the principles above-discussed, the Court holds that the court *a quo* properly acquired jurisdiction over the case. However, petitioner should pay the deficiency that shall be considered as a lien on the monetary awards in her favor pursuant to Section 2, Rule 141 of the Rules of Court[.]

2. ID.; ID.; DISMISSAL OF ACTIONS; LACK OF JURISDICTION AS A GROUND TO DISMISS A COMPLAINT MAY BE RAISED AT ANY STAGE OF THE PROCEEDINGS BUT SUBJECT TO THE DOCTRINE OF ESTOPPEL BY *LACHES*; PRINCIPLE, APPLIED.— [T]he Court observes that if respondents believed that the assessment of filing fees was incorrect, then it was incumbent upon them to have raised the same before the MTC. Instead, contrary to the CA's assertion, records show that respondents actively participated in the proceedings before the MTC and belatedly questioned the alleged underpayment of docket fees only for the first time on appeal before the RTC, or five (5) years later after the institution of the instant case. The Court is aware that lack of jurisdiction, as a ground to dismiss a complaint, may, as a general rule, be raised at any stage of the proceedings. However, in *United Overseas Bank*, the Court has observed that the same is subject to the doctrine of estoppel by *laches*, which squarely applies here.

APPEARANCES OF COUNSEL

Juliet Sangalang-Salaria for petitioner.
Amelia Tansinsin for respondents.

D E C I S I O N

PERLAS-BERNABE, *J.*:

Assailed in this petition for review on *certiorari*[1] are theAmended Decision[2] dated March 21, 2016 and the Resolution[3] dated August 23, 2016 of the Court of Appeals (CA) in CA-G.R. SP No. 131201, deleting the portion of the Judgment[4] dated April 16, 2012 of the Regional Trial Court of Bataan, Branch 4 (RTC) in Criminal Case No. ML-4095 which ordered Spouses Teodorico Guimoc, Jr. (Teodorico) and Elenita Guimoc (Elenita; collectively, respondents) to pay petitioner Isabel G. Ramones (petitioner) the amounts of ₱60,000.00 and ₱507,000.00, respectively, representing their civil liabilities.

The Facts

This case stemmed from an Information[5] filed on June 30, 2006 before the Municipal Trial Court of Mariveles, Bataan (MTC), docketed as Criminal Case No. 06-8539, charging respondents with the crime of Other Forms of Swindling under Article 316 (2) of the Revised Penal Code (RPC), the accusatory portion of which reads:

> That on or about June 09, 2005, in Mariveles, Bataan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating together and mutually aiding one another,did then and there willfully, unlawfully and feloniously, with intent to defraud and to cause damage to another, by means of deceit, obtained money (loan) from Isabel Ramones in the amount of ₱663,000.00 with the promise to sell their house and lot to the latter,

---

[1] *Rollo*, pp. 51-78.

[2] *Id*. at 103-108. Penned by Associate Justice Romeo F. Barza, with Associate Justices Andres B. Reyes, Jr. (now member of the Court) and Agnes Reyes-Carpio, concurring.

[3] *Id*. at 109-115.

[4] *Id*. at 128-132. Penned by Judge Bartolome V. Flores.

[5] Records, pp. 2-3.

and in fact, the accused executed a Deed of Sale of Residential Bldg. and Transfer of Rights over the aforementioned house and lot which they acknowledged before a Notary Public, despite the accused knowing fully well that said property was already mortgaged to a third person, to the damage and prejudice of the said Isabel Ramones.

CONTRARY TO LAW.[6]

After the said Information was filed by the Office of the Provincial Prosecutor of Bataan to the MTC, the latter's Clerk of Court wrote a letter[7] to petitioner requiring her to pay the amount of ₱500.00 as docket fees. After petitioner's payment thereof,[8] a certification[9] was later issued by the MTC Clerk of Court reflecting the same.

Eventually, the case proceeded to trial, and thereafter, the MTC, in a Judgment[10] dated September 21, 2011, acquitted Teodorico but found Elenita guilty beyond reasonable doubt of the crime of Other Forms of Swindling under Article 316 (2) of the RPC, and accordingly, sentenced her to suffer the penalty of imprisonment of one (1) month and one (1) day to four (4) months of *arresto mayor* in its minimum and medium periods, and ordered her to pay a fine of ₱567,000.00 with subsidiary imprisonment, as the case may be. In addition, Elenita was ordered to pay the amount of ₱507,000.00, and despite his acquittal, Teodorico was also directed to pay the amount of ₱60,000.00, which amounts reflect their respective civil liabilities, both with legal interest from December 13, 2006 until fully paid.[11]

---

[6] *Id*. at 2.

[7] See letter dated November 30, 2006 issued by Clerk of Court II Loida Tajan-Ocampo; *id*. at 18.

[8] See Original Receipt No. 3474417; *id*. at 1.

[9] Dated April 11, 2016. *Rollo*, p. 101.

[10] *Id*. at 116-127. Penned by Judge Damaso P. Asuncion, Jr.

[11] *Id*. at 127.

Aggrieved, respondents appealed[12] to the RTC, docketed as Criminal Case No. ML-4095.

Proceedings Before the RTC

In their Memorandum on Appeal[13] filed before the RTC on January 10, 2012, respondents argued that the MTC did not acquire jurisdiction to award damages in favor of petitioner for failure of the latterto pay the correct amount of docket fees pursuant to Supreme Court Administrative Circular No. 35-2004[14] (SC Circular No. 35-2004), which provides that the filing fees must be paid for money claims in *estafa* cases. They claimed that due to petitioner's failure to make an express reservation to separately institute a civil action, her payment of filing fees in the amount of ₱500.00 was deficient. The damages sought was worth ₱663,000.00;[15] thus, the correct filing fees should have allegedly[16]been around ₱9,960.00.

In her Reply,[17] petitioner countered that based on Rule 111 of the Rules of Criminal Procedure, actual damages are not included in the computation of the filing fees in cases where the civil action is impliedly instituted with the criminal action, and the filing fees shall constitute a lien on the judgment.[18]

In a Judgment[19] dated April 16, 2012, the RTC affirmed the MTC ruling with modification, acquitting Elenita on the ground

---

[12] See Notice of Appeal dated October 20, 2011; records, p. 355.

[13] See Memorandum on Appeal of Accused-Appellant dated December 30, 2011; *id*. at 362-365.

[14] Entitled "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," approved on August 12, 2004.

[15] See records, p. 364.

[16] See Comment with Motion to Refer Receipt to NBI dated May 5, 2017; *rollo*, p. 199.

[17] See Reply (to the Memorandum on Appeal of Accused-Appellant) dated January 20, 2012; records, pp. 367-376.

[18] See *id*. at 374-375.

[19] *Rollo*, pp. 128-132.

of reasonable doubt, but still maintaining respondents' civil liabilities.[20] In so ruling, the RTC declared that there was no intent to defraud and no deceit was employed by Elenita to obtain money from petitioner by selling the already mortgaged subject property, since the said sale was executed as payment for a pre-existing loan.[21]Notably, however, the RTC did not rule upon the issue of non-payment of correct filing fees.

Dissatisfied, Elenita moved for reconsideration,[22] but the same was denied in an Order[23] dated May 21, 2013. Hence, the matter was elevated[24] to the CA.

Proceedings Before the CA

In a Decision[25] dated October 27, 2015, the CA affirmed the RTC judgment and order.[26] It ruled, among others, that the failure to pay docket fees did not preclude petitioner from recovering damages, considering that Section 1,Rule 111 of the Rules of Criminal Procedure does not require the payment of filing fees for actual damages.[27]

Unperturbed, respondents moved for reconsideration,[28]and insisted that, contrary to the finding of the CA, docket fees for claims of actual damages should have been paid pursuant to SC Circular No. 35-2004. In an Amended Decision[29] dated March

---

[20] See *id*. at 132.

[21] See *id*.

[22] See motion for reconsideration dated June 15, 2012; records, pp. 384-385.

[23] *Rollo*, p. 133. Penned by Presiding Judge Emmanuel A. Silva.

[24] See Petition dated September 8, 2013; *id*. at 135-141.

[25] *Id*. at 11-23.

[26] *Id*. at 22.

[27] See *id*. at 18-20.

[28] See motion for reconsideration dated November 14, 2015; *id*. at 24-26.

[29] *Id*. at 103-108.

21, 2016, the CA granted respondents' motion for reconsideration and set aside its earlier decision.[30] It held that SC Circular No. 35-2004 was in effect at the time petitioner filed the case against respondents, and therefore, the court *a quo* erred when it awarded damages in her favor.[31] Consequently, the CA deleted the order directing respondents to pay their respective civil liabilities.

Petitioner moved for reconsideration,[32] but the same was denied in a Resolution[33] dated August 23, 2016.Among others, the CA observed that while the issue of non-payment of docket fees had already been raised during the MTC proceedings, the fact that the MTC Clerk of Court assessed the amount of ₱500.00 as filing fees was belatedly interposed by petitioner as a defense for the first time on appeal.[34]Undaunted, petitioner filed the instant petition.

The Issue Before the Court

The issue for the Court's resolution is whether or not the CA correctly deleted the award of damages.

The Court's Ruling

The petition is meritorious.

Rule 111 of the Rules of Criminal Procedure states that "[e]xcept as otherwise provided in these Rules, no filing fees shall be required for actual damages."[35]

Among these exceptions, Section 21, Rule 141 of the Rules of Court, as amended byA.M. No. 04-2-04-SC[36]– which

---

[30] *Id*. at 107.

[31] See *id*. at 106.

[32] See motion for reconsideration dated April 18, 2016; *id*. at 86-93.

[33] *Id*. at 109-115.

[34] *Id*. at 112-113.

[35] Rules of Criminal Procedure, Rule 111, Section 1; underscoring supplied.

[36] Entitled "Re: PROPOSED REVISION OF RULE 141, REVISED RULES OF COURT LEGAL FEES" (August 16, 2004). See Court's Resolution in A.M. No. 04-2-04-SC dated July 20, 2004.

guidelines were reflected in SC Circular No. 35-2004 and was already in effect at the time the Information was filed– states that the payment of filing fees is required in *estafa* cases under the following conditions:

> SEC. 21. *Other fees.* – The following fees shall also be collected by the clerks of court of the regional trial courts or courts of the first level, as the case may be:
>
> (a) In *estafa* cases where the offended party fails to manifest within fifteen (15) days following the filing of the information that the civil liability arising from the crime has been or would be separately prosecuted, or in violations of BP No. 22 if the amount involved is:
>
> x x x x x x x x x

In the 1987 case of *Manchester Development Corporation v. CA*(*Manchester*),[37] the Court laid down the general rule that "[a court] acquires jurisdiction over any case only upon the payment of the prescribed docket fee."[38]In *Manchester*, the Court upheld the CA's dismissal of the case filed therein, based on the following circumstances:

> The Court of Appeals therefore, aptly ruled in the present case that the basis of assessment of the docket fee should be the amount of damages sought in the original complaint and not in the amended complaint.
>
> The Court cannot close this case without making the observation that it frowns at the practice of counsel who filed the original complaint in this case of omitting any specification of the amount of damages in the prayer although the amount of over ₱78 million is alleged in the body of the complaint. **This is clearly intended for no other purpose than to evade the payment of the correct filing fees if not to mislead the docket clerk in the assessment of the filing fee.** This fraudulent practice was compounded when, even as this Court had taken cognizance of the anomaly and ordered an investigation, petitioner through another counsel filed an amended

---

[37] 233 Phil. 579(1987).

[38] *Id*. at 585.

complaint, deleting all mention of the amount of damages being asked for in the body of the complaint. It was only when in obedience to the order of this Court of October 18, 1985, the trial court directed that the amount of damage be specified in the amended complaint, that petitioners' counsel wrote the damages sought in the much reduced amount of ₱10,000,000.00 in the body of the complaint but not in the prayer thereof. The design to avoid payment of the required docket fee is obvious.

The Court serves warning that it will take drastic action upon a repetition of this unethical practice.

To put a stop to this irregularity, henceforth all complaints, petitions, answers and other similar pleadings should specify the amount of damages being prayed for not only in the body of the pleading but also in the prayer, and said damages shall be considered in the assessment of the filing fees in any case. Any pleading that fails to comply with this requirement shall not be accepted nor admitted, or shall otherwise be expunged from the record.

The Court acquires jurisdiction over any case only upon the payment of the prescribed docket fee. An amendment of the complaint or similar pleading will not thereby vest jurisdiction in the Court, much less the payment of the docket fee based on the amounts sought in the amended pleading. x x x.[39] (Emphasis supplied)

Around two (2) years later, the Court, in *Sun Insurance Office, Ltd. v. Asuncion* (*Sun Insurance*),[40] clarified that the ruling in *Manchester* was made "due to the fraud committed on the government";[41] thus, it was explained that the court *a quo* in *Manchester*" did not acquire jurisdiction over the case and that the amended complaint could not have been admitted inasmuch as the original complaint was null and void."[42] In *Sun Insurance*, however, the Court found that "a more liberal interpretation of the rules [was] called for considering that, unlike *Manchester*, [the] private respondent [therein] demonstrated his willingness

---

[39] *Id.* at 584-585.

[40] 252 Phil. 280 (1989).

[41] *Id.* at 290.

[42] *Id.* at 290-291.

to abide by the rules by paying the additional docket fees as required."[43] Nonetheless, the Court held that "the clerk of court of the lower court and/or his duly authorized docket clerk or clerk in-charge should determine and, thereafter, if any amount is found due, x x x must require the private respondent to pay the same."[44]

Accordingly, subsequent decisions now uniformly hold that "when insufficient filing fees are initially paid by the plaintiffs and there is no intention to defraud the government, the *Manchester* rule does not apply."[45]

In line with this legal paradigm, prevailing case law demonstrates that "[t]he non-payment of the prescribed filing fees at the time of the filing of the complaint or other initiatory pleading fails to vest jurisdiction over the case in the trial court. Yet, where the plaintiff has paid the amount of filing fees **assessed by the clerk of court**, and the amount paid turns out to be deficient, the trial court still acquires jurisdiction over the case, subject to the payment by the plaintiff of the deficiency assessment."[46] "The reason is that to penalize the party for the omission of the clerk of court is not fair if the party has acted in good faith."[47]

Thus, in the cases of *Rivera v. del Rosario*,[48] *Fil-Estate Golf and Development, Inc. v. Navarro*,[49] *United Overseas Bank v. Ros*[50] (*United Overseas Bank*), and *TheHeirs of Reinoso, Sr. v.*

---

[43] *Id*. at 291.

[44] *Id*.

[45] See *Lu v. Lu Ym*, 612 Phil. 390, 403(2009).

[46] *Fedman Development Corporation v. Agcaoili*, 672 Phil. 23, 23 (2011); emphasis and underscoring supplied.

[47] *Id*. at 30.

[48] 464 Phil. 783 (2004).

[49] 553 Phil. 48(2007).

[50] 556 Phil. 178 (2007).

CA,[51] the Court has consistently ruled that jurisdiction was validly acquired by the courts *a quo* therein upon the full payment of the docket fees as assessed by the clerk of court. In these cases, the Court held that the liberal doctrine in the matter of paying docket fees enunciated in *Sun Insurance*, and not the strict regulations set in *Manchester*, will apply in cases where insufficient filing fees were paid based on the assessment made by the clerk of court, provided that there was no intention to defraud the government. In so ruling, the Court explained that when there is underpayment of docket fees,the clerk of court or his duly authorized deputy has the responsibility of making a deficiency assessment, and the party filing the action would be required to pay the deficiency which shall constitute a lien on the judgment.[52]

In this case, it is undisputed that the amount of ₱500.00 paid by petitioner was insufficient to cover the required filing fees for her *estafa* case under the premises of Section 21, Rule 141 of the Rules of Court, as amended byA.M. No. 04-2-04-SC. Nonetheless, it is equally undisputed that she paid the *full amount of docket fees* **as assessed by the Clerk of Court of the MTC**,which is evidenced by a certification dated April 11, 2016 issued therefor.In addition, petitionerconsistently manifested her willingness to pay additional docket fees when required.In her petition, she claims that she is "very much willing to pay the correct docket feeswhich is the reason why she immediately went to the clerks of court[,] and records show that she paid the [MTC] of the amount assessed from her."[53] Indeed, the foregoing actuations negate any bad faith on petitioner's part, much more belie any intent to defraud the government. As such, applying the principles above-discussed, the Court holds that the court *a quo* properly acquired jurisdiction over the case. However, petitioner should pay the deficiency that shall be considered as a lien on the monetary awards in her favor pursuant to Section 2, Rule 141 of the Rules on Court, which states:

---

[51] 669 Phil. 272(2011).

[52] See *id*.

[53] *Rollo*, p. 58.

Section 2. *Fees in lien*. — Where the court in its final judgment awards a claim not alleged, or a relief different from, or more than that claimed in the pleading, the party concerned shall pay the additional fees which shall constitute a lien on the judgment in satisfaction of said lien. The clerk of court shall assess and collect the corresponding fees.

Besides, the Court observes that if respondents believed that the assessment of filing fees was incorrect, then it was incumbent upon them to have raised the same before the MTC. Instead, contrary to the CA's assertion,[54] records show that respondents actively participated in the proceedings before the MTC and belatedly questioned the alleged underpayment of docket fees only for the first time on appeal[55] before the RTC, or five (5) years later after the institution of the instant case. The Court is aware that lack of jurisdiction, as a ground to dismiss a complaint, may, as a general rule, be raised at any stage of the proceedings. However, in *United Overseas Bank*, the Court has observed that the same is subject to the doctrine of estoppel by *laches*, which squarely applies here. In *United Overseas Bank*:

In its Order, the lower court even recognized the validity of petitioner's claim of lack of jurisdiction had it timely raised the issue. **It bears to stress that the non-payment of the docket fees by private respondent and the supposed lack of jurisdiction of the Manila RTC over Civil Case No. 98-90089 was raised by the petitioner only five years after institution of the instant case** and after one of the private respondent's witnesses was directly examined in open court. Not only that, the petitioner even implored the court *a quo*'s jurisdiction by filing an Answer with Counterclaim praying that the amount of ₱12,643,478.46 as deficiency claim of the credit granted to private respondent and the sum ₱6,411,786.19 as full payment of one of the Letters of Credit, be awarded in its favor. Petitioner likewise prayed for the award of exemplary damages in the amount of ₱1,000,000.00, attorney's fees and cost of the suit.

x x x x x x x x x

---

[54] See *id*. at 113.

[55] See records, p. 365.

x x x It is incumbent upon the petitioner to file a Motion to Dismiss at the earliest opportune time to raise the issue of the court's lack of jurisdiction, more so, that this issue is susceptible to *laches*. Petitioner's failure to seasonably raise the question of jurisdiction leads us to the inevitable conclusion that it is now barred by *laches* to assail the Manila RTC's jurisdiction over the case. As defined in the landmark case of *Tijam v. Sibonghanoy* [131 Phil. 556, 563 (1968)]:

Laches, in general sense, is 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 length of time, warranting a presumption that the party entitled to assert it either has abandoned it or declined to assert it.

It has been held that a party cannot invoke the jurisdiction of a court to secure affirmative relief against his opponent and, after obtaining or failing to obtain such relief, repudiate or question that same jurisdiction. By way of explaining the rule, it was further said that the question of whether or not the court had jurisdiction either over the subject matter of the action or the parties is not important in such cases because the party is barred from such conduct, not because the judgment or the order of the court is valid and conclusive as an adjudication, but for the reason that such a practice cannot be tolerated by reason of public policy.

x x x x x x x x x

Since the Manila RTC ruled that the petitioner is now estopped by *laches* from questioning its jurisdiction and considering that its Order denying petitioner's Motion to Dismiss is not tainted with grave abuse of discretion but wholly substantiated by the evidence on the record, this Court would no longer disturb said order.[56]

Accordingly, the Court sets aside the assailed CA rulings. A new one is entered ordering Elenita and Teodorico to pay petitioner the amounts of ₱507,000.00 and ₱60,000.00, respectively, both with legal interest at the rate of twelve percent (12%) per annum, reckoned not from December 13, 2006 as ruled by the MTC, but from the time the Information was filed on June 30, 2006, consistent with existing jurisprudence on

---

[56] *United Overseas Bank, supra* note 50, at 192-194; emphasis supplied.

estafa cases,[57] and six percent (6%) per annum, from July 1, 2013 until full satisfaction.[58] Further, the MTC is directed to determine the amount of deficient docket fees, which shall constitute a lien on the aforementioned monetary awards.

As a final note, it must be pointed out that this Decision only relates to respondents' civil liabilities as records are bereft of any showing that further recourse was taken against the rulings of the courts a *quo* on the criminal aspect of this case.

WHEREFORE, the petition is **GRANTED**. The Amended Decision dated March 21, 2016 and the Resolution dated August 23, 2016 of the Court of Appeals in CA-G.R. SP No. 131201 are hereby **SET ASIDE**. A new one is **ENTERED**, ordering:

(1) Respondents Elenita Guimoc and Teodorico Guimoc, Jr. to pay petitioner Isabel G. Ramones the amounts of ₱507,000.00 and ₱60,000.00, respectively, both with legal interest at the rate of twelve percent (12%) per annum, from June 30, 2006 until June 30, 2013, and six percent (6%) per annum, from July 1, 2013 until full payment; and

(2) The Municipal Trial Court of Mariveles, Bataan to determine the deficient docket fees in Criminal Case No. 06-8539, which shall constitute a lien on the aforementioned monetary awards.

SO ORDERED.

Carpio (Chairperson), Jardeleza,[*] and *Tijam,*[**] *JJ.,* concur.

Caguioa, J., on official leave.

---

[57] See *People of the Philippines v. Daud*, 734 Phil. 698(2014).

[58] In line with the ruling in *Nacar v. Gallery Frames* (716 Phil. 267 [2013]).

[*] Designated Additional Member per Raffle dated February 21, 2018.

[**] Designated Additional Member per Special Order No. 2580 dated August 8, 2018.

FIRST DIVISION

[G.R. No. 230553. August 13, 2018]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **RANDY TALATALA GIDOC,** *accused-appellant.*

SYLLABUS

CRIMINAL LAW; REPUBLIC ACT NO. 9165 (THE COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002); BUY-BUST OPERATIONS; THE PRESERVATION OF THE INTEGRITY AND EVIDENTIARY VALUE OF THE SEIZED ITEMS IS MOST IMPORTANT IN DETERMINING THE GUILT OR INNOCENCE OF THE ACCUSED; ACQUITTAL PROPER IN CASE AT BAR.— In this case, the prosecution failed to prove the legitimacy of the buy--bust operation simply because it failed to proffer any documentary proof of the same. The testimony of SPO1 Mortel during cross-examination reveal that there was no coordination report submitted with the PDEA prior to the buy-bust operation. x x x While we are mindful of the rule that minor deviations from the procedures under RA 9165 would not automatically exonerate an accused, this rule, however, could not defeat our findings that the police operatives are negligent of their duties to preserve the integrity of the seized items from the appellant. Jurisprudence is replete with cases enunciating that the preservation of the integrity and evidentiary value of the seized items is the most important consideration in the determination of the guilt or innocence of the accused. x x x The record is bereft of any showing that the police operatives, headed by SPO1 Mortel, have complied with the procedural safeguards under RA 9165. Given SPO1 Mortel's testimony, the police operatives committed not just an error that constitute a simple procedural lapse but also errors that amount to a gross, systematic, or deliberate disregard of the safeguards drawn by the law. We cannot brush aside the apparent lack of coordination with the PDEA and the failure of the police operatives, having initial custody and control of the drugs, to physically inventory and photograph the same immediately after seizure and confiscation. What is particularly disturbing is that no prosecution witness

did ever explain why these procedures were not followed. x x x Further, the justifiable ground for non-compliance must be proved as a fact. Here, it was markedly absent. In sum, the prosecution is deemed to have failed to fully establish the elements of the crimes charged, creating reasonable doubt on the criminal liability of the appellant. Considering that the integrity and evidentiary value of the seized items not having been sufficiently established beyond reasonable doubt, the acquittal of the appellant, necessarily, must follow.

APPEARANCES OF COUNSEL

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

D E C I S I O N

TIJAM, *J.*:

Appealed to this Court is the Decision[1] dated September 7, 2016, of the Court of Appeals (CA), in CA-G.R. CR-HC No. 07527, which affirmed the Judgment[2] of the Regional Trial Court (RTC) of Calamba City, Branch 37, in Criminal Case Nos. 14428-2006-C to 14431-2006-C.

The Antecedents

Randy Talatala Gidoc (herein appellant) was charged in four (4) separate Informations for violations of Sections 5, 11, 12 and 15 of Article II of Republic Act No. 9165 (RA 9165) otherwise known as The Comprehensive Dangerous Drugs Act of 2002, committed as follows:

CRIMINAL CASE No. 14428-2006-C
(For violation of Section 15, Article II of RA No. 9165)

---

[1] Penned by Associate Justice Ramon R. Garcia and concurred in by Associate Justices Leoncia R. Dimagiba and Jhosep Y. Lopez. *Rollo*, pp. 2-18.

[2] Penned by Presiding Judge Caesar C. Buenagua; CA *rollo*, pp. 25-38.

That on or about 2:00 in the morning of October 15, 2006 at Brgy. Silangan, Municipality of Calauan, Province of Laguna and within the jurisdiction of this Honorable Court, the above-named accused without any authority of law, did then and there willfully, unlawfully and feloniously, use methamphetamine hydrochloride or Shabu a dangerous drugs, in violation of the aforementioned provision of law.

CONTRARY TO LAW.

CRIMINAL CASE No. 14429-2006-C
(For violation of Section 5, Article II of RA No. 9165)

That on or about October 15, 2006 at Brgy. Silangan, Municipality of Calauan, Province of Laguna, and within the jurisdiction of this Honorable Court the above-named accused, did then and there willfully, unlawfully and feloniously sell and deliver two (2) small heat sealed plastic sachet containing methamphetamine hydrochloride, with a total weight of 0.5 grams, a dangerous drug without the corresponding authority of law.

CONTRARY TO LAW.

CRIMINAL CASE No. 14430-2006-C
(For violation of Section 11, Article II of RA No. 9165)

That on or about 2:00 o'clock in the morning of October 15, 2006 at Marfori Avenue, Brgy. Silangan, Municipality of Calauan, Province of Laguna and within the jurisdiction of this Honorable Court, the above-named accused without any authority of law, did then and there willfully, unlawfully and feloniously possess 0.05 grams of methamphetamine hydrochloride, a dangerous drug, in violation of the aforementioned law.

CONTRARY TO LAW.

CRIMINAL CASE No. 14431-2006-C
(For violation of Section 12, Article II of RA No. 9165)

That on or about October 15, 2006 in the Municipality of Calauan, Province of Laguna and within the jurisdiction of this Honorable Court, the above-named accused, without any authority of law, did then and there willfully, unlawfully and feloniously posses Shabu paraphernalia used in the repacking and sniffing Methamphetamine Hydrochloride, commonly known as Shabu, a dangerous drugs.

CONTRARY TO LAW.[3]

The prosecution evidence established that, on October 14, 2006, a confidential informant went to the Calauan Police Station and relayed to Chief of Police Rolando Bagonghasa about the trading activity of illegal drugs by the appellant in Calauan, Laguna.

Immediately after the information was received, the Chief of Police called SPO1 Victor Mortel (SPO1 Mortel) and instructed the latter to form a team to conduct a buy-bust operation in order to arrest the appellant. Prior to their dispatch, the police operatives prepared and marked ₱100.00 bill as buy-bust money.

It was already two o'clock in the morning of October 15, 2006 when the police operatives arrived at Marfori Avenue in Barangay Silangan, Calauan, Laguna, the place where the appellant could be found.[4]

As earlier planned, the informant, who acted as the *poseur*-buyer, approached appellant and asked him if he has *shabu*, to which appellant answered "*mayroon*." The informant forthwith handed to appellant the ₱100.00 bill, who, in turn, gave to the informant one (1) plastic sachet of suspected *shabu*. At that instance, the informant took off his cap as a pre-arranged signal that the transaction was consummated.[5]

SPO1 Mortel witnessed and heard the transaction between appellant and the informant. Immediately, the team approached and arrested the appellant. They informed the appellant of his rights and the reason for his arrest.

When appellant was subjected to a preventive search, the police officers recovered from his pocket another small plastic sachet containing a suspected *shabu*.[6]

---

[3] *Id*. at 25-26.

[4] *Id*. at 110, 135.

[5] *Id*.

[6] *Id*. at 111, 15-136.

SPO1 Mortel marked the plastic sachet bought from appellant as "A" and the plastic sachet found in appellant's pocket as "B". He also prepared the letter-request for laboratory examination and personally delivered the same, together with the two (2) plastic sachets, to the PNP Crime Laboratory.[7]

Per Chemistry Report No. D-401-06 dated October 15, 2006, Forensic Chemist Grace Plantilla confirmed that the plastic sachet marked as "A" and weighing zero point zero three (0.03) gram was positive for methamphetamine hydrochloride, or *shabu*. The other plastic sachet marked as "B" and weighing zero point zero two (0.02) gram also yielded positive result for *shabu*.

Appellant denied the charges against him claiming that he was in San Pablo, Laguna on October 15, 2006. When he boarded a jeepney on his way home, the jeepney was flagged down in front of the Municipal Hall of Calauan by four (4) armed men in civilian clothes. Thereafter, he was arrested for allegedly selling illegal drugs.[8]

Ruling of the RTC

The RTC rendered its Decision dated February 13, 2015, the dispositive portion of which reads:

IN VIEW OF THE FOREGOING, in Criminal Case No. 14429-2006-C, the Court finds accused, **RANDY TALATALA GIDOC, GUILTY BEYOND REASONABLE DOUBT** of violation of Section 5, Article II of Republic Act 9165. The accused is hereby sentenced to suffer the penalty of **LIFE IMPRISONMENT and TO PAY A FINE OF FIVE HUNDRED THOUSAND (₱500,000.00) PESOS**.

In Criminal Case No. 14430-2006-C, the Court likewise finds accused, **RANDY TALATALA GIDOC, GUILTY BEYOND REASONABLE DOUBT** of violation of Section 11, paragraph 2(3), Article II of Republic Act 9165. He is hereby sentenced to suffer the indeterminate penalty of imprisonment of **TWELVE (12) YEARS and ONE (1) DAY, as minimum, to FOURTEEN (14) YEARS**, as

---

[7] *Id*. at 136.

[8] *Id*; TSN, January 29, 2015, pp. 3-5.

maximum, and to **PAY A FINE OF THREE HUNDRED THOUSAND (₱300,000.00) PESOS**.

Considering that the accused was already convicted for violation of Section 11, Article II of Republic Act 9165, this bars conviction under Section 15, Article II of Republic Act 9165. Accordingly, Criminal Case No. 14428-2006-C is **DISMISSED**.

Finally, in Criminal Case No. 14431-2006-C, for lack of evidence and for failure of the prosecution to prove the guilt of accused beyond reasonable doubt, **RANDY TALATALA GIDOC is ACQUITTED** of violation of Section 12, Article II of Republic Act 9165.

The Branch Clerk of Court is hereby ordered to turn over the methamphetamine hydrochloride (*shabu*) subject of this case for proper disposition and destruction.

SO ORDERED.[9]

Ruling of the Court of Appeals

On appeal, the CA affirmed appellant's conviction, to wit:

WHEREFORE, premises considered, the instant appeal is hereby DENIED. The Judgment dated February 13, 2015 of the Regional Trial Court, Branch 37, Calamba City, Laguna, is AFFIRMED.

SO ORDERED.[10]

Hence, this appeal.

The appellant raised the following errors:

I.

THE TRIAL COURT GRAVELY ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY BEYOND REASONABLE DOUBT DESPITE THE DOUBTFUL EXISTENCE OF A VALID BUY-BUST OPERATION.

II.

THE TRIAL COURT GRAVELY ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY BEYOND REASONABLE

---

[9] CA *rollo*, pp. 37-38.

[10] *Rollo*, p 18.

DOUBT DESPITE THE ABSENCE OF INVENTORY AND THE TAKING OF PHOTOGRAPHS IN VIOLATION OF SECTION 21 OF R.A. NO 9165 AND ITS IMPLEMENTING RULES AND REGULATIONS.

III.

THE TRIAL COURT GRAVELY ERRED IN ACCORDING FULL FAITH AND CREDIT TO THE TESTIMONY OF SPO1 MORTEL.

IV.

THE TRIAL COURT GRAVELY ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY BEYOND REASONABLE DOUBT DESPITE THE INADMISSIBILITY OF THE ALLEGEDLY SEIZED ITEMS.[11]

Anchoring its decision in *People vs. Ronwaldo Lafaran y Aclan*,[12] the CA held, among others, that prior coordination with the Philippine Drug Enforcement Agency (PDEA) is of no moment. The CA also held that the failure of the police operatives to take photographs of the evidence seized from appellant in the presence of the representatives from the DOJ and the media, as required under Section 21 of RA 9165 and its implementing rules, is inconsequential.[13]

The Ruling of the Court

We reverse the CA decision.

We took a second hard look on the evidence submitted by the prosecution and found that the police operatives, who conducted the buy-bust operation that led to the arrest of appellant, have failed to comply with the safeguards under RA 9165 and its implementing rules.

At the outset, it bears stressing that the ruling in *People vs. Lafaran*,[14] as cited by the CA in its decision, will not apply in

---

[11] CA *rollo*, pp. 70-71.

[12] 771 Phil. 311 (2015).

[13] *Rollo*, pp. 15-16.

[14] *Supra* note 9.

the present case. In *Lafaran*, the police operatives have prepared, and the prosecution offered, as evidence, (i) the Pre-operation Report sent to the PDEA thru fax machine; (ii) the Inventory of Confiscated Items; and (iii) the accomplished Spot Report and photograph of the accused with the confiscated items. In short, in *Lafaran*, the prosecution sufficiently showed compliance with the safeguards in RA 9165 as regards the conduct of a buy-bust operation. Such is not the case here. The CA, therefore, misapplied the ruling in *Lafaran* in this case.

In this case, the prosecution failed to prove the legitimacy of the buy- bust operation simply because it failed to proffer any documentary proof of the same. The testimony of SPO1 Mortel during cross-examination reveal that there was no coordination report submitted with the PDEA prior to the buy-bust operation.

"ATTY. AMILAO:

x x x x x x x x x

Q: You have no coordination with the PDEA, yes or no, prior to this operation?
A: I cannot recall ma'am.

Q: But you would agree with me that on the records of the case, there are no coordination report that was submitted, yes or no?
A: None ma'am."[15]

The foregoing procedural lapse cannot be set aside much that there are other irregularities, which cast doubt on the integrity of the seized items. We look carefully at the testimony of SPO1 Mortel given in the following manner:

"ATTY. AMIL

x x x x x x x x x

Q: You also do not have any inventory, yes or no?
A: No ma'am.

---

[15] TSN, September 4, 2014, pp. 5-6.

Q: You do not also have any photograph of the specimen confiscated and the accused, yes or no?
A: I do not remember ma'am."[16]

While we are mindful of the rule that minor deviations from the procedures under RA 9165 would not automatically exonorate an accused, this rule, however, could not defeat our findings that the police operatives are negligent of their duties to preserve the integrity of the seized items from the appellant.

Jurisprudence is replete with cases enunciating that the preservation of the integrity and evidentiary value of the seized items is the most important consideration in the determination of the guilt or innocence of the accused. In *People vs. Joel Ancheta y Osan, et al.*,[17] We had the opportunity to explain that:

x x x **[T]he nature of a buy-bust operation necessitates a stringent application of the procedural safeguards specifically crafted by Congress in R.A. 9165 to counter potential police abuses.** x x x (Emphasis Ours)

x x x x x x x x x

x x x While this kind of operation has been proven to be an effective way to flush out illegal transactions that are otherwise conducted covertly and in secrecy, a buy-bust operation has a significant downside that has not escaped the attention of the framers of the law. It is susceptible to police abuse, the most notorious of which is its use as a tool for extortion. In *People vs. Tan*, this Court itself recognized that "by the very nature of anti-narcotics operations, the need for entrapment procedures, the use of shady characters as informants, the ease with which sticks of marijuana or grams of heroin can be planted in pockets of or hands of unsuspecting provincial hicks, and the secrecy that inevitably shrouds all drug deals, the possibility of abuse is great. Thus, courts have been exhorted to be extra vigilant in trying drug cases lest an innocent person is made to suffer the unusually severe penalties for drug offenses." Accordingly, specific procedures relating to the seizure and custody of drugs have been laid down in the law (R.A. No. 9165) for the police to strictly follow.

---

[16] *Id*. at 5.

[17] 687 Phil. 569 (2012).

The prosecution must adduce evidence that these procedures have been followed in proving the elements of the defined offense. (Emphasis Ours)

Section 21 of R.A. 9165 delineates the mandatory procedural safeguards that are applicable in cases of buy-bust operations:

Section 21. *Custody and Disposition of Confiscated, Seized, and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/Paraphernalia and/or Laboratory Equipment*.— The PDEA shall take charge and have custody of all dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment so confiscated, seized and/or surrendered, for proper disposition in the following manner:

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

x x x x x x x x x

Congress introduced another complementing safeguard through Section 86 of R.A. 9165, which requires the National Bureau of Investigation (NBI), Philippine National Police (PNP), and Bureau of Customs (BOC) to maintain close coordination with PDEA in matters of illegal drug-related operations:

x x x x x x x x x

Given the nature of buy-bust operations and the resulting preventive procedural safeguards crafted in R.A. 9165, courts must tread carefully before giving full credit to the testimonies of those who conducted the operations. Although we have ruled in the past that mere procedural lapses in the conduct of a buy-bust operation are not *ipso facto* fatal to the prosecutions cause, so long as the integrity and the evidentiary value of the seized items have been preserved, **courts must still thoroughly evaluate and differentiate those errors that constitute**

a simple procedural lapse from those that amount to a gross, systematic, or deliberate disregard of the safeguards drawn by the law. Consequently, Section 21(a) of the [2002 Implementing Rules and Regulations of R.A. 9165 (IRR)] provides for a saving clause in the procedures outlined under Section 21(1) of R.A. 9165, which serves as a guide in ascertaining those procedural aspects that may be relaxed under justifiable grounds, *viz*:

x x x x x x x x x

We have reiterated that "this saving clause applies **only where the prosecution recognized the procedural lapses, and thereafter explained the cited justifiable grounds" after which, "the prosecution must show that the integrity and evidentiary value of the evidence seized have been preserved."** To repeat, noncompliance with the required procedure will not necessarily result in the acquittal of the accused if: (1) the noncompliance is on justifiable grounds; and (2) the integrity and the evidentiary value of the seized items are properly preserved by the apprehending team. (Emphasis Ours)[18]

The record is bereft of any showing that the police operatives, headed by SPO1 Mortel, have complied with the procedural safeguards under RA 9165. Given SPO1 Mortel's testimony, the police operatives committed not just an error that constitute a simple procedural lapse but also errors that amount to a gross, systematic, or deliberate disregard of the safeguards drawn by the law.[19] We cannot brush aside the apparent lack of coordination with the PDEA and the failure of the police operatives, having initial custody and control of the drugs, to physically inventory and photograph the same immediately after seizure and confiscation. What is particularly disturbing is that no prosecution witness did ever explain why these procedures were not followed.

In *People vs. Dumagay*,[20] we ruled:

---

[18] *Id*. at 577-579.

[19] *People v. Ancheta*, *supra* note 14.

[20] G.R. No. 216753, February 7, 2018.

x x x. Thus, in case the police officers fail to strictly comply with the rules of procedure, **they must be able to "explain the reasons behind the procedural lapses, and that the integrity and value of the seized evidence had nonetheless been preserved x x x because the Court cannot presume what these grounds are or that they even exist.**" x x x (Emphasis Ours)

Further, the justifiable ground for non-compliance must be proved as a fact.[21] Here, it was markedly absent.

In sum, the prosecution is deemed to have failed to fully establish the elements of the crimes charged, creating reasonable doubt on the criminal liability of the appellant. Considering that the integrity and evidentiary value of the seized items not having been sufficiently established beyond reasonable doubt, the acquittal of the appellant, necessarily, must follow.

WHEREFORE, the appeal is **GRANTED**. The Decision dated September 7, 2016 of the Court of Appeals in CA-G.R. CR-HC No. 07527 is hereby **REVERSED** and **SET ASIDE**. Appellant Randy Talatala Gidoc is hereby **ACQUITTED** for failure of the prosecution to prove his guilt beyond reasonable doubt. He is to be immediately **RELEASED** unless he is being lawfully detained for any other reason.

The Director of the Bureau of Corrections is **DIRECTED** to **IMPLEMENT** this Decision and to **REPORT** to this Court within five (5) working days from receipt of this Decision the action he/she has taken.

SO ORDERED.

Peralta[*] *(Acting Chairperson)*, *del Castillo, Jardeleza,* and *Gesmundo,*[**] *JJ.*, concur.

---

[21] *People v. Crispo*, G.R. No. 230065, March 14, 2018.

[*] Designated as Acting Chairperson of the First Division per Revised Special Order No. 2582 dated August 8, 2018.

[**] Designated as Acting Member pursuant to Special Order No. 2560 dated May 11, 2018.

SECOND DIVISION

[G.R. No. 232950. August 13, 2018]

KENNETH SANTOS *y* ITALIG, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CRIMINAL PROCEDURE; WARRANTLESS ARREST; ELEMENTS THAT MUST CONCUR FOR AN *IN FLAGRANTE DELICTO* ARREST TO BE VALID; PRESENT IN CASE AT BAR.— Section 5 (a) [Rule 113 of the Rules of Court] speaks of an *in flagrante delicto* arrest, where the concurrence of two (2) elements is necessary, to wit: (*1*) the person to be arrested must execute an overt act indicating that he has just committed, is actually committing, or is attempting to commit a crime; and (*2*) such overt act is done *in the presence or within the view* of the arresting officer. Non-confluence of these elements renders an *in flagrante delicto* arrest constitutionally infirm. In this case, records show that petitioner was *actually committing* a crime when he was arrested. x x x Records reveal that when PO3 Pacis and SPO1 Bombase approached petitioner, they were not effecting a warrantless arrest just yet; hence, there was no intrusion into the person of petitioner. Their purpose was merely to *investigate* into what appeared to be suspicious actuations of the latter. It was only upon closer scrutiny that they were able to discern exactly what the plastic sachet contained; hence, the warrantless arrest that they effected immediately thereafter is clearly justified under Section 5 (a) above-quoted, it having been established that petitioner was actually committing a crime, *i.e.*, having in his possession *marijuana*, a dangerous drug, without legal authority to do so, in the presence of the arresting officers, and which personal knowledge they obtained in the performance of their investigative duties as police officers.

2. CRIMINAL LAW; DANGEROUS DRUGS ACT OF 2002 (R.A. 9165) AS AMENDED; FAILURE TO COMPLY STRICTLY WITH THE PROCEDURE UNDER SECTION 21 DOES NOT RENDER THE SEIZED ITEMS VOID AND

INVALID PROVIDED THAT JUSTIFIABLE GROUND EXISTS FOR NON-COMPLIANCE AND THE INTEGRITY AND EVIDENTIARY VALUE OF THE ITEMS ARE PRESERVED.— As a general rule, the apprehending team must strictly comply with the foregoing procedure. However, failure to do so will not *ipso facto* render the seizure and custody over the items as void and invalid *provided*: **(*a*) there is justifiable ground for non-compliance; and (*b*) the integrity and evidentiary value of the seized items are properly preserved**. For the saving clause to apply, it is important that the prosecution should explain the reasons behind the procedural lapses and that the integrity and value of the seized evidence had been preserved. Further, the justifiable ground for non-compliance must be proven as a fact, as the Court cannot presume what these grounds are or that they even exist.

3. **ID.; ID.; ID.; THERE WAS AN UNJUSTIFIED BREACH OF PROCEDURE RENDERING THE INTEGRITY AND EVIDENTIARY VALUE OF THE *CORPUS DELICTI* IN THIS CASE HIGHLY SUSPECT; PETITIONER'S ACQUITTAL IS IN ORDER.—** As the records disclose, there were unjustified deviations committed by the police officers in the handling of the confiscated items after petitioner's arrest in breach of the chain of custody procedure as discussed above. x x x The mere marking of the seized drugs, unsupported by a physical inventory and taking of photographs, and in the absence of the necessary personalities under the law, as in this case, fails to approximate compliance with the mandatory procedure under Section 21 of RA 9165. x x x To make matters worse, no practicable reasons were given by the arresting officers, such as a threat to their safety and security or the time and distance which the other witnesses might need to consider, for such non-compliance. 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. Therefore, it must be shown that earnest efforts were exerted by the police officers involved to comply with the mandated procedure so as to convince the Court that the failure to comply was reasonable under the given circumstances. Evidently, such is not the case here, thereby leading to no other conclusion than that there was an unjustified breach of procedure rendering the integrity and evidentiary value of the *corpus delicti* in this case highly suspect. Consequently, petitioner's acquittal is in order.

APPEARANCES OF COUNSEL

Public Attorney's Office for petitioner.
The Solicitor General 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 August 30, 2016 and Resolution[3] dated July 10, 2017 rendered by the Court of Appeals (CA) in CA-G.R. CR No. 37743 affirming with modification the Decision[4] dated June 10, 2015 of the Regional Trial Court of Caloocan City, Branch 127 (RTC) in Crim. Case No. 88635 finding petitioner Kenneth Santos *y* Italig (petitioner) guilty beyond reasonable doubt of violation of Section 11, Article II of Republic Act (RA) No. 9165[5] and sentencing him to suffer the indeterminate penalty of twelve (12) years and one (1) day, as minimum, to fourteen (14) years and eight (8) months, as maximum, and to pay a fine of ₱300,000.00.

The Facts

This case stemmed from an Information[6] dated September 13, 2012 charging petitioner with violation of Section 11, Article II of RA 9165, to wit:

---

[1] *Rollo*, pp. 12-36.

[2] *Id*. at 38-51. Penned by Associate Justice Renato C. Francisco with Associate Justices Apolinario D. Bruselas, Jr. and Danton Q. Bueser concurring.

[3] *Id*. at 53-54.

[4] *Id*. at 78-93. Penned by Judge Victoriano B. Cabanos.

[5] 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.

[6] Records, pp. 2-3.

That on or about the 11th day of September, 2012 in Caloocan City, Metro Manila and within the jurisdiction of this Honorable Court, the above-named accused, without authority of law, did then and there willfully, unlawfully and feloniously have in his possession, custody and control [t]hirteen (13) heat-sealed transparent plastic sachets each containing MARIJUANA leaves and fruiting tops weighing 0.39 gram, 0.36 gram, 0.34 gram, 0.35 gram, 0.34 gram, 0.39 gram, 0.37 gram, 0.38 gram, 0.37 gram, 0.39 gram, 0.38 gram, 0.38 gram & 1.24 gram, which when subjected for laboratory examination gave POSITIVE result to the tests for Marijuana, a dangerous drug, in gross violation of the above-cited law[.]

Contrary to law.[7]

The prosecution alleges that on September 11, 2012, at around 5:30 in the afternoon, the team of police officers led by one Police Chief Inspector Mendoza and consisting of Police Officer (PO) 3 Jeffred Pacis (PO3 Pacis), Senior Police Officer (SPO) 1 John Bombase (SPO1 Bombase), a certain PO3 Ablaza, and PO2 Joel Rosales (PO2 Rosales) conducted a routine patrol along Libis Talisay, Barangay 12, Caloocan City. Thereafter, PO3 Pacis and SPO1 Bombase rested for a while in front of a store.[8]

While there, at a distance of about five (5) meters, PO3 Pacis noticed petitioner, standing at a street corner and removing something from his pocket. PO3 Pacis saw that it was a plastic sachet, prompting him to alert SPO1 Bombase. Discreetly, they approached petitioner to further scrutinize what he was holding in his hands. At a distance of an arm's length, PO3 Pacis saw that petitioner was holding a plastic sachet containing *marijuana*. When PO3 Pacis and SPO1 Bombase introduced themselves as police officers, petitioner attempted to run. However, PO3 Pacis was able to immediately grab petitioner's hands and recover the plastic sachet from him.[9]

---

[7] *Id*. at 2.

[8] See *rollo*, p. 134.

[9] See *id*. at 134-135.

Thereafter, SPO1 Bombase apprised petitioner of his rights, while PO3 Pacis conducted a search on the body of petitioner. The search yielded another twelve (12) plastic sachets of *marijuana* from petitioner's pocket. PO3 Pacis marked the seized plastic sachets with "KSI/JP-1" to "KSI/JP-14" and the date 09-11-12; after which, they returned to the Station Anti-Illegal Drugs, Samson Road, Caloocan City, and turned over the confiscated plastic sachets and the person of petitioner to the investigator. Subsequently, petitioner and the confiscated sachets were brought to the crime laboratory for examination. While petitioner tested negative[10] for drug use, the specimens found in the plastic sachets tested positive[11] for *marijuana*, a dangerous drug.[12]

For his defense, petitioner claimed that on September 11, 2012, between 5:00 to 6:00 o'clock in the afternoon, he was watching a basketball game at Orcania Street, Caloocan City when five (5) men approached him and invited him to the police station. When he asked what his violation was, they merely told him to go with them. He was first brought to the Diosdado Macapagal Medical Center (now Caloocan City Medical Center) where he was examined and thereafter, to the police station where he was frisked and the police recovered his cellphone and wallet. Subsequently, two (2) persons, who introduced themselves as "Tanod" and "Ex-O," arrived and claimed to be the victims of a robbery-snatching incident. However, they denied that petitioner was the perpetrator thereof. After they left, the police asked petitioner for ₱10,000.00; otherwise, they would file a criminal case against him. When petitioner replied that he had no money, they showed him an ice bag containing dried *marijuana* leaves, which they threatened to use as evidence

---

[10] See Physical Science Report No. DT-233-12 dated September 12, 2012; records, p. 8.

[11] See Physical Science Report No. DT-261-12 dated September 11, 2012; *id*. at 9.

[12] See *rollo*, p. 135.

against him. The following day, he was subjected to inquest proceedings.[13]

The RTC Ruling

In a Decision[14] dated June 10, 2015, the RTC found petitioner guilty beyond reasonable doubt of violation of Section 11, Article II of RA 9165, and accordingly, sentenced him to suffer the indeterminate penalty of twelve (12) years and one (1) day, as minimum, to seventeen (17) years and eight (8) months, as maximum, and to pay a fine of ₱300,000.00.[15]

In convicting petitioner, the RTC found that the prosecution was able to prove all the elements of the offense charged, to wit: (*1*) petitioner was in possession of dried leaves of *marijuana*, a dangerous drug, after a valid warrantless arrest by PO3 Pacis; (*2*) petitioner was not authorized by law to possess said *marijuana*; and (*3*) petitioner freely and consciously possessed the same.[16] Moreover, the prosecution was able to establish the identity of the seized drugs in accordance with the requirements of Section 21, Article II of RA 9165 notwithstanding the absence of a representative from the media and the Department of Justice (DOJ), or an elected public official during the inventory of the seized items. As the integrity and evidentiary value thereof were preserved by the arresting officers, the RTC ruled that the chain of custody of the seized items had been satisfactorily established.[17] In contrast, it rejected petitioner's defenses of denial and alibi, as the latter failed to prove the same with convincing evidence.[18]

Aggrieved, petitioner appealed[19] his conviction to the CA.

---

[13] See *id*. at 136-137.

[14] *Id*. at 78-93.

[15] *Id*. at 146.

[16] See *id.* at 84-92.

[17] See *id*. at 89-91.

[18] See *id*. at 92.

[19] See Brief for the Accused-Appellant dated January 29, 2016; *id*. at 53-76.

The CA Ruling

In a Decision[20] dated August 30, 2016, the CA affirmed petitioner's conviction with the modification decreasing the maximum penalty to fourteen (14) years and eight (8) months.

Concurring with the RTC, the CA found that petitioner knowingly possessed and had under his control *marijuana* without legal authority to do so, and that he was arrested *in flagrante delicto*, which is justified under Section 5 (a), Rule 113 of the Rules of Court. Furthermore, the CA held that there was substantial compliance with the procedure set forth under Section 21, Article II of RA 9165 regarding the custody and handling of the seized items, considering that the integrity and evidentiary value thereof had been preserved by the apprehending officers. On this score, the CA posited that the links in the chain of custody of the seized items were all established by the prosecution.[21]

However, considering that petitioner had in his possession a total of 5.68 grams of *marijuana*, the CA ruled that the maximum term of imprisonment in this case should be fourteen (14) years and eight (8) months, in accordance with the ruling in *People v. Simon*.[22]

Petitioner moved for reconsideration,[23] but was denied in a Resolution[24] dated July 10, 2017; hence, this petition.

The Issue Before the Court

The issue for the Court's resolution is whether or not the CA erred in affirming petitioner's conviction for violation of Section 11, Article II of RA 9165.

In his petition, petitioner insists that his conviction was erroneous considering the illegality of his warrantless arrest,

---

[20] *Id*. at 38-51.

[21] See *rollo*, pp. 43-49.

[22] 234 Phil. 555 (1994).

[23] See motion for reconsideration dated October 4, 2016; *rollo*, pp. 111-123.

[24] *Id*. at 53-54.

the non-compliance with the requirements of Section 21 of RA 9165, as well as its Implementing Rules and Regulations (IRR), and the broken chain of custody of the allegedly confiscated plastic sachets containing *marijuana*. On the other hand, the Office of the Solicitor General, on behalf of respondent People of the Philippines, maintains that his *in flagrante delicto* arrest was valid, that there was substantial compliance with Section 21 of RA 9165 and its IRR, and that the prosecution had established the unbroken chain of custody of the seized items.

The Court's Ruling

The appeal is partly meritorious.

At the outset, it must be emphasized that an appeal in criminal cases leaves the whole case open for review, and the appellate court has the duty to correct, cite, and appreciate errors in the appealed judgment, whether or not assigned or unassigned.[25] 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.[26]

A lawful arrest without a warrant may be made by a peace officer or a private individual under the circumstances set forth in Section 5, Rule 113 of the Rules of Court, *viz.*:

Section 5. *Arrest Without Warrant; When Lawful.* – A peace officer or a private person may, without a warrant, arrest a person:

(a) When, in his presence, the person to be arrested has committed, is actually committing, or is attempting to commit an offense;

(b) When an offense has just been committed and he has probable cause to believe based on personal knowledge of facts or circumstances that the person to be arrested has committed it; and

---

[25] See *People v. Dahil*, 750 Phil. 212, 225 (2015).

[26] See *People v. Ceralde*, G.R. No. 228894, August 7, 2017, citing *People v. Comboy*, G.R. No. 218399, March 2, 2016, 785 SCRA 512, 521.

(c) When the person to be arrested is a prisoner who has escaped from a penal establishment or place where he is serving final judgment or is temporarily confined while his case is pending, or has escaped while being transferred from one confinement to another.

Section 5 (a) above-cited speaks of an *in flagrante delicto* arrest, where the concurrence of two (2) elements is necessary, to wit: (*1*) the person to be arrested must execute an overt act indicating that he has just committed, is actually committing, or is attempting to commit a crime; and (*2*) such overt act is done *in the presence or within the view* of the arresting officer.[27] Non-confluence of these elements renders an *in flagrante delicto* arrest constitutionally infirm.

In this case, records show that petitioner was *actually committing* a crime when he was arrested. A cursory examination of the testimony given by PO3 Pacis before the RTC will show that at the time of his arrest, petitioner had in his possession a plastic sachet containing *marijuana*, to wit:

PROS. GALLO – And you said that you saw this male person in red shirt, what was he doing at that time?

PO3 PACIS – He was standing at the corner street and then he drew out something from his right pocket, Ma'am.

Q – So what now if he draw out something from his pocket?

A – Then I take a look at him and I saw him examining a plastic sachet, Ma'am.

COURT – This person that you saw, was he walking or sitting?

A – He was standing at the corner, your Honor.

PROS. GALLO – Was there anybody near him at that time?

A – None, ma'am.

Q – And you said that you were at the distance of five (5) meters, were you able to see the contents of that plastic sachet?

---

[27] See *Dacanay v. People*, G.R. No. 199018, September 27, 2017.

A – Not yet, Ma'am.

Q – So what now?

A – I informed SPO1 Bombase about what I saw and then we discreetly approached that male person, Ma'am.

Q – What was the reason why you have to approach that person?

A – *Because I want to know what he was looking at on his hands, Ma'am*.

Q – So what did you see?

A – *When I approached him I saw a plastic sachet of marijuana from his hands, Ma'am.*

Q – How far were you already from that person when you saw the plastic sachet of marijuana?

A – *About a tapping distance, Ma'am*.

Q – You want to tell the Honorable Court that at that tapping distance the person did not notice you?

A – Yes, Ma'am.

Q – Why?

A – Because he was busy looking at the plastic sachet, Ma'am.

x x x[28] (Emphases and underscoring supplied)

Records reveal that when PO3 Pacis and SPO1 Bombase approached petitioner, they were not effecting a warrantless arrest just yet; hence, there was no intrusion into the person of petitioner. Their purpose was merely to *investigate* into what appeared to be suspicious actuations of the latter. It was only upon closer scrutiny that they were able to discern exactly what the plastic sachet contained; hence, the warrantless arrest that they effected immediately thereafter is clearly justified under Section 5 (a) above-quoted, it having been established that petitioner was actually committing a crime, *i.e.*, having in his possession *marijuana*, a dangerous drug, without legal authority to do so, in the presence of the arresting officers, and which

[28] TSN, August 1, 2013, pp. 6-7.

personal knowledge they obtained in the performance of their investigative duties as police officers.

Notwithstanding the validity of petitioner's warrantless arrest, however, the Court is wont to acquit him on the basis of the non-observance of the stringent requirements under the IRR of RA 9165,[29] Section 21 of which partly states:

Section 21. *Custody and Disposition of Confiscated, Seized and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs,*

---

[29] The IRR of RA 9165 is now crystallized into statutory law with the passage of RA 10640, entitled "AN ACT TO FURTHER STRENGTHEN THE ANTI-DRUG CAMPAIGN OF THE GOVERNMENT, AMENDING FOR THE PURPOSE SECTION 21 OF REPUBLIC ACT NO. 9165, OTHERWISE KNOWN AS THE 'COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002,'" approved on July 15, 2014, Section 1 of which states:

Section 1. Section 21 of Republic Act No. 9165, otherwise known as the "Comprehensive Dangerous Drugs Act of 2002," is hereby amended to read as follows:

"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.

x x x x x x x x x "

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 non-compliance with these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/ team, shall not render void and invalid such seizures of and custody over said items;

x x x (Emphases and underscoring supplied)

As a general rule, the apprehending team must strictly comply with the foregoing procedure. However, failure to do so will not *ipso facto* render the seizure and custody over the items as void and invalid *provided*: **(*a*) there is justifiable ground for non-compliance; and (*b*) the integrity and evidentiary value of the seized items are properly preserved**.[30] For the saving clause to apply, it is important that the prosecution should explain the reasons behind the procedural lapses and that the integrity and value of the seized evidence had been

---

[30] See *People v. Goco*, G.R. No. 219584, October 17, 2016, 806 SCRA 240, 252; citation omitted.

preserved.[31] Further, the justifiable ground for non-compliance must be proven as a fact, as the Court cannot presume what these grounds are or that they even exist.[32] Notably, these rules have been effectively set into law with the passage of RA 10640.

As the records disclose, there were unjustified deviations committed by the police officers in the handling of the confiscated items after petitioner's arrest in breach of the chain of custody procedure as discussed above. *First*, while it is true that a physical inventory[33] of the seized items was prepared by the investigating officer, SPO3 Fernando Moran (SPO3 Moran), no photographs thereof were taken. *Second*, although it appears that the physical inventory had been prepared in the presence of petitioner who merely refused to sign,[34] it was not shown that a representative from the media and the Department of Justice (DOJ), as well as an elected public official had been present during the inventory. If any of them had been present, they should have signed the physical inventory itself and been given a copy thereof.

The mere marking of the seized drugs, unsupported by a physical inventory and taking of photographs, and in the absence of the necessary personalities under the law, as in this case, fails to approximate compliance with the mandatory procedure under Section 21 of RA 9165.[35] In *People v. Mendoza*,[36] 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

---

[31] See *People v. Almorfe*, 631 Phil. 51, 60 (2010).

[32] See *People v. De Guzman*, 630 Phil. 637, 649 (2010).

[33] See Physical Inventory of Seized Evidence Form dated September 11, 2012; folder of exhibits, p. 7.

[34] TSN, August 1, 2013, p. 11.

[35] See *People v. Manansala*, G.R. No. 229092, February 21, 2018.

[36] 736 Phil. 749 (2014).

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."[37]

To make matters worse, no practicable reasons were given by the arresting officers, such as a threat to their safety and security or the time and distance which the other witnesses might need to consider,[38] for such non-compliance. 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. Therefore, it must be shown that earnest efforts were exerted by the police officers involved to comply with the mandated procedure so as to convince the Court that the failure to comply was reasonable under the given circumstances.[39] Evidently, such is not the case here, thereby leading to no other conclusion than that there was an unjustified breach of procedure rendering the integrity and evidentiary value of the *corpus delicti* in this case highly suspect. Consequently, petitioner's acquittal is in order.

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.

---

[37] *Id.* at 764; emphases and underscoring supplied.

[38] *Cf. People v. Belmonte*, G.R. No. 224143, June 28, 2017.

[39] See *People v. Manansala*, *supra* note 35.

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.[40]

"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 this procedure is determinative of the integrity and evidentiary value of the *corpus delicti* and ultimately, the fate of the liberty of the accused, the fact that any issue regarding the same was not raised, 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."[41]

WHEREFORE, the appeal is **GRANTED**. The Decision dated August 30, 2016 and the Resolution dated July 10, 2017 of the Court of Appeals in CA-G.R. CR No. 37743 are hereby **REVERSED** and **SET ASIDE**. Accordingly, petitioner Kenneth Santos *y* Italig is **ACQUITTED** of the crime 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), *Tijam,*[*] and *A. Reyes, Jr., JJ.,* concur.

Caguioa, J., on official leave.

---

[40] *People v. Go*, 457 Phil. 885, 925 (2003), citing *People v. Aminnudin*, 246 Phil. 424, 434-435 (1988).

[41] See *People v. Miranda*, G.R. No. 229671, January 31, 2018.

[*] Designated Additional Member per Special Order No. 2580 dated August 8, 2018.

EN BANC

[A.C. No. 12160. August 14, 2018]

BUENAVISTA PROPERTIES, INC., *complainant, vs.* **ATTY. AMADO B. DELORIA,** *respondent.*

SYLLABUS

1. LEGAL ETHICS; ATTORNEYS; RULE AGAINST CONFLICT OF INTEREST, EXPLAINED; SIMULTANEOUS REPRESENTATION OF THE OPPOSING CLIENTS WITHOUT THEIR WRITTEN CONSENT AND FULL DISCLOSURE OF THE FACTS CONSTITUTES VIOLATION OF THE RULE.— "The rule against conflict of interest also 'prohibits a lawyer from representing new clients whose interests oppose those of a former client in any manner, whether or not they are parties in the same action or on totally unrelated cases,' since *the representation of opposing clients, even in unrelated cases,* '*is tantamount to representing conflicting interests or, at the very least, invites suspicion of double-dealing* which the Court cannot allow.'" Moreover, the requirement under Rule 15.03 is quite clear. A lawyer must secure the *written consent* of all concerned parties after a full disclosure of the facts; failure to do so would subject him to disciplinary action as he would be found guilty of representing conflicting interests. In this case, Atty. Deloria represented Menguito, the President of LSDC, in the criminal case for *estafa* that Spouses Flores filed against her. Subsequently, however, Atty. Deloria filed a complaint for delivery of title against BPI *on behalf of Corazon* before the HLURB. As such, Atty. Deloria simultaneously represented Menguito and Corazon despite their conflicting interests, considering that Corazon's *estafa* case against Menguito was premised on the latter's and LSDC's alleged misrepresentation of ownership over the lots sold and LSDC's eventual failure to deliver the title. It must be stressed that it was LSDC that obligated itself to ensure the transfer of the ownership of the purchased lot to Corazon, a lot buyer, pursuant to the Contract to Sell executed between them. Thus, Atty. Deloria's simultaneous representation of Menguito and Corazon *sans* their

written consent after a full disclosure of the facts violated the rules on conflict of interest.

2. ID.; ID.; RESPONDENT NEGLECTED HIS DUTIES TO HIS CLIENT; TWO (2) YEARS SUSPENSION FROM THE PRACTICE OF LAW, IMPOSED.— Atty. Deloria violated Canon 17 and Rules 18.03 and 18.04, Canon 18 of the CPR, x x x Corazon attested to the fact that Atty. Deloria failed to communicate with and inform her, as his client, about her complaint against BPI before the HLURB. Likewise, Atty. Deloria failed to file the required position paper and draft decision before the HLURB. As such, he neglected the legal matters entrusted to him and failed to serve his client with competence and diligence, for which he must be clearly held administratively liable. x x x [U]nder the circumstances of the present case, the Court finds that a penalty of two (2) years suspension from the practice of law would suffice. Further, Atty. Deloria is warned that a repetition of this and other similar acts will be dealt with more severely.

3. REMEDIAL LAW; CIVIL PROCEDURE; RULE AGAINST FORUM SHOPPING; INSTANCES WHEN FORUM SHOPPING EXISTS.— Forum shopping exists when, as a result of an adverse decision in one forum, or in anticipation thereof, a party seeks a favorable opinion in another forum through means other than appeal or *certiorari*. There is forum shopping when the elements of *litis pendentia* are present or where a final judgment in one case will amount to *res judicata* in another. They are as follows: (*a*) identity of parties, or at least such parties that represent the same interests in both actions; (*b*) identity of rights or causes of action; and (*c*) identity of relief sought.

4. ID.; ID.; ID.; RESPONDENT COMMITTED FORUM SHOPPING.— In the *civil case* before the RTC, Atty. Deloria, on behalf of LSDC, filed an answer with counterclaim and prayed for the issuance of a writ of preliminary mandatory injunction to direct BPI to execute the deeds of absolute sale and release the titles covering the purchased subdivided lots. Notwithstanding the RTC's denial of LSDC's application for a writ of preliminary mandatory injunction in an Order dated August 11, 1998, as well as the pendency of the main case therein, Atty. Deloria nonetheless lodged a complaint before the HLURB praying for

the same relief as that pleaded for in its answer with counterclaim – to compel BPI to execute deeds of absolute sale and deliver the titles over the subdivided lots. Clearly, the elements of *litis pendentia* are present, considering: (*a*) the identity of parties, *i.e.*, BPI and LSDC; (*b*) identity of rights or causes of action, *i.e.*, BPI and LSDC being parties to the JVA, from which sprang their respective rights and obligations; and (*c*) identity of reliefs sought, *i.e.*, to compel BPI to execute the deeds of absolute sale and deliver the titles of the purchased lots. In fact, the HLURB in its Decision dated September 27, 2000 dismissed LSDC's complaint based on the same ground.

APPEARANCES OF COUNSEL

Margarita P. Tamunda for complainant.

D E C I S I O N

PERLAS-BERNABE, *J.*:

This administrative case stemmed from a verified complaint[1] dated March 4, 2005 filed by complainant Buenavista Properties, Inc. (BPI) before the Integrated Bar of the Philippines (IBP) against respondent Atty. Amado B. Deloria (Atty. Deloria) for allegedly violating multiple provisions of the Code of Professional Responsibility (CPR), which include Rules 15.01 and 15.03, Canon 15 on conflict of interest, Rule 12.02, Canon 12 on forum shopping, and Canon 17 and Rules 18.03 and 18.04, Canon 18 for failure to file the necessary pleadings on behalf of his client.

The Facts

On May 7, 1992, BPI, a corporation duly organized and existing under Philippine laws, entered into a Joint Venture Agreement[2]

---

[1] *Rollo*, pp. 2-9. The said complaint was filed by BPI's authorized representative Delfin V. Cruz, Jr.

[2] *Id*. at 10-16. See also the Addendum to the JVA dated February 19, 1996; *id*. at 17-20.

(JVA) with La Savoie Development Corporation[3] (LSDC), represented by Atty. Deloria, for the development of a parcel of land into a mixed-use commercial and residential subdivision and for the sale of the subdivided lots. BPI alleged that the plans, applications, and other documents of LSDC relative thereto were submitted to, processed, and evaluated by the Housing and Land Use Regulatory Board (HLURB) at the time when Atty. Deloria was one of its Commissioners.[4]

LSDC then sold the subdivided lots, albeit at very low prices. Further, LSDC misrepresented[5] itself as the owner of the lots, prompting BPI to demand that LSDC refrain from further selling them. However, LSDC disregarded BPI's demands;[6] hence, the latter filed a complaint[7] against the former for termination of contract, recovery of property and damages, with prayer for the issuance of a temporary restraining order and a writ of preliminary mandatory injunction (*civil case*) before the Regional Trial Court (RTC) of Quezon City. With Atty. Deloria as counsel, LSDC filed an answer with counterclaim and a prayer for the issuance of a writ of preliminary mandatory injunction[8] to direct BPI to execute the deeds of absolute sale and release the corresponding titles to the lot buyers. However, LSDC's application for a writ of preliminary mandatory injunction was denied.[9]

Thereafter, the lot buyers demanded LSDC to release the titles covering the subdivided lots; in turn, LSDC demanded the same from BPI. However, BPI refused, contending that it

---

[3] Also referred to as "La Savioe Development Corporation" in some parts of the *rollo*.

[4] See *rollo*, pp. 2-4.

[5] See Contract to Sell executed between LSDC and lot buyer Corazon Flores; *id*. at 29-30 and 232-236.

[6] See letters dated August 15, 1997, July 22, 1996, and August 15, 1996; *id*. at 21-23.

[7] Not attached to the *rollo*.

[8] Dated March 17, 1998. *Rollo*, pp. 93-103.

[9] See *id*. at 4-5. See also *id.* at 358.

was not a party to the transactions between LSDC and the lot buyers, and that LSDC sold the lots despite its objections. Eventually, the RTC also denied LSDC's prayer for a writ of mandatory injunction.[10]

Subsequently, LSDC, through Atty. Deloria, filed a complaint[11] against BPI before the HLURB to compel the latter to execute the deeds of absolute sale and deliver the titles of the subdivided lots, the same reliefs prayed for in LSDC's answer with counterclaim in the *civil case.* Meanwhile, BPI further alleged that in order to shield LSDC from liability, Atty. Deloria convinced the lot buyers that the former was responsible for the non-delivery of their titles. Thus, several lot buyers appointed[12] him as counsel to file cases on their behalf against BPI before the HLURB.[13]

In March 2004, however, lot buyers Spouses Corazon Flores (Corazon) and Roberto Flores (collectively, Spouses Flores), through their attorney-in-fact Mariano L. Celis,[14] filed a criminal case for *estafa*[15] against LSDC President Jeanne G. Menguito (Menguito), premised on the latter's misrepresentation that she was the owner of the lot that Corazon purchased. An Information[16] was later filed before the Metropolitan Trial Court of Makati City.[17]

Thereafter, Atty. Deloria filed several complaints[18] for delivery of title against BPI before the HLURB on behalf of the lot

---

[10] See *id*.

[11] Filed on August 27, 1999. *Id*. at 104-108.

[12] See the SPAs respectively filed by lot buyers Marlon Bautista, Luisito V. Ingalla, Wilfredo Latuja, Ramon G. Marino, and Corazon Flores; *id.* at 31-35.

[13] See *id*. at 5. See also *id*. at 358.

[14] See Special Power of Attorney dated March 25, 2004; *id.* at 68.

[15] See Memorandum of Preliminary Investigation and Affidavit/Complaint dated March 29, 2004; *id*. at 65-67.

[16] Not attached to the *rollo*.

[17] See *rollo*, p. 191. See also *id.* at 358-359.

[18] *Id*. at 36-51.

buyers, which included the case entitled "*Marlon Bautista, Luisito V. Ingalia, and Wilfredo Latuja, represented by Atty. Amado B. Deloria, Attorney-in-Fact v. Buenavista Properties, Inc. and/or Josephine Conde, President*" docketed as HLURB Case No. REM-C-03-8-1171.[19]

On September 6, 2005, Corazon executed a *Sinumpaang Salaysay*[20] stating, among others, that she was induced by a "fixer" to engage the services of Atty. Deloria as her lawyer for the purpose of filing a case against BPI before the HLURB. She also attested that although Atty. Deloria represented her before the HLURB, he neglected his duties as counsel by refusing to communicate with her and failing to file the required pleadings.[21]

Finally, BPI alleged[22] that Atty. Deloria made it appear that a certain Madelyn Hesola (Hesola) was the secretary of the President of BPI and in such capacity, received the HLURB's Notice of Decision[23] of a judgment against BPI, by reason of which Atty. Deloria moved for the issuance of a writ of execution.[24] However, BPI denied that Hesola was its employee, much more the secretary of its President. It likewise alleged that Atty. Deloria misquoted various provisions in the JVA in a position paper he filed before the HLURB.[25]

In view of the foregoing, BPI prayed for the suspension or disbarment of Atty. Deloria for committing multiple violations of the CPR, to wit: (*a*) **Rule 1.03**,[26] for encouraging the lot

---

[19] Dated December 8, 1994. *Id*. at 36-40.

[20] *Id*. at 330-331.

[21] See *id*. See also *id*. at 359.

[22] See *id*. at 6.

[23] Dated July 17, 2001; *id*.at 69. See also Decision dated June 14, 2001 penned by Legal Services Group Officer-in-Charge Atty. Donna R. Ladao; *id*. at 70-76.

[24] Dated February 10, 2003. *Id*. at 77-78.

[25] See *id*. at 6-7.

[26] Rule 1.03 – A lawyer shall not, for any corrupt motive or interest, encourage any suit or proceeding or delay any man's cause.

buyers to file cases against BPI in order to deflect the charges that the lot buyers have against LSDC; (*b*) **Rules 2.03**[27] and **8.02**[28] for convincing the Spouses Flores to withdraw the *estafa* case against Menguito and to appoint him as lawyer to file a case against BPI instead; (*c*) **Rules 1.01**[29] and **10.02**[30] when he resorted to lies with respect to the employment of Hesola and for misquoting the JVA in his pleadings; (*d*) **Rule 1.01** for inducing the lot buyers to file cases against BPI; (*e*) **Rules 15.01**[31] and **15.03**[32] for acting as counsel for LSDC and the lot buyers at the same time; (*f*) **Rule 12.02**[33] for having filed two (2) cases involving the same parties, issues, facts, and reliefs; (*g*) **Canon 17**[34] and **Rules 18.03**[35] and **18.04**,[36] **Canon**

---

[27] Rule 2.03 – A lawyer shall not do or permit to be done any act designed primarily to solicit legal business.

[28] Rule 8.02 – A lawyer shall not, directly or indirectly, encroach upon the professional employment of another lawyer, however, it is the right of any lawyer, without fear or favor, to give proper advice and assistance to those seeking relief against unfaithful or neglectful counsel.

[29] Rule 1.01 – A lawyer shall not engage in unlawful, dishonest, immoral or deceitful conduct.

[30] Rule 10.02 – A lawyer shall not knowingly misquote or misrepresent the contents of a paper, the language or the argument of opposing counsel, or the text of a decision or authority, or knowingly cite as law a provision already rendered inoperative by repeal or amendment, or assert as a fact that which has not been proved.

[31] Rule 15.01 – A lawyer, in conferring with a prospective client, shall ascertain as soon as practicable whether the matter would involve a conflict with another client or his own interest, and if so, shall forthwith inform the prospective client.

[32] Rule 15.03 – A lawyer shall not represent conflicting interests except by written consent of all concerned given after a full disclosure of the facts.

[33] Rule 12.02 – A lawyer shall not file multiple actions arising from the same cause.

[34] Canon 17 – A lawyer owes fidelity to the cause of his client and he shall be mindful of the trust and confidence reposed in him.

[35] Rule 18.03 – A lawyer shall not neglect a legal matter entrusted to him, and his negligence in connection therewith shall render him liable.

[36] Rule 18.04 – A lawyer shall keep the client informed of the status of his case and shall respond within a reasonable time to the client's request for information.

18,[37] for failing to file the necessary pleadings on behalf of Corazon in the HLURB case; and (*h*) **Rule 6.03**[38] for acting as counsel for LSDC after leaving the government service as HLURB Commissioner.[39]

In his defense,[40] Atty. Deloria argued that while the plans of the subdivision project of BPI were submitted to the HLURB in 1992 for evaluation, he wielded no influence to approve the said plans because the evaluation and approval of subdivision plans were vested with the Commissioner for Planning. He added that being only one of the four (4) commissioners of the HLURB, which always acted as a collegial body, he had very limited functions. Moreover, he denied that he resorted to machinations and "hoodwinked" the lot buyers into engaging him as their lawyer, explaining that he only wanted to help the fully-paid lot buyers to obtain their titles.[41]

Atty. Deloria likewise claimed that it was the staff of LSDC who served the Notice of Decision issued by the HLURB to Hesola. Further, he asserted that Section 7 (b) of Republic Act (RA) No. 6713,[42] otherwise known as the "Code of Conduct

---

[37] Canon 18 – A lawyer shall serve his client with competence and diligence.

[38] Rule 6.03 – A lawyer shall not, after leaving government service, accept engagement or employment in connection with any matter in which he had intervened while in said service.

[39] See *rollo*, pp. 6-8. See also *id*. at 196-210.

[40] See Answer dated June 6, 2005; *id*. at 136-144.

[41] See *id.* at 136-139.

[42] Entitled "AN ACT ESTABLISHING A CODE OF CONDUCT AND ETHICAL STANDARDS FOR PUBLIC OFFICIALS AND EMPLOYEES, TO UPHOLD THE TIME-HONORED PRINCIPLE OF PUBLIC OFFICE BEING A PUBLIC TRUST, GRANTING INCENTIVES AND REWARDS FOR EXEMPLARY SERVICE, ENUMERATING PROHIBITED ACTS AND TRANSACTIONS AND PROVIDING PENALTIES FOR VIOLATIONS THEREOF AND OTHER PURPOSES," approved on February 20, 1989, Section 7 of which states:

Section 7. *Prohibited Acts and Transactions.* – In addition to acts and omissions of public officials and employees now prescribed in the Constitution and existing laws, the following shall constitute prohibited acts and transactions of any public official and employee and are hereby declared to be unlawful:

x x x x x x x x x

and Ethical Standards for Public Officials and Employees," which proscribed his appearance before the HLURB within one (1) year from resignation, retirement, or separation from public office, no longer applies to him, considering that he has retired as HLURB Commissioner thirteen (13) years prior to becoming LSDC's counsel.[43]

Finally, he averred that: (*a*) being an artificial person incapable of experiencing physical suffering or mental anguish, BPI cannot institute this action; (*b*) assuming without admitting that it can do so, no resolution of the Board of Directors of BPI was passed authorizing the filing of this complaint; (*c*) LSDC has the authority, under the JVA, to sell lots in the subdivision project; (*d*) the right to the delivery of the title of a buyer who has fully paid cannot be affected by any misunderstanding or litigation between the parties to a JVA; and (*e*) the complaint is tainted with bad faith, considering that two (2) days before the filing of the present complaint, the President of BPI informed him of an imminent disbarment case should he fail to cause the withdrawal of the lot buyers' complaints against BPI.[44]

(b) *Outside employment and other activities related thereto.* – Public officials and employees during their incumbency shall not:

(1) Own, control, manage or accept employment as officer, employee, consultant, counsel, broker, agent, trustee or nominee in any private enterprise regulated, supervised or licensed by their office unless expressly allowed by law;

(2) Engage in the private practice of their profession unless authorized by the Constitution or law, provided, that such practice will not conflict or tend to conflict with their official functions; or

(3) Recommend any person to any position in a private enterprise which has a regular or pending official transaction with their office.

These prohibitions shall continue to apply for a period of one (1) year after resignation, retirement, or separation from public office, except in the case of subparagraph (b) (2) above, but the professional concerned cannot practice his profession in connection with any matter before the office he used to be with, in which case the one-year prohibition shall likewise apply.

x x x (Emphasis and underscoring supplied)

[43] See *rollo*, pp. 139-141.

[44] See *id*. at 141-143.

The IBP's Report and Recommendation

In a Report and Recommendation[45] dated July 20, 2016, the IBP Investigating Commissioner found Atty. Deloria administratively liable, and accordingly, recommended that he be meted the penalty of suspension from the practice of law for two (2) years.[46]

The Investigating Commissioner found that Atty. Deloria did not violate Rules 1.03, 2.03, and 8.02 of the CPR on the ground of insufficiency of evidence. Likewise, Atty. Deloria was found not guilty of violating Rules 1.01 and 10.02 of the CPR as BPI failed to show that he had a role in the wrongful designation of Hesola or that he knowingly misquoted the JVA in a position paper he filed with the HLURB.[47]

However, the Investigating Commissioner found Atty. Deloria *guilty* of violating Rules 15.01 and 15.03 of the CPR for representing conflicting interests. Records show that on March 30, 2004, Corazon filed the *estafa* case against Menguito, President of LSDC, whose lawyer was Atty. Deloria. The basis for the *estafa* charges was Menguito's misrepresentation that she was the owner of the lot Corazon purchased. Thereafter, or on June 15, 2004, Atty. Deloria, *on behalf of Corazon*, filed a complaint for delivery of title with the HLURB against BPI with LSDC as third-party respondent. Thus, Atty. Deloria simultaneously represented LSDC President Menguito and Corazon, a lot buyer, who had conflicting interests. Likewise, he represented several lot buyers as complainants in the HLURB case against BPI while also representing LSDC as third-party respondent therein. The Investigating Commissioner noted that Atty. Deloria failed to show that he obtained the written consent of the parties concerned.[48]

---

[45] *Id*. at 356-370. Penned by Commissioner Leo B. Malagar.

[46] *Id.* at 370.

[47] See *id.* at 363-365.

[48] See *id*. at 365-366.

Similarly, the Investigating Commissioner found Atty. Deloria liable for violating Rule 12.02 of the CPR on forum shopping, having prayed in its answer with counterclaim with prayer for the issuance of a writ of preliminary mandatory injunction in the *civil case* before the RTC that BPI be directed to execute the deeds of absolute sale and deliver the titles covering the subdivided lots, and thereafter, when the prayer for injunction was denied, filed a complaint before the HLURB praying for the same reliefs. In fact, the HLURB eventually dismissed the complaint filed before it on the ground of *litis pendentia*, finding the presence of all the elements therefor.[49]

Finally, Atty. Deloria was also found to have violated Canon 17 and Rules 18.03 and 18.04, Canon 18 of the CPR for his failure to file the necessary pleadings for his client and to inform and communicate with her, as attested to by Corazon in her *Sinumpaang Salaysay.*[50]

As regards the alleged violation of Rule 6.03 of the CPR, the Investigating Commissioner found no violation thereof, as the proscription under Section 7 (b) of RA 6713 prohibiting a former public officer from engaging in certain transactions applies only for a period of one (1) year after his/her resignation, retirement, or separation from office. As Atty. Deloria was engaged as LSDC's counsel thirteen (13) years after his retirement from HLURB, the prohibition no longer applies to him. Moreover, BPI failed to prove that Atty. Deloria intervened in any of the transactions where LSDC was involved during his stint as HLURB Commissioner.[51]

Parenthetically, as regards BPI's standing to institute the present case, the Investigating Commissioner noted that a corporate entity may institute disbarment proceedings,[52] as in this case.

---

[49] See *id*. at 367-368.

[50] See *id*. at 368-369.

[51] See *id*. at 369.

[52] See *id*. at 370.

In a Resolution[53] dated June 17, 2017, the IBP Board of Governors adopted the aforesaid report and recommendation.[54]

The Issue Before the Court

The essential issue in this case is whether or not grounds exist to hold Atty. Deloria administratively liable for any violations of the CPR.

The Court's Ruling

After a punctilious review of the records, the Court concurs with the conclusion of the IBP Board of Governors that Atty. Deloria should be held administratively liable in this case.

Atty. Deloria represented conflicting interests

Rules 15.01 and 15.03, Canon 15 of the CPR state:

CANON 15 – x x x

Rule 15.01 – A lawyer, in conferring with a prospective client, shall ascertain as soon as practicable whether the matter would involve a conflict with another client or his own interest, and if so, shall forthwith inform the prospective client.

x x x x x x x x x

Rule 15.03 – A lawyer shall not represent conflicting interests except by written consent of all concerned given after a full disclosure of the facts.

In *Hornilla v. Salunat*,[55] the Court explained the test to determine conflict of interest, to wit:

There is conflict of interest when a lawyer represents inconsistent interests of two or more opposing parties. The test is "whether or not in behalf of one client, it is the lawyer's duty to fight for an issue or claim, but it is his duty to oppose it for the other client. In brief,

---

[53] See Notice of Resolution No. XXII-2017-1216; *id*. at 354-355.

[54] See *id*. at 354.

[55] 453 Phil. 108 (2003).

if he argues for one client, this argument will be opposed by him when he argues for the other client." This rule covers not only cases in which confidential communications have been confided, but also those in which no confidence has been bestowed or will be used. Also, there is conflict of interest if the acceptance of the new retainer will require the attorney to perform an act which will injuriously affect his first client in any matter in which he represents him and also whether he will be called upon in his new relation to use against his first client any knowledge acquired through their connection. **Another test of the inconsistency of interests is whether the acceptance of a new relation will prevent an attorney from the full discharge of his duty of undivided fidelity and loyalty to his client or invite suspicion of unfaithfulness or double-dealing in the performance thereof**.[56]

"The rule against conflict of interest also 'prohibits a lawyer from representing new clients whose interests oppose those of a former client in any manner, whether or not they are parties in the same action or on totally unrelated cases,' since *the representation of opposing clients, even in unrelated cases,* '*is tantamount to representing conflicting interests or, at the very least, invites suspicion of double-dealing* which the Court cannot allow.'"[57] Moreover, the requirement under Rule 15.03 is quite clear. A lawyer must secure the *written consent* of all concerned parties after a full disclosure of the facts;[58] failure to do so would subject him to disciplinary action[59] as he would be found guilty of representing conflicting interests.[60]

In this case, Atty. Deloria represented Menguito, the President of LSDC, in the criminal case for *estafa* that the Spouses Flores filed against her. Subsequently, however, Atty. Deloria filed a complaint[61] for delivery of title against BPI *on behalf of Corazon*

---

[56] *Id*. at 111-112.

[57] See *Romero v. Evangelista, Jr.*, A.C. No. 11829, February 26, 2018; citations omitted.

[58] See *Palacios v. Amora, Jr.*, A.C. No. 11504, August 1, 2017.

[59] See *id*., citing *Gonzales v. Cabucana, Jr.*, 515 Phil. 296, 306 (2006).

[60] See *id*.

[61] Dated June 14, 2004. *Rollo*, pp. 46-51.

before the HLURB. As such, Atty. Deloria simultaneously represented Menguito and Corazon despite their conflicting interests, considering that Corazon's *estafa* case against Menguito was premised on the latter's and LSDC's alleged misrepresentation[62] of ownership over the lots sold and LSDC's eventual failure to deliver the title.[63] It must be stressed that it was LSDC that obligated itself to ensure the transfer of the ownership of the purchased lot to Corazon, a lot buyer, pursuant to the Contract to Sell[64] executed between them. Thus, Atty. Deloria's simultaneous representation of Menguito and Corazon *sans* their written consent after a full disclosure of the facts violated the rules on conflict of interest.

Moreover, he represented several lot buyers as complainants in HLURB Case No. REM-C-03-8-1171 against BPI while also representing LSDC as third-party respondent therein. In fact, he even filed a Position Paper[65] on behalf of *both* the complainants therein and LSDC. Such dual representation without the written consent of the parties again constitutes a violation of Rules 15.01 and 15.03, Canon 15 of the CPR, warranting disciplinary action therefor.

Atty. Deloria committed forum shopping

Likewise, Atty. Deloria violated Rule 12.02, Canon 12 of the CPR on forum shopping, which states:

> CANON 12 – x x x
>
> x x x x x x x x x
>
> Rule 12.02 – A lawyer shall not file multiple actions arising from the same cause.

---

[62] See Affidavit/Complaint; *id*. at 272-273.

[63] See *id*. at 365-366.

[64] See *id*. at 29-30.

[65] Dated February 8, 2000. *Id*. at 80-92.

Forum shopping exists when, as a result of an adverse decision in one forum, or in anticipation thereof, a party seeks a favorable opinion in another forum through means other than appeal or *certiorari*.[66] There is forum shopping when the elements of *litis pendentia* are present or where a final judgment in one case will amount to *res judicata* in another. They are as follows: (*a*) identity of parties, or at least such parties that represent the same interests in both actions; (*b*) identity of rights or causes of action; and (*c*) identity of relief sought.[67]

In the *civil case* before the RTC, Atty. Deloria, on behalf of LSDC, filed an answer with counterclaim and prayed for the issuance of a writ of preliminary mandatory injunction[68] to direct BPI to execute the deeds of absolute sale and release the titles covering the purchased subdivided lots. Notwithstanding the RTC's denial of LSDC's application for a writ of preliminary mandatory injunction in an Order[69] dated August 11, 1998, as well as the pendency of the main case therein, Atty. Deloria nonetheless lodged a complaint[70] before the HLURB praying for the same relief as that pleaded for in its answer with counterclaim – to compel BPI to execute deeds of absolute sale and deliver the titles over the subdivided lots. Clearly, the elements of *litis pendentia* are present, considering: (*a*) the identity of parties, *i.e.*, BPI and LSDC; (*b*) identity of rights or causes of action, *i.e.*, BPI and LSDC being parties to the JVA, from which sprang their respective rights and obligations; and (*c*) identity of reliefs sought, *i.e.*, to compel BPI to execute the deeds of absolute sale and deliver the titles of the purchased lots. In fact, the HLURB in its Decision[71] dated September

---

[66] *Teodoro III v. Gonzales*, 702 Phil. 422, 428 (2013), citing *Polanco v. Cruz*, G.R. No. 182426, February 13, 2009, 579 SCRA 489, 495.

[67] *Id*.

[68] *Rollo*, pp. 93-103.

[69] Not attached to the *rollo*.

[70] *Rollo*, pp. 104-108.

[71] *Id*. at 110-118. Penned by Housing and Land Use Arbiter Atty. Gina A. Antonio.

27, 2000 dismissed LSDC's complaint based on the same ground.

Atty. Deloria neglected his duties to his client

Finally, Atty. Deloria violated Canon 17 and Rules 18.03 and 18.04, Canon 18 of the CPR, which state:

> CANON 17 – A lawyer owes fidelity to the cause of his client and he shall be mindful of the trust and confidence reposed in him.
>
> CANON 18 – A lawyer shall serve his client with competence and diligence.
>
> x x x x x x x x x
>
> Rule 18.03 – A lawyer shall not neglect a legal matter entrusted to him, and his negligence in connection therewith shall render him liable.
>
> Rule 18.04 – A lawyer shall keep the client informed of the status of his case and shall respond within a reasonable time to the client's request for information.

In this case, Corazon attested to the fact that Atty. Deloria failed to communicate with and inform her, as his client, about her complaint against BPI before the HLURB. Likewise, Atty. Deloria failed to file the required position paper and draft decision before the HLURB. As such, he neglected the legal matters entrusted to him and failed to serve his client with competence and diligence, for which he must be clearly held administratively liable.

Penalty imposed upon Atty. Deloria

In *Quiambao v. Bamba*,[72] the Court explained that the penalty *solely* for a lawyer's representation of conflicting interests on the basis of jurisprudence is suspension from the practice of law for one (1) to three (3) years.[73] On the other hand, in the

---

[72] 505 Phil. 126 (2005), cited in *Palacios v. Amora*, *supra* note 58.

[73] See *id*. at 139.

case of *Williams v. Enriquez*,[74] the Court imposed the penalty of suspension from the practice of law for six (6) months upon the respondent for violating the rule on forum shopping. Finally, in *Pilapil v. Carillo*,[75] the Court suspended a lawyer from the practice of law for six (6) months after finding that he had failed to file a petition for *certiorari* from the adverse decision rendered in the case of his client despite the latter's repeated follow-ups. The Court imposed a similar penalty in *Quiachon v. Ramos*[76] for respondent's failure to keep the client informed of the status of the case and to promote the client's cause, thereby neglecting the case entrusted to him.

In view thereof, and under the circumstances of the present case, the Court finds that a penalty of two (2) years suspension from the practice of law would suffice. Further, Atty. Deloria is warned that a repetition of this and other similar acts will be dealt with more severely.

WHEREFORE, respondent Atty. Amado B. Deloria is found **GUILTY** of violating Rules 15.01 and 15.03 of Canon 15, Rule 12.02 of Canon 12, Canon 17, and Rules 18.03 and 18.04 of Canon 18 of the Code of Professional Responsibility. Accordingly, he is hereby **SUSPENDED** from the practice of law for a period of two (2) years, effective upon his receipt of this Decision, with a **STERN WARNING** that a repetition of the same or similar acts will be dealt with more severely.

The suspension from the practice of law shall take effect immediately upon receipt by respondent of this Decision. Respondent is **DIRECTED** to immediately file a Manifestation to the Court that his suspension has started, copy furnished all courts and quasi-judicial bodies where he has entered his appearance as counsel.

---

[74] 769 Phil. 666 (2015).

[75] 443 Phil. 193 (2003).

[76] 735 Phil. 1 (2014).

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

SO ORDERED.

Carpio, Leonardo-de Castro, Peralta, Bersamin, del Castillo, Leonen, Jardeleza, Caguioa, Tijam, A. Reyes, Jr., Gesmundo, and *J. Reyes, Jr., JJ.,* concur.

EN BANC

[G.R. No. 230218. August 14, 2018]

PHILIPPINE HEALTH INSURANCE CORPORATION REGIONAL OFFICE – CARAGA, JOHNNY Y. SYCHUA; ABAMONGA, JOCELYN J.; AGUDO, CELESTE MONICA N.; ARAT, ANDREW B.; ARAT, HEIDI JOY H.; ARIAR, RODRIGO D.; AUTOR, SARA FAITH P.; AVENIDO, SOFIA C.; AZARCON, JOCELYN C.; BABASOL, CHAROL B.; BACALA, MARY ANGELIQUE R.; BARIQUIT, JULIETA L.; BOHOLANO, LEILANI DANA D.; BOKINGO, MARIA ALMA L.; BORLEO, JUDY C.; BUCAYON, ROMMEL A.; CABALLERO, LOWELL RICHARD S.; CABUYOC, RICARDO M.; CADELIÑA, JANE M.; CALO, ROWENA M.; CALOPE, ARMI B.; CAMACHO, ZENDA C.; CAÑETE, JOCELYN E.; CANTA, HONEY JOY M.; CASCARA, SOTICO M.; CASTAÑOS, MARICEL M.; COLIMA, JR., YBARRA ROYRINO A.; COSCOS, ACEL M.; DAIRO, MARIA ROWENA B.; DE GUZMAN, FEBIE S.; DE JESUS,

JOEL ARTURO S.; DE VEYRA, TERESITA M.; DE VILLA, MARIA ESTELLA L.; DE VILLA, VICTOR M.; DUMANON, LOIDA M.; DURANO, JR., REINERIO M.; DURANO, REGGIE Y.; ELMIDO, ALEXIS C.; ESGUERRA, EVELYN C.; ESPAÑOL, PROCORO C.; ESPARRAGO, MARITES D.; ESPINA, DINAH M.; ETIC, ZANDRO B.; GALICTO, JELBERT B.; GALIDO, GUADA MAE D.; GALOLA, MARICRIS P.; GOLEZ, JULIET A.; GONZALES, AMADEL A.; GONZALEZ, EDUARDO S.; GREFALDE, CHRISTLEN Q.; GUILLENA, SHEILA M., JAMERO, MARIA NIMFA S.; JANDUG, CARYLNE A.; JAVA, SHIELA S.; LAFUENTE, ROWENA C.; LASCO, CHELO B.; LISONDRA, SHEILA M.; LOPEZ, JOCELYN A.; LUTA, ANGELINA R.; MAG-ISA, ROSEMARIE P.; MAGTIBAY, MARCELITO M.; MAG-USARA, QUEENIE R.; MALLARI, MARITESS M.; MAPUTI, JR., ROBERTO B.; MARASIGAN, JEANNE-MARIE F.; MARCHAN, MARIA JEZREEL CATHEREEN P.; MERO, CRISILDA DOLORES U.; MICULOB, JONNA G.; MIRO, PEMILYN Z.; MOLETA, JO-ANN N.; MONTE DE RAMOS, JHONA C.; MONTENEGRO, CLAIRE M.; MORALES, FLORA M.; MOREDAS, MA. MAE T.; NONAN, CHERYLLE D.; OLANO, ARA VILLA K.; OSO, ARNEL P.; PEDROSA, MARY GRACE F.; PLAZA, JOHANN A.; PO, KENNETH M.; POCON, KATHERINE A.; POCON, RICKY C.; QUINTO, MITZI V.; RAMIREZ, MARILOU M.; RAMORAN, MARK ANTHONY C.; SABACAJAN, RINA M.; SALAZAR, ERIC G.; SANCHEZ, CECILIA R.; SANTOS, JANE E.; SEGALES, BEBELYN P.; SUAREZ, ADELA S.; SYCHUA, JOHNNY Y.; TABADA, EILEEN I.; TANANGKINGSING, MARY GRACE S.; TARE, ROBERTO M.; VALENCIA, ROBERT A.; VERACION, MINDA A.; VERDUN, SHERWIN E.; YBAÑEZ, KRISTINE A.; YUCHITCHO, ETHEL L.; ALMEDA, JR., RODULFO

G.; AMPOLOQUIO, RYAN GOLDBERG B.; ANGUB, JOVANIE T.; APRESTO, MARIA LIMAYA B.; ASIDERA, JOANNE MAE A.; ATO, BERNADITH B.; AVILA, RHEZA C.; BADIANG, DAISY MAE P.; BAJAO, JEROME C.; BALAGOLAN, RACHEL MAE U.; BALAGOSA, CARLO JAE C.; BANTASAN, LESLIE ANN M.; BASCO, FRANZ JOSEF L.; BATULAN, CATHERINE P.; BENSON, DEGRAN A.; BERDIN, BIENVENIDO A.; BERTULFO, ROSELLE E.; BESANDE, CHARLES C.; BETIA, ARBELLE L.; BLANCO, MARY GRACE T.; BRIONES, MARIEDITH GRACE S.; BUQUE, EMMIELOU B.; BUSA, IAN A.; BUYAN, PARLEY U.; CABANBAN, KRIZZIA BELLE A.; CABATINGAN, GEMMA COREEN S.; CAHILOG, MARISAL A.; CALIMPUSAN, JORNY L.; CALLANTA, DARRYL L.; CALO, ALMA LOURDES ROSARIO S.; CALO, JESRYL N.; CAMPOS, EUNICE D.; CANDONTOL, ERICK VAL S.; CANINDO, JOSEPH M.; CARLOS, KRISTINE JOY SHALOM P.; CASIMERO, MAIRENE S.; CASTILLO, JR., RUFINO O.; CAYBOT, CHARISSE AIKO B.; COMANDANTE, GRACE SHARINA C.; CIANO, EPHRELYN C.; COLLADO, JANUARY T.; CORVERA, MARYDEL D.; CORVERA, JUNALYN C.; CUARES, JAN ANTHONY A.; CURATO, GERTRUDE VALERIE O.; DACUYA, MARILOU B.; DANGOY, GLIZELLE B.; DE CLARO, ODESSA MAR S.; DE LA CRUZ, JR., SILVANO C.; DIGAL, ALBERT M.; DISCAYA, JO-IAN S.; DOLINOG, ROLAND P.; DOLORICON, JAFF ERIC L.; DOMINGO, ROY ANDREI M.; DUMDUMAYA, JAN MICHAEL C.; ELMIDO, JEANETTE T.; ENRIQUEZ, PAULYN VIERNE T.; ESPINOSA, ARES P.; EUSEBIO, JINGLE A.; FACURIB, JANIT C.; FEBRA, MICHAEL E.; FORSUELO, JOSEPH HOUSSIEN G.; FRAYCO, TWINKLE JANE F.; FUMAR, SHIELA V.; GACAL, JETHRO M.; GACAL, ROSE JANE R.; GALEON,

DINO H.; GALVAN, NEIL E.; GAMBA, RODEL B.; GARGAR, ROGEMAE R.; GOLORAN, JOSEPHINE M.; GONZAGA, SUZETTE ANNE M.; INGLES, CLARK ARIES A.; JAYOMA, CLARK ERICSON M.; JUMONONG, JR., VIRGILIO C.; LAAG, HAZEL GRACE R.; LEMOSIONERO, JUNEIAN FLORENCE P.; LIBRES, SARAH JANE D.; LIGAYA, EDUARD L.; MAKINANO, ELLEN ROSE G.; MALAQUE, DIONA LORRAINE G.; MARQUEZ, CRISTY P.; MARTINEZ, EVANGELINE C.; MASCARIÑAS, ENGELI M.; MATURAN, MANELYN I.; MEJIAS, GRACE C.; MENDOZA, SHEENA KATRINA S.; MILLAN, ICELLE R.; MOJICA, MERIEJO L.; MONDARES, PHOEBE B.; MONTERO, RUEL G.; MONTILLA, JR., ROLANDO U.; MORALES, JR., FELICITO O.; NEIS, CHRISTINE CARLA R.; OCHAVILLO, KAREN L.; OCULAM, CYNTHIA S.; OLANO, JOHNWEVEN DALE M.; OÑEZ, ALCEL MARC A.; ONTUA, JR., ALEXANDER L.; ORTIZ, MERCHEL M.; OTACAN, STEPHANIE SUZANNE D.; OYDA, ALFREDO M.; PABILLIORE, ALFIE SEMONETTE P.; PAHIT, KATHLEEN O.; PALACIO, SHEILA MARIE B.; PALER, MARY KRISTY B.; PALOMA, JEREMY A.; PASCO, LUIDE IVAN U.; PAYAC, MARY ANN M.; VERGAS, JUNAHLYN P.; POMBO, MICHELLE G.; PULTA, MAXIMO B.; QUEVEDO, DIOSDADO III L.; QUINTO, MARLETZ D.; RABISANTO, JAYZL M.; RAGAS, JESABBEL R.; REGLOS, JENNIFER M.; SALA, JR., RESTITUTO O.; SALA, MICHELLE A.; SALMORO, IRISH R.; SANCHEZ, JENNET N.; SILAGAN, MICHELLE A.; SIMBAJON, FLORELYN T.; SUANTE, GLARIS MAE C.; TAC-AL, JESUS L.; TAMISAN, MA. KARINA JOY J.; TAYAG, EFREN ALEXIS A.; TIMBAL, ROZCIEL C.; TORCULAS, AILYN C.; TORRALBA, JENNY MAE A.; UMBA, CATHERINE E.; VALCURZA, MARK M.; VAPOR, CRISTIE G.; YBAÑEZ, KRISTAL GAYLE L., *petitioners, vs.* **COMMISSION ON AUDIT,**

CHAIRPERSON MICHAEL G. AGUINALDO, MA. GRACIA PULIDO-TAN, HEIDI L. MENDOZA, JOSE F. FABIA, *respondents.*

SYLLABUS

1. **POLITICAL LAW; CONSTITUTIONAL LAW; COMMISSION ON AUDIT (COA); POWER AND DUTIES.—** The COA as constitutional office and guardian of public funds is endowed with the exclusive authority to determine and account government revenue and expenditures, and disallow irregular, unnecessary excessive use of government funds. x x x The limitation of the Court's power of review over COA rulings merely complements its nature as an independent constitutional body to: (i) determine whether the government entities comply with the law and the rules in disbursing public funds; and (ii) disallow legal disbursements of these funds.

2. **ID.; ADMINISTRATIVE LAW; GOVERNMENT-OWNED AND CONTROLLED CORPORATION; PHILHEALTH; POWER TO FIX THE COMPENSATION AND BENEFITS OF ITS PERSONNEL IS SUBJECT TO THE GUIDELINES ISSUED BY THE PRESIDENT AND TO SUBMIT A REPORT TO THE DEPARTMENT OF BUDGET AND MANAGEMENT (DBM); PHILHEALTH'S FISCAL AUTONOMY DOES NOT AUTOMATICALLY PRECLUDE THE COA'S POWER TO DISALLOW THE GRANT OF BENEFITS AND ALLOWANCES.—** Philhealth CARAGA is still required to 1) observe the policies and guidelines issued by the President with respect to position classification, salary rates, levels of allowances, project and other *honoraria*, overtime rates, and other forms of compensation and fringe benefits, and 2) report to the President, through the Budget Commission, on their position classification and compensation plans, policies, rates and other related details following such specifications as may be prescribed by the President. Thus, Philhealth CARAGA's power to fix the compensation of its personnel as granted by its charter, does not necessarily mean that it has unbridled discretion to issue any and all kinds of allowances and other forms of benefits or compensation package, limited only by the provisions of its charter. The power of GOCCs or its board to fix the salaries,

allowances and bonuses must still conform to compensation and position classification standards laid down by applicable laws, as discussed above. To sustain Philhealth CARAGA's claim that it has unbridled authority to unilaterally fix its compensation package will result in an invalid delegation of legislative power. Further, Philhealth CARAGA's fiscal autonomy does not automatically preclude the COA's power to disallow the grant of allowances in cases of irregular, excessive, unnecessary, or unconscionable expenditures of government funds. As discussed and quoted above, Philhealth CARAGA's compensation standardization scheme notwithstanding its exemption from the coverage of the Office of Compensation and Position Classification requires it to observe the guidelines issued by the President and to submit a report to DBM. The rationale for the review of the DBM is to provide for the standardized compensation of all government employees and officials, including those in GOCCs under Salary Standardization Laws, which are P.D. No. 985, its amendment, P.D. No. 1597, R.A. No. 6758 and R.A. No. 10149, based on government's national policy of equal pay for work of equal value and to base differences in pay upon substantive differences in duties and responsibilities, and qualification requirements of the positions.

3. ID.; ID.; ID.; OFFICERS WHO ACTED IN GOOD FAITH IN RELEASING THE BENEFITS AND OFFICERS AND OTHER EMPLOYEES WHO RECEIVED SUCH BENEFITS IN GOOD FAITH ARE ABSOLVED FROM REFUNDING THE AMOUNTS RELEASED AND/OR RECEIVED.— The Court however finds that the COA failed to show bad faith on the part of the Philhealth CARAGA's approving officers in disbursing the disallowed benefits and allowances. Further, Philhealth CARAGA officers and other employees are presumed to have acted in good faith when they allowed and/or received the said benefits, in the honest belief that there was legal basis for such grant as cited above. The Philhealth CARAGA employees and contractors in turn who accepted the allowances and bonuses acted in good faith in believing that they were entitled to such grant and that Philhealth CARAGA Board validly exercise its power. Thus, Philhealth CARAGA officers, employees and contractors are absolved from refunding the amounts they received.

APPEARANCES OF COUNSEL

Philippine Health Insurance Corporation Legal Sector for petitioners.

The Solicitor General for respondents.

D E C I S I O N

TIJAM, *J.*:

Before Us is a petition for *certiorari*[1] under Rule 65, filed by petitioner Philippine Health Insurance Corporation Regional Office CARAGA (Philhealth CARAGA) to annul and set aside the Decision No. 2014-250[2] dated September 11, 2014 and Resolution No. 2016-029[3] dated November 17, 2016 of respondent Commission on Audit (COA), which disallow the various benefits Philhealth CARAGA granted to its officers, employees and contractors in the total amount of ₱49,874,228.02.

The Factual Antecedents

On 2008, Philhealth CARAGA granted its officers, employees and contractors various benefits, among others are: contractor's gift, special events gifts, project completion incentive, nominal gift, and birthday gifts, amounting to ₱49,874,228.02.[4]

On 2009, the Audit Team Leader (ATL) of Philhealth CARAGA issued Notice of Disallowance (ND) Nos. 09-005-501-(09) to 09-019-501-(09) on the payment of benefits to officers, employees and contractors of Philhealth CARAGA in the calendar year of 2009 in the total amount of ₱49,874,228.02.[5]

---

[1] *Rollo*, pp. 84-131.

[2] Penned by Chairperson Ma. Gracia M. Pulido-Tan, concurred in by Commissioner Heidi L. Mendoza and Jose A. Fabia; *id*. at 135-141.

[3] *Id*. at 142.

[4] *Id*. at 135.

[5] *Id*.

The reason for the disallowance was the lack of approval from the Office of the President (OP) through the Department of Budget and Management (DBM) as required under the laws, such as: Section 6 of the Presidential Decree (P.D.) No. 1597,[6] Memorandum Order (M.O.) No. 20[7] dated June 25, 2001, and Administrative Order (A.O.) No. 103[8] dated August 31, 2004.[9]

The Audit Team Leader (ATL) ruled that although Philhealth CARAGA was exempted from the coverage of Republic Act (R.A.) No. 6758,[10] also known as the Compensation and Position Classification Act of 1989, and that the Philhealth CARAGA Board of Directors members acted within their powers to fix the compensation of its personnel, the additional compensation package should have been reviewed and approved by the OP through the DBM before it was implemented.[11] Thus, the grants were considered irregular and illegal.

---

[6] FURTHER RATIONALIZING THE SYSTEM OF COMPENSATION AND POSITION CLASSIFICATION IN THE NATIONAL GOVERNMENT.

Sec. 6. *Exemptions from OCPC regulations*. Agencies, positions or , groups of officials and employees of the national government, including government-owned or controlled corporations, that are hereafter exempted by law from OCPC coverage shall observe such guidelines and policies as may be issued by the President governing position classification, salary rates, levels of allowances, projects and other honoraria, overtime rates and other forms of compensation and fringe benefits. Exemptions notwithstanding, agencies shall report to the President, through the Budget Commission, on their position classification and compensation plans, policies, rates and other related details following such specifications as may be prescribed by the President.

[7] DIRECTING HEADS OF GOVERNMENT-OWNED-AND-CONTROLLED CORPORATIONS (GOCCs), GOVERNMENT FINANCIAL INSTITUTIONS (GFIs) AND SUBSIDIARIES EXEMPTED FROM OR NOT FOLLOWING THE SALARY STANDARDIZATION LAW (SSL) TO IMPLEMENT PAY RATIONALIZATION IN ALL SENIOR OFFICER POSITIONS.

[8] DIRECTING THE CONTINUED ADOPTION OF AUSTERITY MEASURES IN THE GOVERNMENT.

[9] *Rollo*, p. 136.

[10] AN ACT PRESCRIBING A REVISED COMPENSATION AND POSITION CLASSIFICATION SYSTEM IN THE GOVERNMENT AND FOR OTHER PURPOSES. Approved on August 21, 1989.

[11] *Rollo*, pp. 135-136.

Philhealth CARAGA challenged the constitutionality and applicability of the above-mentioned laws. Philhealth CARAGA also averred that the laws cited by the ATL divested the Philhealth CARAGA Board of Directors of its prerogative to fix compensation as granted by its charters. Philhealth CARAGA further averred that the benefits were received by its officers, employees and contractors in good faith and equity dictates that it may not be refunded.[12]

On February 21, 2011, the COA Regional Director of R.O. No. XIII, rendered its Decision No. 2011-007, and affirmed the notices of disallowance with modifications, as to:

1. The amount of audit disallowance should be recomputed net of tax; and
2. The ground for disallowance should be that the grants were considered irregular and illegal since they violated Section 6 of P.D. No. 1597, M.O. No. 20 and A.O. No. 103.[13]

On automatic review, the COA Commission Proper in a Decision[14] No. 2014-250 dated September 11, 2014, upheld the Decision No. 2011-007 of the COA Regional Director R.O. No. XIII. It also ordered the recomputation of the amount of the disallowance to reflect the actual amount paid to its recipients net of tax. The dispositive portion of which, provides:

WHEREFORE, premises considered, COA - R.O. No. XII[I] Decision No. 2011-007 dated February 21, 2011 modifying ND Nos. 09-005-501-(09) to 09-019-501-(09) on the payment of various benefits to officials, employees and contractors of [Philippine Health CARAGA] is hereby **APPROVED.** Accordingly, the concerned [ATL] is instructed to recompute the amount of the disallowance to reflect the actual amount paid to [its] recipients net of tax[,] which shall be reflected in the COA – R.O. N[o]. XIII Decision No. 2011-007. A

[12] *Id*. at 136.

[13] *Id*.

[14] *Id*. at 135-141.

copy of said Decision shall be furnished the Commission Secretary, together with the recomputation by the ATL.[15]

Philhealth CARAGA's Motion for Reconsideration was likewise denied in the Resolution No. 2016-029[16] dated November 17, 2016 of the COA *En Banc*.

Hence, Philhealth CARAGA filed this instant petition for *certiorari*.

Issues

Substantially the issues for our resolution are as follows:

1) Whether or not the COA committed grave abuse of discretion in upholding the disallowance;

2) Whether or not the COA committed grave abuse of discretion as it divested the Philhealth CARAGA Board of Directors of its prerogatives to fix compensation as granted by its charters, and its grant of fiscal autonomy; and

3) Whether or not Philhealth CARAGA officers, employees and contractors received the benefits in good faith and even if the disallowance is sustained, they cannot be required to refund the said amount.

Ruling of the Court

The petition is partly granted.

The COA did not commit grave abuse of discretion in upholding the disallowance.

This Court has consistently held that findings of administrative agencies are generally accorded not only respect but also finality, unless found to have been tainted with grave abuse of discretion. The same was aptly discussed in the case of *Maritime Industry Authority v. Commission on Audit*,[17] to wit:

---

[15] *Id*. at 140-141.

[16] *Id.* at 142.

[17] 750 Phil. 288 (2015).

It is the general policy of the Court to sustain the decisions of administrative authorities, especially one which is constitutionally-created not only on the basis of the doctrine of separation of powers but also for their presumed expertise in the laws that they are entrusted to enforce. Findings of administrative agencies are accorded not only respect but also finality when the decision and order are not tainted with unfairness or arbitrariness that would amount to grave abuse of discretion. It is only when the COA has acted without or in excess of jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, that this Court entertains a petition questioning its rulings. There is grave abuse of discretion when there is an evasion of a positive duty or a virtual refusal to perform a duty enjoined by law or to act in contemplation of law as when the judgment rendered is not based on law and evidence but on caprice, whim and despotism.[18] (Citation omitted)

The COA as constitutional office and guardian of public funds is endowed with the exclusive authority to determine and account government revenue and expenditures, and disallow irregular, unnecessary excessive use of government funds. The case of *Metropolitan Waterworks and Sewerage System v. Commission on Audit*,[19] elucidated on this matter:

The COA as a constitutional office is endowed with enough latitude to determine, prevent and disallow irregular, unnecessary, excessive, extravagant, or unconscionable expenditures of government funds. It has the power to ascertain whether public funds were utilized for the purpose for which they had been intended. The 1987 Constitution has expressly made COA the guardian of public funds, vesting it with broad powers over all accounts pertaining to government revenue and expenditures and the uses of public funds and property, including the exclusive authority to define the scope of its audit and examination, establish the techniques and methods for such review, and promulgate accounting and auditing rules and regulations.[20] (Citations omitted)

The limitation of the Court's power of review over COA rulings merely complements its nature as an independent

---

[18] *Id*. at 308.

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

[20] *Id*.

constitutional body to: (i) determine whether the government entities comply with the law and the rules in disbursing public funds; and (ii) disallow legal disbursements of these funds.[21]

On this note, we find no grave abuse of discretion amounting to lack or excess of jurisdiction on the part of COA in disallowing the various benefits granted to Philhealth CARAGA officers, employees and contractors, as a constitutional office which has the power to review or disallow disbursement of public funds.

In support of its grant of the subject allowances and benefits, Philhealth CARAGA persistently invokes its fiscal autonomy enunciated under Article IV, Section 16(n)[22] of R.A. No. 7875,[23] *viz*: to organize its office, fix the compensation of and appoint personnel as may be deemed necessary and upon the recommendation of the president of the Corporation.

Even if Philhealth CARAGA is exempted from Office of Compensation and Position Classification under Section 16 of R.A. No. 6758, and enjoys fiscal autonomy as enunciated under Section 16(n) of R.A. No. 7875, it does not necessarily connotes that Philhealth CARAGA's discretion on the matter of fixing compensation and benefits are absolute. It must still conform to the standards laid down by the rules as covered by Section 6 of P.D. No. 1597,[24] *viz*:

---

[21] *Maritime Industry Authority v. Commission on Audit*, *supra* at 308.

[22] SEC. 16. Powers and Functions – The Corporation shall have the following powers and functions:

x x x x x x x x x

n) to organize its office, fix the compensation of and appoint personnel as may be deemed necessary and upon the recommendation of the president of the Corporation[.]

[23] AN ACT INSTITUTING A NATIONAL HEALTH INSURANCE PROGRAM FOR ALL FILIPINOS AND ESTABLISHING THE PHILIPPINE HEALTH INSURANCE CORPORATION FOR THE PURPOSE. Approved on February 14, 1995.

[24] FURTHER RATIONALIZING THE SYSTEM OF COMPENSATION AND POSITION CLASSIFICATION IN THE NATIONAL GOVERNMENT.

Sec. 6. *Exemptions from OCPC Rules and Regulations.* Agencies positions, or groups of officials and employees of the national government, including government owned or controlled corporations, who are hereafter exempted by law from OCPC coverage, shall observe such guidelines and policies as may be issued by the President governing position classification, salary rates, levels of allowances, project and other honoraria, overtime rates, and other forms of compensation and fringe benefits. Exemptions notwithstanding, agencies shall report to the President, through the Budget Commission, on their position classification and compensation plans, policies, rates and other related details following such specifications as may be prescribed by the President.

The extent of the power of Government-Owned and Controlled Corporations (GOCC), like Philhealth, to fix compensation and the grant of allowances to its officers and employees had already been conclusively laid down in *Philippine Health Insurance Corporation v. Commission On Audit*,[25] to wit:

The PCSO charter evidently does not grant its Board the unbridled authority to set salaries and allowances of officials and employees. On the contrary, as a government owned and/or -controlled corporation (GOCC), it was expressly covered by P.D. No. 985 or "The Budgetary Reform Decree on Compensation and Position Classification of 1976," and its 1978 amendment, P.D. No. 1597 (Further Rationalizing the System of Compensation and Position Classification in the National Government), and mandated to comply with the rules of then Office of Compensation and Position Classification (OCPC) under the DBM.

Even if it is assumed that there is an explicit provision exempting the PCSO from the OCPC rules, the power of the Board to fix the salaries and determine the reasonable allowances, bonuses and other incentives was still subject to the DBM review. In *Intia, Jr. v. COA*, the Court stressed that the discretion of the Board of Philippine Postal Corporation on the matter of personnel compensation is not absolute as the same must be exercised in accordance with the standard laid down by law, *i.e.*, its compensation system, including the allowances granted by the Board, must strictly conform with that provided for other

[25] G.R. No. 213453, November 29, 2016, 811 SCRA 238.

government agencies under R.A. No. 6758 in relation to the General Appropriations Act. To ensure such compliance, the resolutions of the Board affecting such matters should first be reviewed and approved by the DBM pursuant to Section 6 of P.D. No. 1597.

The Court, in the same case, further elaborated on the rule that notwithstanding any exemption granted under their charters, the power of GOCCs to fix salaries and allowances must still conform to compensation and position classification standards laid down by applicable law. Citing *Philippine Retirement Authority (PRA) v. Buñag*, We said:

> In accordance with the ruling of this Court in *Intia*, we agree with petitioner PRA that these provisions should be read together with P.D. No. 985 and P.D. No. 1597, particularly Section 6 of P.D. No. 1597. **Thus, notwithstanding exemptions from the authority of the Office of Compensation and Position Classification granted to PRA under its charter, PRA is still required to 1) observe the policies and guidelines issued by the President with respect to position classification, salary rates, levels of allowances, project and other *honoraria*, overtime rates, and other forms of compensation and fringe benefits and 2) report to the President, through the Budget Commission, on their position classification and compensation plans, policies, rates and other related details following such specifications as may be prescribed by the President.**
>
> Despite the power granted to the Board of Directors of PRA to establish and fix a compensation and benefits scheme for its employees, the same is subject to the review of the Department of Budget and Management. x x x
>
> **The rationale for the review authority of the Department of Budget and Management is obvious. Even prior to R.A. No. 6758, the declared policy of the national government is to provide "equal pay for substantially equal work and to base differences in pay upon substantive differences in duties and responsibilities, and qualification requirements of the positions."** To implement this policy, P.D. No. 985 provided for the standardized compensation of government employees and officials, including those in government-owned and -controlled corporations. Subsequently, P.D. No. 1597 was enacted prescribing the duties to be followed by agencies and

> offices exempt from coverage of the rules and regulations of the Office of Compensation and Position Classification. The intention, therefore, was to provide a compensation standardization scheme such that notwithstanding any exemptions from the coverage of the Office of Compensation and Position Classification, **the exempt government entity or office is still required to observe the policies and guidelines issued by the President and to submit a report to the Budget Commission on matters concerning position classification and compensation plans, policies, rates and other related details.** x x x

Accordingly, that Section 16(n) of R.A. 7875 granting PHIC's power to fix the compensation of its personnel does not explicitly provide that the same shall be subject to the approval of the DBM or the OP as in Section 19(d) thereof does not necessarily mean that the PHIC has unbridled discretion to issue any and all kinds of allowances, limited only by the provisions of its charter. As clearly expressed in *PCSO v. COA*, even if it is assumed that there is an explicit provision exempting a GOCC from the rules of the then Office of Compensation and Position Classification (*OCPC*) under the DBM, the power of its Board to fix the salaries and determine the reasonable allowances, bonuses and other incentives was still subject to the standards laid down by applicable laws: P.D. No. 985, its 1978 amendment, P.D. No. 1597, the SSL, and at present, R.A. [No.] 10149. To sustain petitioners' claim that it is the PHIC, and PHIC alone, that will ensure that its compensation system conforms with applicable law will result in an invalid delegation of legislative power, granting the PHIC unlimited authority to unilaterally fix its compensation structure. Certainly, such effect could not have been the intent of the legislature.[26] (Citations and emphasis omitted, emphasis in the original and emphasis ours)

Simply put, Philhealth CARAGA is still required to 1) observe the policies and guidelines issued by the President with respect to position classification, salary rates, levels of allowances, project and other *honoraria*, overtime rates, and other forms of compensation and fringe benefits, and 2) report to the

---

[26] *Id*. at 258-261.

President, through the Budget Commission, on their position classification and compensation plans, policies, rates and other related details following such specifications as may be prescribed by the President.[27]

Thus, Philhealth CARAGA's power to fix the compensation of its personnel as granted by its charter, does not necessarily mean that it has unbridled discretion to issue any and all kinds of allowances and other forms of benefits or compensation package, limited only by the provisions of its charter. The power of GOCCs or its board to fix the salaries, allowances and bonuses must still conform to compensation and position classification standards laid down by applicable laws, as discussed above. To sustain Philhealth CARAGA's claim that it has unbridled authority to unilaterally fix its compensation package will result in an invalid delegation of legislative power. Further, Philhealth CARAGA's fiscal autonomy does not automatically preclude the COA's power to disallow the grant of allowances in cases of irregular, excessive, unnecessary, or unconscionable expenditures of government funds.

As discussed and quoted above, Philhealth CARAGA's compensation standardization scheme notwithstanding its exemption from the coverage of the Office of Compensation and Position Classification requires it to observe the guidelines issued by the President and to submit a report to DBM. The rationale for the review of the DBM is to provide for the standardized compensation of all government employees and officials, including those in GOCCs under Salary Standardization Laws, which are P.D. No. 985, its amendment, P.D. No. 1597, R.A. No. 6758 and R.A. No. 10149,[28] based on government's

---

[27] *Id.* at *259.*

[28] AN ACT TO PROMOTE FINANCIAL VIABILITY AND FISCAL DISCIPLINE IN GOVERNMENT-OWNED OR -CONTROLLED CORPORATIONS AND TO STRENGTHEN THE ROLE OF THE STATE IN ITS GOVERNANCE AND MANAGEMENT TO MAKE THEM MORE RESPONSIVE TO THE NEEDS OF PUBLIC INTEREST AND FOR OTHER PURPOSES. Approved on June 6, 2011.

national policy of equal pay for work of equal value and to base differences in pay upon substantive differences in duties and responsibilities, and qualification requirements of the positions.

Furthermore, the subject disallowance of Philhealth CARAGA pertain to additional benefits such as contractor's gift, special events gifts, project completion incentive, nominal gift, and birthday gifts, which are considered additional benefits and incentives that require the recommendation of DBM and approval of the President, Joint Resolution No. 4 dated June 17, 2009,[29] is instructive on the matter, to wit:

> (9) Exempt Entities – Government agencies which by specific provision/s of laws are authorized to have their own compensation and position classification system shall not be entitled to the salary adjustments provided herein. Exempt entities shall be governed by their respective Compensation and Position Classification Systems: *Provided,* That such entities shall observe the policies, parameters and guidelines governing position classification, salary rates, categories and rates of allowances, benefits and incentives, prescribed by the President: *Provided, further,* **That any increase in the existing salary rates as well as the grant of new allowances, benefits and incentives, or an increase in the rates thereof shall be subject to the approval by the President, upon recommendation of the DBM:** *Provided, finally,* That exempt entities which still follow the salary rates for positions covered by Republic Act No. 6758, as amended, are entitled to the salary adjustments due to the implementation of this Joint Resolution, until such time that they have implemented their own compensation and position classification system. (Emphasis ours)

Thus, COA's disallowance of the various benefits granted to Philhealth CARAGA officers, employees and contractors in the total amount of ₱49,874,228.02 is in order.

---

[29] JOINT RESOLUTION AUTHORIZING THE PRESIDENT OF THE PHILIPPINES TO MODIFY THE COMPENSATION AND POSITION CLASSIFICATION SYSTEM OF CIVILIAN PERSONNEL AND THE BASE PAY SCHEDULE OF MILITARY AND UNIFORMED PERSONNEL IN THE GOVERNMENT, AND FOR OTHER PURPOSES. Approved on June 17, 2009.

As to the issue of whether Philhealth CARAGA officers, employees and contractors received the benefits in good faith, we rule in the affirmative.

Philhealth CARAGA acted in good faith in releasing contractor's gift, special events gifts, project completion incentive, nominal gift, and birthday gifts to its officers, employees and contractors and need not refund the said amount.

The case of *Maritime*[30] ruled that benefits and other allowances received by payees or recipients in good faith need not refund the disallowed amount, we quote the pertinent discussion on this matter for reference:

> [W]ith regard to the disallowance of salaries, emoluments, benefits, and allowances of government employees, prevailing jurisprudence provides that recipients or payees need not refund these disallowed amounts when they received these in good faith. Government officials and employees who received benefits or allowances, which were disallowed, may keep the amounts received if there is no finding of bad faith and the disbursement was made in good faith.[31] (Citations omitted)

"On the other hand, officers who participated in the approval of the disallowed allowances or benefits are required to refund only the amounts received when they are found to be in bad faith or grossly negligent amounting to bad faith."[32]

Philhealth CARAGA claims that it acted in good faith in releasing such benefits, in the honest impression that they could do so under the imprimatur of the so-called fiscal autonomy to fix compensation of its personnel as authorized by its charter.[33]

In *Philippine Economic Zone Authority (PEZA) v. Commission on Audit, et al.*,[34] this court defined good faith relative to the requirement of refund of disallowed benefits or allowances.

---

[30] *Supra* note 17.

[31] *Id*. at 336.

[32] *Id*.

[33] *Rollo*, p. 223.

[34] 690 Phil. 104 (2012).

In common usage, the term "good faith" is ordinarily used to describe that state of mind denoting "honesty of intention, and freedom from knowledge of circumstances which ought to put the holder upon inquiry; an honest intention to abstain from taking any unconscientious advantage of another, even through technicalities of law, together with absence of all information, notice, or benefit or belief of facts which render transaction unconscientious."[35] (Citation and emphasis omitted)

Records show that as a matter of diligence prior to the grant of such benefits, Philhealth CARAGA requested for the opinion of the Office of Government Corporate Counsel (OGCC), the statutory counsel and principal law office of all GOCC's regarding such grant. The OGCC opined in its Opinion No. 258, Series of 1999 dated December 21, 1999,[36] that Philhealth CARAGA is legally authorized to increase the compensation of its official and employees. Also, Philhealth CARAGA's fiscal autonomy was re-affirmed by OGCC Opinion No. 056, Series of 2004, dated March 31, 2004.[37] For another, the birthday gifts and educational assistance allowance were granted pursuant to Philhealth CARAGA's Board Resolutions with numbers 1014 Series of 2007[38] and 322 Series of 2000,[39] respectively. Thus, Philhealth CARAGA manifested its due diligence and good faith in granting said various benefits and allowances.

The Court however finds that the COA failed to show bad faith on the part of the Philhealth CARAGA's approving officers in disbursing the disallowed benefits and allowances. Further, Philhealth CARAGA officers and other employees are presumed to have acted in good faith when they allowed and/or received the said benefits, in the honest belief that there was legal basis for such grant as cited above. The Philhealth CARAGA

---

[35] *Id*. at 115.

[36] *Rollo*, pp. 226-268.

[37] *Id*. at 269-273.

[38] *Id*. at 274-276.

[39] *Id*. at 277-279.

employees and contractors in turn who accepted the allowances and bonuses acted in good faith in believing that they were entitled to such grant and that Philhealth CARAGA Board validly exercise its power. Thus, Philhealth CARAGA officers, employees and contractors are absolved from refunding the amounts they received.

WHEREFORE, the petition is **PARTLY GRANTED**. The Decision No. 2014-250 dated September 11, 2014 and Resolution No. 2016-029 dated November 17, 2016 of the Commission on Audit Proper, which affirmed the Decision No. 2011-007 of the COA Regional Director R.O. No. XIII dated February 21, 2011, are hereby **AFFIRMED with MODIFICATION.** Philippine Health Insurance Corporation Regional Office—CARAGA's officers, employees and contractors need not refund the amounts they received.

SO ORDERED.

Carpio, Leonardo-de Castro, Peralta, Bersamin, del Castillo, Perlas-Bernabe, Leonen, Jardeleza, Caguioa, A. Reyes, Jr., Gesmundo, and *J. Reyes, Jr., JJ.,* concur.

EN BANC

[G.R. No. 236573. August 14, 2018]

BARANGAY CHAIRMAN HERBERT O. CHUA, *petitioner, vs.* **COMMISSION ON ELECTIONS, HON. MARIANITO C. SANTOS, in his capacity as the Presiding Judge of METC, Branch 57, San Juan City, and SOPHIA PATRICIA K. GIL,** *respondents.*

SYLLABUS

1. POLITICAL LAW; ELECTIONS; COMELEC RULES OF PROCEDURE; METROPOLITAN TRIAL COURT'S DECISION IN ELECTION PROTEST CASES SHALL BECOME FINAL AND EXECUTORY AFTER 30 DAYS FROM PROMULGATION; A PETITION FOR *CERTIORARI* INTERRUPTS THE PERIOD.— Appeals from decisions of the MeTC in election protest cases are classified as ordinary actions under the Comelec Rules of Procedure. As such, decisions or resolutions pertaining to the same shall become final and executory after thirty (30) days from promulgation. The concerned party, however, may file a petition for *certiorari* with this Court to interrupt the period and challenge the ruling on the ground of grave abuse of discretion.

2. ID.; ID.; ID.; ID.; THE SUBJECT MANIFESTATION WITH CLARIFICATION AND MOTION TO STAY EXECUTION IS IN THE NATURE OF A MOTION FOR RECONSIDERATION WHICH IS A PROHIBITED PLEADING; IT DID NOT TOLL THE RUNNING OF THE 30-DAY PERIOD AND THE COMELEC *EN BANC* DECISION BECOMES FINAL BY OPERATION OF LAW.— Instead of filing a petition for *certiorari*, however, Chua filed a Manifestation with Clarification and Motion to Stay Execution, alleging a matter that he failed to raise during the pendency of the proceedings. He particularly pointed out that Gil should be considered to have abandoned her election protest when she filed a certificate of candidacy for the position of councilor of the City of San Juan for the May 2016 elections and prayed that, in the meantime, the issuance of a writ of execution and entry of judgment be held in abeyance. A reading of the allegations in the manifestation shows that it is in the nature of a motion for reconsideration which is a prohibited pleading under Section 1(d), Rule 13 of the Comelec Rules of Procedure[.] x x x The Manifestation with Clarification and Motion to Stay Execution filed by Chua, being a prohibited pleading, did not toll the running of the 30-day period stated in Section 3, Rule 64 of the Rules of Court. The period expired on December 3, 2017 and by the time Chua filed the instant petition for *certiorari* before this Court on January 31, 2018, the Resolution dated November 6, 2017 of the Comelec *En Banc* had long attained finality. x x x It bears stressing that

the finality of a decision comes by operation of law which means that the effects of a final and executory decision take place as a matter of course unless interrupted by the filing of the appropriate legal remedy within the period stated in the rules.

3. ID.; ID.; ID.; ID.; AN ELECTION PROTEST CASE MUST BE DISMISSED ON THE GROUND OF MOOTNESS WHERE THERE IS NO LONGER ANY POST TO VACATE OR ASSUME.— Even assuming that the petition for *certiorari* was properly filed, the same must still be dismissed on the ground of mootness. The issue of whether who between Chua and Gil won the seat for Punong Barangay in the 2013 Barangay Elections had been rendered moot and academic by the recently-concluded Barangay and SK Elections held on May 14, 2018. "An issue is said to become moot and academic when it ceases to present a justiciable controversy, so that a declaration on the issue would be of no practical use or value." There is no actual substantial relief to which petitioners would be entitled and which would be negated by the dismissal of the petition. Deliberating on the merits of the petition would be an exercise in futility as whatever may be the outcome thereof may no longer be enforced. x x x The Court also takes judicial notice of the fact that Chua won the 2018 Barangay Elections in Barangay Addition Hills, San Juan City as Punong Barangay, the very same office which was the subject of his election protest albeit in the immediately preceding barangay elections in 2013. Considering that there is no longer any post to vacate or assume, the petition must be dismissed on the ground of mootness.

APPEARANCES OF COUNSEL

Santiago Cairo Rey Arboladura Law Offices for petitioner.
The Solicitor General for public respondents.
Chang & Padilla Law Office for private respondent.

D E C I S I O N

A. REYES, JR., *J.*:

This is a petition for *certiorari* and prohibition filed by Herbert O. Chua (Chua), assailing the Resolutions dated April

7, 2017[1] and November 6, 2017[2] of the Commission on Elections in EAC (BRGY) No. 165-2014, which declared Sophia Patricia K. Gil (Gil) the duly-elected Punong Barangay of Barangay Addition Hills, San Juan City in the October 28, 2013 Barangay Elections.

Factual Antecedents

Chua and Gil were candidates for the position of Punong Barangay of Addition Hills, San Juan City in the October 28, 2013 Barangay Elections. After the canvassing of the votes, Chua was proclaimed the winner after obtaining 465 votes as against Gil's 460 votes.[3]

On May 7, 2013, Gil filed an election protest with the Metropolitan Trial Court (MeTC) of San Juan City, alleging that fraud and illegal acts marred the voting and counting thereof in all the fifteen (15) precincts of Barangay Addition Hills, San Juan City, which was docketed as EAC (BRGY) No. 165-2014. Specifically, she questioned (1) the presence of voters who are not residents of the barangay; (2) that votes were erroneously counted in favor of Chua by the Chairmen of the Board of Election Tellers (BETs), and; (3) that ballots where the space provided for the Punong Barangay was left blank and her name was mistakenly written on the first line for Kagawad slots were not credited in her favor.[4]

In his Answer, Chua claimed that the Verification and Certification Against Forum Shopping attached to the election protest was defective thereby making the same a mere scrap of paper. He added that Gil's claims were based on mere hearsay and self-serving allegations.[5]

---

[1] *Rollo*, pp. 25-55.

[2] *Id*. at 56-65.

[3] *Id*. at 127.

[4] *Id*.

[5] *Id*. at 128.

Ruling of the MeTC

On May 20, 2014, the MeTC rendered a Decision,[6] dismissing the election protest, the dispositive portion of which reads as follows:

> WHEREFORE, in light of the foregoing, this Court Resolved to DISMISS the instant election protest, including the parties' mutual claims for damages and attorney's fee; AFFIRM the proclamation of Protestee HERBERT O. CHUA; and DECLARE him to be the duly elected Barangay Captain of Barangay Addition Hills, San Juan City, for having obtained a plurality of 468 votes over the second placer Sophia Patricia K. Gil.
>
> SO ORDERED.[7]

Ruling of the Comelec

Unyielding, Gil filed an appeal of the decision of the MeTC with the Comelec, and it was raffled off to the First Division. Subsequently, on April 7, 2017, the Comelec First Division issued a Resolution,[8] reversing the Decision dated May 20, 2014 of the MeTC. The dispositive portion of the resolution reads, thus:

> WHEREFORE, premises considered, the Commission (First Division) RESOLVED, as it hereby RESOLVES, to GRANT the appeal filed by Sophia Patricia K. Gil. The 20 May 2014 Decision of the Metropolitan Trial Court of San Juan City is hereby REVERSED and SET ASIDE. Sophia Patricia K. Gil is DECLARED to be the duly-elected Punong Barangay of Addition Hills, San Juan City in the 28 October 2013 Barangay Elections.
>
> SO ORDERED.[9]

Dissatisfied, Chua filed a verified motion for reconsideration of the foregoing resolution to the Comelec *En Banc*. Thereafter,

---

[6] *Id*. at 127-134.

[7] *Id*. at 134.

[8] *Id*. at 25-55.

[9] *Id*. at 55.

on November 6, 2017, the Comelec *En Banc* issued a Resolution,[10] affirming the Resolution dated April 7, 2017 of the Comelec First Division, disposing thus:

> WHEREFORE, the instant MOTION FOR RECONSIDERATION is DENIED. The 07 April 2017 Resolution of the Comelec (First Division) is hereby AFFIRMED.
>
> SO ORDERED.[11]

Thereafter, on November 10, 2017, Chua filed a Manifestation with Clarification and Motion to Stay Execution,[12] praying for the Comelec to hold in abeyance the entry of judgment and/or the issuance of a writ of execution on the ground that Gil has abandoned her election protest when she filed a certificate of candidacy for the position of councilor for the second district of San Juan City on October 18, 2015.[13]

On January 19, 2018, the Comelec *En Banc* issued an Order,[14] denying the Manifestation with Clarification and Motion to Stay Execution filed by Chua. It ruled that the said manifestation is in the nature of a motion for reconsideration of the Comelec *En Banc*'s resolution which is among the prohibited pleading enumerated in Section 1(d), Rule 13 of the Comelec Rules of Procedure.[15]

Meanwhile, pursuant to Section 13, paragraph (a) Rule 18 of the Comelec Rules of Procedure, the Electoral Contests Adjudication Department of the Comelec issued a Certificate of Finality[16] and the Resolution dated November 6, 2017 of

---

[10] *Id*. at 56-64.

[11] *Id*. at 64.

[12] *Id*. at 135-138.

[13] *Id*. at 136.

[14] *Id*. at 22-24.

[15] *Id*. at 23.

[16] *Id*. at 78-80.

the Comelec *En Banc* was recorded in the Book of Entries of Judgments[17] on January 23, 2018.

On January 31, 2018, Chua filed the instant Petition for *Certiorari* and Prohibition under Rule 64, in relation to Rule 65 of the Rules of Court, with an Urgent Application for Temporary Restraining Order (TRO) and/or Preliminary Injunction.[18] He alleged that the Comelec gravely abused its discretion when it did not rule on the supposed mootness of Gil's election protest.

On March 5, 2018 and April 5, 2018, respectively, counsel for Gil filed his Entry of Appearance as Collaborating Counsel for Private Respondent with Comment,[19] while the Office of the Solicitor General (OSG) filed its Comment[20] on the petition.

Ruling of this Court

The petition is dismissed.

At the outset, the petition was filed out of time. The Rules of Court and the Comelec Rules of Procedure are clear on the manner and period of appealing or challenging the decisions, resolutions or orders of the Comelec *En Banc*. Section 3, Rule 64 of the Rules of Court states:

Section 3. *Time to file petition.* — The petition shall be filed within thirty (30) days from notice of the judgment or final order or resolution sought to be reviewed. The filing of a motion for new trial or reconsideration of said judgment or final order or resolution, if allowed under the procedural rules of the Commission concerned, shall interrupt the period herein fixed. If the motion is denied, the aggrieved party may file the petition within the remaining period, but which shall not be less than five (5) days in any event, reckoned from notice of denial.

---

[17] *Id*. at 81-82.

[18] *Id*. at 3-16.

[19] *Id*. at 94-105.

[20] *Id*. at 113-126.

Concomitantly, Section 13, paragraph (a), Rule 18 of the Comelec Rules of Procedure provides:

> Sec. 13. *Finality of Decisions or Resolutions.* — (a) In ordinary actions, special proceedings, provisional remedies and special reliefs a decision or resolution of the Commission en banc shall become final and executory after thirty (30) days from its promulgation.

Appeals from decisions of the MeTC in election protest cases are classified as ordinary actions under the Comelec Rules of Procedure. As such, decisions or resolutions pertaining to the same shall become final and executory after thirty (30) days from promulgation. The concerned party, however, may file a petition for *certiorari* with this Court to interrupt the period and challenge the ruling on the ground of grave abuse of discretion.

The records bear out, however, that Chua failed to take the proper legal remedy in questioning the ruling of Comelec *En Banc* within the reglementary period. He received a copy of the Resolution dated April 7, 2017 of the Comelec First Division on April 11, 2017.[21] Six (6) days thereafter, on April 17, 2017, he filed a motion for reconsideration which the Comelec *En Banc* denied in its Resolution dated November 6, 2017. He received a notice of the said denial on November 9, 2017, thereby giving him twenty-four (24) days to file a petition for *certiorari* with this Court. Instead of filing a petition for *certiorari*, however, Chua filed a Manifestation with Clarification and Motion to Stay Execution, alleging a matter that he failed to raise during the pendency of the proceedings. He particularly pointed out that Gil should be considered to have abandoned her election protest when she filed a certificate of candidacy for the position of councilor of the City of San Juan for the May 2016 elections and prayed that, in the meantime, the issuance of a writ of execution and entry of judgment be held in abeyance.[22] A reading of the allegations in the manifestation shows that it is in the

---

[21] *Id.* at 8.

[22] *Id.* at 137.

nature of a motion for reconsideration which is a prohibited pleading under Section 1(d), Rule 13 of the Comelec Rules of Procedure which states, thus:

> Section 1. *What Pleadings are not Allowed.* — The following pleadings are not allowed:
> (a) motion to dismiss;
> (b) motion for a bill of particulars;
> (c) motion for extension of time to file memorandum or brief;
> **(d) motion for reconsideration of an en banc ruling, resolution, order or decision except in election offense cases;**
> (e) motion for re-opening or re-hearing of a case;
> (f) reply in special actions and in special cases; and
> (g) supplemental pleadings in special actions and in special cases.

"Under the COMELEC Rules of Procedure, a motion for reconsideration of its e*n banc* ruling is prohibited except in a case involving an election offense."[23] A prohibited pleading does not produce any legal effect and may be deemed not filed at all. In *Landbank of the Philippines vs. Ascot Holdings and Equities, Inc.*,[24] the Court emphasized that "a prohibited pleading cannot toll the running of the period to appeal since such pleading cannot be given any legal effect precisely because of its being prohibited."[25]

In *Angelia vs. Commission on Elections*,[26] the Court stressed that the resolution of Comelec *En Banc* "is not subject to reconsideration and, therefore, any party who disagreed with it had only one recourse, and that is to file a petition for *certiorari* under Rule 65 of the Rules of Civil Procedure."[27] Even supposing that a motion for reconsideration was filed, the concerned party need not wait for the resolution of the same and may nonetheless proceed to file a petition for *certiorari* with this Court within

---

[23] *Ferdinand Thomas M. Soller v. Commission on Elections*, 394 Phil. 197, 206 (2000).

[24] 562 Phil. 974 (2007).

[25] *Id*. at 983.

[26] 388 Phil. 560 (2000).

[27] *Id*. at 566.

the reglementary period. Thus, in *Angelia*, the Court further elaborated, *viz.*:

> As the case before the COMELEC did not involve an election offense, reconsideration of the COMELEC resolution was not possible and petitioner had no appeal or any plain, speedy, and adequate remedy in the ordinary course of law. For him to wait until the COMELEC denied his motion would be to allow the reglementary period for filing a petition for *certiorari* with this Court to run and expire.[28]

The Manifestation with Clarification and Motion to Stay Execution filed by Chua, being a prohibited pleading, did not toll the running of the 30-day period stated in Section 3, Rule 64 of the Rules of Court. The period expired on December 3, 2017 and by the time Chua filed the instant petition for *certiorari* before this Court on January 31, 2018, the Resolution dated November 6, 2017 of the Comelec *En Banc* had long attained finality. Correspondingly, a certificate of finality was issued and the same was entered in the book of entries of judgments on January 23, 2018.

It bears stressing that the finality of a decision comes by operation of law which means that the effects of a final and executory decision take place as a matter of course unless interrupted by the filing of the appropriate legal remedy within the period stated in the rules. In *Testate Estate of Maria Manuel vs. Biascan*,[29] the Court elaborated on this matter, thus:

> It is well-settled that judgment or orders become final and executory by operation of law and not by judicial declaration. Thus, finality of a judgment becomes a fact upon the lapse of the reglementary period of appeal if no appeal is perfected or motion for reconsideration or new trial is filed. The trial court need not even pronounce the finality of the order as the same becomes final by operation of law.[30]

It is axiomatic that when a decision attains finality, it "becomes immutable and unalterable, and may no longer be modified in

---

[28] *Id.*

[29] 401 Phil. 49 (2000).

[30] *Id.* at 59.

any respect, even if the modification is meant to correct erroneous conclusions of fact and law, and whether it be made by the court that rendered it or by the Highest Court of the land."[31] While there are recognized exceptions[32] to this rule, Chua failed to demonstrate that the instant case falls under any of the instances.

Moreover, "it must be stressed that *certiorari*, being an extraordinary remedy, the party who seeks to avail of the same must strictly observe the rules laid down by law."[33] To reiterate, a petition for *certiorari* under Rule 64 must be filed within thirty (30) days from notice of judgment, final order or resolution sought to be reviewed. If a motion for reconsideration is filed and eventually denied, the aggrieved party may file the petition within the remaining period, which shall not be less than five (5) days in any event, reckoned from notice of denial. Here, from the date of receipt of notice of denial of his motion for reconsideration by the Comelec *En Banc* on November 9, 2017, Chua still had 24 days or until December 3, 2017 to file a petition for *certiorari*. He, however, gambled on his chances by filing a prohibited pleading and allowed the period to lapse.

Even assuming that the petition for *certiorari* was properly filed, the same must still be dismissed on the ground of mootness. The issue of whether who between Chua and Gil won the seat for Punong Barangay in the 2013 Barangay Elections had been rendered moot and academic by the recently-concluded Barangay and SK Elections held on May 14, 2018. "An issue is said to become moot and academic when it ceases to present a justiciable controversy, so that a declaration on the issue would be of no practical use or value."[34] There is no actual substantial relief to which petitioners would be entitled and which would be negated by the dismissal

---

[31] *Spouses Jorge Navarra and Carmelita Navarra v. Yolanda Liongson*, 784 Phil. 942, 953 (2016).

[32] *Id.* at 954.

[33] *Macapanton B. Batugan v. Hon. Rasad G. Balindong*, 600 Phil. 518, 527 (2009).

[34] *Landbank of the Philippines v. Federico Suntay*, 678 Phil. 879, 905 (2011).

of the petition.[35] Deliberating on the merits of the petition would be an exercise in futility as whatever may be the outcome thereof may no longer be enforced. Thus, in the similar case of *Baldo, Jr. vs. Comelec*, *et al*.,[36] the Court ratiocinated, thus:

> Since the present Petition is grounded on petitioner Baldo's specific objections to the 26 ERs in the previous local elections, no practical or useful purpose would be served by still passing on the merits thereof. Even if the Court sets aside the assailed COMELEC Resolutions and orders the exclusion of the disputed ERs from the canvass of votes, and as a result thereof, petitioner Baldo would emerge as the winning candidate for municipal mayor of Camalig, Albay, in the 10 May 2004 local elections, it would be an empty victory. It is already impossible for petitioner Baldo to still assume office as municipal mayor of Camalig, Albay, elected in the 10 May 2004 local elections, since his tenure as such had ended on 30 June 2007. Petitioner Baldo himself is currently occupying the very same office as the winning candidate in the 14 May 2007 local elections. Irrefragably, the Court can no longer grant to petitioner Baldo any practical relief capable of enforcement.[37]

The Court also takes judicial notice of the fact that Chua won the 2018 Barangay Elections in Barangay Addition Hills, San Juan City as Punong Barangay, the very same office which was the subject of his election protest albeit in the immediately preceding barangay elections in 2013. Considering that there is no longer any post to vacate or assume, the petition must be dismissed on the ground of mootness.

WHEREFORE, in view of the foregoing, the petition is **DISMISSED.**

SO ORDERED.

Carpio, Leonardo-de Castro, Peralta, Bersamin, del Castillo, Perlas-Bernabe, Leonen, Jardeleza, Caguioa, Tijam, Gesmundo, and *J. Reyes, Jr., JJ.,* concur.

---

[35] *Teofisto C. Gancho-on v. Secretary of Labor and Employment*, 337 Phil. 654, 658 (1997).

[36] 607 Phil. 281 (2009).

[37] *Id*. at 287.

EN BANC

[G.R. No. 240347. August 14, 2018]

IN RE: CORRECTION/ADJUSTMENT OF PENALTY PURSUANT TO REPUBLIC ACT NO. 10951, IN RELATION TO *HERNAN v. SANDIGANBAYAN*, SAMUEL SAGANIB *y* LUTONG, *petitioner.*

SYLLABUS

CRIMINAL LAW; REPUBLIC ACT NO. 10951; WHETHER A CONVICT IS ENTITLED TO IMMEDIATE RELEASE PURSUANT TO R.A. 10951 SHOULD BE UNDERTAKEN BY THE TRIAL COURT, WHICH IS MORE EQUIPPED TO MAKE FINDINGS OF BOTH FACT AND LAW.— While the petitioner correctly invoked R.A. No. 10951 for the modification of his sentence, in the recent case of *In Re: Correction/Adjustment of Penalty pursuant to R.A. No. 10951 in Relation to Hernan v. Sandiganbayan — Rolando Elbanbuena y Marfil,* this Court, however, ruled that the determination of whether the petitioner is entitled to immediate release would necessarily involve ascertaining, among others, the actual length of time actually served and whether good conduct time allowance should actually be allowed, and thus should be better undertaken by the trial court, which is relatively more equipped to make findings of both fact and law.

APPEARANCES OF COUNSEL

Public Attorney's Office for petitioner.

R E S O L U T I O N

TIJAM, *J.*:

Before Us is a Petition for Release,[1] praying for the immediate release of Samuel Saganib *y* Lutong (petitioner) pursuant to

[1] *Rollo,* pp. 3-13.

the provisions of Republic Act (R.A.) No. 10951[2] and this Court's ruling in *Hernan v. Sandiganbayan.*[3] G.R. No. 217874, December 5, 2017.

The Facts

Petitioner was convicted of the crime of *Estafa* under Article 315, paragraph 2(a) of the Revised Penal Code for pretending to be a lawyer, a certain "Atty. Amos Saganib Sabling" that will help private complainants to facilitate the release of their friend from jail for ₱100,000.00 as attorney's fees. Despite receipt of the said amount, however, the prisoner was never released and worse, he died in jail.[4] The dispositive portion of the Decision[5] dated January 28, 2011 of the Regional Trial Court (RTC) of Baguio City, Branch 3 in Criminal Case No. 27487-R, reads:

WHEREFORE, [petitioner] is hereby ***FOUND GUILTY BEYOND REASONABLE DOUBT,*** for the crime of *Estafa,* and he is hereby sentenced to suffer the penalty of imprisonment from ***FIVE (5) YEARS of prision correccional as minimum to NINE (9) YEARS of prision mayor as maximum*** at the National Bilibid Prisons (NBP), Muntinlupa City, Metro Manila, and to indemnify private complainant Ruben Iglesias the amount of One Hundred Thousand Pesos (₱l 00,000.00) as Actual Damages, with legal interest from January 2007, until the amount is fully paid; Moral Damages of Fifty Thousand Pesos (₱50,000.00) each to private complainants Nenita Catabay, and Ruben Iglesias; and Exemplary Damages of Thirty Thousand Pesos (₱30,000.00) each to the said private complainants, plus costs of suit.

---

[2] AN ACT ADJUSTING THE AMOUNT OR THE VALUE OF PROPERTY AND DAMAGE ON WHICH A PENALTY IS BASED, AND THE FINES IMPOSED UNDER THE REVISED PENAL CODE, AMENDING FOR THE PURPOSE ACT NO. 3815, OTHERWISE KNOWN AS "THE REVISED PENAL CODE", AS AMENDED. Approved on August 29, 2017.

[3] G.R. No. 217874, December 5, 2017.

[4] *Rollo,* p. 38.

[5] Penned by Judge Fernando Vil Pamintuan; *id*. at 30-40.

IT IS SO ORDERED.[6]

The RTC Decision became final and executory on February 12, 2012 per the said court's Entry of Judgment[7] dated February 20, 2012.

Per his Prison Record,[8] petitioner already has two (2) years, seven (7) months, and six (6) days time served with earned good conduct time allowance as of June 6, 2018.

Meanwhile, R.A. No. 10951 was promulgated on August 29, 2017, which provides under Article 315, paragraph 3 that *estafa,* involving an amount of over ₱40,000.00 but not exceeding ₱1,200,000.00 shall be punishable by *arresto mayor* in the maximum period to *prision correccional* in its minimum period.

Applying, thus, the Indeterminate Sentence Law and invoking our ruling in *Hernan,* allowing for the re-opening of an already terminated case and the recall of an Entry of Judgment for purposes of modifying/reducing the penalty to be served, petitioner comes before this Court averring that he is entitled to have his sentence modified in accordance with R.A. No. 10951 and be released immediately from confinement in view of the aforesaid circumstances.

The Issue

Is petitioner entitled to the relief prayed for?

Ruling of the Court

While the petitioner correctly invoked R.A. No. 10951 for the modification of his sentence, in the recent case of *In Re: Correction/Adjustment of Penalty pursuant to R.A. No. 10951 in Relation to Hernan v. Sandiganbayan — Rolando Elbanbuena y Marfil,*[9] this Court, however, ruled that the determination of

---

[6] *Id*. at 40.

[7] *Id*. at 41.

[8] *Id*. at 29.

[9] G.R. No. 237721, July 31, 2018.

whether the petitioner is entitled to immediate release would necessarily involve ascertaining, among others, the actual length of time actually served and whether good conduct time allowance should actually be allowed, and thus should be better undertaken by the trial court, which is relatively more equipped to make findings of both fact and law. In the said case, the Court also had the occasion to issue Guidelines considering the anticipated influx of similar petitions, in the interest of justice and efficiency, which states:

I. *Scope.*

These guidelines shall govern the procedure for actions seeking (1) the modification, based on the amendments introduced by R[.]A[.] No. 10951, of penalties imposed by final judgments; and, (2) the immediate release of the petitioner-convict on account of full service of the penalty/penalties, as modified.

II. *Who may file.*

The Public Attorney's Office, the concerned inmate, or his/her counsel/representative, may file the petition.

III. *Where to file.*

The petition shall be filed with the Regional Trial Court exercising territorial jurisdiction over the locality where the petitioner-convict is confined. The case shall be raffled and referred to the branch to which it is assigned within three (3) days from the filing of the petition.

IV. *Pleadings.*

(A) *Pleadings allowed* — The only pleadings allowed to be filed are the petition and the comment from the OSG. No motions for extension of time, or other dilatory motions for postponement shall be allowed. The petition must contain a certified true copy of the Decision sought to be modified and, where applicable, the *mittimus* and/or a certification from the Bureau of Corrections as to the length of the sentence already served by petitioner-convict.

(B) *Verification.* — The petition must be in writing and verified by the petitioner-convict himself.

V. *Comment by the OSG.*

Within ten (10) days from notice, the OSG shall file its comment to the petition.

VI. *Effect of failure to file comment.*

Should the OSG fail to file the comment within the period provided, the court, *motu propio,* or upon motion of the petitioner-convict, shall render judgment as may be warranted.

VII. *Judgment of the court.*

To avoid any prolonged imprisonment, the court shall promulgate judgment no later than ten (10) calendar days after the lapse of the period to file comment. The judgment shall set forth the following:

a. The penalty/penalties imposable in accordance with R[.]A[.] No. 10951;

b. Where proper, the length of time the petitioner-convict has been in confinement (and whether time allowance for good conduct should be allowed); and

c. Whether the petitioner-convict is entitled to immediate release due to complete service of his sentence/s, as modified in accordance with R[.]A[.] No. 10951.

The judgment of the court shall be immediately executory, without prejudice to the filing before the Supreme Court of a special civil action under Rule 65 of the Revised Rules of Court where there is a showing of grave abuse of discretion amounting to lack or excess of jurisdiction.

VIII. Applicability of the regular rules.

The Rules of Court shall apply to the special cases herein provided in a suppletory capacity insofar as they are not inconsistent therewith.[10]

WHEREFORE, the petition is **GRANTED.** The Decision dated January 28, 2011 of the Regional Trial Court of Baguio City, Branch 3 in Criminal Case No. 27487-R is hereby

---

[10] *Id*.

REMANDED to the said court for the determination of: (1) the proper penalty in accordance with Republic Act No. 10951; and (2) whether petitioner Samuel Saganib *y* Lutong is entitled to immediate release on account of full service of his sentence, as modified.

Let copies of this Resolution be furnished the Office of the Court Administrator for dissemination to the First and Second Level Courts, as well as to the Presiding Justices of the appellate courts, the Department of Justice, Office of the Solicitor General, Public Attorney's Office, Prosecutor General's Office, the Directors of the National Penitentiary and Correctional Institution for Women, and the Integrated Bar of the Philippines for their information, guidance, and appropriate action.

SO ORDERED.

Carpio, Leonardo-de Castro, Peralta, Bersamin, del Castillo, Perlas-Bernabe, Leonen, Jardeleza, Caguioa, A. Reyes, Jr., Gesmundo, and *J. Reyes, Jr., JJ.,* concur.

EN BANC

[G.R. No. 240563. August 14, 2018]

IN RE: CORRECTION/ADJUSTMENT OF PENALTY PURSUANT TO REPUBLIC ACT NO. 10951, IN RELATION TO *HERNAN v. SANDIGANBAYAN,* EMALYN MONTILLANO *y* BASIG, *petitioner.*

SYLLABUS

CRIMINAL LAW; REPUBLIC ACT NO. 10951; MODIFICATION OF PENALTIES; THE DETERMINATION OF WHETHER THE ACCUSED IS ENTITLED TO IMMEDIATE RELEASE NECESSARILY INVOLVES

ASCERTAINING CERTAIN CIRCUMSTANCES WHICH SHOULD BE UNDERTAKEN BY THE TRIAL COURT.— While the petitioner correctly invoked R.A. No. 10951 for the modification of her sentence, in the recent case of *In Re: Correction/Adjustment of Penalty pursuant to R.A. No. 10951 in Relation to Hernan v. Sandiganbayan – Rolando Elbanbuena y Marfil,* however, this Court ruled that the determination of whether the petitioner is entitled to immediate release would necessarily involve ascertaining, among others, the actual length of time actually served and whether good conduct time allowance should actually be allowed, and thus should be better undertaken by the trial court, which is relatively more equipped to make findings of both fact and law. Thus, the Court issued Guidelines considering the anticipated influx of similar petitions, in the interest of justice and efficiency x x x.

APPEARANCES OF COUNSEL

Public Attorney's Office for petitioner.

R E S O L U T I O N

TIJAM, *J.*:

Before Us is a Petition for Release,[1] praying for the modification of the penalty imposed by the Regional Trial Court (RTC) of Muntinlupa City, Branch 204 in Criminal Case No. 16-782, and consequently, for the immediate release of Emalyn Montillano *y* Basig (petitioner) pursuant to the provisions of Republic Act (R.A.) No. 10951,[2] and this Court's ruling in *Hernan v. Sandiganbayan*.[3]

---

[1] *Rollo*, pp. 3-14.

[2] AN ACT ADJUSTING THE AMOUNT OR THE VALUE OF PROPERTY AND DAMAGE ON WHICH A PENALTY IS BASED, AND THE FINES IMPOSED UNDER THE REVISED PENAL CODE, AMENDING FOR THE PURPOSE ACT NO. 3815, OTHERWISE KNOWN AS "THE REVISED PENAL CODE," AS AMENDED. Approved on August 29, 2017.

[3] G.R. No. 217874, December 5, 2017.

The Facts

In the said RTC Judgment[4] dated June 15, 2017, petitioner was convicted of the crime of Simple Theft and thus, sentenced as follows:

> **WHEREFORE**, finding the [**petitioner**], GUILTY beyond reasonable doubt by her own admission for the offense of "Simple Theft" of personal property worth Php 6,000.00, she is sentenced to suffer an indeterminate penalty of imprisonment of six (6) months of *arresto mayor* as minimum, to four (4) years of *prision correccional* as maximum. Considering that the property in this case has been recovered, no civil liability is imposed.
>
> The preventive imprisonment undergone by [petitioner] shall be credited in her favor.
>
> Issue a commitment order for the commitment of [petitioner] to the Correctional Institute for Women for the service of her sentence.
>
> SO ORDERED.[5]

Per the RTC Branch Clerk of Court's Certification[6] dated November 7, 2017, no appeal was filed in the said case.

Per her Prison Record,[7] petitioner already has two (2) years, three (3) months, and twenty-seven (27) days time served with earned good conduct time allowance as of May 8, 2018.

Meanwhile, R.A. No. 10951 was promulgated on August 29, 2017, which provides under Section 81, paragraph 4 thereof, that any person guilty of theft shall be punished by *arresto mayor* in its medium period to *prision correccional* in its minimum period[8] if the value of the property stolen is over ₱5,000.00 but does not exceed ₱20,000.00.

---

[4] Rendered by Judge Juanita T. Guerrero; *rollo*, pp. 21-22.

[5] *Id.* at 22.

[6] *Id.* at 23.

[7] *Id.* at 20.

[8] Two (2) Months and One (1) Day to Two (2) Years and Four (4) Months.

Applying, thus, the Indeterminate Sentence Law and invoking our ruling in *Hernan*, allowing for the re-opening of an already terminated case for purposes of modifying/reducing the penalty to be served, petitioner comes before this Court averring that she is entitled to have her sentence modified in accordance with R.A. No. 10951 and thereafter, to be immediately released from confinement in view of the aforesaid circumstances.

The Issue

Is petitioner entitled to the relief prayed for?

Ruling of the Court

While the petitioner correctly invoked R.A. No. 10951 for the modification of her sentence, in the recent case of *In Re: Correction/Adjustment of Penalty pursuant to R.A. No. 10951 in Relation to Hernan v. Sandiganbayan – Rolando Elbanbuena y Marfil*,[9] however, this Court ruled that the determination of whether the petitioner is entitled to immediate release would necessarily involve ascertaining, among others, the actual length of time actually served and whether good conduct time allowance should actually be allowed, and thus should be better undertaken by the trial court, which is relatively more equipped to make findings of both fact and law. Thus, the Court issued Guidelines considering the anticipated influx of similar petitions, in the interest of justice and efficiency, which states:

I. *Scope*.

These guidelines shall govern the procedure for actions seeking (1) the modification, based on the amendments introduced by R[.]A[.] No. 10951, of penalties imposed by final judgments; and (2) the immediate release of the petitioner-convict on account of full service of the penalty/penalties, as modified.

II. *Who may file*.

The Public Attorney's Office, the concerned inmate, or his/her counsel/representative, may file the petition.

---

[9] G.R. No. 237721, July 31, 2018.

III. *Where to file*.

The petition shall be filed with the Regional Trial Court exercising territorial jurisdiction over the locality where the petitioner-convict is confined. The case shall be raffled and referred to the branch to which it is assigned within three (3) days from the filing of the petition.

IV. *Pleadings*.

(A) *Pleadings allowed*. – The only pleadings allowed to be filed are the petition and the comment from the OSG. No motions for extension of time, or other dilatory motions for postponement shall be allowed. The petition must contain a certified true copy of the Decision sought to be modified and, where applicable, the *mittimus* and/or a certification from the Bureau of Corrections as to the length of the sentence already served by petitioner-convict.

(B) *Verification*. — The petition must be in writing and verified by the petitioner-convict himself.

V. *Comment by the OSG*.

Within ten (10) days from notice, the OSG shall file its comment to the petition.

VI. *Effect of failure to file comment*.

Should the OSG fail to file the comment within the period provided, the court, *motu propio*, or upon motion of the petitioner-convict, shall render judgment as may be warranted.

VII. *Judgment of the court*.

To avoid any prolonged imprisonment, the court shall promulgate judgment no later than ten (10) calendar days after the lapse of the period to file comment. The judgment shall set forth the following:

a. The penalty/penalties imposable in accordance with R[.]A[.]No.10951;

b. Where proper, the length of time the petitioner-convict has been in confinement (and whether time allowance for good conduct should be allowed); and

c. Whether the petitioner-convict is entitled to immediate release due to complete service of his sentence/s, as modified in accordance with R[.]A[.] No. 10951.

The judgment of the court shall be immediately executory, without prejudice to the filing before the Supreme Court of a special civil action under Rule 65 of the Revised Rules of Court where there is showing of grave abuse of discretion amounting to lack or excess of jurisdiction.

VIII. *Applicability of the regular rules.*

The Rules of Court shall apply to the special cases herein provided in a suppletory capacity insofar as they are not inconsistent therewith.[10]

WHEREFORE, the petition is **GRANTED**. The Decision dated June 15, 2017 of the Regional Trial Court of Muntinlupa City, Branch 204 in Criminal Case No. 16-782 is hereby **REMANDED** to the said court for the determination of: (1) the proper penalty in accordance with Republic Act No. 10951; and (2) whether petitioner Emalyn Montillano *y* Basig @ "Dagul" is entitled to immediate release on account of full service of her sentence, as modified.

Let copies of this Resolution be furnished the Office of the Court Administrator for dissemination to the First and Second Level Courts, as well as to the Presiding Justices of the appellate courts, the Department of Justice, Office of the Solicitor General, Public Attorney's Office, Prosecutor General's Office, the Directors of the National Penitentiary and Correctional Institution for Women, and the Integrated Bar of the Philippines for their information, guidance, and appropriate action.

SO ORDERED.

Carpio, Leonardo-de Castro, Peralta, Bersamin, del Castillo, Perlas-Bernabe, Leonen, Jardeleza, Caguioa, A. Reyes, Jr., Gesmundo, and *J. Reyes, Jr., JJ.,* concur.

---

[10] *Id*.

SECOND DIVISION

[A.M. No. RTJ-16-2482. August 15, 2018]
(Formerly OCA IPI No. 15-4441- RTJ)

ATTY. CARLOS D. CINCO, *complainant, vs.* **PRESIDING JUDGE ALFONSO C. RUIZ II, REGIONAL TRIAL COURT, BRANCH 216, QUEZON CITY,** *respondent.*

SYLLABUS

LEGAL ETHICS; JUDGES; UNDUE DELAY IN RENDERING A DECISION OR ORDER IS CONSIDERED A LESS SERIOUS OFFENSE; APPLICABLE PENALTIES; CASE AT BAR.— After assiduously going through the records, the Court agrees with, and accordingly adopts and approves the findings of facts and conclusions of law in the OCA Report, which found the respondent guilty of Undue Delay in Rendering a Decision/ Order. Under Section 9(1), Rule 140 of the Rules of Court, undue delay in rendering a decision or order is considered a less serious offense, and 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) month nor more than three (3) months; or (b) a fine of more than ₱10,000.00 but not exceeding ₱20,000.00. However, considering the circumstances of the case, the OCA deemed it proper that the respondent be admonished instead, which recommendation the Court hereby adopts.

D E C I S I O N

CAGUIOA, *J.*:

Before the Court is the Complaint-Affidavit[1] (Complaint) dated July 23, 2015 filed before the Office of the Court Administrator (OCA) by complainant Atty. Carlos D. Cinco (complainant) against herein respondent Presiding Judge Alfonso C. Ruiz II (respondent), Regional Trial Court (RTC), Branch

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

216, Quezon City. The complainant is the counsel of the plaintiff in *Intestate Estate of the late Flora V. Rodriguez vs. Welcome Supermart, Inc. and Cua Chi Lam, Steven Cua and East Asia Realty Corporation, Intervenor,* Civil Case No. Q-02-46291.[2]

In the said Complaint, the charges against respondent are as follows:

1. Respondent acted with gross ignorance of the law, gross inefficiency and in violation of the Code of Judicial Conduct for taking more than nine (9) months to resolve Plaintiffs Additional Formal Offer of Evidence (Rebuttal)[3] (Formal Offer) dated August 7, 2014; and

2. Respondent committed gross misconduct, violated the Code of Judicial Conduct, and acted with gross ignorance of the law and gross inefficiency for denying the admission of Exhibits "E" and "H" to "W", which were attached to complainant's Amended Judicial Affidavit for Rebuttal[4] (Amended Judicial Affidavit).[5]

The complainant alleged that his Amended Judicial Affidavit stated that the said exhibits be marked and included in evidence.[6] Thus, the complainant asserted that respondent should not have denied the admission of said exhibits.[7]

Antecedents

The facts as culled from the records follow.

In his Complaint, complainant alleged that he was allowed by the trial court to file his Amended Judicial Affidavit in lieu of direct examination in the presentation of rebuttal evidence

---

[2] *Id.* at 1.

[3] *Id.* at 159-165.

[4] *Id.* at 15-47.

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

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

[7] *Id.* at 5.

for the plaintiff (deceased).[8] The complainant also alleged that the defendants and intervenor waived their right to cross-examine him on his Amended Judicial Affidavit in open court on July 28, 2014.[9] According to the complainant, such waiver meant that the defendants and the intervenor accepted and admitted the contents of the Amended Judicial Affidavit for Rebuttal, including its attached exhibits.[10] The complainant also alleged that his Amended Judicial Affidavit included several motions to mark the attached exhibits.[11] The complainant further alleged that he filed the Formal Offer on August 8, 2014.[12]

On September 9, 2014, the defendants in the abovenamed civil case filed their Comment/Opposition to the Formal Offer on the grounds that the exhibits were not duly identified and authenticated, and were not marked during the presentation of rebuttal evidence.[13] To resolve the Formal Offer, and in view of the defendants' Comment/Opposition to the same, the respondent issued an Order[14] dated October 29, 2014, setting a clarificatory hearing on November 21, 2014. However, the complainant failed to attend the said clarificatory hearing.[15] Thus, the respondent issued an Order[16] dated November 21, 2014, giving the plaintiff five (5) days to file a rejoinder to the defendants' Comment/Opposition. In compliance thereto, the complainant filed his "Plaintiff Rejoinder"[17] dated February 5, 2015, explaining that he could not attend the clarificatory hearing

---

[8] *Id*. at 2.

[9] *Id*.

[10] *Id*.

[11] *Id*. at 3.

[12] *Id*. at 2, 165.

[13] *Id*. at 181.

[14] *Id*. at 208.

[15] See *id*. at 210.

[16] *Id*.

[17] *Id*. at 171-178.

on November 21, 2014 since he only received the Notice of such hearing on November 26, 2014 and even if he had received the Notice on time, he still could not attend as he "was down in bed at the time".[18] Moreover, the complainant alleged therein that his Amended Judicial Affidavit included a prayer for the marking of the exhibits attached thereto.[19] The complainant also alleged that the defendants erred in saying that the said exhibits were not identified nor marked since his Amended Judicial Affidavit provided for their marking.[20]

Thereafter, the complainant filed an Ex-Parte Motion to Resolve[21] (Ex-Parte Motion) dated May 12, 2015, regarding the Formal Offer. The respondent issued an Order[22] dated May 19, 2015, resolving the Formal Offer and denying the admission of Exhibits "E" and "H" to "W", "considering that these were not duly marked during the presentation of rebuttal evidence."[23] The court also stated therein that, while the court approved the complainant's Amended Judicial Affidavit in lieu of his direct testimony, it does not mean that the exhibits attached thereto will be considered as duly and officially marked documents.[24] Upon receiving respondent's Order dated May 19, 2015, the complainant filed the present Complaint dated July 23, 2015 before the OCA.

In an Indorsement[25] dated August 24, 2015, the OCA referred the present Complaint to the respondent for his comment to be submitted within ten (10) days from receipt thereof.

---

[18] *Id*. at 171.

[19] See *id*. at 172-173.

[20] *Id*. at 172.

[21] *Id*. at 166-167.

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

[23] *Id*. at 169-170.

[24] *Id*. at 170.

[25] *Id*. at 179.

The respondent filed his Comment[26] dated October 22, 2015, alleging that it was never the intention of the court to delay the resolution of the complainant's Formal Offer.[27] The respondent alleged that, instead of denying outright the said Formal Offer, the court wanted to give the complainant sufficient time and opportunity to rectify the defect of not marking the documents being offered.[28] Moreover, the respondent alleged that, after reviewing the said Formal Offer and the defendants' opposition thereto, the court found merit in the latter's objections but decided to set the case for clarificatory hearing to give the complainant the opportunity to request for the marking of the subject exhibits to cure the defect of his Formal Offer.[29] Furthermore, the respondent alleged that when the complainant failed to appear during the clarificatory hearing, instead of submitting the Formal Offer for resolution and denying the admission of the unmarked exhibits, the court opted to allow the complainant to file a rejoinder and move for the marking thereof.[30]

The respondent also noted that, instead of moving for the marking of the said exhibits, the complainant filed a rejoinder, asserting that the said exhibits should have been considered marked already.[31] The respondent also alleged that, up until the complainant filed his Ex-Parte Motion dated May 12, 2015, the court was hoping that the complainant "would realize the need for filing of a motion for marking of exhibits".[32] However, upon receipt of the complainant's Ex-Parte Motion, the court "had no choice but to resolve the formal offer and deny the admission of the exhibits".[33]

---

[26] *Id*. at 180-190.

[27] *Id*. at 181.

[28] *Id*.

[29] *Id*. at 181-182.

[30] *Id*. at 182-183.

[31] *Id*. at 183.

[32] *Id*.

[33] *Id*.

The respondent further alleged that the court cannot sustain complainant's insistence that the court should have ordered the marking of exhibits since this was categorically requested in his Amended Judicial Affidavit.[34] The respondent alleged that it was complainant's duty to have the exhibits marked at the time he was called to testify and before he offered them in evidence.[35] The respondent noted that when the complainant was called to testify, he only requested for the marking of his Amended Judicial Affidavit, but did not move for the marking of the exhibits attached thereto.[36] The respondent also alleged that, contrary to complainant's insistence, the court had no authority to order the marking of the exhibits without the presence of the defendants or other parties.[37]

The respondent noted that "[i]t is unfortunate that the complainant failed to realize earlier that the court was giving him the opportunity to rectify the defec[t] in the formal offer".[38] The respondent also noted that he "is saddened that the complainan[t] failed to see through the court's good intentions, and surprised that complainant has decided to file this case against respondent".[39] The respondent alleged that he has always accorded respect to the complainant and he has adopted the liberal application of procedural rules[40] in order to be able to decide the case based on the merits.[41] The respondent also alleged that the delay in the resolution of the case cannot be attributed solely to the court.[42]

---

[34] *Id*. at 184.

[35] *Id*.

[36] *Id*.

[37] *Id*. at 185-186.

[38] *Id*. at 186.

[39] *Id*.

[40] *Id*.

[41] See *id*. at 182.

[42] *Id*. at 187.

As a reply to respondent's Comment, the complainant filed a Rejoinder[43] dated December 30, 2015, reiterating his allegations in his Complaint and disputing the defenses posited by the former in his Comment. The complainant reiterated that it took the court more than nine (9) months to resolve his formal offer of evidence.[44]The complainant also alleged that the delay would have been longer had he not filed his Ex-Parte Motion.[45]

OCA Report and Recommendation

In a Report[46] dated August 18, 2016, the OCA recommended that the administrative complaint against the respondent be re-docketed as a regular administrative matter, and that he be found guilty of Undue Delay in Rendering a Decision/Order, and be admonished with a stern warning that a repetition of the same or any similar act shall be dealt with severely.[47] After considering the allegations in the Complaint, the respondent's Comment, and the complainant's Rejoinder, the OCA ratiocinated as follows:

> x x x The issue in this case is whether respondent Judge Ruiz can be held administratively liable for delaying the resolution of complainant's formal offer of evidence and for not admitting the exhibits attached to the amended judicial affidavit for rebuttal of complainant.
>
> Complainant alleged that it took respondent Judge nine (9) months to resolve their formal offer. He also blatantly denied the admission of their exhibits despite the fact that their amended judicial affidavit specifically stated that it be marked and be included in evidence.
>
> For his part, respondent Judge explained that it was never his intention to delay the resolution of complainant's formal offer. In fact, he only wanted to give plaintiff ample time to properly mark the exhibits attached to their amended judicial affidavits *(sic)* for

---

[43] *Id*. at 191-207.

[44] *Id*. at 205.

[45] *Id*.

[46] *Id*. at 216-219.

[47] *Id*. at 219.

rebuttal. However, complainant still failed to mark their exhibits, giving him no choice but to deny their admission.

Settled is the rule that in administrative proceedings, the burden of proof rests on the complainant. The complainant must be able to show this by substantial evidence, or such relevant evidence as a reasonable mind might accept as adequate to support a conclusion, otherwise, the complaint must be dismissed.[48]

In the case at hand, while the matter denying the admission of the exhibits in the formal offer is judicial in nature, it cannot be denied that respondent Judge incurred delay in resolving complainant's formal offer. In fact, he categorically admitted the delay and explained that he only wanted to give the plaintiff ample time to properly mark the exhibits attached to its amended judicial affidavit for rebuttal.

It must be noted that respondent Judge acted immediately when a motion to resolve the pending matter was filed by complainant. Still, his claim of good faith and absence of malice do not abate his consequent liability in light of the allegations of incompetence and ineptitude against him. Good faith and lack of malicious intent cannot completely free respondent Judge from liability.[49] However, these exacting standards may be relaxed in order to extend support and compassion to a seemingly well-meaning member of the Judiciary.

Bearing in mind the circumstances which contributed to the delay and on equitable considerations, this Office believes that there is sufficient justification to cast aside a stiff sanction on respondent Judge. Instead, taking into consideration the fact that this is the first time that respondent Judge has been found guilty of delay, the penalty of admonition will suffice.[50]

In a Resolution[51] dated November 21, 2016, the Court re-docketed the present Complaint as a regular administrative matter, and noted the following: (a) the Complaint; (b) respondent's Comment; and (c) complainant's Reply (denominated as a Rejoinder) to respondent's Comment.

---

[48] *Id*. at 218; citation omitted.

[49] Citing *Ting v. Atal,* 301 Phil. 82, 85 (1994).

[50] *Rollo,* pp. 218-219.

[51] *Id*. at 220.

The Court's Ruling

After assiduously going through the records, the Court agrees with, and accordingly adopts and approves the findings of facts and conclusions of law in the OCA Report, which found the respondent guilty of Undue Delay in Rendering a Decision/Order.

Under Section 9(1),[52] Rule 140 of the Rules of Court, undue delay in rendering a decision or order is considered a less serious offense, and the applicable penalties are those under Section 11(B)[53] thereof, to wit: (a) Suspension from office without salary and other benefits for not less than one (1) month nor more than three (3) months; or (b) a fine of more than ₱10,000.00 but not exceeding ₱20,000.00. However, considering the circumstances of the case, the OCA deemed it proper that the respondent be admonished instead, which recommendation the Court hereby adopts.

WHEREFORE, respondent Judge Alfonso C. Ruiz II, Regional Trial Court, Branch 216, Quezon City, is hereby **ADMONISHED** with a stern warning that a repetition of the same or any similar act shall be dealt with more severely.

SO ORDERED.

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

---

[52] SEC. 9. *Less Serious Charges.* — Less serious charges include:

1. Undue delay in rendering a decision or order, or in transmitting the records of a case[.]

[53] 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.

[*] Designated additional Member per Special Order No. 2587 dated August 28, 2018.

SECOND DIVISION

[G.R. No. 180808. August 15, 2018]

SPOUSES ABRAHAM AND MELCHORA ERMINO, *petitioners, vs.* **GOLDEN VILLAGE HOMEOWNERS ASSOCIATION, INC., REPRESENTED BY LETICIA[*] C. INUKAI,** *respondent.*

SYLLABUS

1. CIVIL LAW; CIVIL CODE; PROPERTY, OWNERSHIP, AND ITS MODIFICATIONS; OWNERSHIP; PROPRIETARY RIGHTS; THE OWNER'S ACT OF PLACING A CONCRETE FENCE ON HIS LAND IS WITHIN THE LEGITIMATE EXERCISE OF PROPRIETARY RIGHTS.— Malice or bad faith, at the core of Articles 20 and 21, implies a conscious and intentional design to do a wrongful act for a dishonest purpose or moral obliquity. Records of the case reveal that while GVHAI replaced the steel grille gate with a concrete fence, the construction was not intended to obstruct whatever waters that may naturally flow from the higher estates. The concrete fence was made to ward off undesirable elements from entering the subdivision. Thus, for purposes of Articles 20 and 21, the construction of the concrete fence is not contrary to any law, morals, good customs, or public policy. There was also no negligence on the part of GVHAI. x x x [W]hen GVHAI decided to construct the concrete fence, it could not have reasonably foreseen any harm that could occur to Spouses Ermino. Any prudent person exercising reasonable care and caution could not have envisaged such an outcome from the mere exercise of a proprietary act. Indeed, the act of replacing the steel grille gate with a concrete fence was within the legitimate exercise of GVHAI's proprietary rights over its property. The law recognizes in the owner the right to enjoy and dispose of a thing, without other limitations than those established by law. Article 430 of the Civil Code provides that "(e)very owner may enclose or fence his land or tenements

---

[*] Also spelled as "Letecia" in some parts of the records.

by means of walls, ditches, live or dead hedges, or by any other means without detriment to servitudes constituted thereon."

2. ID.; ID.; ID.; EASEMENTS OR SERVITUDES; EASEMENTS RELATING TO WATERS; LOWER ESTATES ARE ONLY OBLIGED TO RECEIVE WATER NATURALLY FLOWING FROM HIGHER ESTATES AND SHOULD BE FREE FROM ANY HUMAN INTERVENTION.— Alco Homes and Golden Village are lower in elevation than the Hilltop City Subdivision, and thus, are legally obliged to receive waters which naturally flow from the latter, as provided under Article 637 of the Civil Code and Article 50 of the Water Code. These provisions refer to easements relating to waters. An easement or servitude is "a real right constituted on another's property, corporeal and immovable, by virtue of which the owner of the same has to abstain from doing or to allow somebody else to do something on his property for the benefit of another thing or person." The statutory basis of this right is Article 613 of the Civil Code x x x. In this regard, Hilltop City Subdivision, the immovable in favor of which the easement is established, is the dominant estate; while Alco Homes and Golden Village, those that are subject of the easement, are the servient estates. It must be noted, however, that there is a concomitant responsibility on the part of Hilltop City Subdivision not to make the obligation of these lower estates/ servient estates more onerous. This obligation is enunciated under second paragraph of Article 637 x x x and Article 627 of the Civil Code x x x. Based on the ocular inspection conducted by the RTC of the Hilltop City Subdivision, the area was bulldozed and the hills were flattened. There were no retaining walls constructed to prevent the water from flowing down and the soil was soft. This flattening of the area due to bulldozing changed the course of water, which ultimately led to the passing of said water to the house of Spouses Ermino. x x x Thus, the bulldozing and construction works done by E.B. Villarosa, not to mention the denudation of the vegetation at the Hilltop City Subdivision, made Alco Homes and Golden Village's obligation, as lower estates, more burdensome than what the law contemplated. **Lower estates are only obliged to receive water naturally flowing from higher estates and such should be free from any human intervention.** In the instant case, what flowed from Hilltop City Subdivision was not water that naturally

> flowed from a higher estate. The bulldozing and flattening of the hills led to the softening of the soil that could then be easily carried by the current of water whenever it rained. Thus, Alco Homes and Golden Village are not anymore obligated to receive such waters and earth coming from Hilltop City Subdivision. x x x Therefore, it is ineluctably clear that E.B. Villarosa is responsible for the damage suffered by Spouses Ermino. E.B. Villarosa should have provided for the necessary measures such as retaining walls and drainage so that the large volume of water emanating from it would not unduly cause inconvenience, if not injury, to the lower estates. E.B. Villarosa's negligence is the proximate cause of the injury. Had it only exercised prudence, reasonable care and caution in the construction of Hilltop City Subdivision, then Spouses Ermino would not have experienced the injury that they suffered.

APPEARANCES OF COUNSEL

Salcedo-Babarin & Babarin Law Office for petititoners.
Soriano Araña Serina Saarenas & Associates for respondent.

D E C I S I O N

CAGUIOA, *J.*:

Before the Court is a Petition for Review on *Certiorari*[1] (Petition) under Rule 45 of the Rules of Court filed by petitioners, Spouses Abraham and Melchora Ermino (Spouses Ermino) assailing the Decision[2] dated October 9, 2007 of the Court of Appeals (CA) in CA-G.R. CV No. 00044. The CA modified the Decision[3] dated December 30, 2003 of the Regional Trial Court, Branch 24, Cagayan de Oro City (RTC) which found

---

[1] *Rollo*, pp. 8-20, excluding Annexes.

[2] *Id*. at 59-74. Penned by Associate Justice Rodrigo F. Lim, Jr. and concurred in by Associate Justices Teresita Dy-Liacco Flores and Michael P. Elbinias.

[3] Records, Vol. II, pp. 682-698. Penned by Presiding Judge Leonardo N. Demecillo.

both E.B. Villarosa & Partners Co., Ltd. (E.B. Villarosa) and Golden Village Homeowners Association, Inc. (GVHAI) liable for damages to Spouses Ermino by absolving GVHAI of any liability.

The Facts and Antecedent Proceedings

Spouses Ermino are residents of Alco Homes, a subdivision located beside Golden Village Subdivision (Golden Village) in Barangay Carmen, Cagayan de Oro City.

On days prior to August 12, 1995 and September 10, 1995, there was continuous heavy rain which caused a large volume of water to fall from the hilltop subdivision to the subdivisions below.[4] The volume of water directly hit Spouses Ermino's house and damaged their fence, furniture, appliances and car.[5]

Spouses Ermino filed a complaint for damages against E.B. Villarosa, the developer of Hilltop City Subdivision, and GVHAI. The Hilltop City Subdivision is found at the upper portion of Alco Homes, making it a higher estate, while Golden Village is located beside Alco Homes, which makes both Alco Homes and Golden Village lower estates *vis-a-vis* Hilltop City Subdivision.

Spouses Ermino blamed E.B. Villarosa for negligently failing to observe Department of Environment and Natural Resources rules and regulations and to provide retaining walls and other flood control devices which could have prevented the softening of the earth and consequent inundation.[6] They likewise claimed that GVHAI committed a wrongful act in constructing the concrete fence which diverted the flow of water to Alco Homes, hence, making it equally liable to Spouses Ermino.[7]

---

[4] *Rollo*, p. 61.

[5] *Id*.

[6] *Id*. at 62.

[7] *Id*.

Spouses Ermino prayed that E.B. Villarosa and GVHAI be made jointly and severally liable in the amount of ₱500,000.00 as actual damages, ₱400,000.00 as moral damages and ₱100,000.00 as exemplary damages.[8] They likewise prayed for attorney's fees and litigation costs and expenses.[9]

E.B. Villarosa argued that the location of the house of Spouses Ermino is located at the lower portion of the Dagong Creek and is indeed flooded every time there is a heavy downpour, and that the damage was further aggravated by GVHAI's construction of the concrete fence.[10] It contended, however, that the damage was due to a fortuitous event.[11] Meanwhile, GVHAI averred that the construction of the concrete fence was in the exercise of its proprietary rights and that it was done in order to prevent outsiders from using the steel grille from entering the subdivision.[12] It likewise asserted that they "should not be made inutile and lame-duck recipients of whatever waters and/or garbage" that come from Alco Homes.[13] GVHAI attributed sole liability on E.B. Villarosa for having denuded Hilltop City Subdivision and for its failure to provide precautionary measures.

Ruling of the RTC

The RTC found E.B. Villarosa and GVHAI jointly and severally liable for the damages to Spouses Ermino's properties, thus:

> WHEREFORE, premises considered, judgment is hereby rendered:
>
> (a) Holding defendants E.B. Villarosa and Partners Co. Limited and/or Eliezer Villarosa and Golden Village Homeowners Association[,] Inc., liable for the damage caused to the house

---

[8] *Id*.

[9] *Id*.

[10] *Id*. at 62-63.

[11] *Id*. at 63.

[12] *Id*.

[13] *Id*.

of plaintiffs. Consequently, they are hereby ordered to pay jointly and severally plaintiffs, the following sums:

1) ₱561,535.53 for the damage of the house including attorney[']s fee as listed in Exh. 1-3 and 1-4;
2) ₱7,664.53 for the damage of the car;
3) ₱400.00 consultation fee;
4) ₱1,028.00 for hospital bill;
5) ₱35.00; ₱37.50; ₱31.00 and ₱75.00 for charge tickets of Cagayan Capitol College;
6) ₱20,000.00 for litigation expenses;

(b) Dismissing the cross-claim of defendant E.B. Villarosa and Partners Co. Limited against Golden Village Homeowners Association, Inc. there being no evidence adduced by said defendant E.B. Villarosa and Partners Co. Limited and/or Eliezer Villarosa against Golden Village Homeowners Association, Inc. as it was declared to have waived presenting evidence in its favor;

(c) Dismissing the cross-claim of defendant Golden Village Homeowners Association[, Inc.] against Alco Homes there being no sufficient evidence adduced during trial against said Alco Homes;

(d) Ordering defendant Golden Village Homeowners Association, Inc. to change the gate between Alco Homes and Golden Village Subdivision from concrete cement to steel [grille] or if not, to make many holes in the concrete cement gate so that the water that will flow will not be blocked and will just pass; and

(e) Denying plaintiff's prayer for moral and exemplary damages there being no sufficient evidence offered during trial.

SO ORDERED.[14]

The RTC held that the bulldozing by E.B. Villarosa of the proposed Hilltop City Subdivision made the soil soft that it could easily be carried by a flow of water and that if GVHAI did not change the steel grille gate to concrete fence between its subdivision and Alco Homes, the flow of water would have

---

[14] Records, Vol. II, pp. 697-698.

just passed by.[15] Thus, both E.B. Villarosa and GVHAI were negligent and liable to Spouses Ermino.

Ruling of the CA

Only GVHAI appealed to the CA. Thus, the trial court's decision attained its finality as regards E.B. Villarosa.

The CA reversed the RTC's Decision and found no liability on the part of GVHAI. The CA held that indeed, GVHAI exercised its proprietary rights when it constructed the concrete fence and that it was also not negligent. The dispositive portion reads:

WHEREFORE, premises foregoing, the appeal is hereby **GRANTED**. Defendant-appellant Golden Village Homeowners Association is absolved of any liability to herein [plaintiffs]-appellees. The assailed decision is **MODIFIED** insofar as GVHAI's liability to [plaintiffs]-appellees is concerned.[16]

Issue

Whether the CA erred in ruling that GVHAI was not responsible for the damage to Spouses Ermino's properties.

The Court's Ruling

The Petition lacks merit.

Lack of malice or bad faith; and valid exercise of proprietary rights

Spouses Ermino impleaded GVHAI in their complaint for damages on the ground that the latter committed a wrongful act in replacing its steel grille gate with a concrete fence.[17] Spouses Ermino asserted that had the steel grille gate been unchanged, the injury suffered by them would have been

---

[15] *Id*. at 696.

[16] *Rollo*, p. 73.

[17] *Id*. at 66.

prevented.[18] Spouses Ermino rely on Articles 20 and 21 of the Civil Code which state:

> ARTICLE 20. Every person who, contrary to law, wilfully or negligently causes damage to another, shall indemnify the latter for the same.
>
> ARTICLE 21. Any person who wilfully causes loss or injury to another in a manner that is contrary to morals, good customs or public policy shall compensate the latter for the damage.

Malice or bad faith, at the core of Articles 20 and 21, implies a conscious and intentional design to do a wrongful act for a dishonest purpose or moral obliquity.[19] Records of the case reveal that while GVHAI replaced the steel grille gate with a concrete fence, the construction was not intended to obstruct whatever waters that may naturally flow from the higher estates.[20] The concrete fence was made to ward off undesirable elements from entering the subdivision.[21] Thus, for purposes of Articles 20 and 21, the construction of the concrete fence is not contrary to any law, morals, good customs, or public policy.

There was also no negligence on the part of GVHAI. The test of negligence is stated in *Picart v. Smith, Jr.*:[22]

> The test by which to determine the existence of negligence in a particular case may be stated as follows: Did the defendant in doing the alleged negligent act use that reasonable care and caution which an ordinarily prudent person would have used in the same situation? If not, then he is guilty of negligence.[23]

As correctly found by the CA, when GVHAI decided to construct the concrete fence, it could not have reasonably foreseen

---

[18] *Id*.

[19] *ABS-CBN Broadcasting Corp. v. Court of Appeals*, 361 Phil. 499, 531 (1999).

[20] *Rollo*, p. 66.

[21] *Id*.

[22] 37 Phil. 809 (1918).

[23] *Id*. at 813.

any harm that could occur to Spouses Ermino.[24] Any prudent person exercising reasonable care and caution could not have envisaged such an outcome from the mere exercise of a proprietary act.[25]

Indeed, the act of replacing the steel grille gate with a concrete fence was within the legitimate exercise of GVHAI's proprietary rights over its property. The law recognizes in the owner the right to enjoy and dispose of a thing, without other limitations than those established by law.[26] Article 430 of the Civil Code provides that "(e)very owner may enclose or fence his land or tenements by means of walls, ditches, live or dead hedges, or by any other means without detriment to servitudes constituted thereon."

Easements relating to waters; and rights and obligations of the owners of the dominant and servient estates

Spouses Ermino likewise ascribe liability to GVHAI relying on Article 637 of the Civil Code and Article 50 of the Water Code, which state:

> ARTICLE 637. Lower estates are obliged to receive the waters which naturally and without the intervention of man descend from the higher estates, as well as the stones or earth which they carry with them.
>
> The owner of the lower estate cannot construct works which will impede this easement; neither can the owner of the higher estate make works which will increase the burden.
>
> ARTICLE 50. Lower estates are obliged to receive the waters which naturally and without the intervention of man flow from the higher estates, as well as the stone or earth which they carry with them.

---

[24] *Rollo*, p. 68.

[25] *Id*.

[26] *Spouses Custodio v. Court of Appeals*, 323 Phil. 575, 587 (1996) citing *Jovellanos, et al. v. Court of Appeals, et al.*, 285 Phil. 587, 596 (1992).

The responsibility imposed on lower estates to receive waters from higher estates is illustrated in the early case of *Lunod v. Meneses*,[27] thus:

> The lands of Paraanan being the lower are subject to the easement of receiving and giving passage to the waters proceeding from the higher lands and the lake of Calalaran; this easement was not constituted by agreement between the interested parties; it is of a statutory nature, and the law has imposed it for the common public utility in view of the difference in the altitude of the lands in the barrio of Bambang.
>
> Article 552 of the Civil Code provides:
>
> "Lower estates must receive the waters which naturally and without the intervention of man descend from the higher estates, as well as the stone or earth which they carry with them.
>
> Neither may the owner of the lower estate construct works preventing this easement, nor the one of the higher estate works increasing the burden."
>
> Article 563 of the said code reads also:
>
> "The establishment, extent, form, and conditions of the easements of waters to which this section refers shall be governed by the special law relating thereto in everything not provided for in this code."
>
> The special law cited is the Law of Waters of August 3, 1866, article 111 of which, treating of natural easements relating to waters, provides:
>
> "Lands situated at a lower level are subject to receive the waters that flow naturally, without the work of man, from the higher lands together with the stone or earth which they carry with them."
>
> Hence, the owner of the lower lands [cannot] erect works that will impede or prevent such an easement or charge, constituted and imposed by the law upon his estate for the benefit of the higher lands belonging to different owners; neither can the latter do anything to increase or extend the easement.

---

[27] 11 Phil. 128 (1908).

According to the provisions of law above referred to, the defendant, Meneses, had no right to construct the works, nor the dam which blocks the passage, through his lands and the outlet to the Taliptip River, of the waters which flood the higher lands of the plaintiffs; and having done so, to the detriment of the easement charged on his estate, he has violated the law which protects and guarantees the respective rights and regulates the duties of the owners of the fields in Calalaran and Paraanan.

It is true that article 388 of said code authorizes every owner to enclose his estate by means of walls, ditches, fences or any other device, but his right is limited by the easement imposed upon his estate.

The defendant Meneses might have constructed the works necessary to make and maintain a fish pond within his own land, but he was always under the strict and necessary obligation to respect the statutory easement of waters charged upon his property, and had no right to close the passage and outlet of the waters flowing from the lands of the plaintiffs and the lake of Calalaran into the Taliptip River. He could not lawfully injure the owners of the dominant estates by obstructing the outlet to the Taliptip River of the waters flooding the upper lands belonging to the plaintiffs.[28]

Alco Homes and Golden Village are lower in elevation than the Hilltop City Subdivision, and thus, are legally obliged to receive waters which naturally flow from the latter, as provided under Article 637 of the Civil Code and Article 50 of the Water Code. These provisions refer to easements relating to waters. An easement or servitude is "a real right constituted on another's property, corporeal and immovable, by virtue of which the owner of the same has to abstain from doing or to allow somebody else to do something on his property for the benefit of another thing or person."[29] The statutory basis of this right is Article 613 of the Civil Code which reads:

---

[28] *Id*. at 131-132.

[29] *Spouses Valdez v. Spouses Tabisula*, 582 Phil. 328, 333-334 (2008) citing 3 Sanchez Roman 572.

ARTICLE 613. An easement or servitude is an encumbrance imposed upon an immovable for the benefit of another immovable belonging to a different owner.

The immovable in favor of which the easement is established is called the dominant estate; that which is subject thereto, the servient estate.

In this regard, Hilltop City Subdivision, the immovable in favor of which the easement is established, is the dominant estate; while Alco Homes and Golden Village, those that are subject of the easement, are the servient estates. It must be noted, however, that there is a concomitant responsibility on the part of Hilltop City Subdivision not to make the obligation of these lower estates/servient estates more onerous. This obligation is enunciated under second paragraph of Article 637, as abovementioned, and Article 627 of the Civil Code:

ARTICLE 627. The owner of the dominant estate may make, at his own expense, on the servient estate any works necessary for the use and preservation of the servitude, **but without altering it or rendering it more burdensome.**

For this purpose he shall notify the owner of the servient estate, and shall choose the most convenient time and manner so as to cause the least inconvenience to the owner of the servient estate. (Emphasis supplied)

Based on the ocular inspection conducted by the RTC of the Hilltop City Subdivision, the area was bulldozed and the hills were flattened.[30] There were no retaining walls constructed to prevent the water from flowing down and the soil was soft.[31] This flattening of the area due to bulldozing changed the course of water, which ultimately led to the passing of said water to the house of Spouses Ermino.[32]

---

[30] Records, Vol. II, p. 694.

[31] *Id*.

[32] *Id*. at 695.

The case of *Remman Enterprises, Inc. v. Court of Appeals*[33] applying Article 637 of the Civil Code and Article 50 of the Water Code, is instructive:

> The owner of the lower estate cannot construct works which will impede this natural flow, unless he provides an alternative method of drainage; neither can the owner of the higher estate make works which will increase this natural flow.

As worded, the two (2) aforecited provisions impose a natural easement upon the lower estate to receive the waters which naturally and without the intervention of man descend from higher states. **However, where the waters which flow from a higher state are those which are artificially collected in man-made lagoons, any damage occasioned thereby entitles the owner of the lower or servient estate to compensation.**[34] (Emphasis supplied)

Thus, the bulldozing and construction works done by E.B. Villarosa, not to mention the denudation of the vegetation at the Hilltop City Subdivision, made Alco Homes and Golden Village's obligation, as lower estates, more burdensome than what the law contemplated. **Lower estates are only obliged to receive water naturally flowing from higher estates and such should be free from any human intervention.** In the instant case, what flowed from Hilltop City Subdivision was not water that naturally flowed from a higher estate. The bulldozing and flattening of the hills led to the softening of the soil that could then be easily carried by the current of water whenever it rained. Thus, Alco Homes and Golden Village are not anymore obligated to receive such waters and earth coming from Hilltop City Subdivision.

The Court also agrees with the CA's observation that the concrete fence cannot be considered as an impediment to Golden Village's obligation to receive the water, because if only naturally flowing water, without any human intervention, cascaded down from the Hilltop City Subdivision, the concrete fence would

---

[33] 386 Phil. 340 (2000).

[34] *Id*. at 348-349.

not pose as an obstruction to its flow.[35] In this regard, the closure of the steel grille gate was effected even before the construction made by E.B. Villarosa.[36]

Therefore**,** it is ineluctably clear that E.B. Villarosa is responsible for the damage suffered by Spouses Ermino. E.B. Villarosa should have provided for the necessary measures such as retaining walls and drainage so that the large volume of water emanating from it would not unduly cause inconvenience, if not injury, to the lower estates. E.B. Villarosa's negligence is the proximate cause of the injury. Had it only exercised prudence, reasonable care and caution in the construction of Hilltop City Subdivision, then Spouses Ermino would not have experienced the injury that they suffered.

WHEREFORE, premises considered, the Petition is hereby **DENIED**. The Decision dated October 9, 2007 of the Court of Appeals in CA-G.R. CV No. 00044 is hereby **AFFIRMED**.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 184766. August 15, 2018]

JOSIE CASTILLO-CO, *petitioner, vs.* **HONORABLE SANDIGANBAYAN (SECOND DIVISION), and PEOPLE OF THE PHILIPPINES,** *respondents.*

---

[35] *Rollo*, p. 71.

[36] Records, Vol. II, p. 686.

SYLLABUS

1. **CRIMINAL LAW; REPUBLIC ACT NO. 3019 (ANTI-GRAFT AND CORRUPT PRACTICES ACT); OFFENSE DEFINED IN SECTION 3 (g) OF R.A. NO. 3019; ELEMENTS; ESTABLISHED IN CASE AT BAR.—** In *Henry T. Go vs. Sandiganbayan*, the elements of the offense defined in Section 3(g) of R.A. No. 3019 were enumerated, to wit: (1) that the accused is a public officer; (2) that he or she entered into a contract or transaction on behalf of the government; and (3) that such contract or transaction is grossly and manifestly disadvantageous to the government. x x x Section 3(g) of R.A. No. 3019 is intended to be flexible in order to give judges some latitude in determining whether the disadvantage to the government, occasioned by the act of a public officer in entering into a particular contract is, indeed, gross and manifest. Otherwise stated, there is no hard and fast rule against which the disadvantageous acts complained of should be calibrated. The determination of whether the disadvantage caused was gross and manifest, as contemplated by Section 3(g), should be done on a case-to-case basis. "Gross" connotes something "glaring, reprehensible, flagrant, or shocking." On the other hand, "manifest" is defined as "evident to the senses, open, obvious, notorious, and unmistakable." In this case, the Sandiganbayan finds, and that Court agrees, that the following acts caused gross and manifest disadvantage to the Province of Quirino: *First*, entering into an agreement to purchase reconditioned heavy equipment, contrary to the terms of Sangguniang Panlalawigan Resolution No. 120, which authorized Gov. Co to purchase only brand new heavy equipment; *Second*, advancing forty (40%) percent of the total contract price to Nakajima Trading, in violation of Section 338 of the Local Government Code, which explicitly prohibits advance payments; and *Third*, paying the balance, or sixty (60%) percent of the total contract price, despite non-compliance by Nakajima Trading with a provision in the agreement, which provided that delivery had to be effected within ninety (90) days from payment.

2. **POLITICAL LAW; LOCAL GOVERNMENT CODE; SECTION 338 OF THE LOCAL GOVERNMENT CODE PROHIBITS LOCAL GOVERNMENT UNITS FROM MAKING PAYMENTS FOR GOODS NOT YET**

DELIVERED AND SERVICES NOT YET RENDERED; VIOLATION IN CASE AT BAR.— [Section 338 of the Local Government Code] prohibits local government units from making payments for goods not yet delivered and services not yet rendered, x x x Notably, this is not the first time that the Court has adjudged an advance payment of public funds, made in violation of an express provision of law, to be commensurate with a violation of R.A. No. 3019. x x x As correctly pointed out by Gov. Co herself, **the purpose of the prohibition against advance payments is to ensure the receipt of goods or the performance of services**. Section 338 of the Local Government Code seeks to prevent situations where private suppliers can easily abscond with public funds. When a local government unit makes an advance payment, it risks pecuniary loss in the event of non-delivery or non-performance by the party with which it contracts. Such advances directly place the government at a disadvantage by effectively putting the supplier in control of the transaction, thus opening up the possibility that the latter will not make good its obligations, ultimately leading to the pilferage of the public coffers. Gov. Co also maintained that the prohibition against advance payments does not apply to cases where the government contracts with foreign suppliers. x x x However, contrary to Gov. Co's stance, **the consequences of making an advance payment are even more dire when, as in this case, the government contracts with a foreign supplier**. Unlike local suppliers, which may be made subject of coercive processes issued by Philippine courts, foreign suppliers may readily abscond with impunity. There would be no way to recover, through domestic channels, the funds disbursed in favor of foreign entities; local government units would thus be left without recourse against suppliers without any presence or assets in the Philippines. This is without a doubt disadvantageous to the government. x x x Public office is a public trust. To maintain inviolate the public trust reposed in them, public officers must, in the performance of their duties, exercise the diligence of a good father of a family. This entails, *inter alia*, that **they observe relevant laws and rules as well as exercise ordinary care and prudence in the disbursement of public funds**. Public funds, after all, are the property of the people and must be used prudently at all times with a view to prevent dissipation and waste.

APPEARANCES OF COUNSEL

Vicente D. Millora for petitioner.

D E C I S I O N

A. REYES, JR., *J.*:

When a local legislative board gives the local chief executive authority to perform a certain act or enter into a specific transaction, the latter ought to strictly abide by the express terms of such authority. Any deviation therefrom, to the detriment of the local government unit, constitutes an offense punishable under the Anti-Graft and Corrupt Practices Act, for which the chief executive must be held accountable.

Before this Court is a Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Court seeking to nullify (1) the Decision[2] dated April 28, 2008 of the Sandiganbayan, which found the petitioner, Josie Castillo-Co (Gov. Co), Governor of the Province of Quirino, guilty of violating Section 3(g) of Republic Act (R.A.) No. 3019, and (2) the subsequent Resolution[3] dated September 24, 2008 denying her Urgent Motion for Reconsideration and Supplemental Motion for Reconsideration.

The Factual Antecedents

On June 27, 1997, Junie E. Cua, (Rep. Cua) Representative of the Province of Quirino and the Chairman of the Committee on Good Government of the House of Representatives, filed a letter-complaint before the Office of the Ombudsman against the petitioner, Gov. Co, and the Provincial Engineer of the Province of Quirino, Virgilio Ringor (Engr. Ringor), for violations of Section 3(e) and (g) of the Anti-Graft and Corrupt

---

[1] *Rollo*, pp. 8-81.

[2] Penned by Associate Justice Edilberto Sandoval with Associate Justices Francisco H. Villaruz, Jr. and Samuel Martires concurring; *id*. at 97-108.

[3] *Id*. at 172-179.

Practices Acts, Frauds Against the Public Treasury, and Malversation of Public Funds.[4]

In the letter-complaint, Rep. Cua alleged that irregularities attended the purchase of heavy equipment by the Provincial Government of Quirino from Nakajima Trading Co., Ltd. (Nakajima Trading).[5]

According to Rep. Cua, prior to contracting with Nakajima Trading and in order to fund the purchase, Gov. Co entered into a loan agreement with the Philippine National Bank (PNB) by virtue of a resolution of the Sangguniang Panlalawigan of Quirino. The resolution authorized Gov. Co to obtain a loan to fund the purchase of brand new heavy equipment.[6]

However, on January 11, 1996, Gov. Co entered into an agreement to purchase reconditioned heavy equipment instead, with the Province of Quirino as the buyer and Nakajima Trading as the seller.[7]

The letter-complaint also alleged that Gov. Co agreed to advance 40% of the total purchase price before the delivery of the machinery would be effected, in violation of the prohibition on advance payments found in Section 338 of the Local Government Code of 1991.[8]

Rep. Cua additionally averred that the equipment purchased by the Province of Quirino was overpriced. To substantiate this allegation, he presented quotations comparing the prices of the equipment furnished by Nakajima Trading and similar or equivalent models of the same machines from local suppliers.[9]

---

[4] *Id*. at 82.

[5] *Id.*

[6] *Id.*

[7] *Id.*

[8] *Id*. at 13.

[9] *Id*. at 82.

Lastly, Rep. Cua alleged that despite full payment of the purchase price, the Province of Quirino did not receive everything owing it under the agreement with Nakajima Trading.[10] According to Rep. Cua, Nakajima Trading failed to ship an Ingersol-Rand SP 100 Vibratory Road Roller and a set of tools and spare parts within the stipulated 90-day delivery period.[11] While the amount pertaining to the equipment was subsequently returned, Rep. Cua averred that Nakajima Trading did not refund the amount of interest pertaining to the refunded amount, to the prejudice of the province.[12]

Meanwhile, Engr. Ringor was charged with conspiring with Gov. Co.[13] In his counter-affidavit, however, he interposed the defense that he merely recommended the purchase of reconditioned heavy equipment in place of brand new heavy equipment due to insufficiency of funds.[14]

After the letter-complaint was filed, the case was assigned to Graft Investigation Officer Germain G. Lim of the Office of the Ombudsman who, later on, recommended the prosecution of Gov. Co[15] and the dismissal of the case against Engr. Ringor.[16] These recommendations were contained in the Ombudsman Resolution[17] dated September 1, 1998.

On September 2, 1998, an Information[18] was filed before the Sandiganbayan against Gov. Co for violation of Section 3(g) of R.A. No. 3019, the accusatory portion of which reads:

---

[10] *Id*. at 83.

[11] *Id*.

[12] *Id*. at 85.

[13] *Id*. at 82.

[14] *Id*. at 83.

[15] *Id*. at 84.

[16] *Id*.

[17] *Id*. at 82-87.

[18] *Id*. at 94-96.

That on or about 11 January 1996, or sometime prior or subsequent thereto, in the City of Manila, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, a public officer, then being the Governor of the Province of Quirino, committing the penal offense herein charged while in the performance of, in relation to, and taking advantage of her official position and functions as such did then and there willfully, unlawfully and criminally enter, on behalf of the Province of Quirino and the government as the buyer, into the Agreement dated 11 January 1996 with Nakajima Trading Co., Ltd. as the seller, for the purchase by the aforesaid buyer from the seller of overpriced reconditioned heavy equipment, spare parts, and tools, specified as follows:

1. One (1) unit Bulldozer CAT D6H Series II or equivalent;
2. One (1) unit Motor Grader Mitsubishi LG2H Blade 3.7M or equivalent;
3. One (1) unit Wheel Loader 3.5M3 Class CAT 936/Komatsu wa450 or equivalent;
4. One (1) unit Vibratory Road Roller Ingersol-Rand SP 100 or equivalent;
5. One (1) unit Backhoe Mitsubishi with 128 Flywheel HP Diesel Engine, track link type or equivalent;
6. Five (5) units LHD Dump Truck Isuzu CXZ 19/21 or equivalent;
7. One (1) lot Spare Parts for 2 yrs. fast moving;
8. One (1) unit Isuzu Water Tank Lorry w/ Sprinkle 10KL Cap w/ 6HEI Diesel Engine or equivalent;
9. One (1) Set Low Bed Trailer 40 tons, 10 Wheeler Tractor Head Isuzu EXZ 19/21 double diff.;
10. One (1) unit Toyota Hi-Lux, 4WD Double Cab 2.8 Diesel, FLD, Complete w/ Accessories; and
11. One (1) lot Tools.[19]

at a total contract price of ¥160,425,000.00, Japanese currency, which contract is manifestly and grossly disadvantageous to the

---

[19] *Id*. at 94-95.

Province of Quirino and the government, as the same provides for the unlawful advance payment by the buyer to the seller of forty percent (40%) of the said contract price, in violation of Section 338 of the Local Government Code, and for the purchase by the buyer from the seller of reconditioned heavy equipments (*sic*) instead of brand new ones as expressly mandated by the Resolution No. 120 dated 20 October 1995 passed by the Province of Quirino, to the damage and prejudice of the Sangguniang Panlalawigan of the Province of Quirino and the government.

CONTRARY TO LAW.

Ruling of the Sandiganbayan

In the April 28, 2008 Decision, which is now before this Court for review, the Sandiganbayan found Gov. Co guilty of entering into a transaction grossly and manifestly disadvantageous to the government, in violation of Section 3(g) of R.A. No. 3019. The dispositive portion thereof reads:

Accordingly, We find the Accused, Josie Castillo-Co, GUILTY of violating Sec. 3(g) of R.A. 3019 and sentence her to an Indeterminate Penalty of imprisonment of Six Years and One Month as minimum to Nine Months as maximum with perpetual disqualification from public office. By way of civil liability, Accused Josie Castillo-Co is ordered to indemnify the Provincial Government of Quirino, the sum of ₱330,490.78 representing the interest paid to PNB by the Provincial Government on the 40% advance payment to Nakajima Trading.

SO ORDERED.[20]

The anti-graft court ruled that Gov. Co had entered into an agreement to purchase reconditioned heavy equipment when the authority given to her by the Sangguniang Panlalawigan of Quirino was for the purpose of obtaining a loan to fund the purchase of brand new equipment.[21] It held that she was not able to show that the Sangguniang Panlalawigan had ratified

[20] *Id*. at 108.

[21] *Id*. at 100.

the purchase of reconditioned equipment, thus causing gross and manifest disadvantage to the province.[22]

In addition, the Sandiganbayan found that not only was an advance payment of 40% of the purchase price was effected in violation of Section 338 of the Local Government Code, but also that the remaining 60% was paid before complete delivery of all the subject equipment. The evidence of the prosecution showed that Nakajima Trading failed to deliver the vibratory road roller, tools, and spare parts within the 90-day delivery period stated in the agreement. To the Sandiganbayan, this too constituted gross disadvantage.[23]

Finally, the Sandiganbayan held that, while Nakajima Trading refunded the amount representing the value of the undelivered equipment, the Province of Quirino still suffered losses by reason of the interest it owed the PNB under the loan agreement because the amount returned by the Japanese company did not include the amount representing interest due. The Sandiganbayan also said, however, that the prosecution was unable to prove the exact amount of interest paid to the PNB.[24]

Gov. Co filed her Urgent Motion for Reconsideration on May 8, 2008 and Supplemental Motion for Reconsideration on May 14, 2008. The Sandiganbayan, however, denied both in its Resolution dated September 24, 2008.[25]

Hence, the instant petition.

The Issue

In her petition asking for the reversal of the Sandiganbayan's decision, Gov. Co raises issues that may be synthesized as:

WHETHER OR NOT THE SANDIGANBAYAN COMMITTED A REVERSIBLE ERROR IN RULING THAT GOVERNOR CO

---

[22] *Id*. at 101.

[23] *Id* at. 102.

[24] *Id*. at 104.

[25] *Id.* at 172-179.

ENTERED INTO A TRANSACTION GROSSLY AND MANIFESTLY DISADVANTAGEOUS TO THE PROVINCIAL GOVERNMENT OF QUIRINO[26]

The Court's Ruling

The petition is devoid of merit. The Sandiganbayan's decision, convicting Gov. Co of violating Section 3(g) of R.A. No. 3019 and sentencing her accordingly, must be affirmed.

R.A. No. 3019 was enacted to repress certain acts of public officers and private persons alike that constitute graft or corrupt practices or may lead thereto.[27]

Particularly, Section 3(g) of R.A. No. 3019, under which Governor Co was charged and found guilty, relevantly provides:

Section. 3. *Corrupt practices of public officers*. In addition to acts or omissions of public officers already penalized by existing law, the following shall constitute corrupt practices of any public officer and are hereby declared to be unlawful:

x x x x x x x x x

(g) Entering, on behalf of the Government, into any contract or transaction manifestly and grossly disadvantageous to the same, whether or not the public officer profited or will profit thereby.

In *Henry T. Go vs. Sandiganbayan*,[28] the elements of the offense defined in Section 3(g) of R.A. No. 3019 were enumerated, to wit:

(1) that the accused is a public officer;

(2) that he or she entered into a contract or transaction on behalf of the government; and

(3) that such contract or transaction is grossly and manifestly disadvantageous to the government.[29]

---

[26] *Id*. at 44.

[27] *Reyes v. People*, 641 Phil. 91, 103 (2010).

[28] 549 Phil. 783 (2007).

[29] *Id.* at 795.

There is no debate as to the existence of the first two elements. That the petitioner is a public officer is settled. At the time of the commission of the act complained of, she was the Governor of Quirino Province.[30] There is also no disputing that the Agreement with Nakajima Trading was a contract or transaction that Gov. Co entered into on behalf of the Provincial Government of Quirino.[31] There is thus no doubt that the first two elements are present in the case at bar.

Gov. Co now contends that the third element cannot exist because, assuming that the province suffered disadvantage, the same was not gross and manifest.

This assertion, however, has no merit.

Section 3(g) of R.A. No. 3019 is intended to be flexible in order to give judges some latitude in determining whether the disadvantage to the government, occasioned by the act of a public officer in entering into a particular contract is, indeed, gross and manifest.[32] Otherwise stated, there is no hard and fast rule against which the disadvantageous acts complained of should be calibrated. The determination of whether the disadvantage caused was gross and manifest, as contemplated by Section 3(g), should be done on a case-to-case basis.

"Gross" connotes something "glaring, reprehensible, flagrant, or shocking.[33]" On the other hand, "manifest" is defined as "evident to the senses, open, obvious, notorious, and unmistakable.[34]"

In this case, the Sandiganbayan finds, and that Court agrees, that the following acts caused gross and manifest disadvantage to the Province of Quirino:

---

[30] *Rollo*, p. 94.

[31] *Id*. at 13.

[32] *Dans, Jr. v. People*, 349 Phil. 434, 463 (1998).

[33] *Crucillo v. Ombudsman*, 552 Phil. 699, 724 (2007).

[34] *Sajul v. Sandiganbayan*, 398 Phil. 1082, 1105 (2000).

First, entering into an agreement to purchase reconditioned heavy equipment, contrary to the terms of Sangguniang Panlalawigan Resolution No. 120, which authorized Gov. Co to purchase only brand new heavy equipment;

Second, advancing forty (40%) percent of the total contract price to Nakajima Trading, in violation of Section 338 of the Local Government Code, which explicitly prohibits advance payments; and

Third, paying the balance, or sixty (60%) percent of the total contract price, despite non-compliance by Nakajima Trading with a provision in the agreement, which provided that delivery had to be effected within ninety (90) days from payment.

Anent the first act, it was settled at the trial that on December 23, 1995, when the loan agreement with the PNB was entered into, and on January 11, 1996, when the sale with Nakajima Trading was contracted, Gov. Co possessed authority to purchase brand new equipment on behalf of the Province of Quirino. The local government unit granted her such authority through two resolutions enacted by its provincial legislative council or Sangguniang Panlalawigan. These resolutions were presented into evidence by the prosecution to prove Gov. Co's want of authority to purchase reconditioned equipment.

The first resolution was Sangguniang Panlalawigan Resolution No. 120 dated October 20, 1995, which expressly authorized Gov. Co to negotiate with and obtain a loan from the PNB to fund the purchase of brand new machinery. The province manifested its intent to purchase heavy equipment through this resolution, which, in no uncertain terms, provided that such equipment had to be brand new, to wit:

RESOLUTION AUTHORIZING THE PROVINCIAL GOVERNOR TO REPRESENT THE PROVINCIAL GOVERNMENT OF QUIRINO TO NEGOTIATE AND ENTER INTO A CONTRACT TO OBTAIN A LOAN FROM THE PHILIPPINE NATIONAL BANK IN THE AMOUNT OF FORTY THREE (*sic*) MILLION FIVE HUNDRED THOUSAND PESOS (₱43,500,000.00) **FOR THE PURPOSE OF PURCHASING BRAND NEW HEAVY EQUIPMENT** AND TO SIGN THE LOAN AGREEMENT, THE PROMISSORY NOTES, AND OTHER DOCUMENTS

CONTEMPLATED THEREBY.[35] (Emphasis and underscoring supplied)

Moreover, the Sandiganbayan found that on December 23, 1995, the PNB granted the loan to the province on the basis of the aforementioned resolution.[36]

The record also shows that subsequent resolutions of the Sangguniang Panlalawigan confirmed that the province indeed planned to purchase brand new, and not reconditioned, heavy equipment. The second resolution presented by the prosecution was Sangguniang Panlalawigan Resolution No. 06-A dated January 12, 1996. This resolution, which was enacted a day after the perfection of the agreement with Nakajima Trading, was likewise an unequivocal grant of authority to purchase brand new heavy equipment. In fact, the dispositive portion of Resolution No. 06-A reads:

RESOLVED, AS IT IS HEREBY RESOLVED x x x for the purpose of purchasing **brand new [h]eavy [e]quipment** x x x[37] (Emphasis and underscoring supplied)

The foregoing clearly shows that the Provincial Government of Quirino intended to acquire only brand new heavy equipment. Resolution No. 120 pre-dated the loan agreement and Resolution No. 06-A was enacted a day after the sale was perfected. Thus, during the periods prior and subsequent to both the loan and the sale, the Province of Quirino made manifest its intent to obtain brand new machinery.

This, however, failed to materialize.

Verily, Gov. Co never denied that she caused the purchase of reconditioned heavy equipment in contravention of the terms of the aforementioned resolutions, which expressly mentioned that the subject equipment had to be brand new. She postulated,

---

[35] *Rollo*, pp. 99-100.

[36] *Id.* at 99.

[37] *Id.* at 100.

however, that she did so only because Engr. Ringor, after informing her of the insufficiency of the loaned funds, recommended that the province procure reconditioned machinery instead. Therefore, the initial questions posed to the Court were:

Was gross and manifest disadvantage caused to the Province of Quirino when Governor Co purchased reconditioned heavy equipment, contrary to Resolution No. 120 and Resolution No. 06-A?[38]

If in the affirmative, did Provincial Engineer Ringor's recommendation justify her deviation from the terms of the aforementioned resolutions?[39]

On the first question, the Court rules in the affirmative; on the second, in the negative.

A resolution is a declaration of the will of a municipal corporation or local government unit on a given matter.[40] In the case at bar, **the inclination of the Province of Quirino, as shown by Resolution No. 120 and Resolution No. 06-A, was evidently to procure brand new heavy machinery**. **To its prejudice, however, Gov. Co caused the expenditure of public funds allotted for that purpose on reconditioned equipment instead**. Worse, she did so knowingly. When she entered into the loan with the PNB and the sale with Nakajima Trading, she was well aware of the existence and tenor of Resolution No. 120. She likewise knew, prior to the sale, that the subject equipment was merely reconditioned and not brand new as required by the Sangguniang Panlalawigan. Nonetheless, to the detriment of the province, she pushed through with the transaction. To the Court, this act clearly caused gross and manifest disadvantage to the government.

---

[38] *Id.* at 36-43.

[39] *Id.*

[40] *Mascuñana v. Provincial Board of Negros Occidental*, 169 Phil. 385, 391 (1977).

The record shows that even prior to the date of the loan, the Office of the Provincial Engineer had already informed Gov. Co that the province could not afford brand new equipment. In a letter[41] dated October 31, 1995, Engr. Ringor recommended that the province purchase reconditioned machinery due to insufficiency of funds, to wit:

> As per quotation received by the Province from KITA SANGYO Ltd. of 1-7 Masago 4-Chome, Mihama-Ku, Chiba City, Chiba-ken, Japan, copy attached, for the supply of brand new heavy construction equipment x x x amounting to a total cost of JPY 283,155,000 and equivalent to more or less ₱65.0 M. It is informed that the Province may not be able to purchase the 13 units of equipment and spare parts and tools.
>
> In this connection and in order that the proposed loan of the province amounting to more or less ₱43.0 M would be sufficient, it is recommended that the Province will purchase Japan reconditioned equipment which would still be of good quality.
>
> Very truly yours,
>
> VIRGILIO A. RINGOR
> Provincial Engineer[42]

Given the foregoing recommendation of Engr. Ringor, Gov. Co was duty-bound to inform the Sangguniang Panlalawigan that the funds allotted by the province were insufficient for brand new heavy equipment. She was likewise obliged to defer contracting with Nakajima Trading until the province had given her the appropriate authority to purchase reconditioned equipment. However, in defiance of the unequivocal will of the province, she proceeded with the sale.

In her defense, Gov. Co turned to Engr. Ringor's recommendation. Gov. Co posited that she bought reconditioned equipment because the provincial engineer raised the insufficiency of the sum loaned from the PNB and recommended that the province acquire

---

[41] *Rollo*, p. 158.

[42] *Id.*

reconditioned machinery. Invoking *Arias vs. Sandiganbayan*,[43] she argued that her reliance on his statement should serve as a basis for exoneration. She stated that when the allegedly disadvantageous agreement reached her, the same was already prepared and that it was prepared at the Office of the Provincial Engineer. She thus maintained that she should not be faulted for her good faith reliance on Engr. Ringor's recommendation.

Her argument is bereft of merit.

Under the *Arias* doctrine, all heads of offices have to rely to a reasonable extent on their subordinates and on the good faith of those who prepare bids, purchase supplies, or enter into negotiations.[44]

However, in *Rivera vs. People*,[45] the Court held:

> To clarify, the *Arias* doctrine is not an absolute rule. It is not a magic cloak that can be used as a cover by a public officer to conceal himself in the shadows of his subordinates and necessarily escape liability. Thus, **this ruling cannot be applied to exculpate the petitioners in view of the peculiar circumstances in this case which should have prompted them, as heads of offices, to exercise a higher degree of circumspection and, necessarily, go beyond what their subordinates had prepared**.[46] (Emphasis and underscoring supplied)

In this case, the Court finds that Resolution No. 120 should have prompted Gov. Co to be more circumspect in transacting with Nakajima Trading. To reiterate, the resolution clearly directed her to procure brand new heavy equipment. Notwithstanding the tenor of the resolution, however, she contracted with Nakajima Trading for reconditioned equipment and effected the consequent expenditure of public funds thereon. All this, to the prejudice of the Province of Quirino.

---

[43] 259 Phil. 794, 805 (1989).

[44] *People v. Sandiganbayan (2nd Division), et al.*, 765 Phil. 845, 853 (2015).

[45] 749 Phil. 124 (2014).

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

Gov. Co cannot now plead her innocence by simply shifting the blame to Engr. Ringor.[47] Knowing that the resolution explicitly granted her authority to purchase brand new equipment, she should have dealt with Nakajima Trading more prudently. Between the Sangguniang Panlalawigan, which authorized her to purchase brand new equipment, on one hand and the Office of the Provincial Engineer, which recommended reconditioned equipment due to insufficiency of funds, on the other, she owed obedience to the former, the same being the legislative branch of the local government unit of which she was the chief executive.

In another attempt to escape liability, Gov. Co introduced into evidence Sangguniang Panlalawigan Resolution No. 205, which, according to her, ratified the contract with Nakajima Trading and showed that the Sangguniang Panlalawigan approved the change from brand new to reconditioned machinery.[48]

Nevertheless, the Sandiganbayan found that Resolution No. 205 was not a ratification of the sale by the Sangguniang Panlalawigan. According to the anti-graft court, the said resolution merely re-appropriated the unutilized portion of the loan proceeds for payment of loan amortizations, insurance and registration fees of the acquired equipment, and personnel services benefits for casual employees of the province. Nowhere in the resolution did it appear that the loan was for the purchase of reconditioned equipment.[49]

To encapsulate, by purchasing reconditioned instead of brand new heavy equipment in contravention of the terms of her authority, Gov. Co entered into a contract grossly and manifestly disadvantageous to the Province of Quirino. Such **disadvantage was brought about because the province had set aside public funds for brand new heavy machinery only to receive used albeit reconditioned equipment**. Now, she cannot lay the blame on Engr. Ringor by arguing that her actions were precipitated

---

[47] *Rollo*, p. 70.

[48] *Id.* at 43.

[49] *Id.* at 101.

by his recommendation. The evidence distinctly revealed that Gov. Co was well aware of the terms of her authority and of the fact that Nakajima Trading was offering only reconditioned equipment.[50] Nevertheless, she pushed through with the transaction to the prejudice of the province. For this, she must be held accountable.

Thus, on this ground alone, Gov. Co's petition must fail.

Anent the second act, the evidence of the prosecution showed that the telegraphic transfer of 40% of the total contract price was effected on January 24, 1996, while the heavy equipment was initially delivered on April 10, 1996. Thus, the Provincial Government of Quirino paid public funds to Nakajima Trading before the latter delivered to it the heavy machinery subject of the contract. The prosecution argued that this advance payment, which violated Section 338 of the Local Government Code,[51] caused gross and manifest disadvantage.[52] The said provision prohibits local government units from making payments for goods not yet delivered and services not yet rendered, to wit:

Section 338. *Prohibitions Against Advance Payments*. — No money shall be paid on account of any contract under which no services have been rendered or goods delivered.

Gov. Co in fact admitted that this advance was made. However, in her defense, she maintained that she made the payment only after consulting Atty. Primitivo Marcos (Atty. Marcos), her private lawyer, who was not at that time in the employ of the province. Atty. Marcos advised Gov. Co that Section 338 did not apply to the transaction with Nakajima Trading because the advance was necessary for the Japanese supplier to begin reconditioning the equipment. She argued, once again on the basis of *Arias*, that her reliance in good faith on the opinion of Atty. Marcos should exonerate her from the charge of making

---

[50] *Id*. at 38.

[51] LOCAL GOVERNMENT CODE, Book II, Title Five, Chapter 4, Sec. 338.

[52] *Rollo*, p. 102.

an advance payment.[53] Thus, the next questions posed to the Court were:

Did the advance of forty (40%) percent of the total contract price, in violation of Sec. 338 of the Local Government Code, cause manifest and gross disadvantage to the Province of Quirino?[54]

If in the affirmative, did Governor Co have the right to rely on the legal opinion of Atty. Marcos, her private counsel?[55]

Again, the Court rules in the affirmative on the first question and in the negative on the second.

Notably, this is not the first time that the Court has adjudged an advance payment of public funds, made in violation of an express provision of law, to be commensurate with a violation of R.A. No. 3019.

In *Plameras vs. People*,[56] Provincial Governor Jovito C. Plameras was held liable for a violation of R.A. No. 3019 after he made an advance payment of ₱5,666,600.00 on behalf of Antique Province to answer for desks needed by the province's public schools. In that case, Governor Plameras signed a Purchaser-Seller Agreement with CKL as supplier and the provincial government as buyer. To fund the purchase, he applied for an Irrevocable Domestic Letter of Credit in the amount of ₱5,666,600.00 on behalf of the Provincial School Board. The application was approved and a letter of credit was issued in favor of the supplier. Full payment was effected soon after. Nonetheless, the province only received 1,838 out of the 5,246 desks that CKL agreed to deliver. Governor Plameras was therefore charged by the Office of the Deputy Ombudsman for the Visayas, which found probable cause to indict him for a violation of Section 3(e) of R.A. No. 3019. The Deputy

---

[53] *Id.* at 46-49.

[54] *Id.* at 44-56.

[55] *Id.*

[56] 717 Phil. 303 (2013).

Ombudsman particularly noted that payment was made before the desks were delivered, in violation of existing rules and regulations. After trial on the merits, the Sandiganbayan convicted Governor Plameras of violating Section 3(e) of R.A. No. 3019. He appealed his conviction to this Court. After assessing his arguments, the Court ruled to deny his appeal, holding that the Sandiganbayan did not err in convicting him, to wit:

> As correctly observed by the Sandiganbayan, **certain established rules, regulations, and policies of the Commission on Audit and those mandated under the Local Government Code of 1991 (R.A. No. 7160) were knowingly sidestepped and ignored** by [Governor Plameras] which enabled CKL x x x to successfully get full payment for the school desks and armchairs, despite non-delivery—an act or omission evidencing bad faith and manifest partiality. (Emphasis and underscoring supplied)

One of the rules transgressed in *Plameras*, as well as in this case, was the prohibition against advance payments found in Section 338.

In the case at bench, Gov. Co effected the payment of ₱15,881,115.50, or 40% percent of the total contract price, before delivery by Nakajima Trading. The prosecution maintained that the advance payment was a clear and unequivocal breach of Section 338 of the Local Government Code.[57] The Sandiganbayan, for its part, held that this constituted gross and manifest disadvantage to the government.[58]

The Court finds no reason to deviate from the Sandiganbayan's ruling.

As correctly pointed out by Gov. Co herself, **the purpose of the prohibition against advance payments is to ensure the receipt of goods or the performance of services**.[59] Section

---

[57] *Rollo*, p. 95.

[58] *Id.* at 102.

[59] *Id*. at 49.

338 of the Local Government Code seeks to prevent situations where private suppliers can easily abscond with public funds. When a local government unit makes an advance payment, it risks pecuniary loss in the event of non-delivery or non-performance by the party with which it contracts. Such advances directly place the government at a disadvantage by effectively putting the supplier in control of the transaction, thus opening up the possibility that the latter will not make good its obligations ultimately leading to the pilferage of the public coffers.

Gov. Co also maintained that the prohibition against advance payments does not apply to cases where the government contracts with foreign suppliers. It was her position that these suppliers would naturally require earnest money as proof that the buyer was serious about pursuing with the transaction.[60]

However, contrary to Gov. Co's stance, **the consequences of making an advance payment are even more dire when, as in this case, the government contracts with a foreign supplier**. Unlike local suppliers, which may be made subject of coercive processes issued by Philippine courts, foreign suppliers may readily abscond with impunity. There would be no way to recover, through domestic channels, the funds disbursed in favor of foreign entities; local government units would thus be left without recourse against suppliers without any presence or assets in the Philippines. This is without a doubt disadvantageous to the government.

The Court finds that, here, the mere risk of losing such a substantial amount of money (*i.e.*, 15,881,115.50) caused gross and manifest disadvantage to the Province of Quirino.

Public office is a public trust.[61] To maintain inviolate the public trust reposed in them, public officers must, in the performance of their duties, exercise the diligence of a good father of a family. This entails, *inter alia*, that **they observe relevant laws and rules as well as exercise ordinary care**

---

[60] *Id.* at 105.

[61] CONSTITUTION, Article XI, Sec. 1.

and prudence in the disbursement of public funds.[62] Public funds, after all, are the property of the people and must be used prudently at all times with a view to prevent dissipation and waste.[63]

In this regard, Gov. Co failed miserably. As mentioned earlier, she advanced public funds in the amount of ₱15,881,115.50 in favor of Nakajima Trading, blatantly disregarding Section 338 of the Local Government Code. She neglected to abide by the law, which she, as a public officer, is bound to uphold. Thus, the Court holds that the Sandiganbayan did not err when it ruled that the advance of 40% of the total purchase price caused gross and manifest disadvantage to the Province of Quirino.

Next, the Court shall discuss Gov. Co's misplaced invocation of the *Arias* doctrine in relation to her reliance on the legal opinion of her lawyer, Atty. Primitivo Marcos.

To reiterate, Gov. Co argued that she merely depended in good faith on the judgment of Atty. Marcos, who opined that the transaction with Nakajima Trading was exempt from Section 338 of the Local Government Code. Again citing *Arias*, she maintained that she cannot be faulted for her reliance on his opinion because the question of whether the advance payment violated the Local Government Code was not within her competence since she is not a lawyer. Thus, she concluded that her good faith reliance on the legal opinion of Atty. Marcos should exonerate her from the charge.[64]

The argument deserves scant consideration.

The subordinates contemplated by the *Arias* doctrine are those public officers and employees who are actually under the control or supervision of the head of office concerned, or those who answer directly or indirectly to their superiors, who are in the

---

[62] Concurring and dissenting opinion of Justice Arturo D. Brion, in *Technical Education and Skills Development Authority v. Commission on Audit*, 729 Phil. 60, 87 (2014).

[63] *Yap v. Commission on Audit*, 633 Phil. 174, 188 (2010).

[64] *Rollo*, p. 48.

employ of the same government agency. In other words, for the *Arias* doctrine to find application, both the superior and the subordinate must be public officers working for the same government office or agency.

In his cross-examination,[65] Atty. Marcos admitted that he was merely consulted by Gov. Co in his capacity as a private lawyer, to wit:

> Q: Mr. witness, you said that you were the legal consultant of the accused in 1996, does it mean that you were a private counsel for the accused in 1996?
>
> A: Yes, ma'am.
>
> Q: So, you were not the official legal counsel of the Provincial Governor in 1996?
>
> A: Yes, **I was acting then as private legal consultant**, ma'am.
>
> Q: And you were not connected in any way with the province?
>
> A: At that time, ma'am. (Emphasis and underlining supplied)

Given the foregoing admission, the Court cannot extend the protection afforded by the *Arias* doctrine to Gov. Co.

Moreover, Gov. Co cannot hide behind the cloak of ignorance or lack of familiarity with the provisions of the law.[66] It is settled in our jurisdiction that ignorance of the law excuses no one from compliance therewith.[67] Corollarily, a mistake of law cannot be used to justify an illegal act because everyone is presumed to know the law and the consequences of its violation.[68]

Hence, Gov. Co's reliance on the legal opinion rendered by Atty. Marcos will not serve to exculpate her.

---

[65] TSN, March 20, 2007, *id*. at 105.

[66] *Office of the Deputy Ombudsman for Luzon v. Eufrocina Carlos Dionisio and Winifredo Salcedo Molina*, G.R. No. 220700, July 10, 2017.

[67] CIVIL CODE, Article 3.

[68] *In re: Petition to sign in the Roll of Attorneys, Medado*, B.M. No. 2540, 718 Phil. 286, 291 (2013).

Anent the third act, the findings of the Sandiganbayan show that Nakajima Trading failed to comply with a stipulation in the agreement, which provided that the complete delivery of the heavy equipment had to be within ninety (90) days from the date payment was received. The record reveals that, through a letter of credit, full payment had been effected on February 14, 1996. Thus, the Japanese supplier had until May 14, 1996 to perform its obligation under the contract. However, it failed to do so. Nakajima Trading delivered the equipment in three (3) separate shipments. According to the Sandiganbayan, these shipments were made on April 10, 1996, June 10, 1996, and June 24, 1996.[69] Clearly, therefore, complete delivery was not made in accordance with the terms of the contract.

More, the prosecution established that, despite full payment of the contract price, the provincial government did not receive every unit of equipment due under the contract. Specifically, the evidence revealed that Nakajima Trading never delivered the set of tools and spare parts and that it failed to deliver the Ingersol-Rand SP 100 Vibratory Road Roller in accordance with the terms of the agreement. The record shows that Provincial Engineer Ringor inspected the machine upon delivery and that his inspection revealed that it was not in the condition agreed upon, the same being laden with dents and scratches.[70]

To the Court, this act only highlights Gov. Co's wanton negligence in the handling of public funds. Despite the lapse of the final day for delivery, Gov. Co chose to sit idly and wait for over a month for Nakajima Trading to ship the equipment that the province ordered. This shows that the governor was undoubtedly remiss in her duty to exercise heightened responsibility in dealing with public funds. This is precisely the lax attitude R.A. No. 3019 seeks to repress; this is, in every way, the cavalier disposition that a public officer cannot display and that the Court cannot countenance.

---

[69] *Rollo*, pp. 102-103.

[70] *Id.* at 103.

Considering all the foregoing, Gov. Co must be held accountable for entering into a transaction grossly and manifestly disadvantageous to the government.

WHEREFORE, the petition is **DENIED**. The April 28, 2008 Decision and the September 24, 2008 Resolution of the Sandiganbayan in Criminal Case No. 24901, are **AFFIRMED** *in toto*.

The petitioner, Josie Castillo-Co, is hereby sentenced to an indeterminate penalty of Six (6) years and One (1) month, as minimum, to Six (6) years and Nine (9) months, as maximum, with perpetual disqualification from public office.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 186196. August 15, 2018]

BENEDICTO V. YUJUICO,[*] *petitioner, vs.* **FAR EAST BANK AND TRUST COMPANY (NOW BANK OF THE PHILIPPINE ISLANDS), substituted by PHILIPPINE INVESTMENT ONE (SPV-AMC), INC.,**[**] *respondent.*

---

[*] Designated additional Member per Special Order No. 2587, dated August 28, 2018.

[*] In the Motion for Extension of Time to File Petition for Review on *Certiorari* dated February 18, 2009 (*rollo*, pp. 3-7) the caption reflects GTI Sportswear Corporation and Benedicto V. Yujuico as the petitioners. However, in the Petition for Review on *Certiorari* dated March 12, 2009 (*rollo*, pp. 11-51) subsequently filed, only the name of Benedicto V. Yujuico appears as petitioner in the caption.

[**] Per Resolution of the Court dated January 15, 2014; *rollo*, p. 280.

SYLLABUS

1. **CIVIL LAW; OBLIGATIONS AND CONTRACTS; NOVATION; DEFINED AS THE SUBSTITUTION OR ALTERATION OF AN OBLIGATION BY A SUBSEQUENT ONE THAT CANCELS OR MODIFIES THE PRECEDING ONE; CLASSIFICATIONS.—** Noted civilist Justice Eduardo P. Caguioa elucidated on the concept of novation as follows: x x x Novation has been defined as the substitution or alteration of an obligation by a subsequent one that cancels or modifies the preceding one. Unlike other modes of extinction of obligations, novation is a juridical act of dual function, in that at the time it extinguishes an obligation, it creates a new one in lieu of the old. xxx This is not to say however, that in every case of novation the old obligation is necessarily extinguished. Our Civil Code now admits of the so-called imperfect or modificatory novation where the original obligation is not extinguished but modified or changed in some of the principal conditions of the obligation. Thus, article 1291 provides that obligations may be *modified*. As to its essence, novation may be classified into: (a) *objective* or *real*, (b) *subjective* or *personal*, or (c) *mixed*. Article 1291(1) contemplates an objective or real novation where there is a change in the cause, object or principal conditions of the obligations while (2) and (3) of said Article contemplate a *passive* one where there is a substitution of the person of the debtor and an *active* one where there is subrogation of a third person in the rights of the creditor. Mixed novation, on the other hand, refers to a combination of objective and subjective novation. As to its form or constitution, novation may be *express*, when it is declared in unequivocal terms that the old obligation is extinguished by a new one which substitutes the same, or *implied* or *tacit*, when the old and the new obligations are incompatible with each other on every point. As to extent or effect, novation may be *total* or *extinctive*, when there is an absolute extinguishment of the old obligation, or *partial*, when there is merely a modification of the old obligation.

2. **ID.; ID.; ID.; TOTAL OR EXTINCTIVE NOVATION, NOT ESTABLISHED IN CASE AT BAR.—** The Court agrees with the finding of the CA that "[t]he attendant facts do not make out a case of novation" in the sense of a total or extinctive novation. As explained by the CA: A perusal of the records

reveals that there is no document that states in unequivocal terms that the agreement to convert the loan from peso to US dollar would abrogate the loan restructuring agreement or the omnibus credit line. Instead what is readily apparent from the exchange of communications concerning the request for conversion is that the parties recognize the subsistence of the loan restructuring agreement. In fact, in the letter dated September 5, 1995 sent by x x x GTI to [respondent] reiterating the former's request to re-dominate its loan obligation from peso to US dollar, x x x GTI even assured [respondent] that the other terms of the restructuring agreement would be complied with. Verily, where the parties to the new obligation expressly recognize the continuing existence and validity of the old one, there can be no novation. x x x From the foregoing, it can be gathered that, at best, the agreement to convert the Peso-denominated restructured loan into a US Dollar-denominated one is an implied or tacit, partial, modificatory novation. There was merely a change in the method of payment.

3. ID.; ID.; ID.; ABSENT A TOTAL OR EXTINCTIVE NOVATION, THE SURETY AGREEMENT SUBSISTS; CASE AT BAR.— [W]ithout a total or extinctive novation, the surety agreement subsists. Aside from the absence of a "perfect" novation, the CA said that "another circumstance that militates against the release of [petitioner] Yujuico as surety is the fact that he executed a comprehensive or continuing surety, one which is not limited to a single transaction, but which contemplates a future course of dealing, covering a series of transactions, generally for an indefinite time or until revoked." The CA added: x x x The comprehensive characteristic of the surety is evident in the Comprehensive Surety Agreement by which [petitioner] Yujuico guaranteed in joint and several capacity, the punctual payment at maturity of any and all indebtedness of every kind which, at the time of execution was or may thereafter become due or owing [to respondent by the Borrower, GTI]. Indubitably, these provisions are broad enough to include the loan obligation under the loan restructuring agreement even after its conversion to US dollar. x x x The Court fully agrees with the CA. While Article 1215 of the Civil Code provides that novation, compensation or remission of the debt, made by any of the solidary creditors or with any of the solidary debtors, shall extinguish the obligation, the novation

contemplated therein is a total or extinctive novation of the old obligation. Also, the Comprehensive Surety Agreement that petitioner Yujuico executed in favor of respondent is so worded that it covers "any and all other indebtedness of every kind which is now or may hereafter become due or owing to [respondent] by the Borrower."

APPEARANCES OF COUNSEL

Pelaez Gregorio Gregorio & Lim for petitioner.
Solis Lacambra & Associates Law Office for respondent Philippine Investment.

R E S O L U T I O N

CAGUIOA, *J.*:

This is a Petition for Review on *Certiorari*[1] (Petition) under Rule 45 of the Rules of Court assailing the Decision[2] of the Court of Appeals[3] (CA) dated January 23, 2009 in CA-G.R. CV No. 87836. The CA Decision partially granted the appeal and affirmed with modification the Decision[4] dated October 6, 2004 of the Regional Trial Court, Branch 146, Makati City (RTC) in Civil Case No. 97-2522.

Facts and Antecedent Proceedings

The CA Decision narrates the following antecedent facts of the case:

On May 14, 1993, appellant then Far East Bank and Trust Company (appellant bank, for brevity) approved the renewal of appellee GTI Sportswear Corporation's Omnibus Credit Line (OCL) with a total

---

[1] *Rollo*, pp. 11-51, excluding Annexes.

[2] *Id.* at 53-69. Penned by Associate Justice Ramon R. Garcia, with Associate Justices Edgardo P. Cruz and Magdangal M. De Leon concurring.

[3] Seventh Division.

[4] *Rollo*, pp. 75-85. Penned by Pairing Judge Cesar D. Santamaria.

amount of ₱35,000,000.00. The credit line was available in the form of letters of credit, trust receipts, margin loan, export packing credit line, bills purchase line and export bills purchase line. This was secured by a Comprehensive Surety Agreement executed by appellee Benedicto V. Yujuico in his personal capacity. He was also the president of appellee GTI.

Sometime in May 1995, negotiations were undertaken to settle appellee GTI's trust receipt obligation under the OCL. During these negotiations, appellee GTI made known to appellant bank its request for the conversion of its peso loan to US dollar-denominated loan. An exchange of communications concerning the conversion transpired but no definite agreement on the said conversion was put into writing.

On June 26, 1995, appellee Yujuico, in behalf of appellee GTI and in his personal capacity as surety, and appellant's First Vice President Ricardo G. Lazatin, in behalf of appellant bank, signed a Loan Restructuring Agreement (LRA), the subject of which was appellee GTI's outstanding balance on its Omnibus Credit Line in the amount of ₱25,208,[874].84[5] as of May 31, 1995. The agreement expressly stated that the restructured loan continues to be secured by the Comprehensive Surety Agreement previously executed by appellee Yujuico in favor of appellant bank.

After the signing of the restructuring agreement, appellee GTI, reiterated its request for the re-denomination of its loan obligation to US dollars. Appellant bank, however, denied the request and informed appellees that the conversion was not deemed workable in view of the following considerations: appellant bank requires long-term FCDU loans to be fully collateralized and appellee GTI, as borrower, must have adequate FCDU placements with appellant bank as well as maintain substantial deposit ADB levels.

In a letter dated September 22, 1997, appellant bank demanded that appellee GTI update all its unpaid amortizations on the outstanding restructured loan with a principal balance of ₱11,376,666.25 not later than September 30, 1997 and to settle all its other past due obligations to avert any legal action.

On October 29, 1997, appellees filed against appellant bank a Complaint for Specific Performance with Preliminary Injunction with the Regional Trial Court of Makati City. Appellees alleged that during

---

[5] See *rollo*, p. 79.

the signing of the loan restructuring agreement, they were assured by the officers of appellant bank, namely: Paul Regondola and Jacqueline Fernandez, that after a few payments on its obligation, appellee GTI's peso loan would be converted to US dollars. Also, sometime in October 1996, Paul Regondola confirmed by phone that the conversion of appellee GTI's loan from peso to US Dollars had been approved by appellant bank. This prompted appellee GTI's financial consultant Bermundo to send appellant bank a letter dated October 31, 1996 acknowledging appellant bank's alleged confirmation of the approval of the conversion of the restructured loan. This letter was not denied by appellant bank until December 18, 1996 when it informed appellees that the conversion of the restructured loan to US dollars was not deemed workable because of certain considerations. These considerations, however, were not conveyed to appellees beforehand.

Appellees averred further that under the US dollar-denominated loan, appellee GTI would be paying lower interest and would save the total amount of ₱2,844,228.00.

Hence, appellees prayed that appellant bank be directed to convert GTI's loan to US dollars retroactively effective October 1, 1996 and that appellant bank be directed to pay appellees ₱2,844,228.00 representing savings that could have accrued in favor of appellees in terms of the difference in interest payments. They also prayed for exemplary damages and attorney's fees.

In an Answer dated December 4, 1997, appellant bank denied that it made assurances to appellees that it would approve the latter's request for conversion of the peso loan to US dollar. Appellant bank informed appellees that the request for conversion would be considered depending on appellee's performance on the restructuring agreement and their compliance with the requisites set by appellant bank. Sometime in October 1996, Regondola informed appellee GTI's financial consultant, Pablito Bermundo, that the request was approved in principle, subject to some conditions which appellant bank imposes before approving similar requests for conversion. Appellee GTI, however, was not able to comply with the requirements resulting in the denial of their request for conversion. Hence, appellant bank prayed that the complaint be dismissed.

By way of counterclaim, appellant bank prayed that appellees be ordered to jointly and severally pay their obligations under the loan restructuring agreement amounting to ₱15,798,642.39 as well as appellees' other obligations under the Export Packing Credit Facility

in the amount of ₱2,333,531.11 and Trust Receipt Agreements in the amount of ₱1,922,646.60.

In a Decision dated October 6, 2004, the court *a quo* ruled that appellant bank indeed agreed to convert to US dollar appellee GTI's peso loan obligation. The conversion also resulted in the novation of appellee GTI's loan obligation. As a result, appellee Yujuico was accordingly released from his obligations as surety pursuant to Article 1215 of the New Civil Code in conjunction with paragraph 1 of Article 1291 of the same Code. In addition, the court *a quo* dismissed without prejudice appellant bank's counterclaims for failure to pay the required filing fees. x x x

x x x x x x x x x

[The dispositive portion of the RTC Decision dated October 6, 2004 states:

> PREMISES CONSIDERED, judgment is rendered in favor of the plaintiffs and against the defendant Bank of the Philippine Island (sic), directing the latter to acknowledge and confirm its obligation to convert the restructured Omnibus Credit Line of plaintiff GTI from Philippine Peso loan account into a US Dollar denominated loan obligation; and finding the original Omnibus Credit Line entered into by plaintiff GTI with defendant BPI to have been novated, the Comprehensive Surety Agreement executed by plaintiff Yujuico covering said loan is deemed extinguished and the latter is released from his obligation as surety.
>
> The compulsory counterclaims of the defendant which are actually permissive counterclaims are not admitted and are therefore DISMISSED without prejudice for failure of the defendant to pay the required filing fees.
>
> SO ORDERED.[6]

Appellant bank then filed a Motion for Reconsideration. x x x

[In the Motion for Reconsideration[7] dated November 2, 2004, appellant bank manifested that:

---

[6] *Rollo*, p. 85.

[7] *Id*. at 87-96, including Annexes.

> x x x Anent the first ground, defendant hereby manifests its acceptance of and willingness to abide by the decision of the [RTC]. As mandated by the [RTC], defendant BPI acknowledges and confirms its obligation to convert the restructured Omnibus Line of plaintiff GTI Sportswear from a peso account into a US Dollar denominated loan obligation. In support thereof, defendant attaches herewith and makes an integral part hereof as Annex "A" the Statement of Account[8] of the plaintiffs under the restructured Omnibus Line as of October 31, 2004. The Statement of Account reflects defendant's computation of the outstanding obligation of the plaintiffs on the basis of a peso-dollar rate of exchange at [$1] = ₱26.30, then the prevailing rate[.]
>
> x x x With the submission of the foregoing computation, plaintiffs should now be directed to pay defendant under the restructured Omnibus Line the amount of US$1,132,795.31 plus the stipulated interests and penalty charges thereon from October 31, 20[0]4 until the same is fully paid in US dollar currency[.][9]

The appellant bank raised as second ground, the correctness of the release of Yujuico from his obligation as a surety of the loan obtained by appellee GTI and took the position that there was no novation.[10] As third ground, appellant bank argued that its permissive counterclaim against plaintiffs should not have been dismissed for failure to pay the required docket fees.[11]

The motion for reconsideration was denied in an Order dated March 4, 2005.

Aggrieved, appellant bank filed [an] appeal [before the CA].[12]

---

[8] The Statement of Account (Annex "A") states that principal of the restructured loan as of October 31, 2004 was ₱10,998,027.38 or US$418,175.95 with interest from 10/01/96 to 10/31/04 at 8.8402% interest rate equivalent to interest amount of US$303,134.24 and penalty at 12% penalty rate equivalent to US$411,485.13. Thus, the total amount due was US$1,132,795.31. *Id*. at 94.

[9] *Rollo*, p. 88.

[10] *Id*. at 89.

[11] *Id*. at 90.

[12] CA Decision dated January 23, 2009, *id*. at 55-61.

In a Decision[13] dated January 23, 2009, the CA partially granted the appeal. The CA no longer delved on the issue of whether or not the parties perfected a contract on the conversion of the restructured loan to US dollars in view of appellant bank's acknowledgment and confirmation of its obligation to convert the restructured loan to US dollars in its Motion for Reconsideration dated November 2, 2004.[14] The lone issue left for determination as far as the CA was concerned was whether or not the conversion of the peso-denominated loan is tantamount to novation warranting the extinguishment of appellee Yujuico's obligations as a surety.[15] On the said issue, the CA ruled that the Omnibus Credit Line and the Loan Restructuring Agreement between appellee GTI Sportswear Corporation (GTI) and appellant bank were not novated and appellee Yujuico remained to be liable as a surety under the Comprehensive Surety Agreement.[16]

The dispositive portion of the CA Decision states:

WHEREFORE, the instant appeal is hereby ***PARTIALLY GRANTED***. Accordingly, the Decision dated October 6, 2004 of the Regional Trial Court, Branch 146, Makati City is ***AFFIRMED WITH MODIFICATION*** in that the Omnibus Credit Line and the Loan Restructuring Agreement between appellee GTI and appellant were not novated and appellee Yujuico remains to be liable as surety under the Comprehensive Surety Agreement.

SO ORDERED.[17]

Hence, the present Rule 45 Petition dated March 12, 2009 filed by petitioner Benedicto V. Yujuico (Yujuico). GTI, petitioner Yujuico's co-plaintiff before the RTC and co-appellee before the CA, did not join as co-petitioner in the Petition.

---

[13] *Id.* at 53-69.

[14] *Id*. at 62.

[15] *Id*.

[16] *Id*. at 68.

[17] *Id*.

Respondent Far East Bank and Trust Company (now Bank of the Philippine Islands), substituted by Philippine Asset Investment (SPV-AMC), Inc. (PAI) filed a Comment[18] dated December 7, 2009. Petitioner Yujuico filed a Reply[19] dated May 20, 2010. Pursuant to the Court's Resolution[20] dated January 15, 2014, which granted the Motion for Substitution[21] filed by Philippine Investment One (SPV-AMC), Inc. (PIO) as the assignee of all the rights, title and interest over the Non-Performing Loan of GTI of the assignor PAI by virtue of the Deed of Assignment[22] dated May 11, 2007 executed by PAI and PIO,[23] PIO (respondent) was allowed to substitute for PAI as new party respondent in this case.

Issues

Petitioner Yujuico raises the following issues in the Petition:

1. whether the CA has legal basis to resolve and declare that there was no novation between GTI and respondent;
2. whether the CA has legal basis to resolve and declare that petitioner Yujuico remains liable as surety of the obligation of GTI; and
3. whether the CA has legal basis to entertain the appeal as respondent had already performed a partial execution of the Decision of the RTC which prevents and/or precludes respondent from questioning and/or appealing the judgment/ Decision of the RTC.[24]

The Court's Ruling

Petitioner Yujuico fails to convince the Court that the CA erred. His Petition is not meritorious.

---

[18] *Id*. at 214-225.

[19] *Id*. at 230-240, excluding Annexes.

[20] *Id*. at 280-281.

[21] *Id.* at 267-274, excluding Annexes.

[22] *Id*. at 278-279.

[23] *Id*. at 268.

[24] Petition, *id*. at 29.

The third issue will be resolved first because it directly impacts on the other two issues.

Petitioner Yujuico takes the position that pursuant to the leading case of *Verches v. Rios*[25] (*Verches*), "in x x x converting the restructured Omnibus Credit Line/loan of GTI Sportswear Corporation from Philippine Peso to United States Dollar denominated [respondent] has clearly and definitely partially executed the judgment/decision of the Trial Court and/or has voluntarily acquiesced or ratified partially the execution of the judgment/decision of the Trial Court."[26]

Petitioner Yujuico entirely misses the import of the Court's ruling in *Verches*, which is extensively reproduced below:

> There is no dispute about any material fact. Plaintiffs complaint is founded upon an indivisible cause of action to recover the sum of ₱2,400 arising out of a fraudulent breach of a contract, upon which the lower court rendered judgment in favor of the plaintiff for the sum of ₱1,000, from which the plaintiff appealed assigning the following errors:
>
> "The lower court erred in sentencing the defendant to pay the plaintiff only the sum of ₱1,000 instead of sentencing her to the payment of the sum of ₱2,400 with legal interest thereon."
>
> After his appeal was taken and perfected, the plaintiff filed a motion in this court for leave to have an execution issued out of the court below on the judgment in his favor against the defendant for ₱1,000. That motion was granted by the vacation Justice x x x and this order of the vacation Justice was approved by the court *in banc* x x x. Based upon the order of the vacation Justice x x x, the plaintiff applied to the lower court and obtained leave to issue an execution on his judgment for ₱1,000, and that execution was issued out of the lower court, and eventually the defendant was forced to, and did, pay the ₱1,000 to plaintiff, who signed the receipt x x x.
>
> The proof is conclusive that, through an execution issued on his motion, the plaintiff has obtained satisfaction in full of his judgment for ₱1,000. x x x

---

[25] 48 Phil. 16 (1925).

[26] Petition, *rollo*, p. 43.

Although the amount involved is small, the question presented is one of first impression in this court, and is important to the legal profession.

The case of Paine *vs*. Woolley (80 Ky., 568), is a leading, well written case on the question presented, the syllabus of which is as follows:

"1. A party who has recovered a judgment upon a claim which is indivisible, and has, after its rendition, coerced by execution full satisfaction, cannot maintain an appeal in this court, against the objections of the judgment debtor, upon the ground that he has not recovered enough.

"2. This rule applies to judgments in equity as well as at law.

"3. Having elected to collect his judgment, appellant ratified it, and should be estopped from prosecuting the appeal as inconsistent with his collection of the amount adjudged to him."

And on page 573, the opinion says:

"We may, therefore, conclude with perfect confidence that the general principle is that a party who has recovered judgment on a claim which cannot be split up and made the basis of several causes of action, and afterwards coerced full satisfaction by writ of execution or authority of the court, cannot maintain an appeal from the judgment against the objections of the judgment debtor.

"Counsel for appellants have cited a number of authorities which, it is contended, establish a different rule; but after a patient and thorough examination of each case, we are unable to find that any of them go further than to hold that neither a *voluntary* payment by the defendant of the judgment, nor a *partial* satisfaction thereof under coercion, will constitute a waiver of the appeal or a release of errors. But the weight of authority is to the effect that an acceptance of full satisfaction of the judgment annihilates the right to further prosecute the appeal, while there are cases holding the contrary view."

The following authorities are also square in point:

"One who complains of a judgment must be consistent in his conduct with reference to it. If he recognizes its validity, he will not be heard to say that it is erroneous." (*Babbit vs. Corby*, 13 Kan., 612; Merchant's *Nat. Bank vs. Quinton*, 9 Kan. App., 882; 57 Pac. 261.)

"A party who is dissatisfied with a decree in his favor has the option to have it reviewed by proper proceedings, or to enforce it and receive its benefits; but he cannot pursue both courses, since one is inconsistent with the other." (Harte *vs*. Castetter, 38 Neb., 571; 57 N. W., 381.)

"If one desires to appeal from an order made in a litigation in which he is a party, he should accept no benefit under it, for he cannot do both." (Cogswell *vs*. Colley, 22 Wis., 381.)

"The right to accept the fruits of a judgment, and the right of appeal therefrom are not concurrent. On the contrary, they are totally inconsistent. An election to take one of these courses is, therefore, a renunciation of the other." (Estate of Shaver, 131 Cal., 219.)

"When an appellee has paid, and the appellant has accepted payment of a judgment from which an appeal has been taken, there is nothing more in controversy, and the court will not entertain or permit the prosecution of the appeal." (State *ex rel.* Neal *vs*. Kamp, 111 Ind., 56.)

"The right to proceed upon a judgment or decree, and invoke the process of the court, and thus acquire or otherwise secure and enjoy the fruits of such judgment or decree, is wholly inconsistent with the right to appeal from it." (Merriam *vs*. Victory Mining Co., 37 Or., 321.)

"It is manifestly unjust to permit a partly successful litigant to take all the money the decree gives him, and then speculate upon the possibilities of getting more by means of a writ of error." (Holt *vs.* Rees, 46 Ill., 181.)

"The receipt of money due upon a decree, and the allowance of its satisfaction in consequence of the payment in full before an appeal, is a waiver of all errors, unless the money thus received is returned or tendered to the appellee before the proceeding to assign errors in the appellate court." (Murphy's Heirs *vs.*Murphy's Adm'r., 45 Ala., 123.)

The rule is also sustained by the supreme court of Louisiana, where it is held:

"An appellant from a judgment in his favor for a less amount than he claimed, who, after taking his appeal, causes a *fi.fa*.[27] to be issued upon the judgment, will be considered voluntarily to have executed such judgment, and to have abandoned his appeal." (Campbell *vs*. Orillion, 3 La. Ann., 115.)

"A party in whose favor a judgment appealed from was rendered, who partially executes the same by compulsory legal process, must be considered as having acquiesced in such judgment, and cannot afterwards, by appeal or answer to his adversary's appeal, or otherwise, ask that the judgment be amended." (Wiemann's Succession, 112 La., 293; 36 So., 354.)

"It cannot be controverted, declared the court in De Egana's Succession, *supra*, that under the laws and jurisprudence of this state, the party who voluntarily executes, either partially or in toto, a judgment rendered for or against him, or who voluntarily acquiesces in or ratifies, either partially or in toto, the execution of that judgment, is not permitted to appeal from it." De Egana's Succession, 18 La. Ann., 59.)

"To receive the amount of a judgment, in whole or in part, is, in its natural significance, as well as under the Louisiana jurisprudence, an acquiescence in the judgment. And to receive a part of a judgment is as significant of an acquiescence of the judgment as would be the reception of the whole." (Flowers *vs*. Hughes, 46 La. Ann., 436; 15 So., 14.)

Owing to the similarity of the jurisprudence of that State with the law of the Philippine Islands, the Louisiana decisions are important and should have great weight in this court.

Plaintiff's cause of action is indivisible.

The plaintiff, having applied to this court for leave to issue an execution out of the lower court on his judgment for ₱1,000, and, through coercion, having collected that judgment and receipted for it in full, ought not to be heard in this Court to say that the judgment

---

[27] A writ of *fieri facias* (or Writ of Fi Fa) is a document issued by the Clerk of Magistrate Court for the purpose of recording a lien on the judgment debtor's property. It is also the legal instrument by which the sheriff of a county may seize the assets of a judgment debtor. < https://www.accgov.com/709/Writs-of-Fieri-Facias >.

of the lower court was erroneous. It may be, as plaintiff claims, that in the collection of a judgment for ₱1,000 on an execution, it never was his purpose or intent to waive or abandon his appeal from that judgment.

His cause of action being indivisible, and the judgment from which plaintiff's appeal was taken having been satisfied by an execution issued on his own motion, there is nothing left from which to appeal. Upon an indivisible cause of action, plaintiff, through an execution, cannot collect a judgment in his favor and at the same time prosecutes an appeal from that judgment upon the ground that it was erroneous and should have been for more money.[28]

To distill the foregoing, the party, who is barred from appealing and claiming that he has not recovered enough, must have recovered a judgment upon a claim which is indivisible and, after its rendition, has coerced by execution full or partial satisfaction. Thus, having elected to collect from the judgment by execution, he has ratified it, either *in toto* or partially, and should be estopped from prosecuting an appeal inconsistent with his collection of the amount adjudged to him.

In fine, the claim must be one which is indivisible and there must be an execution of the judgment, either partially or fully. Indeed, the claim of respondent against GTI and petitioner Yujuico is indivisible since it cannot be split up and made the basis for several causes of action. However, there is yet no execution of the RTC Decision, either fully or partially. Respondent merely acceded to the directive of the RTC "to acknowledge and confirm its obligation to convert the restructured Omnibus Credit Line of x x x GTI from Philippine Peso loan account into a US Dollar denominated loan obligation."[29] In fact, the RTC, while it recognized that GTI is indebted to respondent, ruled that "[t]he liquidation of this obligation is however subject to a condition that the bank [(respondent)] must first comply with its obligation to convert the Peso loan account into a US Dollar denominated loan and

---

[28] *Verches v. Rios*, *supra* note 25, at 19-23.

[29] RTC Decision dated October 6, 2004, *rollo*, p. 85.

thereafter [compute] the outstanding obligation of [GTI and petitioner Yujuico] to it."[30] Even in the Motion for Reconsideration[31] dated November 2, 2004 filed by respondent wherein it manifested its acceptance of and willingness to abide by the RTC directive, respondent alleged that "[w]ith the submission of the x x x computation [of the outstanding obligation of GTI and petitioner Yujuico pursuant to the Statement of Account it attached as Annex 'A' thereof, they] should now be directed to pay [respondent] under the restructured Omnibus Line the amount of US$1,132,795.31 plus the stipulated interests and penalty charges thereon from October 31, 20[0]4 until the same is fully paid in US dollar currency."[32] Thus, GTI or petitioner Yujuico has not been coerced by execution to satisfy the RTC judgment; and respondent is not precluded to appeal the resolution of the RTC that there is novation and petitioner Yujuico is released from his obligation as a surety. Additionally, respondent questioned the release of petitioner Yujuico as surety and the ruling on the presence of novation in the said Motion for Reconsideration.

Tañada v. Court of Appeals[33] cited by petitioner Yujuico is not persuasive. In that case, the assailed order of the lower court dated April 8, 1941, which was subsequently opposed by Narcisa Mendoza (Mendoza), the defendant therein, "had become final and executory, [and] it could no longer be disturbed, not even by the very court which rendered it" because "Mendoza did not question the reasonableness of said order before the court, much less did she interpose an appeal therefrom."[34] The actuations of Mendoza after the issuance of the said order — surrender to the Register of Deeds the certificates of title covering the lands involved for annotation of therein petitioners' lien; delivery to the petitioners their one-half share of the yearly

---

[30] *Id*. at 84.

[31] *Rollo*, pp. 87-96, including Annexes.

[32] *Id.* at 88.

[33] 223 Phil. 634 (1985).

[34] *Id.* at 639.

produce from 1941 to 1958 — were tantamount to virtual acquiescence to the assailed order and she could not subsequently be allowed to repudiate her representations or assume an inconsistent posture.[35] It is within this context that the principle being raised by petitioner Yujuico was invoked by the Court.

Regarding the first issue, novation is governed principally by Articles 1291 and 1292 of the Civil Code, which provide:

ART. 1291. Obligations may be modified by:

(1) Changing their object or principal conditions;

(2) Substituting the person of the debtor;

(3) Subrogating a third person in the rights of the creditor.

ART. 1292. In order that an obligation may be extinguished by another which substitutes the same, it is imperative that it be so declared in unequivocal terms, or that the old and the new obligations be on every point incompatible with each other.

Noted civilist Justice Eduardo P. Caguioa elucidated on the concept of novation as follows:

x x x Novation has been defined as the substitution or alteration of an obligation by a subsequent one that cancels or modifies the preceding one.[36] Unlike other modes of extinction of obligations, novation is a juridical act of dual function, in that at the time it extinguishes an obligation, it creates a new one in lieu of the old.[37] x x x This is not to say however, that in every case of novation the old obligation is necessarily extinguished. Our Civil Code now admits of the so-called imperfect or modificatory novation where the original obligation is not extinguished but modified or changed in some of the principal conditions of the obligation. Thus, article 1291 provides that obligations may be *modified*.[38]

---

[35] *Id*.

[36] Eduardo P. Caguioa, *COMMENTS AND CASES ON CIVIL LAW*, *CIVIL CODE OF THE PHILIPPINES*, Vol. IV (1983 Rev. 2nd Ed.), p. 410, citing 8 Manresa, p. 751.

[37] *Id*., citing *Gov't. v. Bautista* (CA), 37 O.G. 1880; 3 Castan, 8th ed., p. 306.

[38] *Id*. at 410-411.

As to its essence, novation may be classified into: (a) *objective* or *real*, (b) *subjective* or *personal*, or (c) *mixed*.[39] Article 1291(1) contemplates an objective or real novation where there is a change in the cause, object or principal conditions of the obligations while (2) and (3) of said Article contemplate a *passive* one where there is a substitution of the person of the debtor and an *active* one where there is subrogation of a third person in the rights of the creditor.[40] Mixed novation, on the other hand, refers to a combination of objective and subjective novation.[41]

As to its form or constitution, novation may be *express*, when it is declared in unequivocal terms that the old obligation is extinguished by a new one which substitutes the same, or *implied* or *tacit*, when the old and the new obligations are incompatible with each other on every point.[42]

As to extent or effect, novation may be *total* or *extinctive,*[43] when there is an absolute extinguishment of the old obligation, or *partial*, when there is merely a modification of the old obligation.[44]

The Court agrees with the finding of the CA that "[t]he attendant facts do not make out a case of novation"[45] in the sense of a total or extinctive novation. As explained by the CA:

---

[39] Desiderio P. Jurado, *COMMENTS AND JURISPRUDENCE ON OBLIGATIONS AND CONTRACTS* (1987 9th Rev. Ed.), p. 323, citing 3 Castan, 7th Ed., p. 284.

[40] *Id*.

[41] *Id*., citing 3 Castan, 7th Ed., p. 284.

[42] *Id*., citing CIVIL CODE, Art. 1292.

[43] Edgardo L. Paras, *CIVIL CODE OF THE PHILIPPINES ANNOTATED*, Vol. IV (2016 18th Ed.), p. 489.

[44] *Id*. at 490.

[45] CA Decision dated January 23, 2009, *rollo*, p. 63.

A perusal of the records reveals that there is no document that states in unequivocal terms that the agreement to convert the loan from peso to US dollar would abrogate the loan restructuring agreement or the omnibus credit line. Instead what is readily apparent from the exchange of communications concerning the request for conversion is that the parties recognize the subsistence of the loan restructuring agreement. In fact, in the letter dated September 5, 1995 sent by x x x GTI to [respondent] reiterating the former's request to re-dominate its loan obligation from peso to US dollar, x x x GTI even assured [respondent] that the other terms of the restructuring agreement would be complied with. Verily, where the parties to the new obligation expressly recognize the continuing existence and validity of the old one, there can be no novation.[46]

Neither do We see any substantial incompatibility between the obligations of the parties under the restructuring agreement and the agreement to convert the loan as to warrant a finding of an implied novation. Implied novation necessitates that the incompatibility between the old and new obligations be total on every point such that the old obligation is completely superseded by the new one.[47] This is not the case here. The only modification that the conversion agreement introduced was that [GTI's and petitioner Yujuico's] loan obligation would be payable in US dollars instead of Philippine pesos. Incidentally, the applicable interest rate is lower on account of the change in currency. These alterations, however, do not suffice to constitute novation. The well-settled rule is that, with respect to obligations to pay a sum of money, the obligation is not novated by an instrument that expressly recognizes the old, changes only the terms of payment, adds other obligations not incompatible with the old ones, or the new contract merely supplements the old one.[48] At most, the changes introduced by the conversion of the loan obligation amount merely to modificatory novation, which results from the

---

[46] *Id*. at 64, citing *California Bus Lines, Inc. v. State Investment House, Inc*., 463 Phil. 689, 708 (2003), further citing *Cochingyan, Jr. v. R&B Surety and Insurance Co., Inc.*, 235 Phil. 332, 345 (1987).

[47] *Id.*, citing *Iloilo Traders Finance Inc. v. Heirs of Sps. Soriano*, 452 Phil. 82, 89 (2003).

[48] *Id*. at 64-65, citing *Sps. Reyes v. BPI Family Savings Bank, Inc*., 520 Phil. 801, 808 (2006).

alteration of the terms and conditions of an obligation without altering its essence.[49]

In the 1912 case of *Zapanta v. De Rotaeche*,[50] the plaintiff therein commenced an action against Zapanta for the purpose of recovering the sum of 7,179.48 pesos Mexican currency; the trial court rendered a judgment in favor of the plaintiff therein and against Zapanta for the said sum of ₱7,179.48 pesos Mexican currency, which equaled the sum of ₱6,353.52. Subsequent to the judgment, the plaintiff therein and Zapanta entered into an agreement or contract whereby Zapanta acknowledged his indebtedness in the sum of ₱6,353.52 as declared in the judgment and as Zapanta was unable to pay said amount in a lump sum, he promised to pay at the end of each month to the plaintiff therein ₱150 per month; the sum owed was to bear interest at 3% *per annum*; and in case of nonfulfillment of Zapanta's promise, said plaintiff would be at liberty to enter suit against him. When Zapanta failed to punctually comply with the provisions of the agreement, the plaintiff therein sued for the issuance of a writ of execution of the judgment.[51] In resolving the issue of whether the plaintiff therein had lost his right to the writ of the execution under the said judgment and the remedy was for the said plaintiff to commence an action against Zapanta upon said agreement, the Court ruled as follows:

x x x The Civil Code,[52] in article 1156,[53] provides the method by which all civil obligations may be extinguished. One of the methods recognized by said code for the extinguishment of obligations is that by novation. (Civil Code, arts. 1156, 1203 to 1213.[54]) In order, however,

---

[49] *Id*. at 65, citing *Swagman Hotels and Travel, Inc. v. Court of Appeals*, 495 Phil. 161, 175 (2005).

[50] 21 Phil. 154 (1912).

[51] *Id.* at 156-158.

[52] OLD CIVIL CODE or the CIVIL CODE OF 1889.

[53] CIVIL CODE (Republic Act No. 386), Art. 1231.

[54] *Id*., Arts. 1291, 1292, 1293, 1295, 1296, 1298, 1300, 1302, 1303, and 1304.

that an obligation shall be extinguished by another obligation (by novation) which substitutes it, the law requires that the novation or extinguishment shall be expressly declared or that the old and new obligations shall be absolutely incompatible. (Civil Code, art. 1204.) In the present case, the contract referred to does not expressly extinguish the obligations existing in said judgment. Upon the contrary it expressly recognizes the obligations existing between the parties in said judgment and expressly provides a method by which the same shall be extinguished, which method is, as is expressly indicated in said contract, by monthly payments. The contract, instead of containing provisions "absolutely incompatible" with the obligations of the judgment, expressly ratifies such obligations and contains provisions for satisfying them. The said agreement simply gave the plaintiff *a method and more time* for the satisfaction of [the] judgment. It did not extinguish the obligations contained in the judgment, until the terms of said contract had been fully complied with. Had the plaintiff continued to comply with the conditions of said contract, he might have successfully invoked its provisions against the issuance of an execution upon the said judgment. The contract and the punctual compliance with its terms only delayed the right of the defendant to an execution upon the judgment. The judgment was not satisfied and the obligations existing thereunder still subsisted until the terms of the agreement had been fully complied with. The plaintiff was bound to perform the conditions mentioned in said contract punctually and fully, in default of which the defendant was remitted to the original rights under his judgment.[55]

The Court observed in *Sandico, Sr. v. Piguing*[56] that:

Novation results in two stipulations — one to extinguish an existing obligation, the other to substitute a new one in its place.[57] Fundamental it is that novation effects a substitution or modification of an obligation by another or an extinguishment of one obligation by the creation of another. In the case at hand, we fail to see what new or modified obligation arose out of the payment by the respondent of the reduced amount of ₱4,000 and substituted the monetary liability for ₱6,000 of the said respondent under the appellate court's judgment.

---

[55] *Zapanta v. De Rotaeche*, *supra* note 50, at 159-160.

[56] 149 Phil. 422 (1971).

[57] *Id*. at 433, citing *Tin Siuco v. Habana*, 45 Phil. 707 (1924).

Additionally, to sustain novation necessitates that the same be so declared in unequivocal terms — clearly and unmistakably shown by the express agreement of the parties or by acts of equivalent import — or that there is complete and substantial incompatibility between the two obligations.[58]

From the foregoing, it can be gathered that, at best, the agreement to convert the Peso-denominated restructured loan into a US Dollar-denominated one is an implied or tacit, partial, modificatory novation. There was merely a change in the method of payment.

As to the second issue, without a total or extinctive novation, the surety agreement subsists.

Aside from the absence of a "perfect" novation, the CA said that "another circumstance that militates against the release of [petitioner] Yujuico as surety is the fact that he executed a comprehensive or continuing surety, one which is not limited to a single transaction, but which contemplates a future course of dealing, covering a series of transactions, generally for an indefinite time or until revoked."[59] The CA added:

> x x x The comprehensive characteristic of the surety is evident in the Comprehensive Surety Agreement by which [petitioner] Yujuico guaranteed in joint and several capacity, the punctual payment at maturity of any and all indebtedness of every kind which, at the time of execution was or may thereafter become due or owing [to respondent by the Borrower, GTI]. Indubitably, these provisions are broad enough to include the loan obligation under the loan restructuring agreement even after its conversion to US dollar. x x x[60]

The Court fully agrees with the CA. While Article 1215 of the Civil Code provides that novation, compensation or remission of the debt, made by any of the solidary creditors or with any of the solidary debtors, shall extinguish the obligation, the

---

[58] *Id*., citing CIVIL CODE, Art. 1292.

[59] CA Decision dated January 23, 2009, *rollo*, p. 65, citing *Fortune Motors (Phils.) Corporation v. Court of Appeals*, 335 Phil. 315, 326 (1997).

[60] *Id*.

novation contemplated therein is a total or extinctive novation of the old obligation. Also, the Comprehensive Surety Agreement that petitioner Yujuico executed in favor of respondent is so worded that it covers "any and all other indebtedness of every kind which is now or may hereafter become due or owing to [respondent] by the Borrower."[61]

WHEREFORE, the Petition is hereby **DENIED**. The Decision dated January 23, 2009 of the Court of Appeals in CA-G.R. CV No. 87836 is **AFFIRMED**.

SO ORDERED.

Perlas-Bernabe (Acting Chairperson), *Jardeleza,*[***] *A. Reyes, Jr.*, and *J. Reyes, Jr., JJ.*, concur.

SECOND DIVISION

[G.R. No. 195908. August 15, 2018]

JOSE A. BERNAS and the WHARTON RESOURCES GROUP (PHILIPPINES), INC., *petitioners, vs.* **THE ESTATE OF FELIPE YU HAN YAT, represented by HERO T. YU,** *respondent.*

[G.R. No. 195910. August 15, 2018]

FELOMENA S. MEJIA (duly substituted by heirs CARMELITA S. PONGOL and MAGDALENA S. TUMAMBING), *petitioners, vs.* **FELIPE YU HAN YAT,** *respondent.*

---

[61] *Id.* at 66; emphasis omitted.

[***] Designated additional Member per Raffle dated July 30, 2018.

SYLLABUS

1. REMEDIAL LAW; PETITION FOR REVIEW ON *CERTIORARI*; AS A RULE, THE SUPREME COURT IS NOT A TRIER OF FACTS AND THAT PETITIONS UNDER RULE 45 OF THE RULES OF COURT SHOULD ONLY RAISE QUESTIONS OF LAW; EXCEPTIONS; CASE AT BAR.— It is true that, as a general rule, the Court is not a trier of facts, and that petitions under Rule 45 of the Rules of Court should only raise questions of law. This rule, however, is subject to the following exceptions: (1) the conclusion is grounded on speculations, surmises or conjectures; (2) the inference is manifestly mistaken, absurd or impossible; (3) there is grave abuse of discretion; (4) the judgment is based on a misapprehension of facts; (5) the findings of fact are conflicting; (6) there is no citation of specific evidence on which the factual findings are based; (7) the findings of absence of fact are contradicted by the presence of evidence on record; (8) the findings of the CA are contrary to those of the trial court; (9) the CA manifestly overlooked certain relevant and undisputed facts that, if properly considered, would justify a different conclusion; (10) the findings of the CA are beyond the issues of the case; and (11) such findings are contrary to the admissions of both parties. Some of the exceptions are present in this case. The rulings alone of the RTC and the CA were contradictory, to the point that they differ on their rulings on each of the issues presented in this case. Further, and as will be discussed in detail later on, the CA committed grave abuse of discretion in arriving at certain factual findings and legal conclusions. The Court must perforce conduct a judicious examination of the records to arrive at a just conclusion for this case.

2. ID.; FORUM SHOPPING; ELEMENTS; NOT ESTABLISHED IN CASE AT BAR.— Respondent's assertions fail to convince. Petitioners did not commit forum shopping by filing separate appeals. In *Young v. Spouses Sy*, the Court held that there is forum shopping where there exist: (a) identity of parties, **or at least such parties as represent the same interests in both actions;** (b) identity of rights asserted and relief prayed for, the relief being founded on the same facts; and (c) the identity of the two preceding particulars is such that any judgment rendered in the pending case, regardless of which party is

successful would amount to *res judicata*. While there was identity of rights asserted and relief prayed for, there was no identity of parties in the case at bar. Granted that both Mejia and Bernas trace their title from Nava, this does not, by itself, make their interests identical. Bernas' and Mejia's interests remain separate, and a judgment on one will not amount to *res judicata* on the other as, for instance, Bernas could, and did, raise the defense that he was an innocent purchaser for value of the subject property and thus should not be bound by any adverse judgment should Mejia's title be found defective. The same reasoning applies to respondent's assertion that Mejia's and Bernas' claims were now barred by *res judicata* because the Heirs of Nava did not appeal. The heirs of Nava hold an interest separate from Mejia's and Bernas', and the latter could not be adversely affected by the fact that the Heirs of Nava no longer filed an appeal.

3. CIVIL LAW; LAND TITLES AND DEEDS; TORRENS SYSTEM; TO ASSAIL THE VALIDITY OF A TORRENS TITLE, THERE MUST BE A DIRECT PROCEEDING EXPRESSLY INSTITUTED FOR THE PURPOSE; TO TEST WHETHER AN ACTION IS A DIRECT ATTACK ON THE TORRENS TITLE, THE NAME OF THE ACTION IS NOT CONTROLLING BUT THE ULTIMATE OBJECTIVE OF THE ACTION AND THE RELIEF SOUGHT THEREIN; CASE AT BAR.— Bernas and Mejia claim that the CA erred when it upheld as valid the petition for quieting of title filed by Yu Han Yat. They claim that the petition for quieting of title was a collateral attack, as opposed to a direct attack, on TCT No. 336663, which is proscribed under the principle of indefeasibility of Torrens titles. Petitioners are mistaken. The CA was correct in holding that the petition for quieting of title filed by Yu Han Yat was not a collateral attack on TCT No. 336663, and was, in fact, a direct attack on the same. x x x The test is not the name of the action, but the ultimate objective of the same and the relief sought therein. Applying the said test in this case, the petition for quieting of title filed by Yu Han Yat was a direct attack on the petitioners' title as the petition specifically sought to annul TCT No. 336663 in the name of Nava. Thus, even as petitioners correctly claim that in assailing the validity of a Torrens title, there must be a direct proceeding expressly instituted for the purpose, the fact of the matter is that the petition for quieting of title was exactly

that proceeding as it was filed precisely to question the validity of TCT No. 336663.

4. ID.; ID.; ID.; AS A RULE, WHERE THERE ARE TWO CERTIFICATES OF TITLE COVERING THE SAME LAND, THE EARLIER IN DATE MUST PREVAIL AS BETWEEN THE PARTIES CLAIMING OWNERSHIP OVER IT; CASE AT BAR.— It is well established in jurisprudence that where there are two certificates of title covering the same land, the earlier in date must prevail as between the parties claiming ownership over it. As early as the 1915 case of *Legarda vs. Saleeby*, the Court already said that: The question, who is the owner of land registered in the name of two different persons, has been presented to the courts in other jurisdictions. In some jurisdictions, where the "torrens" system has been adopted, the difficulty has been settled by express statutory provision. In others it has been settled by the courts. Hogg, in his excellent discussion of the "Australian Torrens System," at page 823, says: "**The general rule is that in the case of two certificates of title, purporting to include the same land, the earlier in date prevails, whether the land comprised in the latter certificate be wholly, or only in part, comprised in the earlier certificate.** (Oelkers *vs*. Merry, 2 Q. S. C. R., 193; Miller *vs*. Davy, 7 N. Z. R., 155; Lloyd *vs*. Mayfield, 7 A. L. T. (V.) 48; Stevens *vs.* Williams, 12 V. L. R., 152; Register of Titles *vs.* Esperance Land Co., 1 W. A. R., 118.)" x x x Verily, it is undoubtedly clear that between the parties in this case, it is Yu Han Yat who has shown that he has better title over the subject property for having presented the earlier title. The contention that Bernas (on behalf of Wharton) and Mejia were "innocent purchasers" is thus immaterial, for even if it is assumed that they are indeed such, they still could not acquire a better right than their transferor — Nava — whose title was issued much later than Yu Han Yat's transferor.

5. REMEDIAL LAW; EVIDENCE; JUDICIAL NOTICE, WHEN MANDATORY; APPLIED IN CASE AT BAR.— Bernas asserts that the x x x ruling of the CA was not supported by evidence on record and was bereft of factual basis nor based on established facts. The Court, however, agrees with the resolution of the CA. The CA was justified in taking judicial notice when Quezon City was established. Section 1, Rule 129 of the Rules of Court states: 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.** The CA correctly held that the Quezon City was established only in 1939, upon the enactment of Commonwealth Act No. 502, the city's charter. Hence, when the survey for Psd-2498 was conducted in 1927, Quezon City did not as yet exist. Further, the property in question has always been referred to as part of the Piedad Estate.

6. ID.; APPEALS; POINTS OF LAW, THEORIES, ISSUES AND ARGUMENTS NOT BROUGHT TO THE ATTENTION OF THE TRIAL COURT OUGHT NOT TO BE CONSIDERED BY A REVIEWING COURT, AS THESE CANNOT BE RAISED FOR THE FIRST TIME ON APPEAL; CASE AT BAR.— The instances present in *Alonso* and *Manotok* do not exist in the case at bar. The issue of whether there was a valid transfer from the government to either of the parties was never raised in the proceedings in the trial court or upon initial appeal. Mejia only raised the issue of compliance with the Friar Lands Act only upon her motion for reconsideration with the CA, and eventually upon appeal to this Court. Mejia is precluded from doing this, as it is well settled in jurisprudence that an issue which was neither averred in the complaint nor raised during the trial in the court below cannot be raised for the first time on appeal as it would be offensive to the basic rules of fair play, justice and due process. x x x To emphasize, points of law, theories, issues and arguments not brought to the attention of the trial court ought not to be considered by a reviewing court, as these cannot be raised for the first time on appeal. Issues raised for the first time on appeal and not raised timely in the proceedings in the lower court are barred by estoppel. To consider the alleged facts and arguments belatedly raised would amount to trampling on the basic principles of fair play, justice, and due process. As such, the Court so holds that the principles under *Alonso* and *Manotok* are inapplicable in the case at bar.

7. ID.; EVIDENCE; JUDICIAL NOTICE; AS A RULE, COURTS ARE NOT AUTHORIZED TO TAKE JUDICIAL NOTICE, IN THE ADJUDICATION OF CASES PENDING BEFORE THEM, OF THE CONTENTS OF THE RECORDS OF OTHER CASES; EXCEPTIONS; ABSENT IN CASE AT BAR.— Petitioners decried the act of the CA of taking judicial notice of a previous case decided by it, and argued that the CA committed a serious error of law. The Court rules in favor of petitioners on this ground. It is well settled that, as a general rule, courts are not authorized to take judicial notice, in the adjudication of cases pending before them, of the contents of the records of other cases, even when such cases have been tried or are pending in the same court, and notwithstanding the fact that both cases may have been heard or are actually pending before the same judge. It is true that the said rule admits of exceptions, namely: (a) In the absence of objection, and as a matter of convenience to all parties, a court may properly treat all or any part of the original record of a case filed in its archives as read into the record of a case pending before it, when, with the knowledge of the opposing party, reference is made to it for that purpose, by name and number or in some other manner by which it is sufficiently designated; or (b) when the original record of the former case or any part of it, is actually withdrawn from the archives by the court's direction, at the request or with the consent of the parties, and admitted as a part of the record of the case then pending. Neither of these exceptions, however, exists in this case. The parties were not informed, much less their consent taken, of the fact that the CA would take judicial notice of these cases. Thus, the CA erred in taking judicial notice of the records of CA-G.R. No. 77666 in the process of adjudicating this case.

8. CIVIL LAW; DAMAGES; IN THE ABSENCE OF MALICE OR BAD FAITH IN THE PROSECUTION OF THE CASE, THE AWARD OF DAMAGES IS UNAVAILING; CASE AT BAR.— Contrary to the ruling of the CA, the Court finds no basis in awarding the x x x damages to Yu Han Yat. In *ABS-CBN Broadcasting Corp. v. Court of Appeals*, the Court held that in the absence of malice or bad faith in the prosecution of the case, the award of damages is unavailing: There is no adequate proof that ABS-CBN was inspired by malice or bad faith. It was honestly convinced of the merits of its cause after it had undergone serious negotiations culminating in its formal

submission of a draft contract. Settled is the rule that the adverse result of an action does not *per se* make the action wrongful and subject the actor to damages, for the law could not have meant to impose a penalty on the right to litigate. If damages result from a person's exercise of a right, it is *damnum absque injuria*. In the same way, the Court believes that petitioners were honestly convinced of the validity of their claim to the subject property. As subsequent holders of the same through a sale, both Mejia and Bernas (and consequently, Wharton) were expected to insist on their supposed ownership over the property in question. Consequently, the Court deems it proper to delete the award of damages in favor of respondent.

APPEARANCES OF COUNSEL

Castillo Laman Tan Pantaleon & San Jose for petitioners in G.R. No. 195908.

Telan Hipe Flores Telan & Associates for petitioners in G.R. No. 195910.

Jimenez Gonzales Bello Valdez Caluya & Fernandez for respondent Estate of Felipe Yu Han Yat.

D E C I S I O N

CAGUIOA, *J.*:

These are consolidated Petitions for Review on Certiorari (Petitions) under Rule 45 of the Rules of Court assailing the Decision[1] of the Court of Appeals (CA) Seventeenth Division dated December 14, 2010 in CA-G.R. CV No. 82681 and the Resolution[2] dated February 28, 2011 denying the Motion for Reconsideration filed by the petitioners.

Facts

The present case involves a parcel of land known as Lot 824-A-4 (subject property), covered by Transfer Certificate of

---

[1] *Rollo* (G.R. No. 195908) Vol. I, pp. 57-82. Penned by Associate Justice Stephen C. Cruz, with Associate Justices Isaias P. Dicdican and Franchito N. Diamante concurring.

[2] *Id.* at 84-87.

Title (TCT) No. RT-28758 (30627) PR-9639 (TCT No. 30627), located at Brgy. Matandang Balara, Quezon City, consisting of 30,000 square meters, more or less, which is part of Lot 824 of the Piedad Estate containing an area of 147,072 square meters registered in the name of respondent Felipe Yu Han Yat (Yu Han Yat).[3]

Yu Han Yat subdivided the subject property into 60 lots under Subdivision Plan Psd-13-018013, duly approved by the Bureau of Lands on August 13, 1991, as part of his plan to develop and convert the subject property.[4] As a consequence, TCT No. 30627 was cancelled and derivative titles, namely TCT Nos. 47294 to 47353 (Yu Han Yat TCTs), were issued in his name.[5]

To finance his plan of developing the subject property, Yu Han Yat applied for loans with several banks using some[6] of the Yu Han Yat TCTs as security. However, when the mortgage instruments[7] were presented for registration, the Register of Deeds of Quezon City refused to record the same on the ground that the Yu Han Yat TCTs overlapped with the boundaries covered by another title: TCT No. 336663 registered in the name of Esperanza Nava (Nava).[8] However, in *Consulta* No. 2038[9] issued on October 15, 1992, the Land Registration Authority (LRA) reversed the action taken by the Register of Deeds, and ordered the registration of the mortgage instruments on Yu Han Yat's TCTs.[10]

---

[3] *Id.* at 59.

[4] *Id.*

[5] *Id.*

[6] *Id.*

[7] *Id.*

[8] *Id.*

[9] *Id.* No copy of *Consulta* No. 2038 was attached in the records of the case, but the CA indicated in its Decision that it was attached in its records. Neither of the parties, however, contests the existence of *Consulta* No. 2038.

[10] *Id.*

Meanwhile, petitioners Jose A. Bernas (Bernas) and Felomena S. Mejia (Mejia) claimed ownership over the subject property. They claim that Nava was the registered owner of a parcel of land covered by TCT No. 336663 until she sold parts of the said lot to Mejia and Gregorio Galarosa (Galarosa).[11] On September 15, 1986, Mejia executed with Nava a Deed of Sale with Right of Redemption by virtue of which Mejia acquired the real property covered by TCT No. 336663, subject to Nava's right to redeem the same.[12] When Nava failed to redeem the property, Mejia then filed a petition for consolidation of title under her name. The petition was granted in a Decision dated June 28, 1990 in Civil Case No. Q-90-5211 rendered by Branch 85 of the Regional Trial Court (RTC) of Quezon City.[13]

Since TCT No. 336663 bore the annotation "subject to verification," the Register of Deeds of Quezon City referred the matter to the LRA for consultation. In a Resolution dated March 15, 1991, in LRA *Consulta* No. 1890,[14] the LRA upheld the registrability of TCT No. 336663 in the name of Mejia. In LRA *Consulta* No. 1890, the LRA reasoned that a court decision is needed to categorically determine that the titles from which TCT No. 336663 were derived were spurious before it could order that the encumbrance was not registrable. Thus:

> In his letter of January 22, 1991, the herein petitioner [Register of Deeds of Quezon City] elevated en consulta to this authority the registrability of the deed of sale with right of redemption executed by Nava in favor of Mejia, it appearing that Nava's title, Transfer Certificate of Title no. 336663. contains a memorandum that the same is subject to verification by the Verification Committee on Questionable Titles which was annotated thereon pursuant to Ministry of Justice Opinion No. 239 dated November 4, 1982. The only issue, therefore, to be resolved is whether or not the deed of sale with right of redemption may be registered.

---

[11] *Id*. at 25 and 88.

[12] *Id*. at 25.

[13] *Id*. at 118-119.

[14] *Id*. at 120-122.

x x x x x x x x x

Considering that the findings of the Verification Committee that the Dominga Sumulong title was fabricated and non-existent cannot justify the suspension of registration of deeds affecting titles derived from Sumulong's reconstituted title and that this Office will be pre-empting the court's judgment on the matter if it were to suspend registration of documents involving titles it has administratively determined to be fabricated, there appears to be no more constraint in the registration of the deed of sale with right of redemption. This is especially true in this case where the court has already ordered the consolidation of ownership in favor of Felomena S. Mejia and directed the Register of Deeds to cancel Transfer Certificate of Title No. 336663 and issue, in lieu thereof, a transfer certificate of title in the name of Mejia.[15] (Underscoring omitted)

Hence, by virtue of the said Resolution, the Deed of Sale with Right of Redemption was annotated on the title of the subject property.

On February 21, 1992, Bernas, for and on behalf of Wharton Resources Group (Philippines), Inc. (Wharton), entered into a Memorandum of Agreement[16] with Mejia whereby the latter agreed to sell to Wharton the parcel of land covered by TCT No. 336663. Subsequently, a Deed of Sale[17] was entered into between Mejia and Wharton conveying to the latter the subject property.

In April 1992, Bernas discovered that there was another title covering about three hectares which overlapped a portion of the property registered under TCT No. 336663.[18] This other title, TCT No. 30627, indicated Yu Han Yat as the registered owner pursuant to subdivision plan Psd-2498 of a parcel of land located in Bayanbayanan, Marikina.[19]

---

[15] *Id*.

[16] *Id*. at 123-124.

[17] *Id*. at 125-130.

[18] *Id.* at 26.

[19] *Id.*

On June 24, 1992, Bernas filed an Affidavit of Adverse Claim on Yu Han Yat's TCTs, claiming that a Deed of Sale was executed between himself, for and on behalf of Wharton, and Mejia over the realty covered by TCT No. 336663 which overlaps portions covered by Yu Han Yat's TCTs.[20]

On the basis of this adverse claim filed by Bernas, the Register of Deeds of Quezon City refused to record the subject mortgages affecting the Yu Han Yat TCTs. This prompted Yu Han Yat to file another *consulta* with the LRA which, in a Resolution dated October 15, 1992, ordered the registration of the mortgage to the properties.[21]

Afterwards, on September 18, 1992, Yu Han Yat filed a Petition for Quieting of Title[22] before the RTC of Quezon City docketed as Civil Case No. Q-92-13609 against the Estate of Nava (represented by Antonio N. Crismundo), Galarosa, Mejia, Bernas, and the Register of Deeds of Quezon City (Estate of Nava, et al.).[23] Mejia then filed an Answer with Compulsory Counterclaims[24] and claimed, among others that, (a) Yu Han Yat's title, TCT No. 30627, was invalid because it originated from TCT No. 8047, which was issued on the basis of a spurious subdivision plan, Psd-2498; (b) Psd-2498 was spurious because it represents to cover a parcel of land located in Barrio Bayanbayanan, Marikina, whereas the actual location of Lot 824 Piedad Estate was in Caloocan City and Quezon City; and (c) the registrability of Mejia's rights and ownership over the subject property was sustained by the LRA in LRA *Consulta* No. 1890.[25] Bernas also filed an Answer with Application for Injunctive Relief[26] dated December 10, 1992 to restrain Yu Han Yat from undertaking development works on the subject property.

---

[20] *Id*. at 60 and 159.

[21] *Id*. at 61.

[22] *Id.* at 138-143.

[23] *Id*. at 58.

[24] *Id*. at 148-151.

[25] *Id*. at 28.

[26] *Id*. at 58.

On December 20, 1993, the RTC issued an Order[27] granting Bernas' application for preliminary injunction. The RTC, in the said Order, stated that:

> This Court finds the respondents to have amply proven their entitlement to the relief. Petitioner in this case has failed to convince this Court to act otherwise. The Court takes notice of a number of allegations brought up by petitioner's witness in the person of Atty. Bustos, however, the short of it all is that the respondents' title which is traced back from the title of Dominga Sumulong remains valid and subsisting insofar as the lot in question is concerned. Under the decisions rendered in Civil Case No. Q-11962 of then Court of First Instance of Rizal, Branch 9, Quezon City entitled Zaida M. Santos vs. Dominga Sumulong and in Civil Case No. 11180 entitled Pilar Ibanez Vda. De Suzuaregui et al., vs Constitutional Hills Deverlopment (*sic*) Corporation, Dominga Sumulong, et al.; it is stated therein that the title of Dominga Sumulong is not wholly null and void but only insofar as the lots involved are concerned which does not particularly refer to the lot in question in the instant case.[28]

On August 12, 1994, Yu Han Yat filed an Amended Petition[29] dated August 9, 1994 to implead Wharton, in view of the fact that the latter was the beneficial owner of the subject property and that Bernas was only its agent.[30] On October 3, 1994, Bernas and Wharton filed an Amended Answer to Amended Petition[31] dated September 29, 1994, adding the following affirmative defenses: (a) that Yu Han Yat's Amended Petition stated no cause of action because petitioners are innocent purchasers for value; and (b) although there was an annotation in TCT No. 336663 that the same was "subject to verification," the registrability of the title was nevertheless upheld in LRA *Consulta* No. 1890. The Amended Answer likewise interposed a cross-

---

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

[28] *Id*. at 161.

[29] *Id*. at 198-208.

[30] *Id*. at 29.

[31] *Id*. at 220-237.

claim against Mejia for possible breach of her Memorandum of Agreement with Bernas.[32]

Trial ensued, and on March 15, 2004, the RTC issued a Decision[33] ruling in favor of the Estate of Nava, et al., and Wharton. The trial court reasoned as follows:

> Based on the records and evidence presented[,] the properties subject of the controversy are TCT No. 30627 of the petitioner (Exhibit "G") and TCT No. 336663 (Exhibit "6" for Mejia as adopted by Bernas). Details underlying the procurement of those titles from the parties were quite overwhelming. But the history of how such titles came about does not convince the court to grant the relief sought by the petitioner.
>
> Careful reading of the amended petition shows the evident objective of the claim – that is to nullify the respondents' title (TCT 336663) (*Rollo*, page 276, Volume 1) that runs to the very core of challenging the indefeasibility of Torrens title seeking succor under the guise of a petition for quieting of title.
>
> Undeniably, the amended petition admits that petitioner's title overlaps with TCT No. 336663 (paragraphs 7 and 14, Amended Petition, Rollo, pages 212-21 A, Volume 1). The petition likewise cited *Consulta* No. 2038 (Exhibit "O") of the Land Registration Authority, from which petitioner wanted to conclude that TCT No. 336663 is of doubtful authenticity. The petitioner, however, contradicted himself when in his Memorandum he conceded that the findings of the Land Registration Commission is not binding upon this court. This leads to a point where the Government, through the Solicitor General, filed a nullification and cancellation proceedings (*sic*) (Exhibit "JJ") against Esperanza Nava from whom respondents Bernas and Mejia derived title to TCT No. 336663. The case was cited by petitioner in the petition and he jumped into conclusion that it constituted full knowledge upon respondents that indeed TCT No. 336663 is void and ineffective (Paragraphs 17 and 18, Amended Petition, Rollo, page 275, Volume 1) without evidence of a decision from Branch 102 of the Regional Trial Court of Quezon City which heard the case. It was in stark contrast to the evidence presented by respondent Galarosa

---

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

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

that the court ordered the Government to submit proof of service of summonses within ten (10) (*sic*) from completion lest the court will be constrained to dismiss or archive the case (Exhibit "17"). The records do not account up to this time on the progress of said case. What is apparent is the similar action filed by the Government against Amado R. Santos, the predecessor-in-interest of Esperanza Nava for nullification and cancellation proceedings of titles that included the latter's title. The case docketed as Civil Case No. Q-52834 before Branch 95 of this jurisdiction was dismissed for lack of merit (Exhibit "16" for Galarosa).

The very import of these pieces of evidence is that the petition misleads the court into believing that TCT No. 336663 has been decisively concluded to be void and ineffective. While it is true that TCT No. 336663 bears an annotation which reads: "This title is subject to verification by the LRC Verification Committee on questionable titles, plans[,] decrees and other documents" (Exhibit "KK-1" Exhibit "8-Galarosa"), this court has yet to await a final decision or decree that would indeed declare the questioned title null and void. Proof of which is incumbent upon the petitioner.

It is worthy to note that respondent Bernas' Memorandum quickly pointed out that petitioner's title which was based on plan PS 2498 (*sic*) referred to a parcel of land located in Bayanbayanan, Marikina, Metro Manila (Exhibit "I-Mejia" and Exhibit "E"-Petitioner) which is poles apart from respondents' title that covered a land in Matandang Balara, Quezon City. Petitioner did not present convincing evidence to overturn such fact except to plainly state that "the person who prepared the Survey Plan may have been confused as to the Property's (*sic*) exact location". Although petitioner went on to prove that his property covered by TCT No. 30627 was in Quezon City as he presented Commonwealth Act No. 502 (Exhibit "A"). Nowhere in said evidence proved that Bayanbayanan, Marikina was set to form part of the boundaries of Quezon City under Section 3 thereof. Simply put, the petitioner utterly failed to discharge the burden of proving the sustainability of his posture.

It is a well entrenched rule that in an action for quieting of title, the petition must prove legal or equitable title to the land as the far reaching implication of which is quieting titled lands and putting to stop forever any question of legality of the registration in the certificate or questions that may arise therefrom. To allow the petitioner to nullify the title of the respondents to the property in question would mean an obvious collateral attack which is not permitted under the principle

of indefeasibility of a Torrens title. **"A certificate of title cannot be subject to collateral attack and can be altered modified or cancelled only in a direct proceeding in accordance with law." (Virginia Calalang vs. Register of Deeds of Quezon City, et. al., G.R. No. 76265, March 11, 1994)**[34] (Emphasis in the original)

Aggrieved, Yu Han Yat appealed the above Decision of the RTC to the CA.

In its Decision, the CA granted Yu Han Yat's appeal and held that: (a) the petition for quieting of title, and the petition for annulment of title are essentially the same; and (b) Bernas and Mejia's title was void as they source their ownership from Dominga Sumulong's title to the property which had been declared as null and void by the CA in previous cases. The CA also awarded actual damages, moral damages, exemplary damages, and attorney's fees in favor of Yu Han Yat. Herein petitioners Bernas, Mejia, and Wharton[35] sought reconsideration of the CA Decision, but the same was denied by the CA on February 28, 2011.

Hence, this appeal.

ISSUES

For resolution of the Court are the following issues:

(a) Whether petitioners complied with Rule 45 of the 1997 Rules of Civil Procedure when they filed the Petitions dated April 15, 2011 and April 20, 2011;

(b) Whether the filing of the Petitions constituted forum shopping; whether Petitions are barred by *res judicata*;

(c) Whether Yu Han Yat's Amended Petition constitutes a collateral attack on the validity of the title of petitioners (and their predecessors-in-interest) over the property subject of TCT No. 336663;

---

[34] *Id*. at 90-91.

[35] Wharton was not indicated among the respondents-appellees in the title of the case, but was mentioned as one of the parties that filed the Motion for Reconsideration dated January 12, 2011. See *id*. at 84.

(d) Whether the CA ruling that the property covered by respondent's title is the same as the property subject of TCT No. 336663 is supported by the evidence on record;

(e) Whether the case of *Manotok, et al. v. Barque*[36] (*Manotok*) applies;

(f) Whether the CA erred when it took judicial notice of proceedings in other cases before it;

(g) Whether Yu Han Yat's alleged payment of real property tax constitutes proof of ownership or superior title over the property covered by TCT No. 336663; and

(h) Whether petitioners are liable to the estate of Yu Han Yat (respondent) for damages and attorney's fees.

THE COURT'S RULING

On whether petitioners complied with Rule 45 of the 1997 Rules of Civil Procedure when they filed the Petitions dated April 15, 2011 and April 20, 2011

Before delving into the substantive issues raised by petitioners, the Court deems it proper to first discuss the procedural issue raised by respondent in its Comment — that the Court should have dismissed the case because the Petition raised questions of fact which are outside the province of an appeal through Rule 45.

It is true that, as a general rule, the Court is not a trier of facts, and that petitions under Rule 45 of the Rules of Court should only raise questions of law.[37] This rule, however, is subject to the following exceptions:

(1) the conclusion is grounded on speculations, surmises or conjectures;

---

[36] 595 Phil. 87 (2008).

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

(2) the inference is manifestly mistaken, absurd or impossible;

(3) there is grave abuse of discretion;

(4) the judgment is based on a misapprehension of facts;

(5) the findings of fact are conflicting;

(6) there is no citation of specific evidence on which the factual findings are based;

(7) the findings of absence of fact are contradicted by the presence of evidence on record;

(8) the findings of the CA are contrary to those of the trial court;

(9) the CA manifestly overlooked certain relevant and undisputed facts that, if properly considered, would justify a different conclusion;

(10) the findings of the CA are beyond the issues of the case; and

(11) such findings are contrary to the admissions of both parties.[38]

Some of the exceptions are present in this case. The rulings alone of the RTC and the CA were contradictory, to the point that they differ on their rulings on each of the issues presented in this case. Further, and as will be discussed in detail later on, the CA committed grave abuse of discretion in arriving at certain factual findings and legal conclusions. The Court must perforce conduct a judicious examination of the records to arrive at a just conclusion for this case.

On whether the filing of the Petitions constituted forum shopping, and whether the Petitions are barred by res judicata

Respondent claims that petitioners violated the rule against forum shopping when petitioner Bernas failed to inform the Court that a similar case was pending because Mejia had filed

[38] *Cereno v. Court of Appeals*, 695 Phil. 820, 828 (2012).

an appeal of the assailed CA Decision subsequent to the filing by Bernas. This failure supposedly constitutes a violation of Section 5, Rule 7 of the Rules of Court, which states that:

> SECTION 5. *Certification against forum shopping*. — The plaintiff or principal party shall certify under oath in the complaint or other initiatory pleading asserting a claim for relief, or in a sworn certification annexed thereto and simultaneously filed therewith: (a) that he has not theretofore commenced any action or filed any claim involving the same issues in any court, tribunal or quasi-judicial agency and, to the best of his knowledge, no such other action or claim is pending therein; (b) if there is such other pending action or claim, a complete statement of the present status thereof; and **(c) if he should thereafter learn that the same or similar action or claim has been filed or is pending, he shall report that fact within five (5) days therefrom to the court wherein his aforesaid complaint or initiatory pleading has been filed.**
>
> Failure to comply with the foregoing requirements shall not be curable by mere amendment of the complaint or other initiatory pleading but shall be cause for the dismissal of the case without prejudice, unless otherwise provided, upon motion and after hearing. The submission of a false certification or non-compliance with any of the undertakings therein shall constitute indirect contempt of court, without prejudice to the corresponding administrative and criminal actions. If the acts of the party or his counsel clearly constitute willful and deliberate forum shopping, the same shall be ground for summary dismissal with prejudice and shall constitute direct contempt, as well as a cause for administrative sanctions. (Emphasis and underscoring supplied)

In addition, respondent also asserts that since the heirs of Esperanza Nava (Heirs of Nava) did not appeal the CA Decision, then the same constitutes *res judicata* as regards petitioners Bernas and Mejia. Thus, the case should be dismissed.

Respondent's assertions fail to convince. Petitioners did not commit forum shopping by filing separate appeals. In *Young v. Spouses Sy*,[39] the Court held that there is forum shopping where there exist:

---

[39] 534 Phil. 246 (2006).

(a) identity of parties, **or at least such parties as represent the same interests in both actions;**

(b) identity of rights asserted and relief prayed for, the relief being founded on the same facts; and

(c) the identity of the two preceding particulars is such that any judgment rendered in the pending case, regardless of which party is successful would amount to *res judicata*.[40]

While there was identity of rights asserted and relief prayed for, there was no identity of parties in the case at bar. Granted that both Mejia and Bernas trace their title from Nava, this does not, by itself, make their interests identical. Bernas' and Mejia's interests remain separate, and a judgment on one will not amount to *res judicata* on the other as, for instance, Bernas could, and did, raise the defense that he was an innocent purchaser for value of the subject property and thus should not be bound by any adverse judgment should Mejia's title be found defective. The same reasoning applies to respondent's assertion that Mejia's and Bernas' claims were now barred by *res judicata* because the Heirs of Nava did not appeal. The heirs of Nava hold an interest separate from Mejia's and Bernas', and the latter could not be adversely affected by the fact that the Heirs of Nava no longer filed an appeal.

On whether Yu Han Yat's Amended Petition constitutes a collateral attack on the validity of the title of petitioners (and their predecessors-in-interest) over the property subject of TCT No. 336663

Bernas and Mejia claim that the CA erred when it upheld as valid the petition for quieting of title filed by Yu Han Yat. They claim that the petition for quieting of title was a collateral attack, as opposed to a direct attack, on TCT No. 336663, which

[40] *Id*. at 264.

is proscribed under the principle of indefeasibility of Torrens titles.

Petitioners are mistaken. The CA was correct in holding that the petition for quieting of title filed by Yu Han Yat was not a collateral attack on TCT No. 336663, and was, in fact, a direct attack on the same. In *Villarica Pawnshop v. Spouses Gernale*,[41] the issue before the Court was whether *litis pendentia* was present when there were two pending cases between the same parties: one for quieting of title, and another for annulment and cancellation of title. Ruling in the affirmative, the Court held that:

> Civil Case No. 438-M-2002 is for quieting of title and damages, while Civil Case No. 502-M-2002 is for annulment and cancellation of titles and damages. **The two cases are different only in the form of action, but an examination of the allegations in both cases reveals that the main issue raised, which is ownership of the land, and the principal relief sought, which is cancellation of the opposing parties' transfer certificates of title, are substantially the same.** The evidence required to substantiate the parties' claims is likewise the same. The proceedings in Civil Case No. 502-M-2002 would entail the presentation of essentially the same evidence, which should be adduced in Civil Case No. 438-M-2002. As cited by the CA, this Court held in *Stilianopulos v. City of Legaspi* that:
>
> > The underlying objectives or reliefs sought in both the quieting-of-title and the annulment-of-title cases are essentially the same — adjudication of the ownership of the disputed lot and nullification of one of the two certificates of title. Thus, it becomes readily apparent that the same evidence of facts as those considered in the quieting-of-title case would also be used in this petition.
>
> The subject cases are so intimately related to each other that the judgment that may be rendered in one, regardless of which party would be successful, would amount to *res judicata* in the other.[42] (Emphasis and underscoring supplied)

---

[41] 601 Phil. 66 (2009).

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

The pronouncement above does not mean that in all instances, cases for quieting of title and for annulment of title are essentially the same, as the CA incorrectly held in its assailed Decision.[43] However, petitioners are mistaken in their conclusion that the action filed by Yu Han Yat was a collateral attack just because it was denominated as a "petition for quieting of title" instead of a "petition for annulment of title."

The test is not the name of the action, but the ultimate objective of the same and the relief sought therein. Applying the said test in this case, the petition for quieting of title filed by Yu Han Yat was a direct attack on the petitioners' title as the petition specifically sought to annul TCT No. 336663 in the name of Nava.[44] Thus, even as petitioners correctly claim that in assailing the validity of a Torrens title, there must be a direct proceeding expressly instituted for the purpose, the fact of the matter is that the petition for quieting of title was exactly that proceeding as it was filed precisely to question the validity of TCT No. 336663.

On whether the Court of Appeals' ruling that the property covered by respondent's title is the same as the property subject of TCT No. 336663 is supported by the evidence on record

Petitioners question the following findings of the CA:

> We have scoured and scrutinized the records of the case and found that petitioner-appellant's title was derived from a valid title while respondents-appellees failed to prove that their title were derived from a valid one. Furthermore, petitioner-appellant was able to show how he acquired the subject property from his immediate predecessors and was able to account for the previous major transactions involving Lot 824, its subdivision and, finally, until it was transferred to him.
>
> It is incorrect to state that TCT No. 30627, is a transfer from Original Title (*sic*) No. 8047, when it is clear that it came from Original Title

---

[43] *Rollo* (G.R. No. 195908) Vol. I, p. 65.

[44] *Id*. at 203.

No. 614, pursuant to Decree No. 6667. It is of judicial notice that OCT No. 614, embraces many lots involving the Piedad Estate which are located in Quezon City.

It is clearly typographical error that, as stated, TCT No. 8047 is a transfer from TCT No. 3633/T-R because the technical description therein does not correspond to technical description stated in TCT No. 8047, but it instead corresponds to the technical description stated in TCT No. 36633 (*sic*), after its subdivision.

On respondent-appellee Bernas' claim that TCT 8047 was a transfer from TCT No. 3633, which involved a different property, We have scrutinized the same and it is apparent that TCT 8047, (*sic*) would show that the one who made such certification used a different typewriter as the entry "3633/T-R," appears to be different from the typewritten description of the property which used carbon paper. Likewise, it was certified that the title contains two pages, however, for unknown reasons, the second page was not presented; thus, the Court has no way of checking whether there are encumbrances that may be annotated therein which would trace that how (*sic*) TCT 8047 came to be.[45]

They contend that the CA Decision was not based on the evidence on record, and that TCT No. 30627 allegedly covers a property different from the one covered by TCT No. 336663 from which they derive their claims.

Petitioners' contention is without merit. Prescinding from the CA's justifications as to the use of a different typewriter, a careful scrutiny of the voluminous records of this case would reveal that the CA was ultimately correct that Yu Han Yat was able to establish better title over the subject property. Simply put, the CA was correct in holding that it was Yu Han Yat who was able to account for the previous major transactions involving the property and was able to show how he acquired the subject property from his immediate predecessors. To be sure, Yu Han Yat painstakingly traced his title, complete with documentary and testimonial evidence, in the following manner:

---

[45] *Id*. at 72-73.

1. Petitioner's title, TCT No. RT28758 (30627) PR-[9]639 (Exh. "G") was issued on March 9, 1956, being a transfer from TCT No. 8047 in the name of Bienvenido A. Tan, Jr. (Exh. "1-Galarosa"). Both petitioner's title and that of Mr. Tan, Jr. have the following technical descriptions, to wit:

> "A parcel of land (Lot 824-A-4 of the subd. plan Psd-22842 being a portion of Lot 824-A described on plan Psd-2498 (LRC Rec. No.), situated in Q. City, bounded on the N., by Lot 9471 on the E., by Lots 824-A-1, 824-A-2, 824-A-3 of the subd. plans on the SE. by Tuason Estates; on the W., by Lot 824-B of plan Psd-2498. Beginning at a point marked "1" on plan, being S. 85 deg. 22'E., 3255.54 from LM No. 16, Piedad Estate; thence N.1 deg,. 42'W., 290.30 m. to pt. 2; thence E., 115.00 m. to pt. 3; thence S. 0 deg. 08'E., 248.64 m. to pt. 4; thence S. 68 deg, 47'W., 114.78 m. to pt. of beginning; containing an area of THIRTY THOUSAND (30,000) SQ.M. more or less All pts. referred to are indicated on the plan and are marked on the ground pts. 1 & 2 are marked by Old PLS Cyl, Cone, Mons. & the pt. 3 & 4 by PLS Cyl, Conc. Mons. bearings true; declination 0 deg. 45'E., date of the subd. survey Nov. 4, 1947."

x x x x x x x x x

3. The validity and regularity of petitioner's title is borne out by the fact that it can be traced back to the title of Juan Porciuncula issued prior to 1930. Porciuncula's title is TCT No. T-10849 covering "Lot 824 of the 'PIEDAD ESTATE SUBDIVISION' Case No. 5975 of the Court of Land Registration" (Exh. "R" and "R-1" TSN Lara, 4 April 1995 page 68) the original of which was presented in Court and identified by Mr. Lara of the Pasig Registry. Due to the document's old age, the same had to be placed in a plastic sheet to prevent further deterioration, as mere holding would break the document. In fact, the edges of the document, including the portion on which the date where the title's issuance should have appeared, have been torn to small pieces.

4. On 21 November 1931, an entry written in Spanish was made at the back of TCT No. 10849 to record the subdivision of the lot into Lot 824-A consisting of 60,012 sq. meters, and Lot 824-B with an area of 87,060 sq. meters, pursuant to Subdivision Plan Psd-2498. At the same time, the entry recorded the sale of Lot 824-A to Castor B. Cruz for the sum of ₱1,220.00. The date of the deed of sale was 20 August 1930. (Exh "R-2") As a result of the sale to Castor B.

Cruz, TCT No. T-10849 was cancelled and replaced by TCT No. T-20897 and T-20898 (Exh. "R-3" TSN Lara, 4 April 1995 page 103).

5. While TCT No. 20897 could not be found in the Registration Book (T-84-A) of the Pasig Registry and was listed as missing after the titles were inventoried (TSN Lara, 4 April 1995 pages 87, 88), the Index Card of Porciuncula shows that TCT No. T-10849 was replaced by TCT No. 20897 and 20898 (Exh. "S" and "S-1"). Likewise, the Index Card of Castor Cruz shows that TCT No. 20897 was issued in his name for Lot 824-A. (Exh. "U" and "U-1")

6. On 9 February 1939, TCT No. 20897 was cancelled by TCT No. [366633] issued in the name of Sps. Juan M. Ruiz and Conchita O. Baradi (Exh. "V"). The cancellation and issuance of a new title was occasioned by the sale of Lot 824-A by Castor B. Cruz to the said spouses which sale was registered in the Primary Entry Book (Exh. "W") under Entry No. 5445 (Exh. "W-1", TSN Lara, 4 April 1995 pages 112-114). The cancellation of Castor B. Cruz' TCT No. 20897 and the issuance of TCT No. T-[36633] were also recorded in the Index Card of the former. (Exh. "U-1").

7. As described in the TCT No. [36633] in the name of the Spouses Ruiz, the parcel of land covered by the title is as follows:

> "A parcel of land (Lot No. 824-A of the subdivision plan Psd-2498, being a portion of Lot No. 824, described on the original plan of the Piedad Estate, G.L.R.C. Record No. 5975), situated in the Municipality of Caloocan, Province of Rizal. Bounded on the N., by the property of Juan Porciuncula (Lot No. 947 of the subdivision plan No. 2507) on the E. by Lot No. 823 of Piedad Estate; on the SE by property of Tuason Estate; and on the W. by property of Juan Porciuncula (Lot 824-B of the subdivision plan). Beginning at a point marked "1" on the plan, being N. 89 deg. 33'E 3486.40 m. from L.M. No. 16, Piedad Estate, thence S. 0 deg. 04'E., I, 196.40 m. to point "2"; thence S. 68 deg. 47'W., 259.15 m. to point "3"; thence N. 1 deg. 42' W., 290.30 m. to point "4"; thence 250.00 m. to the point of beginning; containing an area of sixty thousand and twelve square meters (60,012) more or less. All points referred to are indicated on the plan and on the ground points 1 and 2 are marked by old points and points 3 and 4 by P.L.S. concrete monuments to 15 x 60 centimeters. Bearings true,

declination 0 deg. 48' E., date of original survey, July 1 to December 14, 1907, and that of the subdivision survey, June 11-13, 1927—/" (Exh "V"; Exh. "2"-Galarosa)

8. On 6 October 1948, a Subdivision Plan was recorded on the Spouses Ruiz' TCT No. [36633]. Under the Subdivision Plan, Lot 824-1 was subdivided into four lots, namely: Lots 824-A-1, 824-A-2, 824-A-3 and 824-A-4. The same annotation mentioned Lot 824-A-4 to have been sold to Bienvenido A. Tan, Jr. for the sum of ₱8,000.00 pursuant to a Deed of Sale dated 12 July 1948 (please see also Exh "CC"). As a result, TCT No. 36633 was cancelled and in lieu thereof, TCT Nos. 8044, 8045, 8046 and 8047 were issued (Exh. "2-a"-Galarosa).

9. TCT No. 8047 for Lot 824-A-4 appears to have been directly issued in the name of Bienvenido A. Tan, Jr. (Exh. "1" and "2-a"-Galarosa). This is the same title that was cancelled when TCT No. 30627 in favor of petitioner was issued on 9 March 1956 (Exh. "G") pursuant to a Deed of Sale dated 6 March 1956 executed by Bienvenido A. Tan, Jr. in favor of Felipe Yu Han Yat for the sum of ₱30,000.00 (Exh. "BB").[46]

Petitioners, on the other hand, argue that their title does not cover the same property and that even assuming that both titles cover the same property, Yu Han Yat still allegedly failed to prove that his title was superior over theirs.

Both arguments of petitioners fail to convince.

First, petitioners' argument that Yu Han Yat's title, TCT No. 30627, does not cover the same property as their title, TCT No. 336663, is because TCT No. 30627 came from TCT No. 8047 which, in turn, bears an annotation that it is "a transfer from TCT No. 3633/T-R," a title that covers a property situated in Murphy, Quezon City.[47] They point out that, in contrast, TCT No. 336663 covers a parcel of land located in Piedad Estate in Quezon City.[48] The CA dismissed this contention and ruled that the annotation that TCT No. 8047 is "a transfer from TCT No. 3633/T-R" was a clear typographical error "because the

[46] *Rollo* (G.R. No. 195908) Vol. II, pp. 631-634.

[47] *Id*. at 714.

[48] *Id*. at 715.

technical description therein does not correspond to [the] technical description stated in TCT No. 8047, but it instead corresponds to the technical description stated in TCT No. 36633, after its subdivision."[49] The CA attributed the typographical error to the "use of a different typewriter," which ruling is being vigorously contested by the petitioners. According to them, the difference in the technical descriptions between those stated in (a) TCT Nos. 8047 and 336663 and (b) TCT No. 3633/T-R should be construed to mean that "there was an error in transferring the technical description from the latter to the former."

The Court agrees with the CA. Both TCT No. 30627 and TCT No. 336663 cover the same property as shown by their respective technical descriptions stating that the parcel of land covered is Lot 824 of the Piedad Estate.[50] The fact that TCT No. 8047, from which TCT No. 30627 was derived, bears an annotation that it was a transfer from TCT No. 3633/T-R which covers a property in Murphy, Quezon City casts little doubt on the title of Yu Han Yat.

The Court is more inclined to uphold the view that the error lies in the annotation in TCT No. 8047 that it was "a transfer from TCT No. 3633/T-R," as compared with petitioners' theory that the error was in the *entire* technical descriptions contained in TCT Nos. 8047 and TCT No. 336663. It is notable that TCT No. 8047 was, in truth, a transfer from TCT No. 336663, as shown by the meticulous narration of Yu Han Yat quoted above. To repeat, records show that TCT No. 336663, in the name of Spouses Ruiz, was cancelled when the lot was subdivided into four lots: Lot 824-A-1, Lot 824-A-2, Lot 824-A-3, and Lot 824-A-4. **TCT No. 336663 was cancelled**, and TCT Nos. 8044, 8045, 8046, and **8047 were issued** in lieu of the same. TCT No. 8047 was then cancelled when the lot was sold to Yu Han Yat in 1956. In other words, the error occurred in encoding that TCT No. 8047 was "a transfer from TCT No. 3633/T-R" instead of "from TCT No. 36633." As Yu Han Yat convincingly argued:

---

[49] *Rollo* (G.R. No. 195908) Vol. I, p. 73.

[50] *Id*. at 152 and 273.

It defies logic to believe such a preposterous claim – that there is greater likelihood of an error occurring in copying the technical description, rather than to consider more likely a typographical error occurring in typing TCT No. 3633/T-R instead of TCT No. 336663 (*sic*). A technical description is a lengthy narration which would be improbable to be erroneously transferred from one title to another, if good faith is to be presumed in the performance of one's duty. On the other hand, the confusing similarity in the numbers appearing on the title (TCT No. 3633/T-R and TCT No. 336663 [*sic*]) is more susceptible to being interchanged.[51]

Thus, the Court quotes with approval the following disquisition by the CA:

Moreover, We cannot close our eyes to the fact that TCT No. 30627 (transfer from TCT No. 8047) was issued on March 9, 1956, while TCT No. 336663 (transfer from TCT 116925/T-588) was issued only on October 28, 1985. Thus, as between two certificates of title issued to different persons covering the same land in whole or in part, the earlier in date must prevail, and that is, TCT No. 30627, under [Yu Han Yat]'s title.[52]

It is well established in jurisprudence that where there are two certificates of title covering the same land, the earlier in date must prevail as between the parties claiming ownership over it. As early as the 1915 case of *Legarda vs. Saleeby*,[53] the Court already said that:

The question, who is the owner of land registered in the name of two different persons, has been presented to the courts in other jurisdictions. In some jurisdictions, where the "torrens" system has been adopted, the difficulty has been settled by express statutory provision. In others it has been settled by the courts. Hogg, in his excellent discussion of the "Australian Torrens System," at page 823, says: "**The general rule is that in the case of two certificates of title, purporting to include the same land, the earlier in date prevails, whether the land comprised in the latter certificate be**

---

[51] *Rollo* (G.R. No. 195908) Vol. II, p. 760.

[52] *Rollo* (G.R. No. 195908) Vol. I, p. 69.

[53] 31 Phil. 590 (1915).

wholly, or only in part, comprised in the earlier certificate. (Oelkers *vs*. Merry, 2 Q. S. C. R., 193; Miller *vs*. Davy, 7 N. Z. R., 155; Lloyd *vs*. May-field, 7 A. L. T. (V.) 48; Stevens *vs.* Williams, 12 V. L. R., 152; Register of Titles *vs.* Esperance Land Co., 1 W. A. R., 118.)" Hogg adds however that, "if it can be clearly ascertained by the ordinary rules of construction relating to written documents, that the inclusion of the land in the certificate of title of prior date is a mistake, the mistake may be rectified by holding the latter of the two certificates of title to be conclusive." (See Hogg on the "Australian Torrens System," *supra*, and cases cited. See also the excellent work of Niblack in his "Analysis of the Torrens System," page 99.) Niblack, in discussing the general question, said: "**Where two certificates purport to include the same land the earlier in date prevails [x x x] In successive registrations, where more than one certificate is issued in respect of a particular estate or interest in land, the person claiming under the prior certificate is entitled to the estate or interest; and that person is deemed to hold under the prior certificate who is the holder of, or whose claim is derived directly or indirectly from the person who was the holder of the earliest certificate issued in respect thereof.** While the acts in this country do not expressly cover the case of the issue of two certificates for the same land, they provide that a registered owner shall hold the title, and the effect of this undoubtedly is that **where two certificates purport to include the same registered land, the holder of the earlier one continues to hold the title**" (p. 237).

x x x x x x x x x

We have decided, in case of double registration under the Land Registration Act that the owner of the earliest certificate is the owner of the land. That is the rule between original parties. May this rule be applied to successive vendees of the owners of such certificates? Suppose that one or the other of the parties, before the error is discovered, transfers his original certificate to an "innocent purchaser." **The general rule is that the vendee of land has no greater right, title, or interest than his vendor; that he acquires the right which his vendor had, only. Under that rule the vendee of the earlier certificate would be the owner as against the vendee of the owner of the later certificate**.[54] (Emphasis and underscoring supplied)

---

[54] *Id*. at 595-599.

Verily, it is undoubtedly clear that between the parties in this case, it is Yu Han Yat who has shown that he has better title over the subject property for having presented the earlier title.[55] The contention that Bernas (on behalf of Wharton) and Mejia were "innocent purchasers" is thus immaterial, for even if it is assumed that they are indeed such, they still could not acquire a better right than their transferor — Nava — whose title was issued much later than Yu Han Yat's transferor.

Another evidentiary contention by Bernas purportedly establishing his better right to the subject property was that TCT No. T-10849, issued before 1930 to Juan Porciuncula, which was the origin of Yu Han Yat's title, was based on subdivision plan Psd-2498. In turn, Psd-2498 indicates that it is a subdivision plan of a lot located in "Bayanbayanan, Mariquina."[56] Supposedly, this establishes that the land covered by Yu Han Yat's title is different from the one covered by his title. With regard to this issue, the CA ruled that:

> While it is true that, under PS 2498 (*sic*), it was stated that the property is located in Bayanbayanan, Mariquina, however, it must be noted that at the time the survey was conducted on June 11-13, 1927, the property was still under the Province of Rizal and that Quezon City was only created pursuant to Commonwealth Act No. 502, and approved on October 12, 1939. However, subsequent subdivision of Lot 824 would reveal that the property is located at Quezon City.[57]

Bernas asserts that the above ruling of the CA was not supported by evidence on record and was bereft of factual basis nor based on established facts.

---

[55] According to the CA Decision, TCT No. 30627 or Yu Han Yat's title is traceable from OCT No. 614, which was issued on March 12, 1912 (*rollo* [G.R. No. 195908] Vol. I, pp. 72 and 273). On the other hand, petitioners were unable to trace their title to OCT No. 614 and could only present a title issued on Oct. 28, 1985 (*id.* at 378).

[56] *Rollo* (G.R. No. 195908) Vol. I, p. 26; *rollo* (G.R. No. 195908) Vol. II, p. 717.

[57] *Rollo* (G.R. No. 195908) Vol. 1, pp. 73-74.

The Court, however, agrees with the resolution of the CA. The CA was justified in taking judicial notice when Quezon City was established. Section 1, Rule 129 of the Rules of Court states:

> 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 supplied)

The CA correctly held that the Quezon City was established only in 1939, upon the enactment of Commonwealth Act No. 502, the city's charter. Hence, when the survey for Psd-2498 was conducted in 1927, Quezon City did not as yet exist. Further, the property in question has always been referred to as part of the Piedad Estate. In turn, Commonwealth Act No. 502 defined the boundaries of Quezon City as follows:

> SECTION 3. *Boundaries*. — The boundaries and limits of the territory of said city are established and prescribed as follows: **Beginning at a point marked "1" which is identical to Boundary Monument No. 1 of Piedad Estate; to point "2", which is Boundary Monument No. 2 of Piedad Estate**; thence downstream following the Arroyo between Payatas Estate and Mariquina Estate to point "3", which is the junction of the Arroyo and Mariquina River; thence downstream following Mariquina River to point "4", which is the crossing of Mariquina by the old Rosario Road; thence westward following the old Rosario Road to point "5", which is the south-easternmost corner of Wack Wack Golf and Country Club; thence following the road along the south boundary of the Wack Wack [Golf] and Country Club to point "6" where the said road crosses the creek which is the source of Salapan Creek; thence downstream following the Salapan Creek to point "7", which is the junction of Salapan Creek and Dario River; thence southward following the Salapan River to its intersection with the east boundary of the City of Manila to point "8"; thence north-westward following the east boundary of the City of Manila to point "9" near La Loma Cabaret, which is a

corner of the boundary of the City of Manila near the entrance to the North Cemetery; thence northward following the boundary of the City of Manila to point "10", which is the northeast corner of said City; thence westward along said City of Manila boundary at a distance of 100 meters to point "11"; thence northward paralleling the Novaliches Road at a distance of 100 meters from the property line on the side of said road to point "12", which is at a distance of 100 meters north of the crossing of Samson Street (road connecting Balintawak Monument with Bonifacio Monument); thence eastward paralleling Samson Street and the Circumferential Road at a distance of 100 meters on the northside of said street and road to point "13", which is the center of the Culiat Creek; thence upstream following the Culiat Creek to point "14", which is the junction of Pasong Tamo River and Culiat Creek; thence upstream following Pasong Tamo River to point "15", which is the junction of Pasong Tamo River and Pinagpatayan Buaya Creek; thence to the point of beginning. (Emphasis and underscoring supplied)

In *Porciuncula v. Adamo*s,[58] the Court notably observed that the Piedad Estate is "located in barrio Bayanbayanan, Caloocan, Rizal (now Diliman, Quezon City)."[59] As Yu Han Yat noted, the history of Bayanbayanan, Caloocan may have caused the misdescription of municipality in Psd-2498:[60]

While it is true that the subdivision plan of Lot 824 (Psd 2498) of the Piedad Estate shows that it is located in the Barrio of Bayanbayanan, Municipality of Marikina, a deeper understanding and analysis of the history of the subject property will reveal that the misdescription in the subdivision plan is nothing more than a product of confusion between Bayanbayanan, Marikina and Bayanbayanan, Caloocan.

x x x A reading of the documents would reveal that the source of the insidious claim by the petitioners that the property is located in Bayanbayanan, Marikina stems from an erroneous reference in Psd 2498 dated June 11-13, 1927 made by a certain Engr. Sixto Fernando. The said survey indicates that the location of Lot 824, Piedad Estate

---

[58] 103 Phil. 611 (1958).

[59] *Id*. at 612.

[60] *Rollo* (G.R. No. 195908) Vol. II, p. 763.

containing a total area of 147,072 square meters to be in Bayanbayanan, Marikina. When Quezon City was created by virtue of Commonwealth Act No. 502, the boundaries and limits of the city would show that Piedad Estate indeed became part of it, to wit:

> Sec. 3. *Boundaries*. — The boundaries and limits of the territory of said city are established and prescribed as follows: **Beginning at a point marked "1" which is identical to Boundary Monument No. 1 of Piedad Estate; to point "2", which is Boundary Monument No. 2 of Piedad Estate; thence downstream following the Arroyo between Payatas Estate and Mariquina Estate to point "3", which is the junction of the Arroyo and Mariquina River; thence downstream following Mariquina River to point "4", which is the crossing of Mariquina by the old Rosario Road; thence westward following the old Rosario Road to point "5"**, x x x. (Emphasis in the original)

x x x It is apparent that Engr. Sixto Fernando, while making the subdivision plan Psd 2498 in 1927 mistook the portion of respondent's property to be in Bayanbayanan, Marikina.

x x x The "Marikina mistake" appears in only one document, as against several evidence showing that respondent's property is in Quezon City. The inadvertent mention that Felipe Yu Han Yat's property (and the entire Lot 824) is located in Bayanbayanan, Mariquina appears in one and only one document and that is in Psd-2498. Except for this mistake in the designation of municipality, all other data in the survey plan Psd-2498 are consistent with the property being in Piedad Estate, Matandang Balara, Quezon City.

x x x **Further, as stated above, the technical description in respondent's TCT 28758 (30627) PR-9639, referred to the same survey plan, Psd-2498 and went on further to state that the property is located in Quezon City. The said Transfer Certificate of Title where the above cited technical description was mentioned, was prepared by no less than the Register of Deeds. This is a conclusive proof that if at all, the erroneous reference to Bayanbayanan, Mariquina in Psd-2498 was rectified by the Register of Deeds himself, when he prepared the title and correctly described the location of the property to be in Quezon**

City. Noting further the fact that in doing so, he was using as basis the same Psd-2498.[61] (Emphasis supplied)

The foregoing disquisition persuades the Court that the annotation that Psd-2498 pertains to a parcel land in "Bayanbayanan, Mariquina" was indeed a mere inadvertent error.

To be sure, the above factual findings arrived at by the CA are all based on a painstaking review of the voluminous records of this case. The ultimate truth revealed by the evidence on record is that TCT No. 8047 was a transfer from TCT No. 336663, contrary to the annotation that it was "a transfer from TCT No. 3633/T-R." Likewise, the CA correctly took judicial notice of the fact that Quezon City was not yet established at the time the survey for Psd-2498 was conducted. Therefore, the Court so holds that Yu Han Yat's title, TCT No. 30627, and Mejia and Bernas' title, TCT No. 336663, cover the same property.

On whether the case of Manotok, et al. v. Barque applies

Petitioner Mejia argues that the CA erred in ruling in favor of Yu Han Yat, when it did not inquire as to how the latter was able to trace his title from valid alienation by the government pursuant to the provisions of Act No. 1120, or the Friar Lands Act, because Piedad Estate was considered a friar land. Mejia argues that the CA fell short of the yardstick laid down in the case of *Alonso v. Cebu Country Club,*[62] (*Alonso*) where the Court held:

> Section 18 of Act No. 1120 or the Friar Lands Act unequivocally provides: "No lease or sale made by the Chief of the Bureau of Public Lands (now the Director of Lands) under the provisions of this Act shall be valid until approved by the Secretary of the Interior (now, the Secretary of Natural Resources). Thus, petitioners' claim of ownership must fail in the absence of positive evidence showing the approval of the Secretary of Interior. Approval of the Secretary of the Interior cannot simply be presumed or inferred from certain acts since the law is explicit in its mandate. This is the settled rule as

---

[61] *Id*. at 763-765.

[62] 462 Phil. 546 (2003).

enunciated in *Solid State Multi-Products Corporation vs. Court of Appeals* and reiterated *in Liao vs. Court of Appeals*.[63]

Likewise, in the case of *Manotok*,[64] the Court held that:

> It must be borne in mind that the disputed property is part of the "Friar Lands" over which the Government holds title and are not public lands but private or patrimonial property of the Government and can be alienated only upon proper compliance with the requirements of Act No. 1120 or the Friar Lands Act.
>
> x x x x x x x x x
>
> It was thus primordial for the respondent to prove its acquisition of its title by clear and convincing evidence in view of the nature of the land. In fact, it is essential for both respondent and petitioners to establish that it had become private property. Both parties failed to do so. As we have held earlier, petitioners have not succeeded to prove their claim of ownership over the subject property.[65]

Mejia's assertion on this ground fails. In the case of *Alonso*, the Court needed to ascertain both parties' compliance with the Friar Lands Act because the plaintiff's claim was precisely hinged on the alleged sale by the government of the land in question to Francisco Alonso. On the other hand, the Court in *Manotok* needed to check the parties' compliance with the Friar Lands Act because each of the parties questioned the petition for administrative reconstitution filed by the other. Hence, the Court needed to ascertain which of the parties actually held a valid claim to the lands in question, so that it could accordingly grant reconstitution.

The instances present in *Alonso* and *Manotok* do not exist in the case at bar. The issue of whether there was a valid transfer from the government to either of the parties was never raised in the proceedings in the trial court or upon initial appeal. Mejia only raised the issue of compliance with the Friar Lands Act

---

[63] *Id*. at 561-562.

[64] *Supra* note 36.

[65] *Id*. at 147.

only upon her motion for reconsideration with the CA, and eventually upon appeal to this Court. Mejia is precluded from doing this, as it is well settled in jurisprudence that an issue which was neither averred in the complaint nor raised during the trial in the court below cannot be raised for the first time on appeal as it would be offensive to the basic rules of fair play, justice and due process.[66] As Yu Han Yat correctly argued:

> Certainly, the issue of whether an inquiry was made as to how the respondent's predecessors-in-interest may trace their title to a valid alienation by the government under the provisions of Act No. 1120 was not among those raised before the trial court and the Court of Appeals. **If it were so, respondent would have presented evidence to show that he measures up to the yardstick laid down by the Supreme Court in the *Manotok* case.** It must be recalled that the only primordial issue between the parties in this case is whose title is genuine and authentic based on the respective evidence presented. This was how the Honorable Court of Appeals simplified the otherwise convoluted and antagonistic theories of ownership between the parties. But insofar as the alienation by the government of the property in question under the provisions of Act No. 1120 is concerned, that was never put in issue both in the trial court and in the Court of Appeals.[67] (Emphasis supplied)

To emphasize, points of law, theories, issues and arguments not brought to the attention of the trial court ought not to be considered by a reviewing court, as these cannot be raised for the first time on appeal.[68] Issues raised for the first time on appeal and not raised timely in the proceedings in the lower court are barred by estoppel.[69] To consider the alleged facts and arguments belatedly raised would amount to trampling on the basic principles of fair play, justice, and due process.[70] As

---

[66] *Bote v. Spouses Veloso*, 700 Phil. 787, 865 (2012).

[67] *Rollo* (G.R. No. 195908) Vol. II, p. 766.

[68] *Madrid v. Spouses Mapoy*, 612 Phil. 920, 934 (2009).

[69] *Id*.

[70] *Id*.

such, the Court so holds that the principles under *Alonso* and *Manotok* are inapplicable in the case at bar.

On whether the Court of Appeals erred when it took judicial notice of proceedings in other cases before it

In further ruling in favor of Yu Han Yat, the CA held that TCT No. 336663, or the Nava TCT, was null and void by taking judicial notice of other cases decided by it, specifically the case of CA-G.R. No. 77666, titled "*Heirs of Dominga Sumulong y Roxas, represented by Wilfredo Sumulong Torres v. Hon. Demetrio B. Macapagal, Sr., Presiding Judge, RTC, Branch 79, Quezon City, et al.*"[71] In the said case, the CA invalidated TCT No. 56809 registered in the name of Dominga Sumulong for being improperly reconstituted: As TCT No. 336663 originated from TCT No. 56809, the CA concluded that Bernas' and Mejia's title were also null and void because of the "legal principle that the spring cannot rise higher from its source."[72]

Petitioners decried the act of the CA of taking judicial notice of a previous case decided by it, and argued that the CA committed a serious error of law.

The Court rules in favor of petitioners on this ground. It is well settled that, as a general rule,

> courts are not authorized to take judicial notice, in the adjudication of cases pending before them, of the contents of the records of other cases, even when such cases have been tried or are pending in the same court, and notwithstanding the fact that both cases may have been heard or are actually pending before the same judge.[73]

It is true that the said rule admits of exceptions, namely:

---

[71] *Rollo* (G.R. No. 195908) Vol. I, p. 75.

[72] *Id*. at 76.

[73] *Tabuena v. Court of Appeals*, 274 Phil. 51, 57 (1991).

(a) In the absence of objection, and as a matter of convenience to all parties, a court may properly treat all or any part of the original record of a case filed in its archives as read into the record of a case pending before it, when, with the knowledge of the opposing party, reference is made to it for that purpose, by name and number or in some other manner by which it is sufficiently designated; or

(b) when the original record of the former case or any part of it, is actually withdrawn from the archives by the court's direction, at the request or with the consent of the parties, and admitted as a part of the record of the case then pending.[74]

Neither of these exceptions, however, exists in this case. The parties were not informed, much less their consent taken, of the fact that the CA would take judicial notice of these cases. Thus, the CA erred in taking judicial notice of the records of CA-G.R. No. 77666 in the process of adjudicating this case.

Nevertheless, despite this error, the result remains that Yu Han Yat is the rightful owner of the subject property in light of the Court's ruling above that there is an overlap between the properties covered by the two TCTs in question, and that the evidence showing Yu Han Yat's title to be earlier means that Yu Han Yat holds better title.

In view of such ruling, the Court no longer sees the need to tackle the issue of whether Yu Han Yat's payment of real property taxes constitutes proof of ownership or superior title over the subject property. In any event, the Court has consistently ruled that:

Although tax declarations or realty tax payment of property are not conclusive evidence of ownership, nevertheless, they are good indicia of possession in the concept of owner for no one in his right mind would be paying taxes for a property that is not in his actual or at least constructive possession. They constitute at least proof

---

[74] *Calamba Steel Center, Inc. v. Commissioner of Internal Revenue*, 497 Phil. 23, 35 (2005).

that the holder has a claim of title over the property. The voluntary declaration of a piece of property for taxation purposes manifests not only one's sincere and honest desire to obtain title to the property and announces his adverse claim against the State and all other interested parties, but also the intention to contribute needed revenues to the Government. Such an act strengthens one's bona fide claim of acquisition of ownership.[75]

On whether petitioners are liable to respondent for damages and attorney's fees

The CA awarded to Yu Han Yat the following amounts in the form of damages:

(a) ₱1,630,514.17 as actual damages
(b) ₱100,000.00 as moral damages;
(c) ₱100,000.00 as exemplary damages, and
(d) Attorney's Fees in the amount of ₱272,868.25

As to the actual damages, the CA held that petitioners were liable therefor because Yu Han Yat deserved adequate compensation for the duly substantiated losses suffered by him to protect his interest over the property. The CA also awarded moral damages to Yu Han Yat because of the supposed wrongful issuance by the RTC of the preliminary injunction, and the refusal of the Housing and Land Use Regulatory Board (HLURB) to issue a License to Sell to Yu Han Yat due to the pendency of the case. Exemplary damages were likewise awarded by the CA by way of example or correction for the public good. Finally, the CA awarded attorney's fees because Yu Han Yat was supposedly forced by the petitioners to incur expenses in litigation to protect his interest.

Contrary to the ruling of the CA, the Court finds no basis in awarding the above damages to Yu Han Yat. In *ABS-CBN Broadcasting Corp. v. Court of Appeals*,[76] the Court held that

---

[75] *Ganila v. Court of Appeals*, 500 Phil. 212, 224 (2005).

[76] 361 Phil. 499 (1999).

in the absence of malice or bad faith in the prosecution of the case, the award of damages is unavailing:

> There is no adequate proof that ABS-CBN was inspired by malice or bad faith. It was honestly convinced of the merits of its cause after it had undergone serious negotiations culminating in its formal submission of a draft contract. Settled is the rule that the adverse result of an action does not *per se* make the action wrongful and subject the actor to damages, for the law could not have meant to impose a penalty on the right to litigate. If damages result from a person's exercise of a right, it is *damnum absque injuria*.[77]

In the same way, the Court believes that petitioners were honestly convinced of the validity of their claim to the subject property. As subsequent holders of the same through a sale, both Mejia and Bernas (and consequently, Wharton) were expected to insist on their supposed ownership over the property in question. Consequently, the Court deems it proper to delete the award of damages in favor of respondent.

WHEREFORE, the consolidated Petitions are hereby **DENIED**. The Court of Appeals Decision dated December 14, 2010, and the Resolution dated February 28, 2011 in CA-G.R. CV No. 82681 are **AFFIRMED WITH MODIFICATION**. The Court deletes the award of actual, moral, and exemplary damages, and attorney's fees in favor of respondent.

SO ORDERED.

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

---

[77] *Id*. at 531-532.

THIRD DIVISION

[G.R. No. 199451. August 15, 2018]

IRIS RODRIGUEZ, *petitioner, vs.* **YOUR OWN HOME DEVELOPMENT CORPORATION (YOHDC),** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; THE SUPREME COURT DOES NOT REVIEW FACTUAL FINDINGS AS IT ONLY ENTERTAINS QUESTIONS OF LAW AND DOES NOT RULE ON QUESTIONS WHICH DETERMINE THE TRUTH OR FALSEHOOD OF ALLEGED FACTS. — Iris raised a factual issue which is not proper in a Petition for Review on *Certiorari*. This Court does not review factual findings in Rule 45 Petitions. It only entertains questions of law—those which ask to resolve which law applies on a given set of facts. It does not rule on questions which determine "the truth or falsehood of alleged facts." In *Spouses Miano v. Manila Electric Co.*: The Rules of Court states that a review of appeals filed before this Court is "*not a matter of right, but of sound judicial discretion*." The Rules of Court further requires that only questions of law should be raised in petitions filed under Rule 45 since *factual questions are not the proper subject of an appeal by certiorari*. It is not this Court's function to once again analyze or weigh evidence that has already been considered in the lower courts. The question of whether Delos Reyes has been paid the amount of ₱424,000.00 is a question of fact. It does not simply ask to resolve which law properly applies given the set of facts in this case. It requires a review of the evidence and the determination of the truth or falsity of the parties' allegations. Clearly, Iris is raising a question of fact which is not proper in the instant Petition for Review on *Certiorari.*

2. ID.; EVIDENCE; AUTHENTICATION AND PROOF OF DOCUMENTS; A NOTARIZED DOCUMENT IS PRESUMED VALID, REGULAR, AND GENUINE AND IT CARRIES EVIDENTIARY WEIGHT WITH RESPECT

TO ITS DUE EXECUTION, AS SUCH, IT NEED NOT BE PROVEN AUTHENTIC BEFORE IT IS ADMITTED INTO EVIDENCE. — The Regional Trial Court found that Delos Reyes had been paid ₱424,000.00. Thus, YOHDC must reimburse Iris this amount. However, the Court of Appeals ruled that Iris was not entitled to the reimbursement. This Court affirms the ruling of the Court of Appeals and gives more credence to Delos Reyes' Affidavit, which is a public document. A notarized document is presumed valid, regular, and genuine. It carries evidentiary weight with respect to its due execution. As such, it need not be proven authentic before it is admitted into evidence. On its face, it is entitled to full faith and credit, and is deemed to be in full force and effect. A notarized Deed of Absolute Sale has in its favor the presumption of regularity, and it carries the evidentiary weight conferred upon it with respect to its due execution. It is admissible in evidence without further proof of its authenticity and is entitled to full faith and credit upon its face.

3. **ID.; ID.; ID.; ID.; TO NULLIFY A NOTARIZED DOCUMENT ON ACCOUNT OF FLAWS AND DEFECTS, THE PARTY WHO IMPUGNS IT MUST PRESENT STRONG, COMPLETE, AND CONCLUSIVE PROOF OF ITS FALSITY OR NULLITY, AND NOT MERELY PREPONDERANT; RATIONALE.—** To nullify a notarized document on account of flaws and defects, there must be a strong, complete, and conclusive proof of its falsity. The required quantum of proof is a clear, strong, and convincing evidence: Thus, a notarial document must be sustained in full force and effect so long as he who impugns it does not present strong, complete and conclusive proof of its falsity or nullity on account of some flaws or defects. Absent evidence of falsity so clear, strong and convincing, and not merely preponderant, the presumption of regularity must be upheld. The burden of proof to overcome the presumption of due execution of a notarial document lies on the party contesting the same. In *Rufina Patis Factory v. Alusitain*, this Court ruled that to contradict statements in a notarial document, there must be clear, convincing and more than merely preponderant evidence against it. A subsequent notarial document retracting the previous statement is not even sufficient x x x. The rationale for this rule is to maintain public confidence in the integrity of notarized documents.

4. ID.; ID.; ID.; PRIVATE DOCUMENTS MUST FIRST BE AUTHENTICATED BY PRESENTING THE BEST PROOF AVAILABLE BEFORE THEY COULD BE ADMITTED IN EVIDENCE EXCEPT WHERE THE DOCUMENT'S GENUINENESS AND DUE EXECUTION WERE ADMITTED BY THE ADVERSE PARTY.— In contrast, private documents must first be authenticated before they could be admitted in evidence. To establish their authenticity, the best proof available must be presented. x x x. However, authentication may not be necessary where the document's genuineness and due execution were admitted by the adverse party. x x x. In the case at bar, Delos Reyes' Acknowledgement is a private document. Thus, for Iris to rely on it, she must have first proven its genuineness and authenticity by presenting the best proof available. As such, she should have presented Delos Reyes to testify on its genuineness and due execution. However, Iris merely relied on Delos Reyes' Answer and Acknowledgement on their faces. Delos Reyes neither appeared in court to attest to the allegations of his Acknowledgement or to explain his Answer, nor presented as Iris' witness.

5. ID.; ID.; ID.; RETRACTIONS ARE LOOKED UPON WITH DISFAVOR BECAUSE OF ITS UNRELIABLE NATURE AND THE LIKELY PROBABILITY THAT IT MAY AGAIN BE REPUDIATED; RATIONALE.— [T]his Court notes that Delos Reyes never denied his notarized Affidavit's allegations even though his Acknowledgement's allegations are inconsistent with them. Hence, this Court assumes that the Acknowledgement is in the nature of a retraction. This Court has consistently held that retractions are looked upon with disfavor because of its unreliable nature and the likely probability that it may again be repudiated. x x x. The rationale for this ruling stems from retractions being easily obtained from witnesses through intimidation or monetary consideration. x x x. Thus, retractions must not be believed right away. It is important to consider a witness' surrounding circumstances and motives for changing his or her stance. x x x. There must be a comparison of the two (2) testimonies and the general rules of evidence must still be applied x x x. In the case at bar, considering the evidence presented by the parties, this Court hesitates to accord Delos Reyes' retraction any weight or credibility.

6. CIVIL LAW; THE CIVIL CODE OF THE PHILIPPINES; HUMAN RELATIONS; UNJUST ENRICHMENT; ELEMENTS; NOT PRESENT. — It cannot be said that YOHDC was unjustly enriched to make it liable to petitioner. Article 22 of the Civil Code of the Philippines states: 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. This provision addresses unjust enrichment. It is the State's public policy to prevent a person from unjustly retaining a benefit, money, or property, at the expense of another, or against the fundamental principles of justice, equity, and good conscience. Unjust enrichment has two (2) elements: a person benefited without a real or valid basis or justification, and the benefit was at another person's expense or damage. x x x. In the case at bar, it is argued that YOHDC unjustly retained benefit at the expense of the Rodriguez Spouses when the amounts of Delos Reyes' Checks were reimbursed to it. This Court finds that it did not.

APPEARANCES OF COUNSEL

Ferdinand Raymund J. Navarro for petitioner.
Julian R. Torcuator, Jr. for respondent.

D E C I S I O N

LEONEN, *J.*:

This Petition for Review[1] assails the July 18, 2011 Decision[2] and November 23, 2011 Resolution[3] of the Court of Appeals in CA-G.R. CV No. 90297. The assailed Decision overturned

---

[1] *Rollo*, pp. 11-28.

[2] *Id.* at 159A-166. The Decision was penned by Associate Justice Florito S. Macalino and concurred in by Associate Justices Juan Q. Enriquez, Jr. and Ramon M. Bato, Jr. of the Sixth Division, Court of Appeals, Manila.

[3] *Id*. at 180-181. The Resolution was penned by Associate Justice Florito S. Macalino and concurred in by Associate Justices Juan Q. Enriquez, Jr. and Ramon M. Bato, Jr. of the Former Sixth Division of the Court of Appeals.

the Regional Trial Court August 13, 2007 Decision,[4] which ordered Your Own Home Development Corporation (YOHDC) to pay Iris Rodriguez (Iris) ₱424,000.00. The assailed Resolution denied Iris' motion for reconsideration. Iris prays that this Court affirm the Regional Trial Court's Decision.

This case originated from a low-cost housing project in Occidental Mindoro, which YOHDC entered into with its partner, Archangel Corporation. Iris' husband, Tarcisius Rodriguez (Tarcisius), was hired as the project coordinator/manager.[5]

Tasked to find land suited for the project, Tarcisius found a property owned by Rosa Rosillas (Rosillas) and proceeded to negotiate with her. According to YOHDC, Rosillas agreed to sell the land for ₱1,200,000.00. However, Tarcisius misrepresented to the partner corporations that Rosillas had asked for ₱4,000,000.00 instead.[6]

Rosillas was paid ₱1,200,000.00 in two (2) installments on April 8, 1993 and May 14, 1993. Despite this, Tarcisius still requested for two (2) more checks in Rosillas' name, each for ₱500,000.00, insisting that the land was acquired for ₱4,000,000.00. Thus, YOHDC issued Metropolitan Bank and Trust Company (Metrobank) Check Nos. 1181043810 and 1181043843 (Rosillas' Checks).[7]

Aside from this, Tarcisius also requested for two (2) more checks to pay the surveyor of Rosillas' property, Engineer Senen Delos Reyes (Delos Reyes), in the amount of ₱254,400.00 each.[8] For this, YOHDC issued Metrobank Check Nos. 1181043813 and 1181043841 (Delos Reyes' Checks).[9]

---

[4] *Id*. at 116-129. The Decision, docketed as Civil Case No. 95-0131, was penned by Judge Zosimo V. Escano of Branch 259, Regional Trial Court, City of Parañaque.

[5] *Id*. at 160 and 116.

[6] *Id*. at 160.

[7] *Id*.

[8] *Id*. at 160 and 162.

[9] *Id*. at 160.

Tarcisius received all four (4) checks. However, instead of delivering them to Rosillas and Delos Reyes, Tarcisius and his wife, Iris, (collectively, the Rodriguez Spouses), deposited two (2) checks—one of Rosillas' Checks and one of Delos Reyes' Checks—totaling ₱754,400.00 in their personal Bank of the Philippine Islands (BPI) Account No. 3293-0730-06. The other two (2) checks were deposited in the Rodriguez Spouses' other personal bank account, BPI Account No. 0065-0506-25.[10]

YOHDC eventually discovered the irregularities on Rosillas' and Delos Reyes' checks after it received reports of project anomalies, such as padding of expenses and overpricing. Upon investigation, it was found that the endorsement signatures on the checks of the intended payees, Rosillas and Delos Reyes, were different from those on file.[11] Moreover, while the checks were for two (2) different people—for Rosillas who lived in Bulacan and for Delos Reyes who was from Mindoro—they were deposited in the same BPI accounts.[12] It must be noted that during this time, Iris worked as a bank teller at BPI. This prompted YOHDC to contact Rosillas and Delos Reyes regarding the checks. Both confirmed that they never received, endorsed, encashed, or deposited any of the four (4) checks.[13]

Hence, YOHDC demanded from Tarcisius the amount of the checks which he failed to return. Tarcisius then requested to settle YOHDC's claim by way of transferring properties. However, no settlement was reached with Tarcisius, so YOHDC pursued its claim against the banks.[14]

YOHDC first sought reimbursement from Metrobank, which advised it to direct its claim against BPI. BPI suggested that YOHDC course its documents through Metrobank. Pursuant to Metrobank's instructions, YOHDC submitted Rosillas' and

---

[10] *Id*. at 160-161.

[11] *Id.* at 161.

[12] *Id*. at 118.

[13] *Id*. at 161.

[14] *Id*.

Delos Reyes' Checks and affidavits to Metrobank, which, in turn, forwarded them to BPI.[15]

BPI then advised the Rodriguez Spouses to deposit the amount of ₱1,508,800.00 in their BPI bank account so that it could respond to YOHDC's complaint.[16]

The Rodriguez Spouses complied and deposited the amount of ₱1,508,800.00 in their BPI Account No. 3293-0994-39.[17] However, they requested BPI to suspend its action on YOHDC's claim and instructed it not to deduct the amount until they have clarified the matter.[18] BPI denied this request and sent Metrobank Special Clearing Receipt No. 065273 to reimburse the amounts of the four (4) checks totaling ₱1,508,000.00. Thereafter, Metrobank credited the amount to YOHDC.[19]

These events prompted the Rodriguez Spouses to file a Complaint for Damages against YOHDC, BPI, Metrobank, Rosillas, and Delos Reyes, among others.[20] The Rodriguez

---

[15] *Id.*

[16] *Id*. at 115. *See also rollo*, p. 245. BPI Letter dated March 30, 1995 to Iris Rodriguez, which read:

As you are aware, a complaint/demand letter addressed to the bank for ₱1,508,800.00 was received from Atty. Julian R. Torcuator, Jr. on behalf of his client, Your Own Home Development Corporation (YOHDC). This relates directly to the Metrobank checks issued by YOHDC in favor of Rosa Rosillas and Senen de los Reyes which were deposited to your accounts as second-endorsed checks.

To enable our bank to respond to the above-cited complaint and this being a direct result of the checks deposited to your accounts without securing prior approval, we regret to advise you that you have to reimburse the amount of ₱1,508,800.00 not later than April 7, 1995.

We trust that you will give this matter your utmost attention considering that top management has expressed its grave concern on this case.

[17] *Id*. at 63, 103, 120, 123, and 314.

[18] *Id*. at 161-162.

[19] *Id*. at 161.

[20] *Id*. at 162 and 188. The Rodriguez Spouses' Complaint was against BPI, Metrobank, YOHDC, Rosillas, Delos Reyes, Yadollah N. Sachini, and Atty. Julian Torcuator, Jr.

Spouses claimed that Rosillas' Checks were received by Rosillas' agent, Godofredo Syquioco (Syquioco).[21] As for Delos Reyes' Checks, the Rodriguez Spouses asserted that Delos Reyes received ₱424,000.00 from the proceeds of Metrobank Check Nos. 181043813 and 181043841. They claimed that all four (4) checks were encashed through BPI with the assistance of Iris.[22]

On August 13, 2007, the Regional Trial Court dismissed the case against Rosillas, Delos Reyes, Metrobank, and BPI.[23] However, it noted that in Delos Reyes' Answer dated July 9, 1995,[24] he admitted receiving portions of the proceeds of his Checks in the amount of ₱424,000.00.[25] Thus, based on the principle against unjust enrichment, it ordered YOHDC to reimburse the Rodriguez Spouses ₱424,000.00, representing the amount that Delos Reyes had received.[26] The dispositive portion of the Regional Trial Court August 13, 2007 Decision read:

> WHEREFORE premises considered judgment is hereby rendered as follows[:]
>
> 1. The case as against defendants ROSA ROSILLAS, SENEN DELOS REYES, METROBANK and BPI are hereby ordered DISMISSED;
>
> 2. Defendant YOUR OWN HOME DEVELOPMENT CORPORATION is hereby ordered to pay plaintiffs the amount of Php 424,000.00 representing the amount already paid by plaintiffs to defendant Senen delos Reyes; and

---

[21] *Id*. at 162 and 191. The CA Decision referred to Syquioco as "Syquico."

[22] *Id*. at 162.

[23] *Id*. at 127/128.

[24] *Id.* at 201-202.

[25] *Id*. at 124.

[26] *Id*. at 258.

3. Defendant YOUR OWN HOME DEVELOPMENT CORPORATION to pay plaintiffs the amount of Php 50,000.00 as attorney's fees.

4. Costs against the defendant YOUR OWN HOME DEVELOPMENT CORPORATION.

SO ORDERED.[27]

On appeal, the Court of Appeals modified in its July 18, 2011 Decision the Regional Trial Court August 13, 2007 Decision.[28]

It found that the principle against unjust enrichment did not apply. It did not lend credence to Delos Reyes' admission in his Answer regarding an Acknowledgement dated June 9, 1995, which he allegedly signed (Delos Reyes' Acknowledgement). It found that the document is a private document, the execution and authenticity of which were not proven as required by the rules of evidence.[29]

Instead, the Court of Appeals lent credence to the evidence presented by YOHDC, consisting of payment receipts to Delos Reyes, and Delos Reyes' duly notarized Affidavit dated March 14, 1995 (Delos Reyes' Affidavit),[30] which stated that he never received, encashed, or deposited the checks.[31]

---

[27] *Id*. at 128-129.

[28] *Id*. at 159A-166.

[29] *Id*. at 164-165. See *rollo*, p. 98. The Acknowledgement stated:

TO WHOM IT MAY CONCERN:

I, SENEN M. DELOS REYES, of San Jose, Occidental Mindoro and the Geodetic Engineer engaged to do the subdivision survey and titling of Bahayang San Jose Project, San Jose, Occ. Mindoro, hereby state that I have received the Total amount of FOUR HUNDRED TWENTY[-]FOUR THOUSAND (₱424,000.00) PESOS a portion of the proceeds of [Metrobank] cheques 181043813 and 181043841 from Mr. Titus R. Rodriguez representing partial payment for services for the said project.

[30] *Id*. at 310. It read in part:

4. However, I deny having received these checks and further deny having encashed or deposited these checks with the BPI-Parañaque Branch, as I do

The Court of Appeals further noted that assuming that ₱424,000.00 was given to Delos Reyes, it could not have been from Delos Reyes' Checks because the total value of Delos Reyes' Checks was ₱508,800.00.[32] It was not swayed by Tarcisius' explanation that the difference between the two (2) amounts was used for extra-legal expenses for the title's issuance. It concluded that if the amount was for that purpose, it should not have been added to the checks to be paid to Delos Reyes.[33]

It also noted that the numbers of the checks claimed to have been encashed by the Rodriguez Spouses for Delos Reyes and Rosillas were different from Delos Reyes' and Rosillas' Checks.[34] The Rodriguez Spouses claimed that the checks for Rosillas were Metrobank Check Nos. 081043810 and 08143843, instead of 1181043810 and 1181043843, and that the checks for Delos Reyes were Metrobank Check Nos. 181043813 and 181043841, instead of 1181043813 and 1181043841.[35]

Thus, the Court of Appeals found that YOHDC was not liable to the Rodriguez Spouses for ₱424,000.00 as well as attorney's fees:[36]

> WHEREFORE, premises considered, the Decision dated August 13, 2007 of the Regional Trial Court of the City of Parañaque, Branch 259, in Civil Case No. 95-0131, is MODIFIED. Your Own Home Development Corporation is not liable to the Spouses Tarcisius and Iris Rodriguez in the amount of PhP 424,000.00 and it is not also liable to the latter for attorney's fees. No pronouncement as to costs.

---

not maintain any account from the said bank, and neither have I deposited or encashed the same checks with the Metrobank, in any manner whatsoever, more so, I could not have signed the indorsements thereon, and the signatures appearing at the back thereof as indorsements are not my signature[.]

[31] *Id*. at 165.

[32] *Id*. at 124 and 165.

[33] *Id*. at 165.

[34] *Id*.

[35] *Id*. at 162.

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

SO ORDERED. [37]

Meanwhile, Iris alleged that Tarcisius passed away during the course of the proceedings.[38]

Iris filed a Motion for Reconsideration[39] of the Court of Appeals July 18, 2011 Decision.

However, her motion was denied in the Court of Appeals November 23, 2011 Resolution.[40]

Hence, she filed the instant Petition before this Court on January 25, 2012.[41]

She argues that in Delos Reyes' Answer filed with the Regional Trial Court, he admitted the existence of his Acknowledgment and receipt of the amount of ₱424,000.00. She also points out that there is no substantial disparity between the numbers of Delos Reyes' Checks and the numbers of the checks stated in Delos Reyes' Acknowledgment.[42]

She claims that the subsequent execution of his July 9, 1995 Answer and of his June 9, 1995 Acknowledgment constitutes an abandonment of his March 14, 1995 Affidavit, where he denied the receipt or encashment of his Checks.[43]

She raises unjust enrichment, arguing that the payment to Delos Reyes of ₱424,000.00 was at her expense, since she had no obligation to pay him, and it was YOHDC who was bound to pay him for his services.[44]

---

[37] *Id*.

[38] *Id*. at 13.

[39] *Id*. at 167-176.

[40] *Id*. at 180-187.

[41] *Id*. at 141.

[42] *Id.* at 149-150.

[43] *Id*. at 150.

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

In its Comment,[45] YOHDC asserts that in arguing that Delos Reyes was paid ₱424,000.00, Iris raised a question of fact, which is not proper in a petition for review on certiorari.[46]

Furthermore, YODHC claims that it is undisputed that the four (4) checks were not endorsed, encashed, deposited, or transacted by Rosillas or Delos Reyes to BPI. BPI even admitted that it was Iris who deposited or negotiated the checks to it as a second endorsement, without authority from the bank.[47]

YOHDC also contends that Delos Reyes never appeared in court to confirm or prove the allegations in his Answer. It asserts that Delos Reyes' Answer is of doubtful source because it is not signed by counsel, and seems to be part of Tarcisius' grand scheme to cover up his misappropriation.[48]

Assuming it was filed by Delos Reyes, his Answer did not expressly admit the allegations in his Acknowledgment[49] or the truth of its contents.[50] He only admitted the existence of his Acknowledgment.[51]

---

[45] *Id*. at 275-293.

[46] *Id.* at 275 and 285.

[47] *Id*. at 283.

[48] *Id*. at 285-286.

[49] *Id*. at 287. Annex "D-1" of the Complaint (*Rollo*, p. 49) read:

TO WHOM IT MAY CONCERN:

I, SENEN M. DELOS REYES, of San Jose, Occidental Mindoro and the Geodetic Engineer engaged to do the subdivision survey and title of Bahayang San Jose Project, San Jose, Occ. Mindoro, hereby state that I have received the Total amount of FOUR HUNDRED TWENTY[-]FOUR THOUSAND (₱424,000.00) PESOS a portion of the proceeds of [Metrobank] Cheques 181043813 and 181043841 from Mr. Titus R. Rodriguez representing partial payment for services for the said project.

At San Jose, Occ. Mindoro this 9th day of June 1995

(Sgd.)

SENEN M. DELOS REYES

Geodetic Engineer

[50] *Id*. at 286.

[51] *Id*.

In any case, the Answer is not binding on YOHDC because "[a]n admission by a co-defendant is not an admission by the other defendant."[52]

YOHDC also contends that Iris' complaint did not attach a copy of Rosillas' and Delos Reyes' Checks. Thus, Delos Reyes could not have admitted the real and correct checks because he had nothing to admit.[53]

It further avers that the checks mentioned by Delos Reyes in his Acknowledgment are different from his Checks. Hence, assuming there were payments made by the Rodriguez Spouses to Delos Reyes, they did not come from Delos Reyes' Checks. In any case, YOHDC posits that it should be Delos Reyes who should explain the disparity. However, the evidence was offered without explanation from Delos Reyes or Iris during trial. The belated explanations are, therefore, without factual basis.[54]

YOHDC also suggests that it was Tarcisius who prepared Delos Reyes' Acknowledgment or, at the very least, supplied the check numbers. It submits that the check numbers in Delos Reyes' Acknowledgment are the same check numbers in the Rodriguez Spouses' complaint. It also points out that the "typing" in Delos Reyes' Acknowledgment is the same typing in Syquioco's Affidavit,[55]

---

[52] *Id.*

[53] *Id.*

[54] *Id.* at 287.

[55] *Id.* at 229. The document stated:

TO WHOM IT MAY CONCERN:

I, FRED SYQUIOCO, of Mabini St. San Jose, Occidental Mindoro, by virtue of a document, specifically paragraph C, page two of a Memorandum of Agreement authorizing me to receive and encash payments due Mrs. Rosa Rosillas in connection with the sale of her ten-hectare property in Barangay Bagong Sikat, San Jose, Occidental Mindoro to Your Own Home Development Corporation and Archangel Development Corporation and sought the assistance of Mr. Titus Rodriguez for the encashment of [Metrobank] cheques 081043810 and 081043843 to effect payments for the land, for taxes, disturbance compensation and related tenancy problems, commissions and other expenses.

(Sgd.

GODOFREDO "FRED[") SYQUIOCO.

where Rosillas' Checks were also typed as Check Nos. 081043810 and 081043843, instead of 1181043810 and 1181043843. It stresses that this is how the Rodriguez Spouses also typed the check numbers of Rosillas.[56]

It maintains that the figures are not mere typographical errors, but are deliberately done by Tarcisius. It argues that it is unlikely that the mistakes in the Rodriguez Spouses' complaint were also committed by Delos Reyes and Syquioco. Thus, it is tainted with fraud and manipulation, and its integrity cannot be relied upon.[57] YOHDC avers that the Rodriguez Spouses created the confusion so that if it is established that Delos Reyes did not receive the proceeds of the subject checks, they still cannot be charged with falsification or perjury.[58]

It likewise insists that Delos Reyes would not have been able to determine for sure that any amount he received from Tarcisius are proceeds of his Checks because he was not the one who encashed or deposited them.[59] It was Iris who deposited Delos Reyes' Checks in her BPI account in Parañaque City. Delos Reyes lived in Occidental Mindoro and there is no showing that he was in Parañaque when the checks were deposited in Iris' BPI Account.[60]

YOHDC reiterates the Court of Appeals' ruling that if ₱424,000.00 was really the amount intended for Delos Reyes, his Checks would have been issued in that amount, not in the amount of ₱508,000.00. Moreover, Delos Reyes' Checks would have been given directly to Delos Reyes himself, instead of being deposited in Iris' account.[61]

---

[56] *Id*. at 288.

[57] *Id*. at 288-289.

[58] *Id*. at 291.

[59] *Id*.

[60] *Id*. at 289.

[61] *Id*. at 290.

It also points out that in Delos Reyes' Affidavit, he categorically stated that he did not receive, deposit, encash, or endorse his Checks, or receive their proceeds.[62]

YOHDC maintains that it has clearly shown that it was the party that directly paid for Delos Reyes' services. It suggests that assuming Tarcisius paid for Delos Reyes' services, it is likely that Tarcisius took it from the numerous unliquidated advances he obtained from YOHDC's joint venture with Archangel Corporation. All other expenses were paid by YOHDC.[63]

YOHDC denied that it has been unjustly enriched. It argues that reimbursement is proper considering that it was proven that the Rodriguez Spouses did not give the checks to the payees, but instead forged the latter's signatures, deposited the checks in their own accounts, and withdrew the amounts for their personal use. It argues that if there is overpayment to Delos Reyes, Iris should have pursued her claim with him.[64]

Iris filed her Reply where she maintains that she is not disputing the facts, but merely questioning the conclusion drawn from it. She argues that it is clear from the undisputed facts and admitted evidence that Delos Reyes received ₱424,000.00, as he expressly admitted in his Answer. She maintains that the differences in the check numbers are mere typographical errors. She reiterates that Delos Reyes' March 14, 1995 Affidavit was executed before his July 9, 1995 Answer, which, being more recent, is controlling. Hence, Delos Reyes' allegations in his March 14, 1995 Affidavit must be deemed abandoned. Moreover, the Answer was neither controverted by YOHDC nor shown to be a falsity. Thus, the admissions in it must be lent credence. YOHDC being spared from paying ₱424,000.00 at the expense of Iris amounts to unjust enrichment.[65]

---

[62] *Id*.

[63] *Id*. at 291.

[64] *Id.* at 292.

[65] *Id*. at 356-359.

The sole issue for this Court's resolution is whether or not Your Own Home Development Corporation is liable to Iris Rodriguez for ₱424,000.00 based on the principle of unjust enrichment.

This Court denies the Petition.

I

In the first place, Iris raised a factual issue which is not proper in a Petition for Review on Certiorari.

Rule 45, Section 1 of the Rules of Court states:

> Section 1. Filing of petition with Supreme Court. — A party desiring to appeal by certiorari from a judgment or final order or resolution of the Court of Appeals, the Sandiganbayan, the Regional Trial Court or other courts whenever authorized by law, may file with the Supreme Court a verified petition for review on certiorari. The petition shall raise *only questions of law* which must be distinctly set forth. (Emphasis supplied)

This Court does not review factual findings in Rule 45 Petitions. It only entertains questions of law—those which ask to resolve which law applies on a given set of facts.[66] It does not rule on questions which determine "the truth or falsehood of alleged facts."[67]

In *Spouses Miano v. Manila Electric Co.*:[68]

> The Rules of Court states that a review of appeals filed before this Court is "*not a matter of right, but of sound judicial discretion*." The Rules of Court further requires that only questions of law should be raised in petitions filed under Rule 45 since *factual questions are*

---

[66] *Loria v. Muñoz, Jr.*, 745 Phil. 506, 515 (2014) [Per J. Leonen, Second Division].

[67] *Id.*

[68] *Spouses Miano. v. Manila Electric Co.*, G.R. No. 205035, November 16, 2016 < http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2016/november2016/205035.pdf > [Per J. Leonen, Second Division).

not the proper subject of an appeal by certiorari. It is not this Court's function to once again analyze or weigh evidence that has already been considered in the lower courts.[69] (Emphasis supplied, citations omitted)

The question of whether Delos Reyes has been paid the amount of ₱424,000.00 is a question of fact. It does not simply ask to resolve which law properly applies given the set of facts in this case. It requires a review of the evidence and the determination of the truth or falsity of the parties' allegations. Clearly, Iris is raising a question of fact which is not proper in the instant Petition for Review on Certiorari.

II

In any case, the Court of Appeals rightfully lent more credence to Delos Reyes' Affidavit, which stated:

A F F I D A V I T

I, SENEN DE LOS REYES, of legal age, Filipino, married/single and a resident of San Jose, Occ. Mindoro, after having been sworn in accordance with law, do hereby depose and state that:

1. I am the Geodetic Engineer who was contracted to do the land survey for the Joint Venture Project of Your Own Home Development Corporation (YOHDC) and Archangel Development Corporation (ADC) in San Jose, Occidental, Mindoro;

2. Sometime during the first week of March 1995, I was confronted by the President of YOHDC. Mr. Yadollah N. Sichani, about its two (2) Metrobank (Pasong Tamo Branch) Checks with Nos. 1181043813 and 1181043841 which they issued in my favor to pay for my services;

3. After examining the said checks, I realized that these checks were already encashed through a deposit at BPI-Paranaque Branch;

4. *However, I deny having received these checks and further deny having encashed or deposited these checks with the BPI-Paranaque Branch, as I do not maintain any account from the said bank, and neither have I deposited or encashed the same checks with the Metrobank, in any manner whatsoever, more so, I could not have*

---

[69] *Id*. at 4.

signed the indorsements thereon, and the signatures appearing at the back thereof as indorsements are not my signature[s.][70] (Emphasis supplied)

On the other hand, Delos Reyes' Answer stated:

1. That herein defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations in the complaint from paragraphs 1.0 to 9.6 inclusive, hence, he specifically denies the same except to the allegations in the last sentence of paragraph 2.3 in so far as the existence of *ANNEX "D-1" referring to the acknowledgement receipt and the last paragraph of paragraph 2.5 as far as the receipt of the amount of ₱424,000.00[.]*[71] (Emphasis supplied)

The last sentence of paragraph 2.3 of the Rodriguez Spouses' Complaint stated:

[Rosillas] acknowledged receipt of ₱1,200,000.00 and ₱2,400,000.00 through her authorized agent Mr. Fred Syquioco to pay all expenses attendant to the sale transaction including taxes, disturbance compensation and related tenancy problems, commissions and other extra-legal expenses. (*Attached and marked Annex "D & D-1" are the acknowledgement receipts of Rosa Rosillas and Senen de los Reyes*).[72] (Emphasis supplied)

Annex "D-1" refers to Delos Reyes' Acknowledgement, which stated:

TO WHOM IT MAY CONCERN:

I, SENEN M. DELOS REYES, of San Jose, Occidental Mindoro and the Geodetic Engineer engaged to do the subdivision survey and titling of Bahayang San Jose Project, San Jose, Occ. Mindoro, hereby state that I have received the Total amount of FOUR HUNDRED TWENTY[-]FOUR THOUSAND (₱424,000.00) PESOS a portion of the proceeds of [Metrobank] cheques 181043813 and 181043841

---

[70] *Rollo*, p. 310.

[71] *Id*. at 47.

[72] *Id*. at 60.

from Mr. Titus R. Rodriguez representing partial payment for services for the said project.[73]

Paragraph 2.5(2) of the Rodriguez Spouses' Complaint stated:

> Defendant Senen de los Reyes received the sum of ₱424,000 as represented by Metrobank Check No. 181043813 and Metrobank Check No. 181043841.[74]

The Regional Trial Court found that Delos Reyes had been paid ₱424,000.00. Thus, YOHDC must reimburse Iris this amount.[75] However, the Court of Appeals ruled that Iris was not entitled to the reimbursement.[76]

This Court affirms the ruling of the Court of Appeals and gives more credence to Delos Reyes' Affidavit, which is a public document.

A notarized document is presumed valid, regular, and genuine. It carries evidentiary weight with respect to its due execution.[77] As such, it need not be proven authentic before it is admitted into evidence. On its face, it is entitled to full faith and credit, and is deemed to be in full force and effect.[78]

A notarized Deed of Absolute Sale has in its favor the presumption of regularity, and it carries the evidentiary weight conferred upon it with respect to its due execution. It is admissible in evidence without

---

[73] *Id*. at 98.

[74] *Id*. at 61.

[75] *Id*. at 124.

[76] *Id*. at 165.

[77] *Ladignon v. Court of Appeals*, 390 Phil. 1161, 1169-1170 (2000) [Per J. Ynares-Santiago, First Division).

[78] *Almeda v. Heirs of Almeda*, G.R. No. 194189, September 14, 2017< http://sc.judiciary.gov.ph/pdf/web/viewer.html?fi1e=/jurisprudence/2017/september2017/194189.pdf > 8 [Per J. Tijam, First Division]; *Gatan v. Vinarao*, G.R. No. 205912, October 18, 2017 < http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2017/october2017/205912.pdf > [Per J. Leonardo-De Castro, First Division].

further proof of its authenticity and is entitled to full faith and credit upon its face.[79] (Citations omitted)

To nullify a notarized document on account of flaws and defects, there must be a strong, complete, and conclusive proof of its falsity. The required quantum of proof is a clear, strong, and convincing evidence:

Thus, a notarial document must be sustained in full force and effect so long as he who impugns it does not present strong, complete and conclusive proof of its falsity or nullity on account of some flaws or defects.

Absent evidence of falsity so clear, strong and convincing, and not merely preponderant, the presumption of regularity must be upheld. The burden of proof to overcome the presumption of due execution of a notarial document lies on the party contesting the same.[80] (Citations omitted)

In *Rufina Patis Factory v. Alusitain*,[81] this Court ruled that to contradict statements in a notarial document, there must be clear, convincing and more than merely preponderant evidence against it. A subsequent notarial document retracting the previous statement is not even sufficient:

No doubt, admissions against interest may be refuted by the declarant. It bears stressing, however, that Alusitain's Affidavit of Separation filed with the SSS is a notarial document, hence, *prima facie* evidence of the facts expressed therein.

Since notarial documents have in their favor the presumption of regularity, to contradict the facts stated therein, there must be evidence that is *clear, convincing and more than merely preponderant*.

Alusitain explains through his subsequent sworn statement that he only executed these two documents in order to obtain his retirement benefits from the SSS. His daughter, also by sworn statement, corroborates his explanation. His position does not persuade.

---

[79] *Id*.

[80] *Id*.

[81] 478 Phil. 544 (2004) [Per *J*. Carpio-Morales, Third Division].

In order for a declarant to impugn a notarial document which he himself executed, it is not enough for him to merely execute a subsequent notarial document. What the law requires in order to contradict the facts stated in a notarial document is clear and convincing evidence. The subsequent notarial documents executed by respondent and his daughter fall short of this standard.

The case of *Reyes v. Zaballero* is instructive. In said case, the creditor executed on December 1, 1944 a notarial document stating that he was releasing a real estate mortgage as the debtor had already paid his debt. On even date, the creditor subsequently executed an affidavit without the debtor's knowledge stating that he had accepted the payment under protest and "*obligado por las circunstancias actuales*." This Court held that the creditor's statement in his affidavit that he received the money "*obligado por las circunstancias actuale*s" is self-serving evidence.[82] (Emphasis in the original and supplied, citations omitted)

The rationale for this rule is to maintain public confidence in the integrity of notarized documents.[83]

In contrast, private documents must first be authenticated before they could be admitted in evidence. To establish their authenticity, the best proof available must be presented. In *Salas v. Sta. Mesa Market Corp*.,[84]

Whether a document is public or private is relevant in determining its admissibility as evidence. Public documents are admissible in evidence even without further proof of their due execution and genuineness. On the other hand, *private documents are inadmissible in evidence unless they are properly authenticated*. Section 20, Rule 132 of the Rules of Court provides:

> Section 20. *Proof of private documents*. Before any private document offered as authentic is received in evidence, its due execution and authenticity must be proved either:

---

[82] *Id*. at 558-560.

[83] *Id*. at 560.

[84] 554 Phil. 343, (2007) [Per *J*. Corona, First Division].

a. By anyone who saw the document executed or written; or

b. By evidence of the genuineness of the signature or handwriting of the maker.

Any other private document need only be identified as that which it is claimed to be.

. . . . . .

During authentication in court, *a witness positively testifies that a document presented as evidence is genuine and has been duly executed or that the document is neither spurious nor counterfeit nor executed by mistake or under duress*. In this case, petitioner merely presented a memorandum attesting to the increase in the corporation's monthly market revenue, prepared by a member of his management team. *While there is no fixed criterion as to what constitutes competent evidence to establish the authenticity of a private document, the best proof available must be presented*. The best proof available, in this instance, would have been the testimony of a representative of [Sta. Mesa Market Corp.]'s external auditor who prepared the audited financial statements. Inasmuch as there was none, the audited financial statements were never authenticated.[85] (Emphasis supplied, citations omitted)

However, authentication may not be necessary where the document's genuineness and due execution were admitted by the adverse party.

In *Chua v. Court of Appeals*:[86]

Our rule on evidence provides the procedure on how to present documentary evidence before the court, as follows: firstly, the document should be authenticated and proved in the manner provided in the rules of court; secondly, the document should be identified and marked for identification; and thirdly, it should be formally offered in evidence to the court and shown to the opposing party so that the latter may have an opportunity to object thereon.

---

[85] *Id*. at 348-350.

[86] *Chua v. Court of Appeals*, 283 Phil. 253 (1992) [Per *J*. Medialdea, First Division].

The authentication and proof of documents are provided in Sections 20 to 24 of Rule 132 of the Rules of Court. Only private documents require proof of their due execution and authenticity before they can be received in evidence. This may require the presentation and examination of witnesses to testify on this fact. When there is no proof as to the authenticity of the writer's signature appearing in a private document, such private document may be excluded. On the other hand, public or notarial documents, or those instruments duly acknowledged or proved and certified as provided by law, may be presented in evidence without further proof, the certificate of acknowledgment being *prima facie* evidence of the execution of the instrument or document involved. There is also no need for proof of execution and authenticity with respect to documents the genuineness and due execution of which are admitted by the adverse party. These admissions may be found in the pleadings of the parties or in the case of an actionable document which may arise from the failure of the adverse party to specifically deny under oath the genuineness and due execution of the document in his pleading.

After the authentication and proof of the due execution of the document, whenever proper, the marking for identification and the formal offer of such documents as evidence to the court follow.[87] (Citations omitted)

However, this rule presents a caveat m that the admission of the document's authenticity must be categorical:

Nevertheless, petitioner insists on the application of an exception to this rule: authentication is not necessary where the adverse party has admitted the genuineness and due execution of a document. The fact, however, was that nowhere in his testimony did Amado Domingo categorically admit the authenticity of the copies of the audited financial statements. He only testified that [Sta. Mesa Market Corp.] regularly submitted its audited financial statements to the BIR and SEC. There was never any admission that the documents presented by petitioner were true or faithful copies of those submitted to the BIR and the SEC.[88] (Citations omitted)

---

[87] *Id*. at 260.

[88] *Salas v. Sta. Mesa Market Corp.*, 554 Phil. 343, 350 (2007) [Per *J.* Corona, First Division].

In the case at bar, Delos Reyes' Acknowledgement is a private document. Thus, for Iris to rely on it, she must have first proven its genuineness and authenticity by presenting the best proof available. As such, she should have presented Delos Reyes to testify on its genuineness and due execution. However, Iris merely relied on Delos Reyes' Answer and Acknowledgement on their faces. Delos Reyes neither appeared in court to attest to the allegations of his Acknowledgement or to explain his Answer, nor presented as Iris' witness.[89]

Assuming that the statements in Delos Reyes' Answer are binding admissions, these admissions only pertain to the *existence* of his Acknowledgment. He neither categorically stated its genuineness and authenticity, nor admitted its allegations. Moreover, while he admitted the receipt of ₱424,000.00, he excluded from his admission that it was from the Metrobank checks stated in the Rodriguez Spouses' Complaint. Thus, the amount he received cannot be assumed to have been from the proceeds of his Checks or that it was payment made to him on behalf of YOHDC as these claims must still be proven.

Moreover, this Court notes that Delos Reyes never denied his notarized Affidavit's allegations even though his Acknowledgement's allegations are inconsistent with them.

Hence, this Court assumes that the Acknowledgement is in the nature of a retraction. This Court has consistently held that retractions are looked upon with disfavor because of its unreliable nature and the likely probability that it may again be repudiated.

Again, in *Rufina Patis Factory*:[90]

> Lastly, while it is evident that Alusitain's subsequent sworn statement is in the nature of a retraction of his May 22, 1991 Affidavit of Separation, such retraction does not necessarily negate the affidavit. *For retractions are generally unreliable and looked upon with considerable disfavor by the courts as they can easily be fabricated.*

---

[89] *Rollo*, p. 285.

[90] 478 Phil. 544 (2004) [Per *J*. Carpio-Morales, Third Division].

Thus, before accepting a retraction, it is necessary to examine the circumstances surrounding it and possible motives for reversing the previous declaration, as these motives may not necessarily be in consonance with the truth. To automatically adopt them hook, line and sinker would allow unscrupulous individuals to throw wide open the doors to fraud.

In the case at bar, Alusitain's retraction is highly suspect. Other than his bare and self-serving allegations and the sworn statement of his daughter which, as reflected above, cannot be relied upon, *he has not shown any scintilla of evidence* that he was employed with petitioner Rufina Patis Factory at the time R.A. 7641 took effect. He did not produce any documentary evidence such as pay slips, income tax return, his identification card, or any other independent evidence to substantiate his claim.

While the NLRC and its Labor Arbiters are not bound by technical rules of procedure and evidence in the adjudication of cases, this should not be construed as a license to disregard fundamental rules on evidence in proving one's allegations.[91] (Emphasis supplied, citations omitted)

The rationale for this ruling stems from retractions being easily obtained from witnesses through intimidation or monetary consideration. In *People v. Deauna*:[92]

The Separate Opinion of Mr. Justice Reynato S. Puno in *Alonte v. Savellano* explains the rationale for rejecting recantations in these words:

> "Mere retraction by a witness or by complainant of his or her testimony does not necessarily vitiate the original testimony or statement, if credible. The general rule is that courts look with disfavor upon retractions of testimonies previously given in court. . . . The reason is because affidavits of retraction can easily be secured from poor and ignorant witnesses, usually through intimidation or for monetary consideration. Moreover, there is always the probability that they will later be repudiated

---

[91] *Id*. at 561-562.

[92] G.R. Nos. 143200-01, August 1, 2002, 435 Phil. 141, 164-165 (2002) [Per *J*. Panganiban, Third Division].

> and there would never be an end to criminal litigation. It would also be a dangerous rule for courts to reject testimonies solemnly taken before courts of justice simply because the witnesses who had given them later on changed their minds for one reason or another. This would make solemn trials a mockery and place the investigation of the truth at the mercy of unscrupulous witnesses."

To be sure, recantations made by witnesses must be viewed with utmost caution and circumspection, because the motivations behind them may not necessarily be in consonance with the truth. Moreover, to automatically uphold them in any form would allow unscrupulous witnesses to trifle with the legal processes and make a mockery of established judicial proceedings, to the detriment of the entire justice system.[93] (Citation omitted)

Thus, retractions must not be believed right away. It is important to consider a witness' surrounding circumstances and motives for changing his or her stance. In *Philippine National Bank v. Gregorio*:[94]

> We concur with the NLRC's appreciation of the affidavits of retraction. We have often repeated that "[j]ust because one has executed an affidavit of retraction does not imply that what has been previously said is false or that the latter is true." The reliability of an affidavit of retraction is determined in the same manner that the reliability of any other documentary evidence is ascertained. In particular, it is *necessary to examine the circumstances surrounding it*. In the case of Villar's affidavit of retraction, we note that this has never been identified and authenticated. Thus, its weight as evidence is highly suspect. As to Rebollo's alleged affidavit of retraction, a reading of its contents, as correctly pointed out by the NLRC, reveals that Rebollo in fact affirmed Gregorio's participation in the lending activities within PNB Sucat when she said in this affidavit that Gregorio introduced

---

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

[94] *Philippine National Bank v. Gregorio*, G.R. No. 194944, September 18, 2017, <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2017/september2017/194944.pdf > [Per *J*. Jardeleza, First Division]. http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2017/september2017/194944.pdf

her to a certain Realina Ty who became her borrower.[95] (Emphasis supplied, citation omitted)

There must be a comparison of the two (2) testimonies and the general rules of evidence must still be applied:

2. Where a witness testifies for the prosecution and retracts his or her testimony and subsequently testifies for the defense, the test in determining which testimony to believe is one of comparison coupled with the application of the general rules of evidence, as enunciated in *People v. Ubina*, where the Court said:

> The testimony of Ruben Francisco for the prosecution is claimed to be unworthy of credit because later on he testified for the defense, declaring that all he had stated against the defendants is not true ...
>
> The theory of the defense that Francisco's previous testimony is false, as he subsequently declared it to be so, is as illogical as it is dangerous. Merely because a witness says that what he had declared is false and that what he now says is true, is not sufficient ground for concluding that the previous testimony is false. No such reasoning has ever crystallized into a rule of credibility. The rule is that a witness may be impeached by a previous contradictory statement (Rule 123, section 91); not that a previous testimony is presumed to be false merely because a witness now says that the same is not true. The jurisprudence of this Court has always been otherwise, i.e. that contradictory testimony given subsequently does not necessarily discredit the previous testimony if the contradictions are satisfactorily explained. We have also held that if a previous confession of an accused were to be rejected simply because the latter subsequently makes another confession, all that an accused would do to acquit himself would be to make another confession out of harmony with the previous one. Similarly, it would be a dangerous rule for courts to reject testimonies solemnly taken before courts of justice simply because the witnesses who had given them later on change their mind for one reason or another, for such rule would make solemn trials a mockery and place the investigation of truth at the mercy of unscrupulous witnesses.

---

[95] *Id*. at 14.

> If Francisco says that when he testified for the prosecution he was paid ₱700, what can prevent the court from presuming that subsequently he testified for the defense because the defendants also paid him to testify for them? The rule should be that a testimony solemnly given in court should not be lightly set aside and that before this can be done, both the previous testimony and the subsequent one be carefully compared, the circumstances under which each given carefully scrutinized, the reasons or motives for the change carefully scrutinized — in other words, all the expedients devised by man to determine the credibility of witnesses should be utilized to determine which of the contradictory testimonies represents the truth.[96] (Citations omitted)

In the case at bar, considering the evidence presented by the parties, this Court hesitates to accord Delos Reyes' retraction any weight or credibility.

This Court is not bound by Delos Reyes' alleged admission in his Answer. In *Atillo III v. Court of Appeals*:[97]

> Granting *arguendo* that LHUILLIER had in fact made the alleged admission of personal liability in his Answer, We hold that such admission is not conclusive upon him. Applicable by analogy is our ruling in the case of *Gardner vs. Court of Appeals* which allowed a party's testimony in open court to override admissions he made in his answer. Thus:
>
> "The fact, however, that the allegations made by Ariosto Santos in his pleadings and in his declarations in open court differed will not militate against the findings herein made nor support the reversal by respondent court. As a general rule, facts alleged in a party's pleading are deemed admissions of that party and are binding upon it, *but this is not an absolute and inflexible rule. An answer is a mere statement of fact which the party filing it expects to prove, but it is not evidence*. As ARIOSTO SANTOS himself, in open court, had repudiated the defenses he had raised in his

---

[96] *Reano v. Court of Appeals,* 247-A Phil. 605, 609-610 (1988) [Per *J.* Cortes, Third Division].

[97] *Atillo III v. Court of Appeals*, G.R. No. 119053 (Resolution), January 23, 1997, 334 Phil. 546, 554 (1997) [Per *J.* Francisco, Third Division].

> ANSWER and against his own interest, his testimony is deserving of weight and credence. Both the Trial Court and the Appellate Court believed in his credibility and we find no reason to overturn their factual findings thereon."

Prescinding from the foregoing, it is clear that in spite of the presence of judicial admissions in a party's pleading, the trial court is still given leeway to consider other evidence presented. This rule should apply with more reason when the parties had agreed to submit an issue for resolution of the trial court on the basis of the evidence presented....[98] (Emphasis in the original, citation omitted)

In *L.C. Ordonez Construction v. Nicdao*,[99] this Court lent credence to respondent Imelda Nicdao's notarized affidavit although it contained allegations inconsistent with those in her complaint and position paper.

To support their argument, petitioners point out that Nicdao's claim as to the date of her employment should not be believed as she has lost her credibility when she made inconsistent statements regarding the date of her employment as stated in her Affidavit dated January 21, 1994 stating that she was employed in August 1991, as opposed to the date of employment stated as June 1985 in her complaint and position paper.

On this point, the Court rules in favor of petitioner. Indeed, even if petitioners were not able to present any employment records, respondent Nicdao's Affidavit dated January 21, 1994 submitted to the Labor Arbiter in support of her complaint for illegal dismissal militates against her for it stated that "I am a regular employee of respondent Ordonez, having been employed on [sic] August 1991, ..."

. . . . . .

The burden of proof rests upon respondent Nicdao since she is the party claiming entitlement to separation pay and other employee benefits computed from 1985. However, Nicdao herself made an admission against her own interest by stating in her affidavit that she was employed only in August 1991. Nicdao *did not even present*

---

[98] *Id*. at 554.

[99] 528 Phil. 1124 (2006) [Per *J*. Austria-Martinez, First Division].

any explanation for the variance between the date of employment stated in her affidavit as against the date stated in her complaint and position paper. *Nor has she presented any other evidence to overturn the statement in her own affidavit* that she was employed only in August 1991. Having made such an admission against her interest, Nicdao's statement in her affidavit freed petitioners from the burden of presenting evidence, *i.e.*, the employment records, to prove their assertion in their position paper that they only employed Nicdao in May 1989.[100] (Emphasis supplied, citations omitted)

In the case at bar, assuming Delos Reyes' Acknowledgement is genuine, he provided no satisfactory explanation for his contradictory statements in his Affidavit. He did not appear in court to clarify the matter or elucidate any circumstance that could explain what happened between the executions of these two (2) documents.

The only logical explanation that could reconcile the two (2) documents is if this Court assumes that the Rodriguez Spouses paid Delos Reyes the amount of ₱424,000.00 sometime after he executed his Affidavit. However, if this is the case, that payment on behalf of YOHDC is not authorized since the Rodriguez Spouses did not represent YOHDC in any manner. Moreover, it can be assumed that Tarcisius' authority to represent YOHDC had been impliedly revoked considering the incidents on Delos Reyes' and Rosillas' Checks.

Thus, if Delos Reyes was paid by the Rodriguez Spouses on behalf of YOHDC, this payment is unauthorized. Iris' cause of action is with Delos Reyes, and not with YOHDC.

III

It cannot be said that YOHDC was unjustly enriched to make it liable to petitioner.

Article 22 of the Civil Code of the Philippines states:

Every person who through an act of performance by another, or any other means, acquires or comes into possession of something at

---

[100] *Id.* at 1132-1134.

the expense of the latter without just or legal ground, shall return the same to him.

This provision addresses unjust enrichment. It is the State's public policy to prevent a person from unjustly retaining a benefit, money, or property, at the expense of another, or against the fundamental principles of justice, equity, and good conscience.[101]

Unjust enrichment has two (2) elements: a person benefited without a real or valid basis or justification, and the benefit was at another person's expense or damage. In *Loria v. Muñoz, Jr.*:[102]

> In this jurisdiction, public policy has been defined as "that principle of the law which holds that no subject or citizen can lawfully do that which has a tendency to be injurious to the public or against the public good."
>
> Unjust enrichment exists, according to *Hulst v. PR Builders, Inc.*, "when a person unjustly retains a benefit at 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 prevention of unjust enrichment is a recognized public policy of the State, for Article 22 of the Civil Code explicitly provides that "[e]very 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." It is well to note that Article 22 "is part of the chapter of the Civil Code on Human Relations, the provisions of which were formulated as basic principles to be observed for the rightful relationship between human beings and for the stability of the social order; designed to indicate certain norms that spring from the fountain of good conscience; guides for human conduct that should run as golden threads through society to the end that law may approach its

---

[101] *Loria v. Muñoz, Jr.*, 745 Phil. 506, 517 (2014) [Per *J.* Leonen, Second Division].

[102] 745 Phil. 506 (2014) [Per *J.* Leonen, Second Division].

supreme ideal which is the sway and dominance of justice."[103] (Citation omitted)

In the case at bar, it is argued that YOHDC unjustly retained benefit at the expense of the Rodriguez Spouses when the amounts of Delos Reyes' Checks were reimbursed to it.[104]

This Court finds that it did not.

First, Metrobank rightfully returned to YOHDC the amounts in Delos Reyes' and Rosillas' Checks.

Considering that Metrobank is the drawee bank, it is obligated to return the full amounts of the checks upon discovering that they were not paid to the correct payees. In *Associated Bank v. Court of Appeals*:[105]

> Where the instrument is payable to order at the time of the forgery, such as the checks in this case, the signature of its rightful holder (here, the payee hospital) is essential to transfer title to the same instrument. When the holder's indorsement is forged, all parties prior to the forgery may raise the real defense of forgery against all parties subsequent thereto.
>
> An indorser of an order instrument warrants "that the instrument is genuine and in all respects what it purports to be; that he has a good title to it; that all prior parties had capacity to contract; and that the instrument is at the time of his indorsement valid and subsisting." He cannot interpose the defense that signatures prior to him are forged.
>
> A collecting bank where a check is deposited and which indorses the check upon presentment with the drawee bank, is such an indorser. So even if the indorsement on the check deposited by the banks' client is forged, the collecting bank is bound by his warranties as an indorser and cannot set up the defense of forgery as against the drawee bank.

---

[103] *Id*. at 521.

[104] *Rollo*, pp. 151-152.

[105] *Associated Bank v. Court of Appeals*, 322 Phil. 677 (1996) [Per *J*. Romero, Second Division].

The bank on which a check is drawn, known as the drawee bank, is under strict liability to pay the check to the order of the payee. The drawer's instructions are reflected on the face and by the terms of the check. *Payment under a forged indorsement is not to the drawer's order. When the drawee bank pays a person other than the payee, it does not comply with the terms of the check and violates its duty to charge its customer's (the drawer) account only for properly payable items. Since the drawee bank did not pay a holder or other person entitled to receive payment, it has no right to reimbursement from the drawer. The general rule then is that the drawee bank may not debit the drawer's account and is not entitled to indemnification from the drawer. The risk of loss must perforce fall on the drawee bank*.

. . . . . .

In cases involving checks with forged indorsements, such as the present petition, the chain of liability does not end with the drawee bank. The drawee bank may not debit the account of the drawer but may generally pass liability back through the collection chain to the party who took from the forger and, of course, to the forger himself, if available. In other words, *the drawee bank can seek reimbursement or a return of the amount it paid from the presentor bank or person. Theoretically, the latter can demand reimbursement from the person who indorsed the check to it and so on. The loss falls on the party who took the check from the forger, or on the forger himself.*[106] (Emphasis supplied, citations omitted)

Thus, the return of the amounts to YOHDC was rightful and justified.

Likewise, it cannot be said that the amounts returned were at the expense of Iris, considering that the amounts were not meant for the Rodriguez Spouses but for Delos Reyes and Rosillas.

Furthermore, Iris has not proven that Delos Reyes released YOHDC from the payment of its obligation to him. Hence, this Court cannot assume that YOHDC is no longer obligated

---

[106] *Id*. at 696-698.

to pay Delos Reyes for his services on the premise that the Rodriguez Spouses paid him a particular amount.

For Iris to claim any right to the amounts returned to YOHDC, she must prove her claim with the required quantum of evidence. As established, considering there was a previous duly notarized affidavit stating that Delos Reyes did not receive any proceeds from his Checks, it was incumbent upon Iris to prove by clear and convincing evidence that he indeed had been paid and that he had released YOHDC from paying him its obligation. However, Iris failed in this respect; thus, she cannot claim any reimbursement for the returned amount.

WHEREFORE, the Petition for Review on Certiorari is **DENIED**. The Court of Appeals July 18, 2011 Decision and November 23, 2011 Resolution in CA-G.R. CV No. 90297 are **AFFIRMED**.

SO ORDERED.

Leonardo-de Castro (Chairperson), *Bersamin, Reyes, Jr.*, and *Gesmundo, JJ.*, concur.

THIRD DIVISION

[G.R. No. 200444. August 15, 2018]

SUPREME TRANSPORTATION LINER, INC. and FELIX Q. RUZ, *petitioners, vs.* **ANTONIO SAN ANDRES,** *respondent.*

SYLLABUS

1. CIVIL LAW; CIVIL CODE; OBLIGATIONS AND CONTRACTS; EXTRA-CONTRACTUAL OBLIGATIONS;

***QUASI DELICTS*; WHEN THE OMISSION GIVES RISE NOT ONLY TO OBLIGATION *EX DELICTO* BUT ALSO TO OBLIGATION BASED ON *CULPA AQUILIANA*, BOTH OBLIGATIONS BEING RESTED ON THE COMMON ELEMENT OF NEGLIGENCE, THE INJURED PARTY IS ALLOWED TO PROSECUTE BOTH CRIMINAL AND CIVIL ACTIONS SIMULTANEOUSLY.—** We only need to look at the facts alleged in the petitioners' counterclaim to determine the correct nature of their cause of action. The purpose of an action or suit and the law to govern the suit are to be determined not by the claim of the party filing the action, made in his argument or brief, but rather by the complaint itself, its allegations and prayer for relief. x x x [T]he petitioners' cause of action was upon a quasi-delict. As such, their counterclaim against the respondent was based on Article 2184, in relation to Article 2180 and Article 2176, all of the *Civil Code*. x x x [T]he omission of the driver in violation of Article 365 of the *Revised Penal Code* could give rise not only to the obligation *ex delicto,* but also to the obligation based on *culpa aquiliana* under Article 2176 of the *Civil Code*. Under the factual antecedents herein, both obligations rested on the common element of negligence. Article 2177 of the *Civil Code* and Section 3, Rule 111 of the *Rules of Court* allow the injured party to prosecute both criminal and civil actions simultaneously. x x x The foregoing notwithstanding, the petitioners as the injured parties have to choose the remedy by which to enforce their claim in the event of favorable decisions in both actions. This is because Article 2177 of the *Civil Code* bars them from recovering damages twice upon the same act or omission.

2. **ID.; ID.; ID.; ID.; ID.; DOUBLE RECOVERY OF DAMAGES ARISING FROM THE SAME ACT OR OMISSION IS PROHIBITED.—** [W]e are constrained not to award outright the damages prayed for by the petitioners in their counterclaim. Article 2177 of the *Civil Code* and the present version of Section 3, Rule 111 of the *Rules of Court*, which is the applicable rule of procedure, expressly prohibit double recovery of damages arising from the same act or omission. The petitioners' allegation that they had not yet recovered damages from the respondent was not controlling considering that the criminal case against the respondent's driver had already been concluded. It remains for the petitioners to still demonstrate that the RTC as the trial court did not award civil damages in the criminal case.

APPEARANCES OF COUNSEL

Natalio T. Paril, Jr. for petitioners.

The Law Office of Rodolfo B. Bonafe, Jr. and Associates for respondent.

D E C I S I O N

BERSAMIN, *J.*:

The requirement for the reservation of the civil action does not anymore apply to the independent civil actions under Articles 32, 33, 34 and 2176 of the *Civil Code*. Such actions may be filed at anytime, provided the plaintiff does not recover twice upon the same act or omission.

The Case

Petitioners Supreme Transportation Liner Inc. and Felix Q. Ruz hereby assail the decision promulgated on January 27, 2011,[1] whereby the Court of Appeals (CA) affirmed the judgment rendered in Civil Case No. T- 2240 on November 24, 2008 by the Regional Trial Court in Tabaco City dismissing their counterclaim on the ground that to allow their counterclaim was tantamount to double recovery of damages, considering that the same was not prosecuted in the criminal action against the respondent's driver.[2]

Antecedents

The relevant factual background was summarized by the CA thusly:

---

[1] *Rollo*, pp. 23-34; penned by Associate Justice Marlene Gonzales-Sison, and concurred in by Associate Justice Noel G. Tijam (now a Member of the Court) and Associate Justice Danton Q. Bueser.

[2] *Id.* at 47-64; penned by Judge Arnulfo B. Cabredo.

On November 5, 2002, at around 5:00 in the morning, Ernesto Belchez was driving a passenger bus, Mabel Tours Bus with body number 1896-C and plate Number TB EBJ (old)/TB EVL-648 (new), owned by [respondent] Antonio San Andres, along Maharlika Highway in Barangay Malabanban Norte, Candelaria, Quezon, going towards the direction of Manila. While traversing Maharlika Highway, the Mabel Tours Bus sideswiped a Toyota Revo it was overtaking. The Mabel Tours Bus immediately swerved to the left lane but in the process, it hit head-on the Supreme Bus owned and registered in the name of [petitioner] Supreme Bus Transportation Line, Inc., and driven by [petitioner] Felix G. Ruz, that was negotiating in the opposite lane. Because of the strong impact of the incident, the Supreme Bus was pushed to the side of the road and the Mabel Tour Bus continuously moved until it hit a passenger jeepney that was parked on the side of the road which later on fell on the canal. Nobody died but all the vehicles were damaged.

Investigation of the incident and photographs of the damaged buses as well as the other two (2) vehicles were conducted and undertaken by SPO1 Rafael Ausa of Candelaria, Municipal Police Station.

[Respondent] then brought the Mabel Tours Bus to the RMB Assembler and Body Builder to have it repaired. The cost of repair was estimated in the amount of One Hundred Forty Four Thousand and Five Hundred Pesos (Php144,500.00).

On December 12, 2002, a complaint for damages before the Court a quo was instituted by [respondent] Antonio San Andres against [petitioners] alleging actual damage to Mabel Tours Bus and unrealized profits for the non-use of the Mabel Tours Bus at the time it underwent repairs in the amount of ₱144,500.00 and ₱150,000.00, respectively. Claims for attorney's fees of ₱30,000.00, appearance fee of ₱1,000.00, litigation expenses of ₱20,000.00 and cost of the suit were also lodged in the complaint.

x x x x x x x x x

Subsequently, [petitioners] filed their Answer with Counterclaim. They alleged among others that plaintiff has no cause of action against them; the proximate cause of the vehicular accident is the reckless imprudence of the [respondent's] driver, Ernesto Belchez operated the Mabel Tours Bus recklessly and in violation of traffic laws and regulations in negotiating the overtaking of another vehicle without regard to the rightful vehicle occupying the right lane coming from

the opposite direction resulting to head on collision on the lane of defendant Supreme Bus and, at the time of the accident, [respondent] operated the Mabel Tours Bus outside his franchise and without a registered plate.

By way of counterclaim, [petitioner] Supreme Transportation Liner, Inc. alleged that it suffered damages in the aggregate amount of ₱500,000.00 and another ₱100,000.00 for the medical expenses of its employees and passengers. The unwarranted filing of the case forced them to secure the services of a counsel for ₱50,000.00 plus appearance fee of ₱5,000.00 and litigation expenses in the amount of ₱3,000.00 including traveling expenses.

x x x x x x x x x

After all the issues have been joined, the case was set for pre-trial conference wherein the parties, in an effort to amicably settle the case, referred the case to conciliation. The parties, however, failed to hammer out an amicable settlement. Hence, trial on the merits ensued.

[The parties] presented oral and documentary evidence to support their claims and contentions. [Respondent] presented himself and Ernesto Belchez who later became a hostile witness. On the part of [petitioner and Ruz], Felix Ruz, SPO1 Rafael B. Ausa and Assistant for Operations of [petitioner] Supreme Transportation Liner, Inc., Jessi Alvarez, were presented.

In the course of trial, Jessi Alvarez stated that he filed a criminal complaint for reckless imprudence resulting to damage to property against Ernesto Belchez before the Court in Candelaria, Quezon. The case is now terminated and the accused was convicted because of his admission of the crime charged. In the said criminal complaint, he did not reserve their civil claim or asked (sic) the fiscal to reserve it, which, if itemized, would also be the amount of their counterclaim in the present civil action filed by [respondent]. He added that they did not receive any compensation for the civil aspect of the criminal case, and although the Supreme Bus was covered by insurance, they did not claim for any reimbursement in connection with the subject incident.[3]

---

[3] *Supra* note 1, at 24-26.

Judgment of the RTC

On November 24, 2008, the RTC rendered judgment dismissing the respondent's complaint as well as the petitioners' counterclaim,[4] decreeing:

> From the foregoing, the instant complaint for damages filed by the plaintiff is hereby dismissed for having failed to prove liability on the part of the defendant. The counterclaim that was filed by the defendants hereof is also dismissed for failure to adhere to procedural requirements.
>
> SO ORDERED.[5]

The RTC opined that the respondent was not able to prove the petitioners' liability;[6] and that the petitioners' counterclaim should also be dismissed pursuant to Section 1, Rule 111 of the *Rules of Court*,[7] whose pertinent portions the RTC quoted in its judgment as follows:

> Section 1. *Institution of criminal and civil actions.* – When a criminal action is instituted, the civil action for the recovery of civil liability is impliedly instituted with the criminal action, unless the offended party waives the civil action, reserves his right to institute it separately, or institute the civil action prior to the criminal action.
>
> Such civil action includes recovery of indemnity under the Revised Penal Code, and damages under Article 32, 33, 34 and 2176 of the Civil Code of the Philippines arising from the same act or omission of the accused.
>
> x x x x x x x x x
>
> The reservation of the right to institute the separate civil actions shall be made before the prosecution starts to present its evidence and under circumstances affording the offended party a reasonable opportunity to make such reservation.[8]

---

[4] *Supra* note 2.

[5] *Id.* at 64.

[6] *Id.* at 59.

[7] *Id.* at 63.

[8] *Id.*

The RTC indicated that the petitioners' failure to reserve the right to institute a separate civil action precluded their right to recover damages from the respondent through their counterclaim.[9]

Aggrieved, the petitioners appealed, submitting that:

I.

THE TRIAL COURT ERRED IN NOT GRANTING THE COUNTERCLAIM

II.

THE TRIAL COURT ERRED IN DENYING THE COUNTERCLAIM BECAUSE NO RESERVATION WAS MADE IN CRIMINAL CASE NO. 02-253 FILED AGAINST PLAINTIFF-APPELLEE'S DRIVER ERNESTO BELCHEZ.[10]

Decision of the CA

In the assailed decision promulgated on January 27, 2011,[11] the CA dismissed the petitioners' appeal, stating that the RTC had correctly ruled that the counterclaim could not prosper because their recourse was limited to the enforcement of the respondent's subsidiary liability under Article 103 of the *Revised Penal Code*;[12] that "to allow the counterclaim of [petitioners] is tantamount to double recovery of damages, a prohibition under Article 2177 of the New Civil Code and Sec. 3, Rule 111 of the Rules;"[13]and that their failure to reserve the separate civil action meant that their right to recover under Article 2176 of the *Civil Code* was deemed instituted with the criminal action.[14]

---

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

[10] *Rollo*, p. 27.

[11] *Supra* note 1.

[12] *Id*. at 31.

[13] *Id*.

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

The CA denied the petitioners' motion for reconsideration through the resolution promulgated on January 26, 2012.[15]

Hence, this appeal.

Issue

The Court is called upon to decide whether or not the petitioners' counterclaim was correctly denied by the RTC.

Ruling of the Court

The appeal is meritorious.

The petitioners' counterclaim is allowed and should not have been dismissed by the RTC and the CA despite their failure to reserve the right to file a separate civil action in the criminal case they had brought against respondent's driver. However, whether or not they could recover damages upon their counterclaim presents a different story, as they should first show that they will not recover damages twice for the same incident.

1.
Petitioners' counterclaim, being in the nature of an independent civil action, required no prior reservation

As we see it, the CA concluded that the petitioners' cause of action should be limited to the recovery of civil liability *ex delicto* by virtue of their having initiated against the respondent's driver the criminal complaint for criminal negligence under Article 365 of the *Revised Penal Code*. The CA was seemingly of the opinion that the petitioners' recourse against the respondent was limited to recovering from him, as the driver's employer, his subsidiary liability under and pursuant to Article 103[16] of

---

[15] *Id.* at 36-37.

[16] Article 103. *Subsidiary civil liability of other persons.* — The subsidiary liability established in the next preceding article shall also apply to employers, teachers, persons, and corporations engaged in any kind of industry for felonies committed by their servants, pupils, workmen, apprentices, or employees in the discharge of their duties.

the *Revised Penal Code*. Moreover, the CA pointed out that the petitioners' failure to reserve the civil aspect of the criminal case proscribed them from instituting a separate civil action based on Article 2176 of the *Civil Code*, to wit:

> Corollary, appellants should have reserved the civil aspect of the criminal case they have filed. Without so doing, they were deemed to have elected to recover damages from the bus driver on the basis of the crime. Therefore, the right of appellants to institute a separate civil case to recover liability from appellee based under Article 2176 of the Civil Code is deemed instituted with the criminal action. Evidently, appellant's cause of action against appellee will be limited to the recovery of the latter's subsidiary liability under Art. 103 of the Revised Penal Code. x x x[17]

The CA thereby erred. It incorrectly appreciated the nature of the petitioners' cause of action as presented in their counterclaim.

We only need to look at the facts alleged in the petitioners' counterclaim to determine the correct nature of their cause of action.[18] The purpose of an action or suit and the law to govern the suit are to be determined not by the claim of the party filing the action, made in his argument or brief, but rather by the complaint itself, its allegations and prayer for relief.[19]

The counterclaim relevantly reads:

x x x x x x x x x

> 5. That the proximate cause of the subject vehicular accident is the reckless imprudence of the plaintiff"s driver, one ERNESTO BELCHEZ, by operating said Mabel Tours bus recklessly and in violation of traffic laws and regulations in negotiating the overtaking of another vehicle without regards (sic) to the rightful vehicle

---

[17] *Supra* note 1, at 31.

[18] *Dulay v. Court of Appeals*, G.R. No. 108017, April 3, 1995, 243 SCRA 220, 227.

[19] *Cancio, Jr. v. Isip*, G.R. No. 133978, November 12, 2002, 391 SCRA 393, 401.

occupying the right lane coming from the opposite direction resulting to head on collission (sic) on the lane of defendant's SUPREME bus;

6. That at the time of the accident, plaintiff operated the subject Mabel Tour bus outside his franchise, hence, in violation of his franchise and allied rules and regulations; operated the same without registered plate and using the route of another franchise holder; and

COUNTERCLAIM

7. Defendants replead the precedings (sic) paragraphs as they may be relevant;

8. That as a result of plaintiff's violation of his franchise and gross negligence of his driver, the defendant's SUPREME bus suffered damage in the aggregate amount of ₱500,000.00; medical expenses for its employee and passengers in the amount of ₱100,000.00;[20]

x x x x x x x x x

Contrary to the conclusion thereon by the CA, the petitioners' cause of action was upon a quasi-delict. As such, their counterclaim against the respondent was based on Article 2184,[21] in relation to Article 2180[22]

---

[20] *Rollo*, pp. 45-46.

[21] Article 2184. In motor vehicle mishaps, the owner is solidarity liable with his driver, if the former, who was in the vehicle, could have, by the use of the due diligence, prevented the misfortune. It is disputably presumed that a driver was negligent, if he had been found guilty of reckless driving or violating traffic regulations at least twice within the next preceding two months.

If the owner was not in the motor vehicle, the provisions of Article 2180 are applicable. (n)

[22] Article 2180. The obligation imposed by Article 2176 is demandable not only for one's own acts or omissions, but also for those of persons for whom one is responsible.

The father and, in case of his death or incapacity, the mother, are responsible for the damages caused by the minor children who live in their company.

Guardians are liable for damages caused by the minors or incapacitated persons who are under their authority and live in their company.

The owners and managers of an establishment or enterprise are likewise responsible for damages caused by their employees in the service of the branches in which the latter are employed or on the occasion of their functions.

and Article 2176,[23] all of the *Civil Code*. It is relevant to state that even the RTC itself acknowledged that the counterclaim was upon a quasi-delict, as its ratiocination bears out, to wit:

The question is whether despite the absence of such reservation, private respondent may nonetheless bring an action for damages against the plaintiff under the pertinent provisions of the Civil Code, to wit:

Art. 2176. Whoever by act or omission causes damage to another, there being fault or negligence, is obliged to pay for the damage done. Such fault or negligence, if there is no pre-existing contractual relation between the parties, is called a quasi-delict and is governed by the provisions of this Chapter.

Art. 2180. The obligation imposed by Article 2176 is demandable not only for one's own acts or omissions, but also for those of persons for whom one is responsible.

x x x x x x x x x

Employers shall be liable for the damages caused by their employees and household helpers acting within the scope of their assigned task, even though the former are not engaged in any business or industry.

Art. 2177 states that responsibility for fault or negligence under the above-quoted provisions is entirely separate and distinct from the civil liability arising from negligence under the Revised Penal Code.

However, Rule 111 of the Revised Rules of Criminal Procedure, while reiterating that a civil action under the above quoted provisions of the New Civil Code may be brought separately from the criminal action, provides that the right to bring it must be reserved.[24]

Employers shall be liable for the damages caused by their employees and household helpers acting within the scope of their assigned tasks, even though the former are not engaged in any business or industry.

The State is responsible in like manner when it acts through a special agent; but not when the damage has been caused by the official to whom the task done properly pertains, in which case what is provided in Article 2176 shall be applicable.

[23] Article 2176. Whoever by act or omission causes damage to another, there being fault or negligence, is obliged to pay for the damage done. Such fault or negligence, if there is no pre-existing contractual relation between the parties, is called a quasi-delict and is governed by the provisions of this Chapter. (1902a)

[24] *Rollo*, pp. 62-63.

Yet, the RTC likewise erred on its outcome because its ratiocination was founded on the obsolete version of the *Rules of Court*. By the time when the RTC rendered judgment on November 24, 2008, the *revised* relevant rule of procedure had already been promulgated and taken effect,[25] and it had specifically deleted the erstwhile reservation requirement vis-a-vis the independent civil actions, as follows:

> Section 1. *Institution of Criminal and Civil Actions*. — (a) When a criminal action is instituted, the civil action for the recovery of civil liability arising from the offense charged shall be deemed instituted with the criminal action unless the offended party waives the civil action, reserves the right to institute it separately or institutes the civil action prior to the criminal action.
>
> The reservation of the right to institute separately the civil action shall be made before the prosecution starts presenting its evidence and under circumstances affording the offended party a reasonable opportunity to make such reservation.
>
> When the offended party seeks to enforce civil liability against the accused by way of moral, nominal, temperate, or exemplary damages without specifying the amount thereof in the complaint or information, the filing fees therefor shall constitute a first lien on the judgment awarding such damages.
>
> Where the amount of damages, other than actual, is specified in the complaint or information, the corresponding filing fees shall be paid by the offended party upon the filing thereof in court.
>
> Except as otherwise provided in these Rules, no filing fees shall be required for actual damages.
>
> No counterclaim, cross-claim or third-party complaint may be filed by the accused in the criminal case, but any cause of action which could have been the subject thereof may be litigated in a separate civil action. (1a)
>
> (b) The criminal action for violation of Batas Pambansa Blg. 22 shall be deemed to include the corresponding civil action. No reservation to file such civil action separately shall be allowed.

---

[25] Effective December 1, 2000, A.M. No. 00-5-03-SC.

Upon filing of the aforesaid joint criminal and civil actions, the offended party shall pay in full the filing fees based on the amount of the check involved, which shall be considered as the actual damages claimed. Where the complaint or information also seeks to recover liquidated, moral, nominal, temperate or exemplary damages, the offended party shall pay additional filing fees based on the amounts alleged therein. If the amounts are not so alleged but any of these damages are subsequently awarded by the court, the filing fees based on the amount awarded shall constitute a first lien on the judgment.

Where the civil action has been filed separately and trial thereof has not yet commenced, it may be consolidated with the criminal action upon application with the court trying the latter case. If the application is granted, the trial of both actions shall proceed in accordance with section 2 of this Rule governing consolidation of the civil and criminal actions.

The error committed by the CA emanated from its failure to take into consideration that the omission of the driver in violation of Article 365 of the *Revised Penal Code* could give rise not only to the obligation *ex delicto*,[26] but also to the obligation based on *culpa aquiliana* under Article 2176 of the Civil Code. Under the factual antecedents herein, both obligations rested on the common element of negligence. Article 2177[27] of the *Civil Code* and Section 3,[28] Rule 111 of the *Rules of Court* allow the injured party to prosecute both criminal and civil actions simultaneously. As clarified in *Casupanan v. Laroya*:[29]

---

[26] Article 100. *Civil Liability of Person Guilty of Felony*.— Every person criminally liable for a felony is also civilly liable.

[27] Article 2177. Responsibility for fault or negligence under the preceding article [2176] is entirely separate and distinct from the civil liability arising from negligence under the Penal Code. But the plaintiff cannot recover damages twice for the same act or omission of the defendant. (n)

[28] Section 3. *When Civil Action May Proceed Independently*.— In the cases provided in Articles 32, 33, 34 and 2176 of the Civil Code of the Philippines, the independent civil action may be brought by the offended party. It shall proceed independently of the criminal action and shall require only a preponderance of evidence. In no case, however, may the offended party recover damages twice for the same act or omission charged in the criminal action. (3a)

[29] G.R. No. 145391, August 26, 2002, 388 SCRA 28, 37.

Under Section 1 of the present Rule 111, what is "deemed instituted" with the criminal action is only the action to recover civil liability arising from the crime or *ex-delicto*. **All the other civil actions under Articles 32, 33, 34 and 2176 of the Civil Code are no longer "deemed instituted," and may be filed separately and prosecuted independently even without any reservation in the criminal action. The failure to make a reservation in the criminal action is not a waiver of the right to file a separate and independent civil action based on these articles of the Civil Code.** The prescriptive period on the civil actions based on these articles of the Civil Code continues to run even with the filing of the criminal action. Verily, the civil actions based on these articles of the Civil Code are separate, distinct and independent of the civil action "deemed instituted" in the criminal action. (Bold emphasis supplied)

The foregoing notwithstanding, the petitioners as the injured parties have to choose the remedy by which to enforce their claim in the event of favorable decisions in both actions. This is because Article 2177 of the *Civil Code* bars them from recovering damages twice upon the same act or omission. As ruled in *Safeguard Security Agency, Inc. v. Tangco*:[30]

An act or omission causing damage to another may give rise to two separate civil liabilities on the part of the offender, *i.e.*, (1) civil liability *ex delicto*, under Article 100 of the Revised Penal Code; and (2) independent civil liabilities, such as those (a) not arising from an act or omission complained of as a felony, *e.g., culpa* contractual or obligations arising from law under Article 31 of the Civil Code, intentional torts under Articles 32 and 34, and *culpa aquiliana* under Article 2176 of the *Civil Code*; or (b) where the injured party is granted a right to file an action independent and distinct from the criminal action under Article 33 of the Civil Code. Either of these liabilities may be enforced against the offender subject to the caveat under Article 2177 of the Civil Code that the offended party cannot recover damages twice for the same act or omission or under both causes.

As can be seen, the latest iteration of Rule 111, unlike the predecessor, no longer includes the independent civil actions

---

[30] G.R. No. 165732, December 14, 2006, 511 SCRA 67, 78.

under Articles 32, 33, 34, and 2176 of the *Civil Code* as requiring prior reservation to be made in a previously instituted criminal action. Had it been cautious and circumspect, the RTC could have avoided the error.

2.
Petitioners should first show that they would not recover damages twice from the same act or omission.

Nonetheless, we are constrained not to award outright the damages prayed for by the petitioners in their counterclaim.

Article 2177 of the *Civil Code* and the present version of Section 3, Rule 111 of the *Rules of Court*, which is the applicable rule of procedure, expressly prohibit double recovery of damages arising from the same act or omission. The petitioners' allegation that they had not yet recovered damages from the respondent was not controlling considering that the criminal case against the respondent's driver had already been concluded. It remains for the petitioners to still demonstrate that the RTC as the trial court did not award civil damages in the criminal case. Consequently, Civil Case No. T-2240 should be remanded to the RTC for further proceedings, if only to afford to the petitioners the opportunity to present evidence on their counterclaim subject to the prohibition against double recovery of damages.

WHEREFORE, the Court **GRANTS** the appeal; **REVERSES** and **SETS ASIDE** the decision promulgated on January 27, 2011; and **REMANDS** Civil Case No. T-2240 to the Regional Trial Court in Tabaco City for further proceedings to allow the petitioners to present evidence on their counterclaim, subject to the foregoing clarifications.

No pronouncement on costs of suit.

SO ORDERED.

Leonardo-de Castro (Chairperson), *Leonen, A. Reyes, Jr.*, and *Gesmundo, JJ.*, concur.

SECOND DIVISION

[G.R. No. 210435. August 15, 2018]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **SONNY RAMOS *y* BUENAFLOR,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; REVISED PENAL CODE; RAPE THROUGH SEXUAL INTERCOURSE; ELEMENTS.— [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.; RAPE; FORCE; NEED NOT BE OVERPOWERING OR ABSOLUTELY IRRESISTIBLE, FOR WHAT IS ESSENTIAL IS SIMPLY THAT THE FORCE EMPLOYED IS SUFFICIENT TO ENABLE THE OFFENDER TO CONSUMMATE THE LEWD PURPOSE HE HAS IN MIND.— [T]he absence of bodily injury does not negate the commission of rape. As the Court emphasized in the case of *People v. Zafra*, the "absence of external signs of physical injuries does not negate rape." Neither does it make the victim a willing partner in the sexual intercourse. Needless to say, it is a well-settled rule that "the force used in the commission of rape need not be overpowering or absolutely irresistible." "A rape victim has no burden to prove that she did all within her power to resist the force or intimidation employed upon her." Resistance is not an element of rape. What is essential is simply that the force employed was sufficient to enable the offender to consummate the lewd purpose which he had in mind. In the instant case, there is no question that Ramos succeeded in his brutish objective.

3. ID.; ID.; ID.; NOT NEGATED BY THE FAILURE OF THE VICTIM TO RUN, SHOUT OR SEEK FOR HELP AND

NEITHER HER LACK OF RESISTANCE IMPLY THAT SHE CONSENTED TO THE SEXUAL ACT.— AAA's failure to scream does not in any way disprove the commission of rape. The failure of the victim to run, shout or seek help does not negate rape, and neither does her lack of resistance imply that she consented to the sexual act, especially when she was intimidated into submission by the perpetrator. In fact, AAA persistently struggled against Ramos' advances, all the while constantly pushing him away until her strength finally gave out. Furthermore, AAA immediately escaped at the first opportunity she could, and forthwith reported the matter.

4. **REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; THERE IS NO TYPICAL REACTION OR NORM OF BEHAVIOR AMONG RAPE VICTIMS.—** [T]he conduct of the victim immediately following the alleged sexual assault is of utmost importance as it tends to establish the truth or falsity of the charge. However, it is not accurate to say that there is a typical reaction or norm of behavior among rape victims. The workings of the human mind when placed under emotional stress is unpredictable. Some victims may shout, some may faint, while others may be shocked into insensibility. Not every victim can be expected to act with reason or conformably with the usual expectation of mankind. Certainly, it is unfair to expect and demand a rational reaction or a standard behavioral response from AAA, who was confronted with such startling and traumatic experience.

5. **ID.; ID.; ID.; IN MATTERS PERTAINING THERETO, THE APPELLATE COURTS GIVE GREAT WEIGHT TO THE TRIAL COURT'S FINDINGS, CONSIDERING THAT IT HAD THE FULL OPPORTUNITY TO OBSERVE DIRECTLY THE VICTIM'S DEMEANOR AND MANNER OF TESTIFYING.—** The Court agrees with the trial court's assessment of AAA's credibility. 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 courts give great weight to the trial court's findings, considering that it had the full opportunity to observe directly AAA's demeanor, conduct and manner of testifying.

6. ID.; ID.; "SWEETHEART DEFENSE"; REQUIRES PROOF OF COMPELLING EVIDENCE, THAT THE ACCUSED AND THE VICTIM ARE 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. Ramos' utter failure to present any iota of evidence to establish his purported amorous relationship with AAA, clearly renders his claim self-serving and of no probative value.

7. CRIMINAL LAW; REVISED PENAL CODE; CIVIL LIABILITY; CIVIL IDEMNITY; AWARDED TO THE OFFENDED PARTY AS A KIND OF MONETARY RESTITUTION OR COMPENSATION FOR THE DAMAGE 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. Although the RTC awarded AAA civil indemnity of Php 50,000.00, the same amount must be increased to Php 75,000.00 to conform with current jurisprudence.

8. CIVIL LAW; CIVIL CODE; OBLIGATIONS AND CONTRACTS; DAMAGES; MORAL DAMAGES; 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.— [T]he award by the RTC of Php 50,000.00 of moral damages in favor of AAA must x x x be increased to 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.

9. ID.; ID.; ID.; ID.; EXEMPLARY DAMAGES; AWARDED TO PUNISH THE OFFENDER FOR HIS OUTRAGEOUS CONDUCT, AND TO DETER THE COMMISSION OF SIMILAR REPREHENSIBLE ACTS IN THE FUTURE.— [A]n award of exemplary damages must be granted to AAA in the amount of Php 75,000.00. The importance of awarding 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.

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

A. REYES, JR., *J.*:

Carnal knowledge of a woman against her will, effected through force and intimidation is rape. Notably, the absence of contusions and abrasions in the woman's body does not negate rape. Neither will the victim's failure to flee and scream imply consent to the bestial act. Likewise, the victim cannot be expected to act rationally after suffering from a traumatic and harrowing ordeal. As such, the victim's decision to suffer in silence should not render her testimony suspect and unworthy of credence. Finally, the assailant's claim that the victim is his lover will not lie in the absence of compelling proof of such purported amorous relationship.

This treats of the Notice of Appeal[1] filed by herein accused-appellant Sonny Ramos (Ramos), seeking the reversal of the

[1] CA *rollo*, pp. 143-144.

Decision[2] dated April 12, 2013, rendered by the Court of Appeals (CA) in CA-G.R. CR-HC No. 05141, which affirmed the trial court's ruling convicting him of the crime of Rape under Article 266-A, paragraph 1(a) of the Revised Penal Code (RPC), as amended.

The Antecedents

An Information for Rape was filed against Ramos. The accusatory portion of the said Information reads:

> That on or about the 27th day of December 2007, [in the] Province of Benguet, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, did then and there willfully, unlawfully and feloniously by means of force and intimidation, have carnal knowledge with [AAA],[3] against her will and consent, to her great damage, prejudice and mental anguish.
>
> CONTRARY TO LAW.[4]

Upon arraignment, Ramos pleaded not guilty. Trial ensued thereafter.

Evidence for the Prosecution

Ramos and AAA were employees of a hotel located in Baguio City.[5] They resided at the hotel compound, where the male and female employees stayed at separate quarters.

At around 1:00 p.m. of December 27, 2007, AAA went to the hotel recreation room to watch television. However, on

---

[2] Penned by Associate Justice Ricardo R. Rosario, with Associate Justices Ramon M. Bato, Jr. and Leoncia Real-Dimagiba, concurring; *rollo*, pp. 2-19.

[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] CA *rollo*, p. 14.

[5] *Id.* at 15.

her way to the recreation room, she saw Ramos take the television remote control from the office. AAA decided not to proceed in order to avoid Ramos. Instead, she went to a near-by store with a co-employee. After which, AAA visited her older sister, BBB, at the latter's house, which was also located within the hotel compound. AAA returned to the quarters at around 6:00 p.m.[6]

Upon arriving at the quarters, AAA saw Ramos leaves the recreation room. She took her diary, notebook, and the television remote control from the office and then went to the recreation room. The room was empty when she entered.[7]

While AAA was at the recreation room, she heard someone knock at the door. When she opened it, she saw Ramos. He told her that he wanted to watch television with her. Hearing this, she went to the table to collect her things and leave. Suddenly, Ramos pulled her hand and forced her to sit on the sofa where he was seated. AAA pushed Ramos and tried to leave. However, Ramos stood in front of her, and blocked her way. Then, Ramos carried her to the bed and placed himself on top of her. AAA fought back, but Ramos held her hand. Ramos unhooked the strap of her bra with his left hand. All the while, AAA kept struggling and fighting back. Thereafter, Ramos unzipped AAA's pants and pulled her pants and underwear down to her knees. He tried to kiss her, but she continued to struggle against Ramos until she lost all her strength. She felt terrified and frightened and did not know what to do. All the time, she struggled and fought with Ramos, using her hands and legs, but Ramos pinned her down. Ramos placed himself on top of her and inserted his organ inside her vagina. His organ was inside her vagina for only a short while as AAA was able to gain her strength back and push him away. Ramos got up and went to the bathroom. Taking this as a chance to

---

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

[7] *Id*. at 16.

escape, AAA pulled up her underwear and pants, took her things and rushed out of the recreation room.[8]

Thereafter, AAA left the barracks and went out to see her friend CCC, a cook at the hotel. At that time, CCC was talking to DDD, a bellboy at the same hotel. She told them that Ramos raped her. CCC and DDD advised her to report the matter to her brother-in-law EEE. Heeding their advice, AAA texted her brother-in-law and told him about what had happened.[9]

On the same evening, AAA was called to the office of the hotel owner. She reported the rape incident. Shortly thereafter, AAA's brother arrived with police officers. Ramos was called out from the laundry room and was taken to the police station.[10]

On December 28, 2007, Dr. Fe Tangonan-Sanchez (Dr. Sanchez), an Obstetrics-gynecologist resident at the Baguio General Hospital examined AAA. Dr. Sanchez noted that AAA's hymen bore lacerations at the 3, 6 and 11 o'clock positions. She explained that the lacerations may have been caused by a blunt object like a penis, and that the injury was inflicted within 24 hours, considering that she likewise found punctuate hemorrhages (blood clots), within AAA's genitalia. These injuries are usually seen within 24 hours from the time of the injury.[11]

During her cross-examination, AAA related that Ramos had also raped her on a previous occasion on August 12, 2007, also at the same recreation room where the rape incident on December 27, 2007 took place.[12]

On the other hand, Ramos vehemently denied the rape charge leveled against him.

---

[8] *Id*. at 16-17.

[9] *Id*. at 17.

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

[11] *Id*. at 20.

[12] *Id*. at 21-22.

Ramos narrated that on December 27, 2007, at around 6:30 p.m., he sent AAA a text message, telling her that he will go to the recreation room. AAA replied "okay."[13]

Thus, at around 7:00 p.m., he went to the recreation room and knocked at the door, which AAA opened. At that time, AAA was watching television, so he entered and sat on the bed and watched with AAA. AAA was then seated on a chair beside the closet, writing something in her diary. After about 10 minutes, AAA sat close to Ramos on the bed. AAA laid down on the bed and they started to caress each other *("nag-lambing-lambingan").*[14] AAA voluntarily removed her clothes.[15] During the entire time, AAA never resisted, cried or shouted.

Ramos further related that while he and AAA were in the room, AAA asked him if he really loved her. He told her that he did, but that he is not yet serious about marrying her. AAA asked him why, to which Ramos admitted that he was in love with someone else. Allegedly, this angered AAA, and led to a quarrel. In her anger, AAA purportedly threatened him by saying, "*after you've taken everything you will just leave it at that? You have no idea what I am capable of.*"[16] Ramos left the recreation room.[17]

Thereafter, at around 8:00 p.m., while Ramos was at the men's barracks, AAA's brother-in-law confronted Ramos about the rape incident. Then at around 9:00 p.m., Ramos was arrested by the police officers.[18]

During his testimony in open court, Ramos related that there have been instances in the past when he and AAA were alone.

---

[13] *Id.* at 21.

[14] *Id.*

[15] *Id.* at 22.

[16] *Id.*

[17] *Id.*

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

In fact, he claimed that he and AAA had sexual intercourse for the first time on August 3, 2007, and again engaged in a sexual tryst on August 12, 2007, both times at the same recreation room.[19]

Ruling of the Regional Trial Court

On July 5, 2011, the Regional Trial Court (RTC) rendered a Decision[20] finding Ramos guilty beyond reasonable doubt of the crime of rape. The RTC was convinced of the truthfulness of the charge, considering that AAA clearly described on the witness stand how Ramos raped her. Likewise, the RTC observed that AAA's actuations after she was raped strengthened her credibility. The RTC noted the fact that AAA immediately reported the incident to her friends, to her family, the owner of the hotel, and then to the police, which are all indicia of the truth and veracity of her claim. Moreover, the RTC refused to give credence to the sweetheart defense raised by Ramos, as his claim was uncorroborated by any evidence that could have proved the relationship. Also, the RTC rejected Ramos' contention that AAA merely concocted the rape charge out of revenge. The trial court keenly observed that AAA's character and demeanor during the trial revealed that she was not the type of woman who could concoct a rape charge out of sheer spite.[21]

The dispositive portion of the RTC decision reads:

> WHEREFORE, [Ramos] is hereby found guilty beyond reasonable doubt of the crime of rape and is hereby imposed the penalty of *"reclusion perpetua"* with all the accessory penalties thereto attached.
>
> [Ramos] is hereby adjudged to pay the private complainant the amount of Fifty Thousand Pesos (Php 50,000.00) as civil indemnity *ex delicto* and another Fifty Thousand Pesos (Php 50,000.00) as moral damages. He shall likewise pay the costs.

---

[19] *Id*. at 21-22.

[20] Rendered by Judge Danilo P. Camacho; *id*. at 14-39.

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

SO ORDERED.[22]

Aggrieved, Ramos filed an appeal before the CA.

Ruling of the CA

On April 12, 2013, the CA rendered a Decision[23] affirming the conviction meted by the RTC on Ramos. The CA noted that considering that Ramos admitted that he had sexual intercourse with AAA, the only element left to be proven is whether the act was committed against the latter's will, through force or intimidation. In this regard, the CA observed that AAA candidly and truthfully narrated how Ramos forced his way by overpowering her. The absence of any sustained injuries from the struggle will not negate the fact that AAA was overpowered to succumb to Ramos' bestial desires. Neither did the CA agree with Ramos' argument that AAA's conduct belied that of a typical rape victim's. The CA noted that AAA sufficiently explained her reason for staying and not filing a complaint against Ramos after the first rape incident in August 2007.[24] Moreover, the CA refused to accept Ramos' defense that he and AAA were sweethearts, ratiocinating that the purported romantic relations between Ramos and AAA are nothing but a figment of the former's imagination.

The dispositive portion of the assailed CA decision reads:

WHEREFORE, premises considered, the appeal is **DISMISSED.** The Decision of the [RTC] of La Trinidad, Benguet, Branch 62 in Criminal Case No. 08-CR-7211 finding [Ramos] guilty beyond reasonable doubt of the crime of rape and sentencing him to a penalty of *reclusion perpetua* and to pay the offended party the sum of fifty thousand pesos (Php 50,000.00) as civil indemnity *ex delicto* and another fifty thousand pesos (₱50,000.00) as moral damages, and to pay the costs, is **AFFIRMED.**

---

[22] *Id.* at 39.

[23] *Id*. at 124-141.

[24] *Id*. at 129-135.

SO ORDERED.[25]

Dissatisfied with the ruling, Ramos filed a Notice of Appeal[26] dated April 24, 2013, under Rule 124 of the 2000 Rules of Criminal Procedure.

The Issue

The essential issue for the Court's resolution is whether or not Ramos is guilty beyond reasonable doubt of the crime of Rape.

Seeking the reversal of the assailed CA decision, Ramos asserts that the prosecution failed to prove his guilt beyond reasonable doubt. He claims AAA's testimony was riddled with improbabilities.[27] Ramos points out that AAA's demeanor was inconsistent with a rape victim. Apparently, although AAA claimed that he had raped her in an earlier occasion on August 12, 2007, she still talked to him and responded whenever he talked to her. She never reported the incident or shouted invectives at him. Likewise, anent the rape incident on December 27, 2007, Ramos questions why AAA did not scream for help, or run while he was purportedly raping her. Further, AAA's description of the rape incident was questionable. Also, AAA had no physical injuries to prove the fact of struggle with Ramos.[28]

In his defense, Ramos stresses that he and AAA had consensual sexual intercourse, as they were lovers. He claims that the trial court did not allow him to present his SIM card, which contained text messages exchanged between him and AAA. This key piece of evidence would have proven his relationship with AAA. Finally, he claims that after the purported rape incident, he simply proceeded to the barracks, and even reported to the office of the hotel owner, when called. The fact that he did not flee is proof of his innocence.[29]

---

[25] *Id*. at 140.

[26] *Id*. at 143-144.

[27] *Id*. at 50.

[28] *Id*. at 55-59.

[29] *Id.* at 59-60.

On the other hand, the People, through the Office of the Solicitor General (OSG), maintains that the prosecution proved the guilt of Ramos beyond reasonable doubt. The OSG points out that Ramos himself admitted having sexual intercourse with AAA on December 27, 2007, albeit claiming that the same act was consensual.[30] However, Ramos failed to show proof of his alleged romantic relationship with AAA. Even assuming that Ramos and AAA were lovers, this did not serve as a justification for Ramos to force himself upon AAA. Likewise, the OSG counters that there is nothing questionable about AAA's demeanor. AAA offered a sufficient explanation for not reporting the first rape incident.[31]

Ruling of the Court

The instant appeal is bereft of merit.

The Prosecution Established Beyond Reasonable Doubt that Ramos is Guilty of Rape

Article 266-A of the RPC, as amended by Republic Act (R.A.) No. 8353,[32] 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[.]

---

[30] *Id*. at 107-108.

[31] *Id*. at 113-114.

[32] *The Anti-Rape Law of 1997.*

In view of the horrendous nature of rape as an affront to one's dignity and chastity, the law imposes a penalty of *reclusion perpetua* against the offender.[33]

Essentially, 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.[34]

In the case at bar, the prosecution sufficiently established beyond reasonable doubt that Ramos had carnal knowledge with AAA on December 27, 2007, through force and intimidation by pushing and pinning her down, and inserting his penis into her vagina, against her will and without her consent.

The linchpin of AAA's testimony was that Ramos had sexual intercourse with her, despite her struggles and protestations. Her narration revealed the continuous struggle that she put up, and how Ramos overpowered her in consummating his bestial desires. On this matter, AAA 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.[35] This ruling exactly mirrors AAA's testimony.

The Absence of Abrasions and Contusions in AAA's Body, or her Failure to Scream and Flee Do Not Prove Consent to the Sexual Act

---

[33] REVISED PENAL CODE, Art. 266-B, as amended by *R.A. No. 8353*.

[34] *People v. Esteban,* 735 Phil. 663, 670 (2014). (Emphasis Ours)

[35] *People v. Baraoil,* 690 Phil. 368, 375 (2012); *People v. Magayon,* 640 Phil. 121, 136 (2010); *People v. Corpuz,* 517 Phil. 622, 632-633 (2006).

Ramos avers that AAA's claim that she struggled against his advances is belied by the absence of any physical injuries on her body.

This contention does not hold water.

It must be noted that the absence of bodily injury does not negate the commission of rape.[36] As the Court emphasized in the case of *People v. Zafra*,[37] the "absence of external signs of physical injuries does not negate rape."[38] Neither does it make the victim a willing partner in the sexual intercourse.

Needless to say, it is a well-settled rule that "the force used in the commission of rape need not be overpowering or absolutely irresistible."[39] "A rape victim has no burden to prove that she did all within her power to resist the force or intimidation employed upon her."[40] Resistance is not an element of rape.[41] What is essential is simply that the force employed was sufficient to enable the offender to consummate the lewd purpose which he had in mind.[42] In the instant case, there is no question that Ramos succeeded in his brutish objective.

Moreover, the trial the court noted the relative size of AAA as against Ramos, and observed that AAA was "frail and petite," while Ramos was "heavier by far in buil[t]."[43] This lends credence to AAA's testimony that Ramos easily succeeded in pinning her down, against her persistent struggling.

---

[36] *People v. Cabungan,* 702 Phil. 177, 187-188 (2013).

[37] 712 Phil. 559 (2013).

[38] *Id.* at 573.

[39] *People v. Barangan*, 560 Phil. 811, 836 (2007), citing *People v. Villaflores,* G.R. No. 66039, 8 June 1989, 174 SCRA 70, 70-71.

[40] *People v. Japson*, 743 Phil. 495, 503-504 (2014), citing *People v. Rivera*, 717 Phil. 380, 395 (2013).

[41] *People v. Japson*, *id.*, citing *People v. Durano*, 548 Phil. 383, 397 (2007).

[42] *People v. Barangan*, *supra* note 39.

[43] CA *rollo*, p. 34.

Furthermore, AAA's failure to scream does not in any way disprove the commission of rape. The failure of the victim to run, shout or seek help does not negate rape,[44] and neither does her lack of resistance imply that she consented to the sexual act, especially when she was intimidated into submission by the perpetrator.[45] In fact, AAA persistently struggled against Ramos' advances, all the while constantly pushing him away until her strength finally gave out. Furthermore, AAA immediately escaped at the first opportunity she could, and forthwith reported the matter.

AAA's Conduct Before and After the Rape Did Not Detract from her Credibility, But Even Bolstered the Veracity of her Claim

In a bid to exonerate himself from the charge, Ramos alleges that AAA's conduct renders her testimony suspect. Particularly, Ramos points out that if AAA had indeed been raped on a prior occasion, then why did she not report the matter, and worse, even continue to work at the hotel with him.

Indeed, the conduct of the victim immediately following the alleged sexual assault is of utmost importance as it tends to establish the truth or falsity of the charge. However, it is not accurate to say that there is a typical reaction or norm of behavior among rape victims.[46] The workings of the human mind when placed under emotional stress is unpredictable.[47] Some victims may shout, some may faint, while others may be shocked into

---

[44] *People v. Paras,* 735 Phil. 193, 202 (2014), citing *Sison v. People,* 682 Phil. 608, 625 (2012).

[45] *People v. Pareja,* 724 Phil. 759, 778 (2014), citing *People v. Saludo,* 662 Phil. 738, 750 (2011).

[46] *People v. Zafra, supra* note 37, at 572, citing *People v. Saludo, id*. at 758-759.

[47] *People v. Paras, supra* note 44, at 202, citing *Sison v. People, supra* note 44, at 625.

insensibility. Not every victim can be expected to act with reason or conformably with the usual expectation of mankind.[48] Certainly, it is unfair to expect and demand a rational reaction or a standard behavioral response from AAA, who was confronted with such startling and traumatic experience.

Besides, AAA adequately explained why she did not report the matter and still continued working at Ever Lodge, despite Ramos' harassment. Her failure to report the matter was borne out of fear due to Ramos' threat to kill her should she relate the matter to anyone. Ramos also promised that he would never repeat the same offense. When AAA was prodded as to why she was easily cajoled into believing Ramos' promise that he would not harass her again, she defeatedly admitted that it was a fate she had no choice but to accept, saying that: "x x x if I will file a complaint, my life will be turned upside down; that even if I will report the incident, I could not turn things back for myself that I am already destroyed and that things will worsened [sic]."[49] While saying this, the RTC noted the anguish, and defeat in AAA's voice.[50] Moreover, AAA openly admitted in court that she decided to stay until after December, so she could receive her salary, and bonus, and earn money for coming home, and for her education.[51] AAA should not be judged for her choice to stay. She had to forego her own trauma in order to earn a living. This difficult choice that she made should not be taken against her.

It must likewise be noted that AAA avoided Ramos at all costs while she was at the hotel. The records show that she immediately left when she saw that Ramos was on his way to the recreation room. She only went back after ensuring that Ramos had left, and upon seeing that the recreation room was empty. As a matter of fact, when Ramos suddenly entered the recreation room, she immediately gathered her things and

---

[48] *People v. Zafra, supra* note 37, at 572, citing *People v. Saludo, supra* note 45, at 758-759.

[49] CA *rollo*, p. 135.

[50] *Id.* at 31.

[51] *Id.* at 38.

proceeded to leave. Her attempt to flee however proved futile as Ramos blocked her way and pushed her.[52] Added to this, AAA immediately reported the rape incident after its occurrence. All these circumstances serve to bolster AAA's credibility.

Accordingly, the Court agrees with the trial court's assessment of AAA's credibility. 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 courts give great weight to the trial court's findings, considering that it had the full opportunity to observe directly AAA's demeanor, conduct and manner of testifying.[53]

Ramos' Defense that He and AAA were Lovers Fails in the Absence of Competent and Convincing Evidence of the Purported Romantic Relationship

In another bid to prove his innocence, Ramos claims that he and AAA were lovers, and as such, their sexual intercourse was consensual.

The Court is not persuaded.

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.[54] Similarly, evidence of the relationship is required, such as tokens, love letters, mementos, photographs, and the like.[55]

---

[52] *Id.* at 135-137.

[53] *People v. Bosi,* 689 Phil. 66, 73 (2012).

[54] *People v. Olesco,* 663 Phil. 15, 24 (2011).

[55] *Id.* at 20-21, citing *People v. Baldo,* 599 Phil. 382, 388 (2009).

Ramos' utter failure to present any iota of evidence to establish his purported amorous relationship with AAA, clearly renders his claim self-serving claim and of no probative value. In fact, not a single co-employee came forward to confirm his tale that he and AAA were lovers. Although Ramos explained that this was due to fact that they were the only ones who knew of their relationship, it is hard to believe that no one suspected their relationship, especially considering that they were all living in the same barracks.

Further, Ramos bewails the alleged refusal of the trial court to allow him to present his SIM card, which purportedly contained evidence of text messages exchanged between him and AAA. It is strange why Ramos is suddenly blaming the trial court, when the records reveal that he admitted that he deleted the said messages from his SIM card. Contrary to his claim, the trial court was very much open to admit the presentation of the SIM card, to sift out the truth.[56] It was actually Ramos' counsel who manifested his inability to present the said evidence, as shown in the Minutes of the Proceedings on December 14, 2010.[57] Evidently, this claim is nothing but a vain attempt for Ramos to mislead the Court into believing that he was deprived of the chance to present a key piece of evidence.

The Proper Charge and Penalties

The crime of simple rape is penalized under Article 266-B of the RPC, as amended by R.A. No. 8353, with *reclusion perpetua.* Considering that the guilt of Ramos was proven beyond reasonable doubt, the RTC correctly sentenced him with the penalty of *reclusion perpetua,* without eligibility for parole.[58]

In addition, jurisprudence holds that a victim of rape shall be entitled to an award of civil indemnity, moral damages and exemplary damages. Significantly, the award of civil

---

[56] CA *rollo*, p. 138.

[57] *Id.* at 140.

[58] REVISED PENAL CODE, Article 266-B. *Penalty*. — Rape under paragraph 1 of the next preceding article shall be punished by *reclusion perpetua.*

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."[59] 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. Although the RTC awarded AAA civil indemnity of Php 50,000.00, the same amount must be increased to Php 75,000.00 to conform with current jurisprudence.[60]

In the same vein, the award by the RTC of Php 50,000.00 of moral damages in favor of AAA must also be increased to Php 75,000.00.[61] 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.[62] 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.[63]

Furthermore, an award of exemplary damages must be granted to AAA in the amount of Php 75,000.00.[64] The importance of awarding 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.[65]

---

[59] REVISED PENAL CODE, Article 100.

[60] *People v. Jugueta,* 783 Phil. 806, 827 (2016).

[61] *Id*. at 839.

[62] *People of the Philippines v. Rommel Ronquillo,* G.R. No. 214762, September 20, 2017, citing *People v. Delabajan*, 685 Phil. 236, 245 (2012).

[63] *People of the Philippines v. Rommel Ronquillo*, *id*.

[64] *People v. Jugueta,* 783 Phil. 806, 829 (2016).

[65] *People of the Philippines v. Rommel Ronquillo*, *supra* note 62.

Additionally, the payment of costs imposed on Ramos by the CA is likewise affirmed. Finally, all amounts due shall earn legal interest of six (6%) *per annum* from the date of the finality of this Decision until full payment.

WHEREFORE, premises considered, the instant appeal is hereby **DISMISSED for lack of merit.** Accordingly, the Decision dated April 12, 2013 of the Court of Appeals, in CA-G.R. CR-HC No. 05141, is **AFFIRMED with modification.** Accused-appellant Sonny Ramos *y* Buenaflor is held guilty of Rape, and is hereby sentenced to *reclusion perpetua* without eligibility for parole, and is ordered to pay the victim AAA in addition to the costs of the suit, the following amounts, to wit: (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 the finality of this Decision until full payment.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 210950. August 15, 2018]

MILAGROS P. ENRIQUEZ, *petitioner, vs.* **THE MERCANTILE INSURANCE CO., INC.,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; PROVISIONAL REMEDIES; REPLEVIN; MAY BE A PRINCIPAL

REMEDY OR A PROVISIONAL RELIEF.— Replevin is an action for the recovery of personal property. It is both a principal remedy and a provisional relief. When utilized as a principal remedy, the objective is to recover possession of personal property that may have been wrongfully detained by another. When sought as a provisional relief, it allows a plaintiff to retain the contested property during the pendency of the action. x x x As a provisional remedy, a party may apply for an order for the delivery of the property before the commencement of the action or at any time before an answer is filed. Rule 60 of the Rules of Court outlines the procedure for the application of a writ of replevin. Rule 60, Section 2 requires that the party seeking the issuance of the writ must first file the required affidavit and a bond in an amount that is double the value of the property x x x. Once the affidavit is filed and the bond is approved by the court, the court issues an order and a writ of seizure requiring the sheriff to take the property into his or her custody. If there is no further objection to the bond filed within five (5) days from the taking of the property, the sheriff shall deliver it to the applicant. The contested property remains in the applicant's custody until the court determines, after a trial on the issues, which among the parties has the right of possession.

2. ID.; ID.; ID.; ID.; REPLEVIN BOND; SURETY BOND; REMAINS EFFECTIVE UNTIL THE ACTION OR PROCEEDING IS FINALLY DECIDED, RESOLVED, OR TERMINATED.— There was no trial on the merits. The Regional Trial Court's dismissal for failure to prosecute was a dismissal without prejudice to re-filing. In this particular instance, any writ of seizure, being merely ancillary to the main action, becomes *functus oficio*. The parties returned to the status quo as if no case for replevin had been filed. Thus, upon the dismissal of the case, it was imperative for petitioner to return the van to Asuten. x x x *De Guia v. Alto Surety & Insurance, Co.* requires that any application on the bond be made after hearing but before the entry of judgment. Otherwise, the surety can no longer be made liable under the bond x x x. [A] surety bond remains effective until the action or proceeding is finally decided, resolved, or terminated. This condition is deemed incorporated in the contract between the applicant and the surety, regardless of whether they failed to expressly state it. x x x Civil Case No. 10846 is a rare instance where the writ of seizure

is dissolved due to the dismissal without prejudice, but the bond stands because the case has yet to be finally terminated by the Regional Trial Court.

3. ID.; ID.; ID.; ID.; ID.; THE AMOUNT OF THE BOND IS REQUIRED TO BE DOUBLE THE VALUE OF THE PROPERTY.— Of all the provisional remedies provided in the Rules of Court, only Rule 60, Section 2 requires that the amount of the bond be *double* the value of the property. The other provisional remedies provide that the amount be fixed by court or be merely equal to the value of the property x x x. However, there is a rationale to the requirement that the bond for a writ of seizure in a replevin be double the value of the property. The bond functions not only to indemnify the defendant in case the property is lost, but also to answer for any damages that may be awarded by the court if the judgment is rendered in defendant's favor. x x x Any application of the bond in a replevin case, therefore, is premised on the judgment rendered in favor of the defendant. Thus, the Rules of Court imply that there must be a prior judgment on the merits before there can be any application on the bond x x x.

4. ID.; ID.; ID.; ID.; ID.; FORFEITURE OF REPLEVIN BOND; REQUISITES.— The Rules of Court x x x require that for the defendant to be granted the *full* amount of the bond, he or she must first apply to the court for damages. These damages will be awarded only after a proper hearing x x x. Forfeiture of the replevin bond, therefore, requires *first*, a judgment on the merits in the defendant's favor, and *second*, an application by the defendant for damages. Neither circumstance appears in this case. When petitioner failed to produce the van, equity demanded that Asuten be awarded only an amount equal to the value of the van. The Regional Trial Court would have erred in ordering the forfeiture of the *entire* bond in Asuten's favor, considering that there was no trial on the merits or an application by Asuten for damages. This judgment could have been reversed *had petitioner appealed the Regional Trial Court's May 24, 2004 Order in Civil Case No. 10846*. Unfortunately, she did not. Respondent was, thus, constrained to follow the Regional Trial Court's directive to pay Asuten the full amount of the bond.

5. CIVIL LAW; CIVIL CODE; OBLIGATIONS AND CONTRACTS; A CONTRACT IS LAW BETWEEN THE

PARTIES FOR AS LONG AS IT IS NOT CONTRARY TO LAW, MORALS, GOOD CUSTOMS, PUBLIC ORDER, OR PUBLIC POLICY.— This is a simple case for collection of a sum of money. Petitioner cannot substitute this case for her lost appeal in Civil Case No. 10846. In applying for the replevin bond, petitioner voluntarily undertook with respondent an Indemnity Agreement x x x. Basic is the principle that "a contract is law between the parties" for as long as it is "not contrary to law, morals, good customs, public order, or public policy." Under their Indemnity Agreement, petitioner held herself liable for any payment made by respondent by virtue of the replevin bond. x x x A contract of insurance is, by default, a contract of adhesion. It is prepared by the insurance company and might contain terms and conditions too vague for a layperson to understand; hence, they are construed liberally in favor of the insured. x x x Respondent, however, does not seek to recover an amount which exceeds the amount of the bond or any "damages, payments, advances, losses, costs, taxes, penalties, charges, attorney's fees and expenses of whatever kind and nature," all of which it could have sought under the Indemnity Agreement. It only seeks to recover from petitioner the amount of the bond, or ₱600,000.00. Respondent paid ₱600,000.00 to Asuten pursuant to a lawful order of the Regional Trial Court in Civil Case No. 10846. If there were any errors in the judgment of the Regional Trial Court, x x x petitioner could have appealed this. Petitioner, however, chose to let Civil Case No. 10846 lapse into finality. This case cannot now be used as a substitute for her lost appeal.

APPEARANCES OF COUNSEL

Public Attorney's Office for petitioner.
Senador & Associates for respondent.

D E C I S I O N

LEONEN, *J.*:

A surety bond remains effective until the action or proceeding is finally decided, resolved, or terminated, regardless of whether the applicant fails to renew the bond. The applicant will be

liable to the surety for any payment the surety makes on the bond, but only up to the amount of this bond.

This is a Petition for Review on Certiorari[1] assailing the August 13, 2013 Decision[2] and January 14, 2014 Resolution[3] of the Court of Appeals in CA-G.R. CV No. 95955, which affirmed the Regional Trial Court's finding that Milagros P. Enriquez (Enriquez) was liable for the full amount of the replevin bond issued by The Mercantile Insurance Company, Inc. (Mercantile Insurance).

Sometime in 2003, Enriquez filed a Complaint for Replevin[4] against Wilfred Asuten (Asuten) before the Regional Trial Court of Angeles City, Pampanga. This Complaint, docketed as Civil Case No. 10846,[5] was for the recovery of her Toyota Hi-Ace van valued at ₱300,000.00.[6] Asuten allegedly refused to return her van, claiming that it was given by Enriquez's son as a consequence of a gambling deal.[7]

Enriquez applied for a replevin bond from Mercantile Insurance. On February 24, 2003, Mercantile Insurance issued Bond No. 138 for ₱600,000.00,[8] which had a period of one (1) year or until February 24, 2004. Enriquez also executed an indemnity agreement with Mercantile Insurance, where she

---

[1] *Rollo*, pp. 11-29.

[2] *Id*. at 31-39. The Decision was penned by Associate Justice Danton Q. Bueser and concurred in by Associate Justices Amelita G. Tolentino and Ramon R. Garcia of the Fourth Division, Court of Appeals, Manila.

[3] *Id*. at 41-42. The Resolution was penned by Associate Justice Danton Q. Bueser and concurred in by Associate Justices Amelita G. Tolentino and Ramon R. Garcia of the Former Fourth Division, Court of Appeals, Manila.

[4] *Id*. at 99-101.

[5] *Id*. at 51.

[6] *Id*. at 31.

[7] *Id*. at 32.

[8] *Id*. at 47. The CA Decision stated, however, that the replevin bond was issued on February 23, 2003. *See rollo*, p. 32.

agreed to indemnify the latter "for all damages, payments, advances, losses, costs, taxes, penalties, charges, attorney's fees and expenses of whatever kind and nature"[9] that it would incur as surety of the replevin bond.[10]

On May 24, 2004, the Regional Trial Court issued an Order[11] dismissing the Complaint without prejudice due to Enriquez's continued failure to present evidence.

The Regional Trial Court found that Enriquez surrendered the van to the Bank of the Philippine Islands, San Fernando Branch but did not comply when ordered to return it to the sheriff within 24 hours from receipt of the Regional Trial Court March 15, 2004 Order.[12] She also did not comply with prior court orders to prove payment of her premiums on the replevin bond or to post a new bond. Thus, the Regional Trial Court declared Bond No. 138 forfeited. Mercantile Insurance was given 10 days to produce the van or to show cause why judgment should not be rendered against it for the amount of the bond.[13]

On July 12, 2004, the Regional Trial Court held a hearing on the final forfeiture of the bond where it was found that Mercantile Insurance failed to produce the van, and that Bond No. 138 had already expired.[14] In an Order[15] issued on the same day, the Regional Trial Court directed Mercantile Insurance to pay Asuten the amount of ₱600,000.00.

---

[9] *Id*. at 50.

[10] *Id*. at 32.

[11] *Id*. at 51-52. The Order, docketed as Civil Case No. 10846, was penned by Presiding Judge Ma. Angelica T. Paras-Quiambao of Branch 59, Regional Trial Court, Angeles City.

[12] The Regional Trial Court March 15, 2004 Order is not attached in the *rollo*.

[13] *Rollo*, pp. 51-52.

[14] *Id*. at 53.

[15] *Id*. at 53–54. The Order was penned by Presiding Judge Ma. Angelica T. Paras-Quiambao.

Mercantile Insurance wrote to Enriquez requesting the remittance of ₱600,000.00 to be paid on the replevin bond.[16] Due to Enriquez's failure to remit the amount, Mercantile Insurance paid Asuten ₱600,000.00 on September 3, 2004, in compliance with the Regional Trial Court July 12, 2004 Order.[17] It was also constrained to file a collection suit against Enriquez with the Regional Trial Court of Manila.[18]

In her defense, Enriquez claimed that her daughter-in-law, Asela, filed the Complaint for Replevin in her name and that Asela forged her signature in the indemnity agreement. She also argued that she could not be held liable since the replevin bond had already expired.[19]

In its July 23, 2010 Decision,[20] the Regional Trial Court ruled in favor of Mercantile Insurance. It found that non-payment of the premiums did not cause the replevin bond to expire. Thus, Enriquez was still liable for the reimbursement made by the surety on the bond. The Regional Trial Court likewise pointed out that Enriquez made "conflicting claims" of having applied for the bond and then later claiming that her daughter-in-law was the one who applied for it.[21] The dispositive portion of the Regional Trial Court July 23, 2010 Decision read:

> WHEREFORE, judgment is hereby rendered in favor of plaintiff The Mercantile Insurance Co., Inc. and against defendant Milagros P. Enriquez, as follows:
>
> (i) Ordering defendant Milagros P. Enriquez to pay plaintiff the claim of ₱600,000.00 enforced under the Indemnity Agreement

---

[16] *Id*. at 56.

[17] *Id*. at 57.

[18] *Id*. at 43-46 and 133.

[19] *Id*. at 137-138.

[20] *Id*. at 133-142. The Decision, docketed as Civil Case No. 04-111228, was penned by Acting Presiding Judge Ma. Theresa Dolores C. Gomez-Estoesta of Branch 17, Regional Trial Court, Manila.

[21] *Id*. at 139-141.

plus legal interest at the rate of 12% per annum from date of judicial demand on October 22, 2004, until fully paid;

(ii) Ordering defendant Milagros P. Enriquez to pay attorney's fees fixed in the reasonable amount of ₱50,000.00;

(iii) Ordering defendant Milagros P. Enriquez to pay the costs of suit.

SO ORDERED.[22]

Enriquez appealed[23] with the Court of Appeals, arguing that the replevin bond had already expired; therefore, she could not have been liable under the indemnity agreement. She also averred that even assuming that she was still liable under the indemnity agreement, she should not pay the full amount considering that the value of the van was only ₱300,000.00.[24]

On August 13, 2013, the Court of Appeals rendered a Decision[25] affirming the Regional Trial Court's July 23, 2010 Decision.

The Court of Appeals held that under the Guidelines on Corporate Surety Bonds,[26] the lifetime of any bond issued in any court proceeding shall be from court approval until the case is finally terminated. Thus, it found that the replevin bond and indemnity agreement were still in force and effect when Mercantile Insurance paid ₱600,000.00 to Asuten.[27]

The Court of Appeals likewise found that Enriquez was "bound by the incontestability of payments clause" in the indemnity agreement, which stated that she would be held liable for any payment made by the surety under the bond, regardless of the

---

[22] *Id*. at 142.

[23] *Id*. at 119-132.

[24] *Id*. at 34.

[25] *Id*. at 31-39.

[26] A.M. No. 04-7-02-SC (2004).

[27] *Rollo,* pp. 34-35.

actual cost of the van.[28] It held that the issue of whether Enriquez was liable for the full amount of the replevin bond should have been raised before the Regional Trial Court in the Complaint for Replevin, and not in her appeal.[29]

Enriquez moved for reconsideration[30] but was denied by the Court of Appeals in its January 14, 2014 Resolution.[31] Hence, this Petition[32] was filed before this Court.

Petitioner argues that when respondent paid Asuten on September 3, 2004, the indemnity agreement was no longer in force and effect since the bond expired on February 24, 2004.[33] She claims that the indemnity agreement was a contract of adhesion, and that respondent "intended the agreement to be so comprehensive and all-encompassing to the point of being ambiguous."[34]

Petitioner contends that even assuming that the indemnity agreement could be enforced, she should not have been held liable for the full amount of the bond. Citing Rule 60, Section 2 of the Rules of Court, she argues that a judgment on replevin is only "either for the delivery of the property or for its value in case delivery cannot be made and for such damages as either party may prove, with costs."[35]

Respondent, on the other hand, contends that the present action has already prescribed, considering that Rule 60, Section 10, in relation to Rule 57, Section 20 of the Rules of Court,

---

[28] *Id*. at 35.

[29] *Id*. at 36.

[30] *Id.* at 143-147.

[31] *Id*. at 41--42.

[32] *Id.* at 11-29. Respondent's Comment (*Rollo*, pp. 162-172) to the Petition was filed on August 6, 2014 while Petitioner's Reply (*Rollo*, pp. 180-186) was filed on November 24, 2014.

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

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

[35] *Id*. at 21-22.

mandates that any objection on the award should be raised in the trial court where the complaint for replevin is filed. It argues that since petitioner only raised the objection before the Court of Appeals, her action should have been barred.[36]

Respondent likewise points out that the forfeiture of the bond was due to petitioner's own negligence. It asserts that in the proceedings before the Regional Trial Court, Enriquez failed to present her evidence, and it was only when she filed an appeal that she raised her objections.[37] It argues that the Guidelines on Corporate Surety Bonds specify that the expiry of the bond shall be after the court proceeding is finally decided; hence, the bond was still in effect when respondent paid Asuten.[38]

The sole issue for this Court's resolution is whether or not petitioner Milagros P. Enriquez should be made liable for the full amount of the bond paid by respondent The Mercantile Insurance Co., Inc. as surety, in relation to a previous case for replevin filed by petitioner.

I

Replevin is an action for the recovery of personal property.[39] It is both a principal remedy and a provisional relief. When utilized as a principal remedy, the objective is to recover possession of personal property that may have been wrongfully detained by another. When sought as a provisional relief, it allows a plaintiff to retain the contested property during the pendency of the action. In *Tillson v. Court of Appeals*:[40]

> The term replevin is popularly understood as "the return to or recovery by a person of goods or chattels claimed to be wrongfully taken or detained upon the person's giving security to try the matter in court and return the goods if defeated in the action;" "the writ by

---

[36] *Id.* at 163-164.

[37] *Id.* at 165.

[38] *Id.* at 166.

[39] *See* RULES OF COURT, Rule 60, Sec. 1.

[40] 274 Phil. 880 (1991) [Per *J.* Narvasa, First Division].

or the common-law action in which goods and chattels are replevied," i.e., taken or gotten back by a writ for replevin;" and to replevy, means to recover possession by an action of replevin; to take possession of goods or chattels under a replevin order. Bouvier's Law Dictionary defines replevin as "a form of action which lies to regain the possession of personal chattels which have been taken from the plaintiff unlawfully . . ., (or as) the writ by virtue of which the sheriff proceeds at once to take possession of the property therein described and transfer it to the plaintiff upon his giving pledges which are satisfactory to the sheriff to prove his title, or return the chattels taken if he fail so to do;" the same authority states that the term, "to replevy" means "to re-deliver goods which have been distrained to the original possessor of them, on his giving pledges in an action of replevin." The term therefore may refer either to the action itself, for the recovery of personality, or the provisional remedy traditionally associated with it, by which possession of the property may be obtained by the plaintiff and retained during the pendency of the action. In this jurisdiction, the provisional remedy is identified in Rule 60 of the Rules of Court as an order for delivery of personal property.[41]

Similarly, in *BA Finance Corporation v. Court of Appeals*:[42]

Replevin, broadly understood, is both a form of principal remedy and of a provisional relief. It may refer either to the action itself, i.e., to regain the possession of personal chattels being wrongfully detained from the plaintiff by another, or to the provisional remedy that would allow the plaintiff to retain the thing during the pendency of the action and hold it *pendente lite*. The action is primarily possessory in nature and generally determines nothing more than the right of possession. Replevin is so usually described as a mixed action, being partly *in rem* and partly *in personam-in rem* insofar as the recovery of specific property is concerned, and *in personam* as regards to damages involved. As an "action in rem," the gist of the replevin action is the right of the plaintiff to obtain possession of specific personal property by reason of his being the owner or of his having a special interest therein. Consequently, the person in possession of the property sought to be replevied is ordinarily the

---

[41] *Id*. at 892-893 *citing Webster's Third New International Dictionary*, copyright 1986 and Third (Rawle's) Revision, Vol. 2.

[42] 327 Phil. 716 (1996) [Per *J*. Vitug, First Division].

proper and only necessary party defendant, and the plaintiff is not required to so join as defendants other persons claiming a right on the property but not in possession thereof. Rule 60 of the Rules of Court allows an application for the immediate possession of the property but the plaintiff must show that he has a good legal basis, i.e., a clear title thereto, for seeking such interim possession.[43]

As a provisional remedy, a party may apply for an order for the delivery of the property before the commencement of the action or at any time before an answer is filed.[44] Rule 60 of the Rules of Court outlines the procedure for the application of a writ of replevin. Rule 60, Section 2 requires that the party seeking the issuance of the writ must first file the required affidavit and a bond in an amount that is double the value of the property:

Section 2. Affidavit and bond. — The applicant must show by his own affidavit or that of some other person who personally knows the facts:

(a) That the applicant is the owner of the property claimed, particularly describing it, or is entitled to the possession thereof;

(b) That the property is wrongfully detained by the adverse party, alleging the cause of detention thereof according to the best of his knowledge, information, and belief;

(c) That the property has not been distrained or taken for a tax assessment or a fine pursuant to law, or seized under a writ of execution or preliminary attachment, or otherwise placed under *custodia legis*, or if so seized, that it is exempt from such seizure or custody; and

(d) The actual market value of the property.

The applicant must also give a bond, executed to the adverse party in double the value of the property as stated in the affidavit

---

[43] *Id*. at 724–725 *citing Tillson v. Court of Appeals*, 327 Phil. 716 (1996) [Per *J*. Vitug, First Division]; *Bouvier's Dictionary*, Third (Rawle's) Revision, Vol. 2; *Black's Law Dictionary*, Sixth Edition, p. 1299; and 37 WORDS AND PHRASES 17, further citing the *Young Chevrolet Co.* case, 127 P.2d 813, 191 Okl. 161 (1942).

[44] *See* RULES OF COURT, Rule 60, Sec. 1.

aforementioned, for the return of the property to the adverse party if such return be adjudged, and for the payment to the adverse party of such sum as he may recover from the applicant in the action.[45]

Once the affidavit is filed and the bond is approved by the court, the court issues an order and a writ of seizure requiring the sheriff to take the property into his or her custody.[46] If there is no further objection to the bond filed within five (5) days from the taking of the property, the sheriff shall deliver it to the applicant.[47] The contested property remains in the applicant's custody until the court determines, after a trial on the issues, which among the parties has the right of possession.[48]

In Civil Case No. 10846, petitioner Enriquez filed a replevin case against Asuten for the recovery of the Toyota Hi-Ace van valued at ₱300,000.00.[49] She applied for a bond in the amount of ₱600,000.00 with respondent in Asuten's favor. The Regional Trial Court approved the bond and ordered the sheriff to recover the van from Asuten and to deliver it to petitioner. While the van was in petitioner's custody, the Regional Trial Court dismissed the case without prejudice for failure to prosecute. Thus, it ordered the sheriff to restore the van to Asuten. When petitioner failed to produce the van, the Regional Trial Court directed respondent to pay Asuten the amount of the bond.

There was no trial on the merits. The Regional Trial Court's dismissal for failure to prosecute was a dismissal without prejudice to re-filing. In this particular instance, any writ of seizure, being merely ancillary to the main action, becomes *functus oficio*. The parties returned to the status quo as if no case for replevin had been filed. Thus, upon the dismissal of

---

[45] RULES OF COURT, Rule 60, Sec. 2.

[46] *See* RULES OF COURT, Rule 60, Sec. 3.

[47] *See* RULES OF COURT, Rule 60, Sec. 6.

[48] *See* RULES OF COURT, Rule 60, Sec. 9.

[49] *Rollo,* p. 31.

the case, it was imperative for petitioner to return the van to Asuten. In *Advent Capital and Finance Corporation v. Young*:[50]

> We agree with the Court of Appeals in directing the trial court to return the seized car to Young since this is the necessary consequence of the dismissal of the replevin case for failure to prosecute without prejudice. Upon the dismissal of the replevin case for failure to prosecute, the writ of seizure, which is merely ancillary in nature, became *functus officio* and should have been lifted. There was no adjudication on the merits, which means that there was no determination of the issue who has the better right to possess the subject car. Advent cannot therefore retain possession of the subject car considering that it was not adjudged as the prevailing party entitled to the remedy of replevin.
>
> Contrary to Advent's view, *Olympia International Inc. v. Court of Appeals* applies to this case. The dismissal of the replevin case for failure to prosecute results in the restoration of the parties' status prior to litigation, as if no complaint was filed at all. To let the writ of seizure stand after the dismissal of the complaint would be adjudging Advent as the prevailing party, when precisely no decision on the merits had been rendered. Accordingly, the parties must be reverted to their *status quo ante*. Since Young possessed the subject car before the filing of the replevin case, the same must be returned to him, as if no complaint was filed at all.[51]

Petitioner argues that she should not have been made liable for the bond despite her failure to return the van, considering that it was effective only until February 24, 2004, and that she did not renew or post another bond.

De Guia v. Alto Surety & Insurance, Co.[52] requires that any application on the bond be made after hearing but before the entry of judgment. Otherwise, the surety can no longer be made liable under the bond:

> Construing and applying these provisions of the Rules, we have held in a long line of cases that said provisions are mandatory and

---

[50] 670 Phil 538 (2011) [Per *J.* Carpio, Second Division].

[51] *Id.* at 547, *citing Olympia International v. Court of Appeals*, 259 Phil. 841 (1989).

[52] 117 Phil. 434 (1963) [Per *J.* Barrera, *En Banc*].

require the application upon the bond against the surety or bondsmen and the award thereof to be made after hearing and before the entry of final judgment in the case; that if the judgment under execution contains no directive for the surety to pay, and the proper party fails to make any claim for such directive before such judgment had become final and executory, the surety or bondsman cannot be later made liable under the bond. The purpose of the aforementioned rules is to avoid multiplicity of suits.[53]

For this reason, a surety bond remains effective until the action or proceeding is finally decided, resolved, or terminated. This condition is deemed incorporated in the contract between the applicant and the surety, regardless of whether they failed to expressly state it. Under the Guidelines on Corporate Surety Bonds:[54]

VII. LIFETIME OF BONDS IN CRIMINAL AND CIVIL ACTIONS/ SPECIAL PROCEEDINGS

Unless and until the Supreme Court directs otherwise,[55] the lifetime or duration of the effectivity of any bond issued in criminal and civil actions/special proceedings, or in any proceeding or incident therein

---

[53] *Id*. at 440, *citing Visayan Surety & Insurance Corp. v. Pascual*, 85 Phil. 779 (1950) [Per *J*. Ozaeta, *En Banc*]; *Liberty Construction Supply Co. v. Pecson*, 89 Phil. 50 (1951) [Per *J*. Feria, First Division]; *Aguasin v. Velasquez*, 88 Phil. 357 (1951) [Per *J*. Tuason, *En Banc*]; *Abelow v. De la Riva*, 105 Phil. 159 (1959) [Per *J*. Bengzon, *En Banc*]; *Riel v. Lacson*, G.R. No. L-9863, September 29, 1958; *Port Motors, Inc. v. Raposas*, 100 Phil. 732 (1957) [Per *J*. Felix, *En Banc*]; *Luneta Motor Co. v. Lopez*, 105 Phil. 327 (1959) [Per *J*.B.L Reyes, *En Banc*]; *Visayan Surety & Insurance Co. v. Aquino*, 96 Phil. 900 (1955) [Per *J*. Labrador, *En Banc*]; *Curilan v. Court of Appeals*, 105 Phil. 1150 (1959) [Per *J*. Bautista Angelo, *En Banc*]; *Alliance Insurance & Surety Co. v. Piccio*, 105 Phil. 1192 (1959); and *Del Rosario v. Nava*, 95 Phil. 637 (1954) [Per *J*.B.L. Reyes, *En Banc*].

[54] A.M. No. 04-7-02-SC (2004). These Guidelines are given retroactive effect considering that the Regional Trial Court Order was issued on May 24, 2004. Petitioner would not be adversely affected by its retroactive application since the procedural rule prevailing at the time, *Fixing the Lifetime of Bonds in Civil Actions or Proceedings* [Administrative Matter No. 03-03-18-SC (2003)], stated the same rule verbatim.

[55] This has since been amended by A.M. No. 04-7-02-SC (2015) to read: "Unless and until the court concerned directs otherwise."

shall be from its approval by the court, until the action or proceeding is finally decided, resolved or terminated. *This condition must be incorporated in the terms and condition of the bonding contract and shall bind the parties notwithstanding their failure to expressly state the same in the said contract or agreement*. (Emphasis supplied)

Civil Case No. 10846 is a rare instance where the writ of seizure is dissolved due to the dismissal without prejudice, but the bond stands because the case has yet to be finally terminated by the Regional Trial Court.

The peculiar circumstances in this case arose when petitioner *failed* to return the van to Asuten, despite the dismissal of her action. This is an instance not covered by the Rules of Court or jurisprudence. In its discretion, the Regional Trial Court proceeded to rule on the forfeiture of the bond. As a result, respondent paid Asuten twice the value of the van withheld by petitioner. Respondent, thus, seeks to recover *this* amount from petitioner, despite the van only being worth half the amount of the bond.

Of all the provisional remedies provided in the Rules of Court, only Rule 60, Section 2[56] requires that the amount of the bond be *double* the value of the property. The other provisional remedies provide that the amount be fixed by court or be merely equal to the value of the property:

Provisional Remedies

Rule 57
Preliminary Attachment

. . . . . .

Section 4. Condition of applicant's bond. — The party applying for the order must thereafter give a bond executed to the adverse

---

[56] RULES OF COURT, Rule 60, Sec. 2. provides:

Section 2. Affidavit and bond. — . . . .

The applicant must also give a bond, executed to the adverse party in double the value of the property as stated in the affidavit aforementioned, for the return of the property to the adverse party if such return be adjudged, and for the payment to the adverse party of such sum as he may recover from the applicant in the action.

party *in the amount fixed by the court in its order granting the issuance of the writ*, conditioned that the latter will pay all the costs which may be adjudged to the adverse party and all damages which he may sustain by reason of the attachment, if the court shall finally adjudge that the applicant was not entitled thereto.

. . . . . .

Section 12. Discharge of attachment upon giving counter-bond. — After a writ of attachment has been enforced, the party whose property has been attached, or the person appearing on his behalf, may move for the discharge of the attachment wholly or in part on the security given. The court shall, after due notice and hearing, order the discharge of the attachment if the movant makes a cash deposit, or files a counter-bond executed to the attaching party with the clerk of the court where the application is made, *in an amount equal to that fixed by the court in the order of attachment, exclusive of costs*. But if the attachment is sought to be discharged with respect to a particular property, *the counter-bond shall be equal to the value of that property as determined by the court*. In either case, the cash deposit or the counter-bond shall secure the payment of any judgment that the attaching party may recover in the action. A notice of the deposit shall forthwith be served on the attaching party. Upon the discharge of an attachment in accordance with the provisions of this section, the property attached, or the proceeds of any sale thereof, shall be delivered to the party making the deposit or giving the counter-bond, or to the person appearing on his behalf, the deposit or counter-bond aforesaid standing in place of the property so released. Should such counter-bond for any reason be found to be or become insufficient, and the party furnishing the same fail to file an additional counter-bond, the attaching party may apply for a new order of attachment.

. . . . . .

Section 14. Proceedings where property claimed by third person. — If the property attached is claimed by any person other than the party against whom attachment had been issued or his agent, and such person makes an affidavit of his title thereto, or right to the possession thereof, stating the grounds of such right or title, and serves such affidavit upon the sheriff while the latter has possession of the attached property, and a copy thereof upon the attaching party, the sheriff shall not be bound to keep the property under attachment, unless the attaching party or his agent, on demand of the sheriff, shall file a bond approved by the court to indemnify the third-party

claimant *in a sum not less than the value of the property levied upon*. In case of disagreement as to such value, the same shall be decided by the court issuing the writ of attachment. No claim for damages for the taking or keeping of the property may be enforced against the bond unless the action therefor is filed within one hundred twenty (120) days from the date of the filing of the bond.

. . . . . .

Rule 58
Preliminary Injunction

. . . . . .

Section 4. Verified application and bond for preliminary injunction or temporary restraining order. — A preliminary injunction or temporary restraining order may be granted only when:

. . . . . .

(b) Unless exempted by the court, the applicant files with the court where the action or proceeding is pending, a bond executed to the party or person enjoined, *in an amount to be fixed by the court*, to the effect that the applicant will pay to such party or person all damages which he may sustain by reason of the injunction or temporary restraining order if the court should finally decide that the applicant was not entitled thereto. Upon approval of the requisite bond, a writ of preliminary injunction shall be issued.

. . . . . .

Section 6. Grounds for objection to, or for motion of dissolution of, injunction or restraining order. — The application for injunction or restraining order may be denied, upon a showing of its insufficiency. The injunction or restraining order may also be denied, or, if granted, may be dissolved, on other grounds upon affidavits of the party or person enjoined, which may be opposed by the applicant also by affidavits. It may further be denied, or, if granted, may be dissolved, if it appears after hearing that although the applicant is entitled to the injunction or restraining order, the issuance or continuance thereof, as the case may be, would cause irreparable damage to the party or person enjoined while the applicant can be fully compensated for such damages as he may suffer, and the former files a bond in an amount fixed by the court conditioned that he will pay all damages which the applicant may suffer by the denial or the dissolution of the injunction or restraining order. If it appears that the extent of

the preliminary injunction or restraining order granted is too great, it may be modified.

. . . . . .

Rule 59
Receivership

. . . . . .

Section 2. Bond on appointment of receiver. — Before issuing the order appointing a receiver the court shall require the applicant to file a bond executed to the party against whom the application is presented, *in an amount to be fixed by the court*, to the effect that the applicant will pay such party all damages he may sustain by reason of the appointment of such receiver in case the applicant shall have procured such appointment without sufficient cause; and the court may, in its discretion, at any time after the appointment, require an additional bond as further security for such damages.

Section 3. Denial of application or discharge of receiver. — The application may be denied, or the receiver discharged, when the adverse party files a bond executed to the applicant, *in an amount to be fixed by the court*, to the effect that such party will pay the applicant all damages he may suffer by reason of the acts, omissions, or other matters specified in the application as ground for such appointment. The receiver may also be discharged if it is shown that his appointment was obtained without sufficient cause.

. . . . . .

Rule 60
Replevin

. . . . . .

Section 7. Proceedings where property claimed by third person. — If the property taken is claimed by any person other than the party against whom the writ of replevin had been issued or his agent, and such person makes an affidavit of his title thereto, or right to the possession thereof, stating the grounds therefor, and serves such affidavit upon the sheriff while the latter has possession of the property and a copy thereof upon the applicant, the sheriff shall not be bound to keep the property under replevin or deliver it to the applicant unless the applicant or his agent, on demand of said sheriff, shall file a bond approved by the court to indemnify the third-party claimant

in a sum not less than the value of the property under replevin as provided in section 2 hereof. In case of disagreement as to such value, the court shall determine the same. No claim for damages for the taking or keeping of the property may be enforced against the bond unless the action therefor is filed within one hundred twenty (120) days from the date of the filing of the bond.[57] (Emphasis supplied)

However, there is a rationale to the requirement that the bond for a writ of seizure in a replevin be double the value of the property. The bond functions not only to indemnify the defendant in case the property is lost, but also to answer for any damages that may be awarded by the court if the judgment is rendered in defendant's favor. In *Citibank, N.A. v. Court of Appeals*:[58]

It should be noted that a replevin bond is intended to indemnify the defendant against any loss that he may suffer by reason of its being compelled to surrender the possession of the disputed property pending trial of the action. The same may also be answerable for damages if any when judgment is rendered in favor of the defendant or the party against whom a writ of replevin was issued and such judgment includes the return of the property to him. Thus, the requirement that the bond be double the actual value of the properties litigated upon. Such is the case because the bond will answer for the actual loss to the plaintiff, which corresponds to the value of the properties sought to be recovered and for damages, if any.[59]

Any application of the bond in a replevin case, therefore, is premised on the judgment rendered in favor of the defendant. Thus, the Rules of Court imply that there must be a prior judgment on the merits before there can be any application on the bond:

---

[57] RULES OF COURT, Rules 57-60.

[58] 364 Phil. 328 (1999) [Per *J.* Purisima, Third Division].

[59] *Id.* at 347, citing *Alim v. Court of Appeals*, 277 Phil. 156 (1991) [Per *J.* Paras, Second Division]; *Sapugay, et al. v. Court of Appeals, et al.*, 262 Phil. 506 (1990) [Per *J.* Regalado, First Division]; and *Stronghold Insurance Co., v. Court of Appeals*, 258-A Phil. 690 (1989) [Per *J.* Regalado, Second Division].

Rule 60
Replevin

. . . . . .

Section 9. Judgment. — After trial of the issues, the court shall determine who has the right of possession to and the value of the property and shall render judgment in the alternative for the delivery thereof to the party entitled to the same, or for its value in case delivery cannot be made, and also for such damages as either party may prove, with costs.

Section 10. Judgment to include recovery against sureties. — The amount, if any, to be awarded to any party upon any bond filed in accordance with the provisions of this Rule, shall be claimed, ascertained, and granted under the same procedure as prescribed in section 20 of Rule 57.

The Rules of Court likewise require that for the defendant to be granted the *full* amount of the bond, he or she must first apply to the court for damages. These damages will be awarded only after a proper hearing:

Rule 57
Preliminary Attachment

. . . . . .

Section 20. Claim for damages on account of improper, irregular or excessive attachment. — An application for damages on account of improper, irregular or excessive attachment must be filed before the trial or before appeal is perfected or before the judgment becomes executory, with due notice to the attaching party and his surety or sureties, setting forth the facts showing his right to damages and the amount thereof. Such damages may be awarded only after proper hearing and shall be included in the judgment on the main case.

If the judgment on the appellate court be favorable to the party against whom the attachment was issued, he must claim damages sustained during the pendency of the appeal by filing an application in the appellate court, with notice to the party in whose favor the attachment was issued or his surety or sureties, before the judgment of the appellate court becomes executory. The appellate court may allow the application to be heard and decided by the trial court.

Nothing herein contained shall prevent the party against whom the attachment was issued from recovering in the same action the damages awarded to him from any property of the attaching party not exempt from execution should the bond or deposit given by the latter be insufficient or fail to fully satisfy the award.

Forfeiture of the replevin bond, therefore, requires *first*, a judgment on the merits in the defendant's favor, and *second*, an application by the defendant for damages. Neither circumstance appears in this case. When petitioner failed to produce the van, equity demanded that Asuten be awarded only an amount equal to the value of the van. The Regional Trial Court would have erred in ordering the forfeiture of the *entire* bond in Asuten's favor, considering that there was no trial on the merits or an application by Asuten for damages. This judgment could have been reversed *had petitioner appealed the Regional Trial Court's May 24, 2004 Order in Civil Case No. 10846*. Unfortunately, she did not. Respondent was, thus, constrained to follow the Regional Trial Court's directive to pay Asuten the full amount of the bond.

II

This is a simple case for collection of a sum of money. Petitioner cannot substitute this case for her lost appeal in Civil Case No. 10846.

In applying for the replevin bond, petitioner voluntarily undertook with respondent an Indemnity Agreement, which provided:

INDEMNIFICATION – to indemnify the SURETY for all damages, payments, advances, losses, costs, taxes, penalties, charges, attorney's fees and expenses of whatever kind and nature that the SURETY may at any time sustain or incur as a consequence of having become a surety upon the above-mentioned bond, and to pay, reimburse and make good to the SURETY, its successors and assigns, all sums or all money which it shall pay or become liable to pay by virtue of said bond even if said payment/s or liability exceeds the amount of the bond. . . .

INCONTESTABILITY OF PAYMENTS MADE BY THE SURETY – any payment or disbursement made by the surety on account of the

above-mentioned bond, either in the belief that the SURETY was obligated to make such payment or in the belief that said payment was necessary in order to avoid a greater loss or obligation for which the SURETY might be liable by virtue of the . . . above-mentioned bond, shall be final, and will not be contested by the undersigned, who jointly and severally bind themselves to indemnify the SURETY for any of such payment or disbursement.[60]

Basic is the principle that "a contract is law between the parties"[61] for as long as it is "not contrary to law, morals, good customs, public order, or public policy."[62] Under their Indemnity Agreement, petitioner held herself liable for any payment made by respondent by virtue of the replevin bond.

Petitioner contends that the Indemnity Agreement was a contract of adhesion since respondent made the extent of liability "so comprehensive and all-encompassing to the point of being ambiguous."[63]

A contract of insurance is, by default, a contract of adhesion. It is prepared by the insurance company and might contain terms and conditions too vague for a layperson to understand; hence, they are construed liberally in favor of the insured. In *Verendia v. Court of Appeals*:[64]

Basically a contract of indemnity, an insurance contract is the law between the parties. Its terms and conditions constitute the measure of the insurer's liability and compliance therewith is a condition precedent to the insured's right to recovery from the insurer. As it is also a contract of adhesion, an insurance contract should be liberally construed in favor of the insured and strictly against the insurer company which usually prepares it.[65]

---

[60] *Rollo*, p. 50.

[61] *Alcantara v. Alinea*, 8 Phil. 111 (1907) [Per *J*. Torres, First Division].

[62] CIVIL CODE, Art. 1306.

[63] *Rollo,* p. 21.

[64] 291 Phil. 439 (1993) [Per *J.* Melo, Third Division].

[65] *Id*. at 446-447 *citing Pacific Banking Corporation v. Court of Appeals*, 250 Phil. 1 (1988) [Per *J*. Paras, Second Division]; *Oriental Assurance*

Respondent, however, does not seek to recover an amount which exceeds the amount of the bond or any "damages, payments, advances, losses, costs, taxes, penalties, charges, attorney's fees and expenses of whatever kind and nature,"[66] all of which it could have sought under the Indemnity Agreement. It only seeks to recover from petitioner the amount of the bond, or ₱600,000.00.

Respondent paid ₱600,000.00 to Asuten pursuant to a lawful order of the Regional Trial Court in Civil Case No. 10846. If there were any errors in the judgment of the Regional Trial Court, as discussed above, petitioner could have appealed this. Petitioner, however, chose to let Civil Case No. 10846 lapse into finality. This case cannot now be used as a substitute for her lost appeal.

It is clear from the antecedents that any losses which petitioner has suffered were due to the consequences of her actions, or more accurately, her inactions. Civil Case No. 10846, which she filed, was dismissed due to her failure to prosecute. The Regional Trial Court forfeited the replevin bond which she had filed because she refused to return the property. She is now made liable for the replevin bond because she failed to appeal its forfeiture.

WHEREFORE, the Petition is **DENIED**. The August 13, 2013 Decision and January 14, 2014 Resolution of the Court of Appeals in CA-G.R. CV No. 95955 are **AFFIRMED**.

SO ORDERED.

Leonardo-de Castro (Chairperson), *Bersamin, A. Reyes, Jr.,* and *Gesmundo, JJ.,* concur.

Corporation v. Court of Appeals, 277 Phil. 525 (1991) [Per *J.* Melencio-Herrera, Second Division]; *Perla Compania de Seguros, Inc. v. Court of Appeals*, 264 Phil. 354 (1990) [Per *C.J.* Fernan, Third Division]; and *Western Guaranty Corporation v. Court of Appeals*, 265 Phil. 687 (1980) [Per *J.* Feliciano, Third Division].

[66] *Rollo,* p. 20.

THIRD DIVISION

[G.R. No. 211077. August 15, 2018]

CIVIL SERVICE COMMISSION, *petitioner, vs.* **GABRIEL MORALDE,** *respondent.*

[G.R. No. 211318. August 15, 2018]

PROVINCE OF MISAMIS ORIENTAL, *petitioner, vs.* **GABRIEL MORALDE,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; ACTIONS; JUDGMENT; DOCTRINE OF IMMUTABILITY OF JUDGMENT; THE DOCTRINE OF IMMUTABILITY OF JUDGMENTS IS NOT ITSELF ABSOLUTELY AND INESCAPABLY IMMUTABLE; INSTANCES IN WHICH A FINAL JUDGMENT'S EXECUTION MAY BE DISTURBED; ENUMERATED.— The doctrine of immutability of judgments is not itself absolutely and inescapably immutable. "While firmly ingrained as a basic procedural tenet in Philippine jurisprudence, [it] was never meant to be an inflexible tool to excuse and overlook prejudicial circumstances." This Court has recognized that it "must yield to practicality, logic, fairness and substantial justice." Jurisprudence enumerates instances in which a final judgment's execution may be disturbed: (1) the correction of clerical errors; (2) *nunc pro tunc* entries that do not prejudice a party; (3) void judgments; and (4) whenever supervening events or circumstances transpire after the decisions' finality, making the decision's execution unjust and inequitable. This Court's enumeration of exceptions reveals a grounded consideration of, and a commitment to honor, matters at the heart of "serv[ing] substantial justice."

2. LABOR AND SOCIAL LEGISLATION; REPUBLIC ACT NO. 8291 (THE REVISED GOVERNMENT SERVICE INSURANCE ACT OF 1977); RETIREMENT AND SEPARATION BENEFITS, DISTINGUISHED; SEPARATION BENEFITS AND RETIREMENT BENEFITS DIFFER ON

THE SPECIFIC BENEFITS THEY CONFER AND ON THE QUALIFICATIONS REQUIRED OF THOSE WHO SEEK TO AVAIL OF THOSE BENEFITS; ELUCIDATED.— The Court of Appeals rightly differentiated between the receipt of retirement benefits, under Section 13, and the receipt of separation benefits, under Section 11, of Republic Act No. 8291. They differ on the specific benefits they confer and on the qualifications required of those who seek to avail of those benefits. Section 13 lists the retirement benefits available under Republic Act No. 8291: x x x Section 13-A specifies the conditions for entitlement to retirement benefits under Section 13: x x x Section 11 spells out the separation benefits under Republic Act No. 8291 and the conditions for entitlement to these separation benefits: x x x The availing of retirement benefits differs from the availing of separation benefits with respect to the requisite age and length of service. For retirement, the applicant needs to be at least 60 years old and must have served for at least 15 years. For separation benefits, the applicant must be below 60 years old. There are further distinctions for availing of separation benefits under Section 11, paragraphs (a) and (b). Under paragraph (a), the applicant needs to have served for at least three (3) years, but less than 15 years. Under paragraph (b), the applicant must have served for at least 15 years. Retirement and separation benefits differ on the availability of monthly pensions, and the computation of the amount that will be immediately released to an approved applicant. For retirees, with their two (2) options specified in Section 13(a)(1) and Section 13(a)(2), an old-age or basic monthly pension is always assured. It is for the applicant to choose between starting to receive it five (5) years after leaving the service, as provided for by Section 13(a)(1), or immediately upon retiring, as provided for under Section 13(a)(2). For recipients of separation benefits, a basic monthly pension can be obtained only by those who have served for at least 15 years, as expressed in Section 11(b). Even then, they may only avail of this pension upon reaching the age of 60. As to the computation of awards, the amounts that can be granted to a retiree far exceed those that can be given to a recipient of separation benefits. This is because one's number of years in service is a key component of the computations for both retirement and separation benefits.

3. CIVIL LAW; OBLIGATIONS AND CONTRACTS; ESTOPPEL; ELEMENTS THAT MUST BE SATISFIED

FOR A PARTY TO BE HELD IN ESTOPPEL; ENUMERATED.— Estoppel is not to be lightly invoked. In *Kalalo v. Luz*, this Court clarified: Estoppel . . . [is] harsh or odious, and not favored in law. When misapplied, [it] becomes a most effective weapon to accomplish an injustice, inasmuch as it shuts a man's mouth from speaking the truth and debars the truth in a particular case. [It] cannot be sustained by mere argument or doubtful inference; it must be clearly proved in all its essential elements by clear, convincing and satisfactory evidence. No party should be precluded from making out his case according to its truth unless by force of some positive principle of law, and, consequently, estoppel in pais must be applied strictly and should not be enforced unless substantiated in every particular. *Kalalo* discussed the elements that must be satisfied for a party to be held in estoppel: x x x As related to the party to be estopped, the essential elements are: (1) conduct amounting to false representation or concealment of material facts or at least calculated to convey the impression that the facts are otherwise than, and inconsistent with, those which the party subsequently attempts to assert; (2) intent, or at least expectation that this conduct shall be acted upon by, or at least influence, the other party; and (3) knowledge, actual or constructive, of the real facts. As related to the party claiming the estoppel, the essential elements are (1) lack of knowledge and of the means of knowledge of the truth as the facts in question; (2), reliance, in good faith, upon the conduct or statements of the party to be estopped; (3) action or inaction based thereon of such character as to change the position or status of the party claiming the estoppel, to his injury, detriment or prejudice.

4. LABOR AND SOCIAL LEGISLATION; REPUBLIC ACT NO. 8291 (THE REVISED GOVERNMENT SERVICE INSURANCE ACT OF 1977); SECURITY OF TENURE; EMPLOYEES WHO VOLUNTARILY SEVER THEIR EMPLOYER-EMPLOYEE RELATIONS WILLFULLY ABANDON THE SECURITY OF THEIR OWN TENURE; CASE AT BAR.— By definition, reinstatement works to restore a person to his or her former status. Reinstatement is given as a remedy to those whose employment was illegally terminated because the law considers them as having been unduly deprived of their positions. In *Verdadero v. Barney Autolines Group of*

> *Companies Transport, Inc.*: *Reinstatement and backwages are reliefs available to an illegally dismissed employee.* ***Reinstatement restores the employee who was unjustly dismissed to the position from which he was removed, that is, to his status quo ante dismissal***, while the grant of backwages allows the same employee to recover from the employer that which he had lost by way of wages as a result of his dismissal. x x x It is preposterous to consider reinstatement when there was no prior removal. *Verdadero*'s pronouncements on reinstatement cannot encompass those who, like Moralde, did not only voluntarily intend and declare their intent to relinquish their position, but even petitioned to receive monetary benefits available only through the consummation of such relinquishment. *United Laboratories, Inc. v. Domingo* explained that reinstatement is rooted in the State's policy of ensuring a worker's security of tenure. Employees who voluntarily sever their employer-employee relations willfully abandon the security of their own tenure. No one took that security away from them. It would be unfair for an employer to be compelled to reinstate employees who personally, consciously, and willfully acted in a manner that betrays their intent to cease employment. Moralde's acceptance of the benefits which he himself petitioned from GSIS sealed his fate. By receiving them, he affirmed his avowed intent to end his employment. x x x Public officers and employees cannot forestall a finding of liability by opting out of employment. It is doubly worse when they reap financial benefits through severance packages upon opting out of employment. Public service is a public trust, and to hold a government position, no matter the rank, is a privilege, not a right. As such, it must be earned, and to be kept, one must continuously prove oneself worthy not only in terms of competence, but also of integrity.

APPEARANCES OF COUNSEL

Office of the Solicitor General for petitioner.

Benber B. Apepe for respondent.

Provincial Legal Office, Misamis Oriental, for Province of Misamis Oriental.

D E C I S I O N

LEONEN, *J.*:

Quitters are responsible for their own quitting. Persons who willingly turn their backs on their own relations cannot demand to be taken back and restored to their previous state as though nothing happened.

Public officers and employees who actively petition for retirement or separation benefits willfully affirm their separation from service. They are bound by their own voluntary departure. Absent any indication that their choice was vitiated by confounding predicaments, like desperate financial need, they cannot renege on their self-imposed state, and later importune the government to reinstate them to the position they readily relinquished and to pay them backwages in the intervening period. This is especially so when the voluntary severance of their employer-employee relationship with the government was done as part of an attempt to forestall a finding of administrative liability and to evade a dishonorable removal from service. To rule otherwise condones a preposterous predicament rendered unworkable by their own abdication, rewards their desertion and duplicity, and exposes an adjudicatory body's inability to come to terms with the reality foisted by the fact of willful separation from service.

This resolves the consolidated petitions for review on certiorari under Rule 45 of the 1997 Rules of Civil Procedure. The first, docketed as G.R. No. 211077,[1] was brought by the Civil Service Commission. The second, docketed as G.R. No. 211318,[2] was brought by the Province of Misamis Oriental (the Province). These consolidated petitions seek the reversal of the Court of

---

[1] *Rollo* (G.R. No. 211077), pp. 9-37-A.

[2] *Rollo* (G.R. No. 211318), pp. 12-35.

Appeals June 24, 2013 Decision[3] and June 22, 2014 Resolution[4] in CA-G.R. SP No. 02720-MIN.

The assailed Court of Appeals Decision set aside Civil Service Commission Resolution No. 080805 dated April 28, 2008,[5] and Resolution No. 082249 dated December 8, 2008.[6] It also ordered Gabriel Moralde's (Moralde) reinstatement to his former position as Dental Aide of the Province's Provincial Health Office; the payment to him of backwages for five (5) years counted from November 9, 1998, the date when he was supposedly illegally dismissed; and the payment to him of backwages for five (5) years from November 20, 2006, the date when the order for his reinstatement attained finality.[7]

Civil Service Commission Resolution No. 080805 denied the Province's Motion for New Trial and/or Modification of Judgement,[8] but declared as moot and academic its Resolution No. 061984 dated November 20, 2006,[9] which directed Moralde's reinstatement.[10] Civil Service Commission Resolution No. 082249 denied Moralde's Motion for Reconsideration of Civil Service Commission Resolution No. 080805. [11]

The assailed Court of Appeals Resolution denied the separate motions for reconsideration of the assailed Court of Appeals

---

[3] *Rollo* (G.R. No. 211077), pp. 39-58. The Decision was penned by Associate Justice Jhosep Y. Lopez and concurred in by Associate Justices Edgardo A. Camello and Henri Jean Paul B. Inting of the Twenty-Second Division, Court of Appeals, Cagayan de Oro City.

[4] *Id*. at 60-62. The Resolution was penned by Associate Justice Jhosep Y. Lopez and concurred in by Associate Justices Edgardo A. Camello and Henri Jean Paul B. Inting of the Twenty-Second Division, Court of Appeals, Cagayan de Oro City.

[5] *Id*. at 70-77.

[6] *Id*. at 107-111.

[7] *Id*. at 57.

[8] *Id*. at 100-105.

[9] *Id*. at 95-98.

[10] *Id*. at 77.

[11] *Id*. at 111.

Decision filed by the Civil Service Commission[12] and the Province.[13]

Moralde's services were engaged as a Dental Aide in the Province's Provincial Health Office.[14] He was assigned to the municipalities of Villanueva and Claveria. According to the Province, he had a history of falsifying public documents by forging his immediate supervisor's signature onto his Daily Time Record. The Province also noted that he had a track record of "frequent absences without leave, and . . . habitual tardiness."[15]

Eventually, Moralde was formally charged with falsifying his Daily Time Records for March and April 1998.[16] Dr. Diana Marie L. Casiño,[17] Municipal Health Officer of Villanueva, noted that his Daily Time Records were altered to conceal how he did not report for work in those months.[18] In his written explanation, Moralde admitted that he did not render service from March 16 to 30, 1998. After conducting an investigation, Atty. Danilo P. Rubio (Atty. Rubio), the Provincial Attorney, noted that Moralde had previously committed the very same infraction.[19] Thus, he recommended that Moralde be dismissed from service.[20]

Unknown to the Province's officials, Moralde went to the Government Service Insurance System (GSIS) while the administrative case against him was pending. There, on November 8, 1998,[21] he filed an "application for retirement"

---

[12] *Id*. at 130-140.

[13] *Rollo* (G.R. No. 211318), pp. 57-66.

[14] *Rollo* (G.R. No. 211077), p. 9.

[15] *Rollo* (G.R. No. 211318), p. 14.

[16] *Rollo* (G.R. No. 211077), p. 11.

[17] Note that Dr. Casino's name is spelled as 'Dianamarie' in the Province of Misamis Oriental's Petition for Review on *Certiorari*, *see rollo* (G.R. No. 211318), p. 14.

[18] *Rollo* (G.R. No. 211077), p. 11.

[19] *Id*.

[20] *Id*. at 64-66.

[21] *Rollo* (G.R. No. 211318), p. 15.

under Republic Act No. 8291, otherwise known as the "Revised Government Service Insurance Act of 1977."[22]

The very next day, November 9, 1998, then Provincial Governor Antonio P. Calingin (Governor Calingin), issued Memorandum No. APC 1019,[23] finding Moralde guilty of Falsification of Public Documents and dismissing him from service.[24] There was no showing that Moralde informed any of the Province's officials about his pending retirement application with GSIS upon knowing of Memorandum No. APC 1019.[25]

On November 24, 1998, Moralde filed an appeal before the Civil Service Commission. He lamented how he was supposedly dismissed in violation of due process.[26]

On March 20, 2003,[27] GSIS wrote to Moralde, stating that his "application for retirement under [Republic Act No.] 8291" had been approved.[28] It specified November 8, 1998, the date Moralde filed his retirement application, as the date of his retirement's effectivity:

MAR. 20, 2003

MR./MS. GABRIEL A MORALDE RETIREMENT NO. AF 13507

CUGMAN, ZONE 1, CAG. DE ORO

SA# 0151-2361-20 LBP CDO

SIR/MADAM:

PLEASE BE INFORMED THAT **YOUR APPLICATION FOR RETIREMENT UNDER RA 8291, EFFECTIVE NOV. 8, 1998 AT AGE 38.5 YRS. HAS BEEN APPROVED BY THIS OFFICE**. THIS APPROVAL WILL ALSO SERVE AS CLEARANCE FROM GSIS FOR PAYMENT OF YOUR TERMINAL LEAVE AND OTHER

---

[22] *Rollo* (G.R. No. 211077), pp. 11-12.

[23] *Id*. at 87.

[24] *Id*. at 12.

[25] *Id*. *See also rollo* (G.R. No. 211318), p. 15.

[26] *Rollo* (G.R. No. 211077), p. 12.

[27] *Rollo* (G.R. No. 211318), p. 15.

[28] *Rollo* (G.R. No. 211077), p. 85.

BENEFITS PAYABLE BY YOUR EMPLOYER. YOUR CHECK AND A COPY OF YOUR VOUCHER COVERING PAYMENT OF YOUR BENEFITS WILL BE MAILED SHORTLY.

THE BENEFIT TO WHICH YOU ARE ENTITLED IS STATED BELOW:

> [BASIC MONTHLY PENSION] X EIGHTEEN (18) MOS. CASH PAYMENT AND **ANNUITY STARTING ON 02 27 20 YOUR 60TH BIRTHDAY TO BE PAID MONTHLY AS LONG AS YOU LIVE**.[29] (Emphasis supplied)

Moralde served no notice either upon the Province or the Civil Service Commission about GSIS' approval of his retirement and the determination that it was effective on the day immediately preceding the termination of his employment.[30] Instead, he filed a notice of appeal of his dismissal directly before the Civil Service Commission.[31]

On April 9, 2003, the Civil Service Commission's Office of the Legal Affairs issued an Order for Governor Calingin to comment on Moralde's appeal. However, Governor Calingin failed to comply.[32] Moralde's counsel then filed a Motion, "praying that the case be resolved on the basis of evidence and pleadings submitted by Moralde."[33] Hence, "the case was submitted for resolution [only] on the basis of available records."[34]

On May 3, 2005, the Civil Service Commission issued Resolution No. 050569, setting aside Governor Calingin's termination order.[35]

On April 20, 2006, Moralde moved for the execution of Resolution No. 050569.[36] On November 20, 2006, the Civil

---

[29] *Id*.

[30] *Id*. at 12.

[31] *Id*. at 12 and 68.

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

[33] *Rollo* (G.R. No. 211318), p. 15.

[34] *Rollo* (G.R. No. 211077), p. 13.

[35] *Id*. at 113-118.

[36] *Id*. at 13.

Service Commission issued Resolution No. 061984, ruling that Moralde should be reinstated.[37]

On June 8, 2007, then Misamis Oriental Governor Oscar S. Moreno (Governor Moreno) issued an Order reinstating Moralde.[38]

All this time, Moralde remained silent that his "retirement" had already taken effect years prior. It was only in July 2007 while the Province was processing his papers for his reinstatement that it found out about his successful application for retirement. The Province emphasized that neither were Moralde's retirement and its date of effectivity readily reflected in his 201 files, nor was its Personnel Office informed of his retirement.[39]

On October 25, 2007, the Province filed before the Civil Service Commission a Motion for New Trial and/or Modification of Judgement[40] upon discovering that Moralde bypassed his administrative case through retirement.[41] It specifically noted that "Moralde ha[d] already retired from government service on November 8, 1998 and had already received all his benefits from the Government Service Insurance System."[42] Thus, it emphasized that "the judgment contained in Resolution No. 061984 should be modified to reflect the fact of his retirement."[43]

Moralde opposed[44] the Province's motion, arguing that the judgment sought to be modified had already become final and executory; hence, it could no longer be modified or amended except for some clerical errors. He maintained that what he

---

[37] *Id*. at 95-98.

[38] *Id*. at 99.

[39] *Rollo* (G.R. No. 211318), p. 17.

[40] *Rollo* (G.R. No. 211077), pp. 100-104.

[41] *Rollo* (G.R. No. 211318), p. 17.

[42] *Rollo* (G.R. No. 211077), p. 101.

[43] *Id*. at 102.

[44] *Id*. at 80-84.

had received or collected from GSIS was his separation benefits, which did not preclude him from questioning his dismissal's validity.[45]

On April 28, 2008, the Civil Service Commission issued Resolution No. 080805,[46] denying the Province's Motion for New Trial and/or Modification of Judgement. It explained that "the Resolution sought to be modified already attained finality."[47] It also conceded, however, that "the issue of Moralde's reinstatement to the service with payment of backwages [has become] moot and academic":[48]

> However, with the recent information obtained by the [Province] . . . the issue of Moralde's reinstatement to the service with payment of backwages now becomes moot and academic. It was clearly established on record that [he] voluntarily left the service even before he filed an appeal with the Commission. He retired . . . even prior to this Commission's ruling setting aside [Governor Calingin's Order for his termination] . . . [I]t cannot now be said that he can be ordered reinstated and [paid] . . . back salaries . . . [U]pon his retirement, he has already closed a chapter of his government service.
>
> The Commission in declaring Moralde's reinstatement to the service with payment of backwages moot and academic is merely implementing the ruling of the Supreme Court in Santos vs. Court of Appeals, which ruling, if not actually in point, is nevertheless applicable owing to the Supreme Court's pronouncement, to wit:
>
> > "Suffice it to state that upon his retirement from his office as a Judge, petitioner has already closed a chapter of his government service . . . ."
>
> **WHEREFORE**, the instant motion of the [Province] . . . is hereby **DENIED**. Considering, however, that . . . Moralde already retired . . . , this Commission's Order in CSC Resolution No. 06-1984 dated

---

[45] *Id*. at 16.

[46] *Id*. at 70-77.

[47] *Id*. at 76.

[48] *Id*.

November 20, 2006 directing Moralde's reinstatement to the service with payment of backwages is hereby declared moot and academic.[49] (Emphasis in the original, citation omitted)

Moralde filed a Motion for Reconsideration, insisting on the immutability of the Civil Service Commission's prior ruling.[50] On December 8, 2008, the Civil Service Commission denied this Motion through its Resolution No. 082249.[51] This Resolution also clarified that the effect of Resolution No. 080805 was the "set[ting] aside [of its] ruling to reinstate Moralde . . . with payment of backwages."[52]

Moralde filed a Petition for Review before the Court of Appeals.[53] He maintained that the Civil Service Commission's ruling on his reinstatement was immutable and that, in any case, he had never retired, but merely received separation pay.[54]

In response, the Civil Service Commission conceded that generally, a final and executory decision could not be modified. However, it noted that jurisprudence had entertained exceptions "where facts or events transpire[d] after a decision has become executory constituting a supervening cause that would render the final judgment unenforceable, or when its execution becomes impossible or unjust."[55]

The Civil Service Commission emphasized that the Province "had every intention" of reinstating Moralde and of paying him backwages.[56] To the Civil Service Commission, however, it was clear that the "discovery and verification of [Moralde's]

---

[49] *Id*. at 76-77.

[50] *Id*. at 18.

[51] *Id*. at 107-111.

[52] *Id*. at 107.

[53] *Id*. at 18 and 119-129.

[54] *Rollo* (G.R. No. 211318), pp. 40-41.

[55] *Id.* at 41.

[56] *Id*.

retirement ha[d] rendered Resolution No. 061984 practically unenforceable."[57] Thus, it stood firm in its stance that Resolution No. 061984 was moot and academic.[58]

For its part, the Province contended that "contrary to [Moralde's] self-serving claim" of having obtained separation benefits without retiring, the GSIS documents "show[ed] that [he] ha[d] indeed applied for retirement under [Republic Act No.] 8291."[59] It emphasized that GSIS paid Moralde separation benefits precisely because his retirement was approved. The Province charged Moralde with defrauding the government for never personally or actively informing it that he had been retired since November 8, 1998. It added that if it reinstated Moralde and paid him backwages "or any monetary benefits for the period which were already included in the computation of his retirement benefits," he would be getting "double gratuity which [was] unwarranted."[60]

The Court of Appeals ruled in favor of Moralde. It noted that a judgment or order becomes final without a perfected appeal or duly filed motion for reconsideration. It also stated that Moralde's reinstatement "was not rendered moot and academic ... [by his] avail[ing of] and actually receiving his separation benefits."[61] It noted that while Moralde had rendered more than 16 years of service, he was only 38 years old upon his purported retirement, and thus, was years ahead of being qualified to retire. It explained that given his ineligibility for retirement benefits, what Moralde received from the GSIS could have only been separation benefits.[62]

---

[57] *Id*.

[58] *Id*. at 43.

[59] *Id*. at 41-42.

[60] *Id*. at 42.

[61] *Id*. at 43

[62] *Id*. at 44.

Citing *Dytiapco v. Civil Service Commission*[63] and *Yenko v. Gungon*,[64] it further explained that Moralde "did not abandon his appeal before the [Civil Service Commission] when he availed of his separation benefits."[65] It emphasized that a GSIS member previously "separated from the service is not barred from entering or being re-employed in the government service if still qualified."[66] It also stated that Moralde was entitled to even more backwages in view of how he "was belatedly reinstated."[67]

The dispositive portion of the assailed Court of Appeals June 24, 2013 Decision read:

> **WHEREFORE**, premises considered, the instant petition is **GRANTED**. The assailed Resolution No. 080805 dated April 28, 2008 and Resolution No. 082249 dated December 8, 2008 of the Civil Service Commission Proper are hereby **SET ASIDE** in so far as it declared the reinstatement of petitioner Gabriel Moralde to the service with payment of back wages moot and academic. Petitioner Gabriel Moralde is hereby **REINSTATED**, without qualification, to his former position as Dental Aide of the Provincial Health Office, Province of Misamis Oriental, without loss of seniority rights. Respondent Province of Misamis Oriental is **ORDERED** to pay petitioner Gabriel Moralde: **(a)** back salaries for five (5) years from the time of his unlawful dismissal on November 9, 1998 at the rate last received by him without qualification and deduction; and **(b)** back salaries for five (5) years from the proper date of his reinstatement upon finality of the November 20, 2006 resolution of the Civil Service Commission, at the rate prevailing on that date inclusive of allowances, benefits and increases in salary prior to reinstatement.
>
> SO ORDERED.[68]

---

[63] 286 Phil. 174 (1992) [Per *J*. Nocon, *En Banc*].

[64] 612 Phil. 881 (2009) [Per *J*. Peralta, *En Banc*].

[65] *Rollo* (G.R. No. 211318), p. 45.

[66] *Id*. at 50.

[67] *Id*. at 51.

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

Both the Civil Service Commission's[69] and the Province's[70] Motions for Reconsideration were denied by the Court of Appeals in its assailed January 22, 2014 Resolution.[71]

The Civil Service Commission and the Province filed before this Court their separate Rule 45 Petitions, which this Court consolidated on February 9, 2015.[72]

For resolution of this Court is the issue of whether or not petitioner Civil Service Commission erred in setting aside its ruling to reinstate respondent Gabriel Moralde on the ground that the same ruling has become impracticable or unviable, hence, moot and academic.

The Civil Service Commission made no such error. It was the Court of Appeals which committed reversible error in ruling in favor of Moralde and in setting aside Civil Service Commission Resolution Nos. 080805 and 082249.

I

Social Security System v. Isip[73] articulated the basic parameters of and the rationale for adhering to the doctrine of immutability of a final judgment:

> A judgment becomes "final and executory" by operation of law. Finality becomes a fact when the reglementary period to appeal lapses and no appeal is perfected within such period. As a consequence, *no court (not even this Court) can exercise appellate jurisdiction to review a case or modify a decision that has bec[o]me final.*
>
> *When a final judgment is executory, it becomes immutable and unalterable. It may no longer be modified in any respect either by the court which rendered it or even by this Court. The doctrine is founded on considerations of public policy and sound practice that,*

---

[69] *Rollo* (G.R. No. 211077), pp. 130-140.

[70] *Rollo* (G.R. No. 211318), pp. 57-66.

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

[72] *Rollo* (G.R. No. 211077), pp. 161-162.

[73] 549 Phil. 112 (2007) [Per *J*. Corona, *En Banc*].

at the risk of occasional errors, judgments must become final at some definite point in time.

The doctrine of immutability and inalterability of a final judgment has a two-fold purpose: *(1) to avoid delay in the administration of justice and thus, procedurally, to make orderly the discharge of judicial business and (2) to put an end to judicial controversies, at the risk of occasional errors, which is precisely why courts exist. Controversies cannot drag on indefinitely.* The rights and obligations of every litigant must not hang in suspense for an indefinite period of time.[74] (Emphasis supplied, citations omitted)

In staying its own hand in disturbing final judgments, this Court emphasized that the immutability of final judgments is not a matter of mere technicality, "but of substance and merit." In *Peña v. Government Service Insurance System*:[75]

[I]t is axiomatic that final and executory judgments can no longer be attacked by any of the parties or be modified, directly or indirectly, even by the highest court of the land. Just as the losing party has the right to file an appeal within the prescribed period, so also the winning party has the correlative right to enjoy the finality of the resolution of the case.

. . . . . .

The rule on finality of decisions, orders or resolutions of a judicial, quasi-judicial or administrative body is "not a question of technicality but of substance and merit," [as its] ***underlying consideration [is] . . . protecti[n]g . . . the winning party["]s substantive rights] . . .*** *Nothing is more settled in law than that a decision that has acquired finality becomes immutable and unalterable and may no longer be modified in any respect even if the modification is meant to correct erroneous conclusions of fact or law and whether it will be made by the court that rendered it or by the highest court of the land.*[76] (Emphasis supplied)

---

[74] *Id*. at 116.

[75] 533 Phil. 670 (2006) [Per *J*. Chico-Nazario, First Division].

[76] *Id*. at 683-690, *citing Teodoro v. Court of Appeals*, 437 Phil. 336, 346 (2002) [Per *J*. Ynares-Santiago, First Division], *Manila Memorial Park Cemetery, Inc. v. Court of Appeals*, 398 Phil. 720, 777 (2000) [Per *J*. Vitug,

As is clear from *Peña*,[77] the doctrine of immutability of judgments applies as much to decisions of agencies exercising quasi-judicial powers as they do to judicial decisions.[78] Jurisprudence is categorical: "the principle of conclusiveness of prior adjudications is not confined in its operation to the judgments of what are ordinarily known as courts, but extends to all bodies upon which judicial powers had been conferred."[79] Specifically concerning the Civil Service Commission, this Court has stated that:

> *The [Civil Service Commission] has no power or authority to reconsider its decision which has become final and executory.* More so in this case when more than a period of one year had lapsed since the [Civil Service Commission] decision became final and executory. Even ordinary courts may not, as a rule, set aside or even modify its decision that have become final and executory. The duty of the [Civil Service Commission] in such instance is to enforce its final decision rather than disturb it.[80] (Emphasis supplied)

Likewise, in *Provincial Government of Aurora v. Marco*:[81]

Third Division]; *Long v. Basa*, 418 Phil. 375 (2001) [Per *J*. Sandoval-Gutierrez, Third Division]; and *Sacdalan v. Court of Appeals*, 472 Phil. 652 (2004) [Per *J*. Austria-Martinez, Second Division].

[77] In *Peña*, citing *Camarines Norte Electric Cooperative, Inc. v. Torres*, 350 Phil. 315, 330-331 (1998) [Per *J*. Davide, Jr., *En Banc*], this Court further said:

> ***[A]dministrative decisions*** *must end sometime, as fully as public policy demands that finality be written on judicial controversies.* Public interest requires that proceedings already terminated should not be altered at every step, for the rule of *non quieta movere* prescribes that what had already been terminated should not be disturbed. A disregard of this principle does not commend itself to sound public policy. (Emphasis supplied)

[78] *Mendiola v. Civil Service Commission*, 293 Phil. 309 (1993) [Per *J*. Campos, Jr., *En Banc*].

[79] *One Shipping Corp. v. Peñafiel*, 715 Phil. 204, 211 (2015) [Per *J*. Peralta, Third Division].

[80] *Marcayda v. Civil Service Commission*, 275 Phil. 496, 501 (1991) [Per *J*. Gancayco, *En Banc*].

[81] 759 Phil. 201 (2015) [Per *J*. Leonen, Second Division].

The doctrine of immutability of final judgments applies to decisions rendered by the Civil Service Commission. A decision of the Civil Service Commission becomes final and executory if no motion for reconsideration is filed within the 15-day reglementary period under Rule VI, Section 80 of the Uniform Rules on Administrative Cases in the Civil Service:

> Section 80. Execution of Decision.—The decisions of the Commission Proper or its Regional Offices shall be immediately executory after fifteen (15) days from receipt thereof, unless a motion for reconsideration is seasonably filed, in which case the execution of the decision shall be held in abeyance.[82] (Emphasis supplied)

The doctrine of immutability of judgments is not itself absolutely and inescapably immutable. "While firmly ingrained as a basic procedural tenet in Philippine jurisprudence, [it] was never meant to be an inflexible tool to excuse and overlook prejudicial circumstances."[83] This Court has recognized that it "must yield to practicality, logic, fairness and substantial justice."[84]

Jurisprudence enumerates instances in which a final judgment's execution may be disturbed: (1) the correction of clerical errors; (2) *nunc pro tunc* entries that do not prejudice a party; (3) void judgments; and (4) whenever supervening events or circumstances transpire after the decisions' finality, making the decision's execution unjust and inequitable.[85]

---

[82] *Id*. at 218.

[83] *Phil. Woman's Christian Temperance Union, Inc. v. Yangco*, 739 Phil. 269, 282 (2014) [Per *J*. Reyes, First Division].

[84] *Id*.

[85] See *FGU Insurance Corporation v. Regional Trial Court*, 659 Phil. 117 (2011) [Per *J*. Mendoza, Second Division]; *Villa v. Government Service Insurance System*, 619 Phil. 740 (2009) [Per *J*. Brion, Second Division]; *Heirs of Tuballa v. Cabrera*, 570 Phil. 598 (2008) [Per *J*. Velasco, Jr., Second Division]; *Ramos v. Ramos*, 447 Phil. 114, 119 (2003) [Per *J*. Panganiban, Third Division]; *Nacuray v. National Labor Relations Commission*, 336 Phil. 749 (1997) [Per *J*. Bellosillo, First Division]; *Nuñal v. Court of Appeals*, 293 Phil. 28 (1993) [Per *J*. Campos, Jr., Second Division].

This Court's enumeration of exceptions reveals a grounded consideration of, and a commitment to honor, matters at the heart of "serv[ing] substantial justice." In *Barnes v. Padilla*:[86]

> Such failure carries with it the result that no court can exercise appellate jurisdiction to review the case. 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.[87] (Citations omitted)

Still in *Barnes*, this Court expounded on how the recognized exceptions serve as instruments of equity, countervailing conventional rigidities:

> *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.
>
> In *De Guzman vs. Sandiganbayan*, this Court, speaking through the late Justice Ricardo J. Francisco, had occasion to state:
>
> > The Rules of Court was conceived and promulgated to set forth guidelines in the dispensation of justice but not to bind and chain the hand that dispenses it, for otherwise, courts will be mere slaves to or robots of technical rules, shorn of judicial discretion. That is precisely why *courts in rendering justice have always been, as they ought to be guided by the norm that*

---

[86] 482 Phil. 903 (2004) [Per *J.* Austria-Martinez, Second Division].

[87] *Id*. at 915-916.

> *when on the balance, technicalities take a backseat against substantive rights, and not the other way around. Truly then,* ***technicalities, in the appropriate language of Justice Makalintal, "should give way to the realities of the situation."***[88] (Emphasis supplied, citations omitted)

This Court acknowledges the need to temper obdurate insistence on black letter mechanics. To strangle a party's access to *legitimate* exceptions to the immutability doctrine would be to frustrate the higher ends of justice and to condone the triumph of hollow, procedural niceties. While maintaining restraint, this Court, nevertheless, rightly esteems itself in not being "precluded from rectifying errors of judgment if blind and stubborn adherence to the doctrine of immutability of final judgments would involve the sacrifice of justice for technicality."[89]

Thus, in *Industrial Timber Corp. v. National Labor Relations Commission*,[90] this Court acknowledged that the immutability doctrine may be suspended as long as it has been sufficiently established that:

> *[F]acts and circumstances [have] transpire[d] which render [a final judgment's] execution impossible or unjust* and [that] it [is] therefore ... necessary, "in the interest of justice, to direct [the final judgment's] modification in order to harmonize the disposition with the prevailing circumstances."[91] (Emphasis supplied)

II

Moralde willfully severed his employer-employee relationship with the government. This is the inescapable implication of his deliberate petitioning for benefits occasioned by what he

---

[88] *Id*. at 179-180.

[89] *Republic v. Ballocanag*, 593 Phil. 80, 98 (2008) [Per J. Nachura, Third Division], citing *Heirs of Maura So v. Obliosca*, 566 Phil. 397 (2008) [Per J. Nachura, Third Division].

[90] 303 Phil. 621 (1994) [Per J. Cruz, First Division].

[91] *Id*. at 625, *citing Seavan Carrier, Inc. v. GTI Sportswear Corp.*, 222 Phil. 103 (1985) [Per J. Gutierrez, Jr., First Division]; *Lee v. Hon. de Guzman*, 265 Phil. 289 (1990) [Per J. Paras, Second Division].

mistakenly thought was retirement, but which was more accurately a simulation of resignation. In any case, regardless of the technical nomenclature that flawlessly encapsulates every nuance of his voluntary act of ending his employment, the naked truth and the pivotal element of *voluntary* termination of employment remain.

This voluntary termination of employment was made before the administrative complaint against Moralde could be resolved by the Province, at the first instance, and then referred to the Commission, on appeal. It was also successfully concealed for almost nine (9) years. Its discovery was made only long after the Commission ruled on his appeal. The Civil Service Commission's willingness to rule on his appeal reveals that it was under the mistaken impression that Moralde's continuance in office was still an unresolved, justiciable matter. Evidently, however, the Civil Service Commission's ruling on Moralde's appeal was a pointless superfluity. Any pronouncement on his continuance in office was reduced to a purely academic exercise as Moralde had already put himself out of office.

Such antecedent, voluntary termination of employment was the "realit[y] of the situation,"[92] the "practicality"[93] that the Civil Service Commission had to contend with when it was unexpectedly notified of Moralde's successful application for benefits under Republic Act No. 8291. *Common sense dictated that the Civil Service Commission endeavored to come to terms with Moralde's importuning to occupy a position, which had become vacant because Moralde himself vacated it before the Province could even remove him.* Basic sensibility impelled the Civil Service Commission to consider the primordial question of whether it was even still possible to compel the restoration

---

[92] *De Guzman vs. Sandiganbayan*, 326 Phil. 182, 191 (1996) [Per *J.* Francisco, *En Banc*], *citing Urbayan v. Caltex*, 116 Phil. 160 (1962) [Per *J.* Makalintal, *En Banc*]; *Economic Insurance Co. v. Uy Realty*, 145 Phil. 591 (1970) [Per *J.* Fernando, *En Banc*].

[93] *Phil. Woman's Christian Temperance Union, Inc. v. Yangco*, 731 Phil. 269, 282 (2014) [Per *J.* Reyes, First Division].

to office of an employee who himself terminated his employment. The Civil Service Commission's rumination was not confined to the basal question of practicability, but extended into the matter of whether this restoration was logical and, even more importantly, fair and just.

The subsequent unraveling of the pointlessness and utter absurdity of reinstating an employee who voluntarily left employment changed the entire complexion of Moralde's case. Confronted with the basic and pressing demands of "practicality, logic, fairness and substantial justice,"[94] the Civil Service Commission was correct in realizing that forcing the reinstatement of a voluntarily deserting employee was impractical, illogical, unfair, and unjust.

III

The Court of Appeals rightly differentiated between the receipt of retirement benefits, under Section 13, and the receipt of separation benefits, under Section 11, of Republic Act No. 8291. They differ on the specific benefits they confer and on the qualifications required of those who seek to avail of those benefits.

Section 13 lists the retirement benefits available under Republic Act No. 8291:

> Section 13. Retirement Benefits. — (a) Retirement benefit shall be:
>
> (1) the lump sum payment as defined in this Act payable at the time of retirement plus an old-age pension benefit equal to the basic monthly pension payable monthly for life, starting upon expiration of the five-year (5) guaranteed period covered by the lump sum; or
>
> (2) cash payment equivalent to eighteen (18) months of his basic monthly pension plus monthly pension for life payable immediately with no five-year (5) guarantee.

---

[94] *Id.*

(b) Unless the service is extended by appropriate authorities, retirement shall be compulsory for an employee at sixty-five (65) years of age with at least fifteen (15) years of service: Provided, That if he has less than fifteen (15) years of service, he may be allowed to continue in the service in accordance with existing civil service rules and regulations.

Section 13-A specifies the conditions for entitlement to retirement benefits under Section 13:

Section 13-A. Conditions for Entitlement. — A member who retires from the service shall be entitled to the retirement benefits in paragraph (a) of Section 13 hereof: Provided, That:

(1) he has rendered at least fifteen (15) years of service;
(2) he is at least sixty (60) years of age at the time of retirement; and
(3) he is not receiving a monthly pension benefit from permanent total disability.

Section 11 spells out the separation benefits under Republic Act No. 8291 and the conditions for entitlement to these separation benefits:

Section 11. Separation Benefits. — The separation benefit shall consist of: (a) a cash payment equivalent to one hundred percent (100%) of his average monthly compensation for each year of service he paid contributions, but not less than Twelve thousand pesos (₱12,000) payable upon reaching sixty (60) years of age or upon separation, whichever comes later: Provided, That the member resigns or separates from the service after he has rendered at least three (3) years of service but less than fifteen (15) years; or

(b) A cash payment equivalent to eighteen (18) times his basic monthly pension payable at the time of resignation or separation, plus an old-age pension benefit equal to the basic monthly pension payable monthly for life upon reaching the age of sixty (60): Provided, That the member resigns or separates from the service after he has rendered at least fifteen (15) years of service and is below sixty (60) years of age at the time of resignation or separation.

The availing of retirement benefits differs from the availing of separation benefits with respect to the requisite age and length

of service. For retirement, the applicant needs to be at least 60 years old and must have served for at least 15 years. For separation benefits, the applicant must be below 60 years old. There are further distinctions for availing of separation benefits under Section 11, paragraphs (a) and (b). Under paragraph (a), the applicant needs to have served for at least three (3) years, but less than 15 years. Under paragraph (b), the applicant must have served for at least 15 years.

Retirement and separation benefits differ on the availability of monthly pensions, and the computation of the amount that will be immediately released to an approved applicant. For retirees, with their two (2) options specified in Section 13(a)(1) and Section 13(a)(2), an old-age or basic monthly pension is always assured. It is for the applicant to choose between starting to receive it five (5) years after leaving the service, as provided for by Section 13(a)(1), or immediately upon retiring, as provided for under Section 13(a)(2). For recipients of separation benefits, a basic monthly pension can be obtained only by those who have served for at least 15 years, as expressed in Section 11(b). Even then, they may only avail of this pension upon reaching the age of 60.

As to the computation of awards, the amounts that can be granted to a retiree far exceed those that can be given to a recipient of separation benefits. This is because one's number of years in service is a key component of the computations for both retirement and separation benefits.

GSIS' Retirement Brochure explains retirement benefits, as follows:[95]

Option 1: Lump sum and old-age (basic monthly) pension[96]

---

[95] Government Service Insurance System, "Retirement and other Social Insurance Benefits," pp. 11-13 < http://www.gsis.gov.ph/downloads/publications/20150825-Retirement_Brochure.pdf >(last accessed August 13, 2018).

[96] This is derived from Section 13(a)(1) of Republic Act No. 8291, which states: "the lump sum payment as defined in this Act payable at the time

This consists of the following:

- ***Lump sum***— equivalent to your 60-month (or 5-year) ***basic monthly pension (BMP)*** payable at the time of retirement; and
- ***BMP***— payable for life after the 5-year guaranteed period

Option 2: Cash payment and old-age (basic monthly) pension[97]

This consists of the following:

- ***Cash Payment***— equivalent to 18-month BMP payable upon retirement; and
- ***Immediate BMP***— payable for life from the date of retirement.

Here is how BMP is computed.

BMP = (0.025) (AMC + P700) (PPP)

where:

AMC = average monthly compensation
and **PPP = periods with paid premiums.**

Your AMC is computed as follows:

1. If your PPP is *less than 36 months*:

Member's total compensation (with corresponding paid premiums) prior to unemployment/disability/death

$$AMC = \frac{\text{Member's total compensation (with corresponding paid premiums) prior to unemployment/disability/death}}{\text{Actual number of months such compensation was received}}$$

2. If your PPP is *36 months or more:*

---

of retirement plus an old-age pension benefit equal to the basic monthly pension payable monthly for life, starting upon expiration of the five-year (5) guaranteed period covered by the lump sum."

[97] This is derived from Section 13(a)(2) of Republic Act No. 8291, which states: "cash payment equivalent to eighteen (18) months of his basic monthly pension plus monthly pension for life payable immediately with no five-year (5) guarantee."

$$AMC = \frac{\text{Member's total compensation (with corresponding paid premiums) prior to unemployment/disability/death}}{\text{36 months}}$$

Under this law, the BMP should not exceed 90% of the AMC.[98]

The same Retirement Brochure explains separation benefits as follows:[99]

If you are ineligible for retirement benefit under RA 8291 because you did not meet the required age (at least 60 years old) or service (at least 15 years), you may be entitled to separation benefit in the form of Cash Payment payable at age 60.

If you meet only the service requirement of 15 years, however, you are also entitled to pension payable at age 60 on top of the 18 times of your BMP payable upon separation.

Your Cash Payment is computed as follows:[100]

Condition	**Computation**	**When Benefit is Payable**
Age: Below 60 **PPP:** At least 3 but less than 15 years	= (100% AMC) (PPP)	At age 60
Age: Below 60 **PPP:** At least 15 years	= 18 BMP	Upon separation; BMP for life to start at age 60

---

[98] Government Service Insurance System, "Retirement and other Social Insurance Benefits," p. 12, < http://www.gsis.gov.ph/downloads/publications/20150825-Retirement_Brochure.pdf > (last accessed August 13, 2018).

[99] Government Service Insurance System, "Retirement and other Social Insurance Benefits," pp. 11-13, < http://www.gsis.gov.ph/downloads/publications/20150825-Retirement_Brochure.pdf > (last accessed August 13, 2018).

[100] *Id*. at p. 13.

Age: At least 60 **PPP:** At least 3 but less than 15 years	= (100% AMC) (PPP)	Immediately

IV

While retirement benefits differ from separation benefits, a public officer who applies to receive either of them nevertheless acts out of the same contemplation: the complete and unequivocal termination of his or her employer-employee relationship with the government. This is because, by their very nature, retirement and separation benefits become available only when employment ceases.

This Court's treatment of retirement is definite and unmistakable: it is "a withdrawal from office, public station, business, occupation, or public duty,"[101] the "very essence [of which] . . . is the termination of the employer- employee relationship."[102]

Concerning the retirement of private sector employees, jurisprudence states that retirement arises as the result of "a voluntary [employer-employee] agreement . . . where the latter, after reaching a certain age, agrees to sever his employment with the former."[103] Retirement, in this context, is a bilateral act of the employee and the employer.[104] In *Gerlach v. Reuters Limited, Phils.*,[105] this Court considered three (3) categories of retirement in the private sector:

---

[101] *Brion v. South Philippine Union Mission of the Seventh Day Adventist Church*, 366 Phil. 967, 974 (1999) [Per J. Romero, Third Division] *citing Webster's Third New International Dictionary.*

[102] *Producers Bank of the Philippines v. National Labor Relations Commission*, 359 Phil. 45, 52 (1998) [Per J. Romero, Third Division].

[103] *Ariola v. Philex Mining Corporation*, 503 Phil. 765, 783 (2005) [Per J. Carpio, First Division].

[104] See *Magdadaro v. Philippine National Bank*, 610 Phil. 608 (2009) [Per J. Carpio, First Division].

[105] 489 Phil. 501 (2005) [Per J. Sandoval-Gutierrez, Third Division].

The first type is compulsory and contributory in character. The second type is one set up by agreement between the employer and the employees in collective bargaining agreements or other agreements between them. The third type is one that is voluntarily given by the employer, expressly as in an announced company policy or impliedly as in a failure to contest the employee's claim for retirement benefits.[106]

Retirement from the civil service operates differently from retirement from private employment.[107] By no means, however, does it lose its fundamental character as a mechanism for severing an employer-employee relationship. Retirement as a public officer or employee is no less "a withdrawal from office, public station, . . . occupation, or public duty."[108]

Republic Act No. 8291's retirement benefits are not predicated upon the forcible termination of a civil servant's employment arising from the employer's desire to cease professional relations with a specific, unwanted individual. While retirement upon reaching the compulsory age is not per se an action out of one's personal volition, there is still no coercive removal of someone otherwise pinpointed as undesirable. Section 13-A even contemplates voluntary retirement, as early as at age 60, five (5) years ahead of Section 13(b)'s compulsory retirement age.

---

[106] *Id*. at 513 *citing Llora Motors, Inc. v. Drilon*, 258-A Phil. 749 (1989) [Per *J*. Feliciano, Third Division]; and *Allied Investigation Bureau, Inc. v. Ople*, 180 Phil. 221 (1979) [Per *J*. Fernando, Second Division].

[107] *Id*. The retirement of civil servants' retirement is not encapsulated by the setting of a "retirement age . . . in (a) a collective bargaining agreement or (b) other applicable employment contract."

Retirement from private employment also differs from retirement from government with respect to the choice of retirement plan. For private employees, retirement plans and benefit bundles are determined not merely by "existing law," as is the case with public employees, but also possibly by "collective bargaining or ... other agreements," or by an employer's extant policy.

[108] *Brion v. South Philippine Union Mission of the Seventh Day Adventist Church*, 366 Phil. 967, 974 (1999) [Per *J*. Romero, Third Division], *citing Webster's Third New International Dictionary*.

In any case, a person of advanced years who retires manifests a personal acceptance of the reality of his or her state when he or she applies to receive the benefits attendant to his or her retirement. Retirement itself may not be voluntary, but the retiree's acceptance of his or her state and ensuing pursuit of benefits certainly is. Applying for benefits is an independent, willful act through which a civil servant consciously manifests before the concerned government organ, the GSIS, his or her intent to avail of a utility attendant to his or her state.

As to the receipt of Republic Act No. 8291's separation benefits, it is true that a public officer or employee who avails of separation benefits is not irreversibly precluded from again rendering service to the government at a later time. Nevertheless, at that moment that a public officer or employee manifests intent to avail of *separation* benefits, that public officer or employee concedes his or her intent to actually "*separate* from" government, that is, to put an end to his or her employment. By Section 11's own text, availing of such benefits demands specific action on the part of the applicant, i.e., that he or she "resigns or separates from the service."

On availing of retirement benefits, neither is availing of Republic Act No. 8291's separation benefits predicated upon the forcible termination of a civil servant's employment. Section 11's benefits are very clearly available to a civil servant who voluntarily or willfully ends his or her employment. An employee's own "resign[ation] or separat[ion] from the service" is the necessary precondition to avail of separation benefits.

V

The Court of Appeals was correct in noting that Moralde was in no position to receive retirement benefits. At 38 years of age, he was not qualified for Section 13's benefits. Logically, what he qualified for and received must have been in the nature of Republic Act No. 8291's separation benefits.

However, the distinction that the Court of Appeals harps on hardly works to turn the tide in Moralde's favor. It is clear, whether he received retirement or separation benefits, that he

voluntarily and personally intended to put his public employment to a complete and unequivocal end.

Insisting on the receipt of retirement benefits cannot result in a successful disavowal of willingness. At 38 years of age, Moralde was nowhere near the age at which Section 13(b) would have compelled him to retire. He may have mistakenly intended to avail of Section 13(a)'s retirement benefits but, not having yet reached the compulsory retirement age of 65, Moralde could not claim that this availment was involuntarily thrusted upon him.

Insisting on his receipt of separation benefits is even more crippling to Moralde's cause. From Section 11's plain text, the mere act of availing these benefits presupposes both a civil servant's conscious "resign[ation] or separat[ion] from the service," and a concurrently deliberate petition or application for benefits.

Moralde's confusion on the nuances between Section 13's and Section 11's benefits may be overlooked, but the underlying voluntariness of his separation from service cannot be denied.

This voluntary intent to separate from service, erroneously stated as "retirement," is demonstrated by the records.

Annex H of the Civil Service Commission's Rule 45 Petition, a communication signed by GSIS Manager Teresita J. Rojas and addressed to Moralde, specifically used the phrase "*APPLICATION* FOR RETIREMENT."[109] Acting on Moralde's application for benefits, it informed Moralde that his "APPLICATION FOR RETIREMENT UNDER RA 8291, EFFECTIVE NOV. 8, 1998 AT AGE 38.5 YRS. HAS BEEN APPROVED."[110] It also indexed Moralde's application as "RETIREMENT NO.: AF 13507."[111]

---

[109] *Rollo* (G.R. No. 211077), p. 85.

[110] *Id*.

[111] *Id*.

Annex B of the same petition, the corresponding Separation Benefit Voucher stated that Moralde had a "DATE OF RETIREMENT" of November 8, 1998.[112] Consistent with its previous indexing of Moralde's application, it referred to him via the code "RET[.] NO.: AF0013507."[113]

The confusion in terminology does not weaken the cause of the Province and of the Civil Service Commission. Moralde was not in a position to retire for the simple reason that a technical nuance made it impossible. However, the technical nuance between Sections 11 and 13 does not detract from how, in any case, Moralde personally chose to, fully intended to, and positively worked to sever the employer-employee relationship between him and the government to avail of the monetary benefits available only through such severance.

Moralde terminated his employer-employee relationship with the government, which is indeed the essence of what he mistakenly understood to be retirement.[114] He may have conflated retirement with resignation but the essence of these declarations and actions remains.

The Court of Appeals was overly solicitous. It ignored the bare truth of this case: the intricate distinctions between Sections 11 and 13 aside, Moralde's underlying objective was to terminate his tenure with the government. Only then could he avail of the monetary benefits for which he applied. Without the termination of his tenure, his application for monetary benefits was a hollow and ridiculous exercise.

VI

It would be remiss of this Court to fail to appreciate the totality of the circumstances and the specific context in which

---

[112] *Id*. at 86.

[113] *Id*.

[114] See *Producers Bank of the Philippines v. National Labor Relations Commission*, 359 Phil. 45 (1998) [Per *J*. Romero, Third Division].

Moralde both manifested his separation from service and sought to avail of monetary benefits under Republic Act No. 8291.

Prior to November 8, 1998, when his supposed retirement took effect, he had admitted in his written explanation that contrary to what his Daily Time Records indicated, he did not render service from March 16 to 30, 1998. By then, an investigation had been completed by Atty. Rubio, who specifically noted that Moralde had previously committed the same infraction of falsifying his Daily Time Records.[115] Contending that Moralde was a repeat offender, Atty. Rubio recommended that he be dismissed from service.[116]

Moralde's manifestation of his separation from service and the accompanying application for Republic Act No. 8291's benefits should not be viewed in isolation. Instead, they must be perceived with a concomitant appreciation of how, with his own admission of wrongdoing, a guilty verdict was probably, if not certainly, forthcoming. Likewise, it must be viewed with a sense of how a particularly graver penalty, such as dismissal from service, was equally possible given his history of delinquency and Atty. Rubio's specific recommendation. Indeed, not longer than a day after his "retirement" took effect, Governor Calingin issued Memorandum No. APC 1019, finding him guilty of falsification and ruling that he must be dismissed from service.

Thus, one must appreciate that at the bottom of Moralde's actions was a desire to forestall a forthcoming guilty verdict and dishonorable removal from government service. He may not have been animated by a monetary motive per se, i.e., to enrich himself through the benefits which he petitioned from GSIS, but it is not difficult to see how he was really looking to secure an honorable conclusion to his 16 years of service.

Having successfully carried out that intention, Moralde cannot now claim that he should be reinstated.

---

[115] *Rollo* (G.R. No. 211077), p. 11.

[116] *Id*. at 64-66.

Quitters cannot blame others for their own quitting. An employee who voluntarily ends his employment cannot later cry foul over the end of such employment and compel his employer to reinstate him. Moralde has put an end to his employment, he has vacated his own position; it would be laughably ridiculous to force others to restore him to it.

Not only would a ruling favoring Moralde run afoul of common sense. It would also amount to condoning the injustice of his reneging on his own word.

Moralde is estopped by his own actions. He cannot be allowed to "go back on his own acts and representations to the prejudice of the [Civil Service Commission and the Province, both of which have] relied upon them."[117]

Estoppel is not to be lightly invoked. In *Kalalo v. Luz*,[118] this Court clarified:

> Estoppel . . . [is] harsh or odious, and not favored in law. When misapplied, [it] becomes a most effective weapon to accomplish an injustice, inasmuch as it shuts a man's mouth from speaking the truth and debars the truth in a particular case. [It] cannot be sustained by mere argument or doubtful inference; it must be clearly proved in all its essential elements by clear, convincing and satisfactory evidence. No party should be precluded from making out his case according to its truth unless by force of some positive principle of law, and, consequently, estoppel in pais must be applied strictly and should not be enforced unless substantiated in every particular.[119]

Kalalo discussed the elements that must be satisfied for a party to be held in estoppel:

---

[117] *Cortes v. Court of Appeals*, 443 Phil. 42, 51-52 (2003) [Per *J*. Austria-Martinez, Second Division] *citing Maglucot-Aw vs. Maglucot*, 385 Phil. 720 (2000) (Per *J*. Kapunan, First Division].

[118] 145 Phil. 152 (1970) [Per *J*. Zaldivar, *En Banc*].

[119] *Id*. at 161, *citing Coronel, et al. v. CIR, et al.*, 24 SCRA, 990, 996; 28 Am. Jur., 2d., pp. 601-602; *Rivers v. Metropolitan Life Ins. Co. of New York*, 6 N.Y., 2d. 3, 5; and 28 Am. Jur. 2d. p. 642.

Under article 1431 of the Civil Code, in order that estoppel may apply the person, to whom representations have been made and who claims the estoppel in his favor must have relied or acted on such representations. Said article provides:

> Art. 1431. Through estoppel an admission or representation is rendered conclusive upon the person making it, and cannot be denied or disproved as against the person relying thereon.

. . . . . .

As related to the party to be estopped, the essential elements are: (1) conduct amounting to false representation or concealment of material facts or at least calculated to convey the impression that the facts are otherwise than, and inconsistent with, those which the party subsequently attempts to assert; (2) intent, or at least expectation that this conduct shall be acted upon by, or at least influence, the other party; and (3) knowledge, actual or constructive, of the real facts. As related to the party claiming the estoppel, the essential elements are (1) lack of knowledge and of the means of knowledge of the truth as the facts in question; (2), reliance, in good faith, upon the conduct or statements of the party to be estopped; (3) action or inaction based thereon of such character as to change the position or status of the party claiming the estoppel, to his injury, detriment or prejudice.[120] (Citations omitted)

Even wringing this case through the meticulous standards for invoking estoppel, the conclusion is unchanged. Estoppel obtains here in favor of the Civil Service Commission and the Province, and against Moralde.

On the first element for Moralde to be estopped, he concealed material facts. He never volunteered any information regarding his application for Republic Act No. 8291's benefits and its subsequent approval to the Province.[121] On the second element, Moralde's carefully sustained, long suppression[122] of the truth of his application's approval reflects an awareness of how that

---

[120] 145 Phil. 152, 161-163 (1970) [Per *J*. Zaldivar, *En Banc*].

[121] *Rollo* (G.R. No. 211077), pp. 11-12.

[122] *Id*. at 17.

truth was prejudicial to and inherently consistent with his plea for restoration to office. He knew that his suppression of information "shall be acted upon by, or at least influence[d]"[123] the Province and the Civil Service Commission. On the final element, as the person who unilaterally and voluntarily applied for benefits and consummated his separation from service, Moralde's "knowledge . . . of the real facts" could not be more "actual."[124]

The Province and the Civil Service Commission can successfully claim estoppel against Moralde. On the first element, they lacked knowledge and, by Moralde's concealment, were denied the means of knowledge of Moralde's application for benefits under Republic Act No. 8291.[125] The Province merely acted in keeping with the regular course of things. It maintained its position in what it thought was a legitimately ongoing appeal. With Moralde maintaining the appearance of an active participant, there was hardly any reason to suspect that he had somehow managed to emasculate the efficacy of pending litigation. Acting as it did, the Province was misled, but not "through [its] own want of reasonable care and circumspection."[126] It could not be faulted with "careless indifference."[127]

---

[123] *Kalalo v. Luz*, 145 Phil. 152, 162 (1970) [Per *J*. Zaldivar, *En Banc*].

[124] *Id.*

[125] *Rollo* (G.R. No. 211318), p. 17.

[126] *Mijares v. Court of Appeals*, 338 Phil. 274, 286 (1 997) [Per *J*. Kapunan, First Division].

[127] It could not be otherwise prevented from invoking estoppel, in keeping with the following pronouncement from *Mijares v. Court of Appeals*, 338 Phil. 274 (1997) [Per *J*. Kapunan, First Division]:

> A lack of diligence by a party claiming an estoppel is generally fatal. If the party conducts himself with careless indifference to means of information reasonably at hand, or ignores highly suspicious circumstances, he may not invoke the doctrine of estoppel. Good faith is generally regarded as requiring the exercise of reasonable diligence to learn the truth, and accordingly estoppel is denied where the party claiming it was put on inquiry as to the truth and had available means for ascertaining it, at least where actual fraud has not been practised on the party claiming the estoppel. (Citation omitted)

On the second element, with Moralde's continuing active participation m the pending administrative proceedings, petitioners "rel[ied], in good faith, upon the conduct"[128] of Moralde. The Province was even compliant with the Civil Service Commission's order to reinstate him. As the Civil Service Commission pointed out, when it ordered the Province to reinstate Moralde and pay him backwages, then Governor Moreno issued the corresponding Order of Reinstatement.[129] The Province would have even eagerly proceeded to fully comply with Resolution No. 061984, had it not suddenly discovered the fact of Moralde's retirement.[130]

On the third element, the Province suffered injury and prejudice. Moralde's concealments impaired its ability to act. It was mistakenly led to believe that administrative proceedings were merely taking their proper, uninterrupted course. The reality of how the Province and the Civil Service Commission would have acted differently had information not been denied them is borne out by how, on the part of the Province, it rushed to file a Motion for New Trial and/or Modification of Judgement as soon as it realized that Moralde had "retired" ahead of his dismissal. On the part of the Civil Service Commission, this is borne by how it promptly corrected itself and declared its Resolution No. 061984 moot and academic.

By definition, reinstatement works to restore a person to his or her former status.[131] Reinstatement is given as a remedy to those whose employment was illegally terminated because the law considers them as having been unduly deprived of their positions. In *Verdadero v. Barney Autolines Group of Companies Transport, Inc.*: [132]

---

[128] *Kalalo v. Luz*, 145 Phil. 152, 162 (1970) [Per *J.* Zaldivar, *En Banc*].

[129] *Rollo* (G.R. No. 211077), p. 13.

[130] *Id*. at 14.

[131] See < https://www.merriam-webster.com/dictionary/reinstate > (last accessed August 13, 2018).

[132] 693 Phil. 646 (2012) [Per *J.* Mendoza, Third Division].

Reinstatement and backwages are reliefs available to an illegally dismissed employee. ***Reinstatement restores the employee who was unjustly dismissed to the position from which he was removed, that is, to his status quo ante dismissal***, while the grant of backwages allows the same employee to recover from the employer that which he had lost by way of wages as a result of his dismissal. These twin remedies — reinstatement and payment of backwages — make the dismissed employee whole who can then look forward to continued employment. Thus, do these two remedies give meaning and substance to the constitutional right of labor to security of tenure.[133] (Emphasis supplied)

It is preposterous to consider reinstatement when there was no prior removal. *Verdadero*'s pronouncements on reinstatement cannot encompass those who, like Moralde, did not only voluntarily intend and declare their intent to relinquish their position, but even petitioned to receive monetary benefits available only through the consummation of such relinquishment.

United Laboratories, Inc. v. Domingo[134] explained that reinstatement is rooted in the State's policy of ensuring a worker's security of tenure. Employees who voluntarily sever their employer-employee relations willfully abandon the security of their own tenure. No one took that security away from them. It would be unfair for an employer to be compelled to reinstate employees who personally, consciously, and willfully acted in a manner that betrays their intent to cease employment.

Moralde's acceptance of the benefits which he himself petitioned from GSIS sealed his fate. By receiving them, he affirmed his avowed intent to end his employment.

---

[133] *Id*. at 660, *citing Century Canning Corporation v. Ramil*, 641 Phil. 314 (2010) [Per *J*. Peralta, Second Division] and *Nissan North Edsa Balintawak, Quezon City v. Serrano, Jr.*, 606 Phil. 222 (2009) [Per *J*. Carpio, First Division].

[134] 673 Phil. 630 (2011) [Per *J*. Perez, Second Division].

VII

The Court of Appeals cited *Dytiapco v. Civil Service Commission*[135] and *Yenko v. Gungon*,[136] drawing parallels between those cases and Moralde's to maintain that the latter's receipt of separation benefits could not have mooted his reinstatement: "[he] could still be reinstated in the service despite his availment and acceptance of the separation benefits form the GSIS."[137]

The Court of Appeals quoted at length from *Dytiapco*. In the interest of an exhaustive comparison, this Court reproduces in their entirety the statements in *Dytiapco* that the Court of Appeals relied on:

> Petitioner never abandoned his appeal for reinstatement when he accepted separation pay and terminal leave benefits. In fact as early as December 22, 1987, petitioner was protesting respondent Bureau of Broadcast's findings that he lacked writing experience when it conducted evaluation of employees in preparation to the reorganization of said office pursuant to Executive Order No. 297.
>
> This was followed by his letter to Chairman Patricia Sto. Tomas of respondent Commission, dated May 12, 1988 or seven (7) days after receiving his separation and terminal leave benefits on May 5, 1988, appealing for his reinstatement on the ground that his dismissal was without a valid cause as he is a permanent civil service eligible employee. Again, on July 28, 1988 and June 9, 1989, he wrote Chairman Sto. Tomas following up his appeal for reinstatement. These acts of petitioner can in no way be interpreted as abandonment of his appeal. On the contrary, it showed petitioner's strong desire for reinstatement and not separation from government service. *His acceptance of separation and terminal leave benefits was dictated more by economic necessity rather than a desire to leave government employment*.
>
> . . . . . .

---

[135] 286 Phil. 174 (1992) [Per *J*. Nocon, *En Banc*].

[136] 612 Phil. 881 (2009) [Per *J*. Peralta, *En Banc*].

[137] *Rollo* (G.R. No. 211077), p. 51.

Petitioner's dismissal was not for a valid cause, thereby violating his right to security of tenure. . . .

Respondent Commission's reliance on its earlier decision in the Teofilo Pa-alan case promulgated on April 21, 1989, that acceptance of benefits renders an appeal "closed and terminated", is misplaced. It deprives petitioner of his right to due process and added another ground for his removal not contemplated by R.A. No. 6665, that is, the mere payment of his separation and terminal leave benefits.

. . . . . .

Respondent Civil Service Commission gravely abused its discretion in finding that petitioner's receipt of separation and terminal leave benefits renders his appeal closed and terminated and consequently its Resolutions of June 28, 1989 and November 27, 1989 are hereby annulled and set aside.[138] (Emphasis supplied)

It likewise quoted at length from *Yenko*. Again, this Court reproduces in their entirety the statements in *Yenko* that the Court of Appeals relied on:

In fine, Gungon is entitled to reinstatement, without qualification, for having been illegally dismissed. A government official or employee reinstated for having been illegally dismissed is considered as not having left his office. His position does not become vacant and any new appointment made in order to replace him is null and void ab initio.

As regards the award of Gungon's back salaries, it is settled jurisprudence that an illegally terminated civil service employee is entitled to back salaries limited only to a maximum period of five years, and not full back salaries from his illegal termination up to his reinstatement.

. . . . . .

The Court cannot subscribe to the assertion of Municipal Administrator Yenko and Mayor Estrada that mere application for terminal leave or the commutation of leave credits ended Gungon's employment because an application for terminal leave and receipt

---

[138] *Id*. at p. 48-49, citing *Dytiapco v. Civil Service Commission*, 286 Phil. 174 (1992) [Per *J*. Nocon, *En Banc*].

of terminal leave benefits are not legal causes for the separation or dismissal of an employee from the service. The Constitution explicitly states that "[n]o officer or employee of the civil service shall be removed or suspended except for cause provided by law".

At most, *an application for terminal leave* under Sec. 35 of the amended Rule XVI of the Omnibus Civil Service Rules and Regulations *shows the intent of an employee to sever his employment, which intent is clear if he has resigned or retired from the service. However, such intent may be disproved* in cases of separation from the service without the fault of the employee, who questions his separation, even if the government agency, pending the employee's appeal, grants his application for terminal leave because it has already dropped him from the rolls. *In Dytiapco v. Civil Service Commission, the Court understood the predicament of an employee who accepted terminal leave benefits because of economic necessity rather than the desire to leave his employment with the government.*

In this case, the Court of Appeals correctly held that Gungon's application for terminal leave and his acceptance of terminal leave benefits could not be construed as an abandonment of his claim for reinstatement or indicative of his intent to voluntarily sever his employment with the government, because Gungon had appealed his case to the CSC and had a pending motion for reconsideration of CSC Resolution No. 982525 before he received his terminal leave benefits. Indeed, Gungon's appeal against his dismissal to the CSC and, thereafter, to the Court of Appeals, and his petition before this Court — all taken within a span of 11 years — show his desire to be reinstated, not separated from the government service. In this connection, the Court of Appeals aptly stated that it would have been unjust for petitioner, who was dropped from the rolls not to claim his terminal leave pay considering that it would take some time for his appeal to be resolved. Gungon had no permanent employment and had to sustain the needs of his two sons.

Further, Municipal Administrator Yenko and Mayor Estrada contend that the Court of Appeals erred in ordering the payment to Gungon of five years back salaries equivalent to five years from the date he was dropped from the rolls on March 1, 1998 despite the fact that Gungon did not render any service to the Municipal Government of San Juan from the time he was reassigned to POSO up to the time he opted to voluntarily sever his employment when he applied for terminal leave.

The contention is without merit.

It is settled that a government official or employee who had been illegally dismissed and whose reinstatement was later ordered is considered as not having left his office, so he is entitled to all the rights and privileges that should accrue to him by virtue of the office that he held. Thus, Gungon is entitled to payment of back salaries equivalent to a maximum period of five years.[139]

Neither *Dytiapco nor Yenko* corresponds with the facts of this case. *Dytiapco* and *Yenko* share the same narrative elements. First, a ruling dismissing an employee is made.[140] Second, the dismissed employee immediately instituted and zealously pursued an appeal of his dismissal.[141] Third, during the pendency of the

---

[139] *Id*. at 50-51, *citing Yenko v. Gungon*, 612 Phil. 881 (2009) [Per *J*. Peralta, *En Banc*].

[140] In *Yenko v. Gungon*, 612 Phil. 881, 889 (2009) [Per *J*. Peralta, *En Banc*], "In a Memorandum dated February 23, 1998, then San Juan Mayor Jinggoy Estrada informed Gungon that he was 'considered dropped from the rolls because of [his] absence without official leave from ... January 22, 1998 up to the present ...'."

And in *Dytiapco v. Civil Service Commission*, 286 Phil. 174, 176 (1992) [Per *J*. Nocon, *En Banc*], the "petitioner received a letter from the Press Secretary 'That due to limited number of positions in the approved new staffing pattern,' his 'services shall be considered only until January 31, 1988.'"

[141] In *Yenko v. Gungon*, 612 Phil. 881, 890 (2009) [Per *J*. Peralta, *En Banc*], "Gungon appealed the Memoranda . . . of Municipal Administrator Yenko and Mayor Estrada, respectively, to the Civil Service Commission (CSC)." But "[t]he CSC dismissed [his] appeal" and denied his motion for reconsideration of the dismissal. So he "filed a petition for review of the CSC's Resolutions with the Court of Appeals" and the latter "rendered a Decision in [his] favor." It did not stop there as "[t]he parties filed separate motions for reconsideration of the Decision of the Court of Appeals." And when, "[i]n an Amended Decision, . . . the Court of Appeals modified its Decision," Gungon and his opponents all "filed a petition for review on certiorari of the Amended Decision of the Court of Appeals."

And in *Dytiapco v. Civil Service Commission*, 286 Phil. 174, 176 (1992) [Per *J*. Nocon, *En Banc*], the "[p]etitioner immediately appealed his dismissal to the Press Secretary and protested the adverse rating given him by the Evaluation Committee formed to effect the reorganization of the Bureau of

appeal, economic necessity forced the employee to apply for and receive monetary benefits attendant to separation from service.[142] Fourth, the dismissal is finally ruled to be illegal.[143] Finally, the employee was declared to be entitled to reinstatement with backwages.[144]

Broadcast Services." Next, "seven days after receiving his separation and terminal leave benefits petitioner wrote respondent Civil Service Commission appealing for his reinstatement." But as the Commission dismissed his appeal and denied his petition for reconsideration, he went to the Supreme Court and "instituted [a] Petition for *Certiorari* alleging grave abuse of discretion on the part of the Civil Service Commission."

[142] In *Yenko v. Gungon*, 612 Phil. 881, 892 (2009) [Per *J*. Peralta, *En Banc*], "Gungon applied for terminal leave ... and [got] his terminal leave pay."

And in *Dytiapco v. Civil Service Commission*, 286 Phil. 174, 176 (1992) [Per *J*. Nocon, *En Banc*], "pending the outcome of his appeal to the Press Secretary and finding himself in dire financial straits, petitioner filed a claim for separation and terminal leave benefits and ... received from the Bureau of Broadcast . . . ₱26,779.72 and ₱19,028.86 as separation and terminal leave pay."

[143] In *Yenko v. Gungon*, 612 Phil. 881, 901 (2009) [Per *J*. Peralta, *En Banc*], this Court ruled that "Gungon was not validly dismissed from the service," because "[h]is reassignment to the POSO, which involved a reduction in rank and status, was void for being violative of Executive Order No. 292 and the Omnibus Civil Service Rules and Regulations."

And in *Dytiapco v. Civil Service Commission*, 286 Phil. 174, 179 (1992) [Per *J*. Nocon, *En Banc*], this Court ruled that "[p]etitioner's dismissal was not for a valid cause," since "[t]he reason given for his termination, . . . is simply not true," and "[h]e was . . . eased out of the service which he served with distinction for thirteen (13) years to accommodate the proteges of the 'new power brokers.'"

[144] In *Yenko v. Gungon*, 612 Phil. 881, 901 (2009) [Per *J*. Peralta, *En Banc*], this Court ruled that "Gungon is entitled to reinstatement, without qualification, for having been illegally dismissed." It also granted him "back salaries . . . to a maximum period of five years."

And in *Dytiapco v. Civil Service Commission*, 286 Phil. 174, 181 (1992) [Per *J*. Nocon, *En Banc*], this Court ruled that "[r]espondents . . . are . . . to reinstate petitioner . . . without loss of seniority with full pay for the period of his separation." However, this Court did order "[p]etitioner . . . to return to respondent . . . the separation pay and terminal leave benefits he received."

Moralde's case could not be farther removed from this mold. First, faced with an administrative case against him but *before any ruling could be made*, he secretly went to GSIS to apply for retirement benefits.[145] Second, it was only after he had declared his "retirement" that a ruling was made, finding him guilty and terminating his employment.[146] Third, without informing anyone of his pending retirement application, he appealed his dismissal.[147] Fourth, while his appeal was pending, his application for benefits was approved, with his retirement and the consummation of his voluntary severance of employment becoming effective ahead of the ruling terminating his employment.[148] Fifth, he kept knowledge of GSIS' approval to himself; the Province accepted the Civil Service Commission's overturning of his dismissal and facilitated his reinstatement.[149] Sixth, while processing his reinstatement, the Province discovered how he had been "retired" all along.[150] Seventh, the Province, invoking this discovery, filed before the Civil Service Commission a Motion for New Trial and/or Modification of Judgement.[151] Eighth, the Civil Service Commission recognized that Moralde's reinstatement was impracticable and unfair in the wake of his own act of vacating his post.[152] Lastly, Moralde appealed the Civil Service Commission's ruling before the Court of Appeals and emerged victorious, but is now before this Court, given the Province's and Civil Service Commission's appeals.[153]

The biggest difference between this case and *Yenko* and *Dytiapco* is plain to see: the time when an application for

---

[145] *Rollo* (G.R. No. 211077), p. 11; *rollo* (G.R. No. 211318), p. 15.

[146] *Rollo* (G.R. No. 211077), p. 12; *rollo* (G.R. No. 211318), p. 15.

[147] *Rollo* (G.R. No. 211077), p. 12; *rollo* (G.R. No. 211318), p. 15.

[148] *Rollo* (G.R. No. 211077), p. 11; *rollo* (G.R. No. 211318), p. 15.

[149] *Rollo* (G.R. No. 211077), p. 13; *rollo* (G.R. No. 211318), p. 17.

[150] *Rollo* (G.R. No. 211077), pp. 13-14; *rollo* (G.R. No. 211318), p. 17.

[151] *Rollo* (G.R. No. 211077), pp. 14-16; *rollo* (G.R. No. 211318), p. 17.

[152] *Rollo* (G.R. No. 211077), pp. 16-18; *rollo* (G.R. No. 211318), p. 17.

[153] *Rollo* (G.R. No. 211077), pp. 42-55.

monetary benefits attendant to an employee's leaving the service is filed.

In *Yenko* and *Dytiapco*, rulings dismissing employees from service were made first. Thereafter, appeals from those rulings were filed. *The dismissed employees filed for separation benefits only when their appeals had been pending for so long, they could not bear the lack of a source of income*. They sought monetary benefits attendant to separation from service because the length of time that had elapsed without their salaries forced them into *demonstrably* difficult financial situations. On the other hand, in Moralde's case, his application for retirement benefits preceded any appeal. Worse, it even preceded a ruling at the first instance.

Moralde jumped the gun. He did not bother to wait for a resolution of the administrative case against him. He sought to arrest the possibility that his public service career would end in dishonor, and with his separation benefits forfeited. His case is not a case of a hapless worker pushed to his economic breaking point. Rather, it is one of an admittedly dishonest civil servant endeavoring to dodge a guilty verdict to the extent of consciously and willfully leaving his job just so he would not otherwise get fired.

This exact point was captured by the Civil Service Commission when it emphasized in its Petition, thus:

> In respondent's case, the fact that [Moralde] received his benefits under the GSIS Act of 1997, whether upon his **retirement**, as shown by the tenor of the documents presented, i.e. **a)** respondent's letter dated December 17, 2002; **b)** Letter of the Branch Manager of GSIS Cagayan de Oro; and **c)** respondent's letter to the Provincial Government dated June 20, 2005 — or on account of his **resignation** from the government service, clearly shows that **respondent voluntarily severed** his employment with the government, which places him outside of the coverage of **Dytiapco** and **Yenko**.
>
> In **Yenko** and **Dytiapco**, the petitioners therein each applied for and/or received terminal leave and separation benefits **long after they were dropped from the rolls**, or were dismissed by their respective government offices, and their cases were already pending

review before the Court of Appeals or respondent CSC. The acceptance by the petitioners therein of the separation and terminal leave benefits was brought about by economic necessity rather than the desire to leave government employment. The same cannot be said in the present case as . . . respondent was no longer a government employee when the [Province] . . . dismissed him from service.[154] (Emphasis in the original)

The distinction in the timing of filing applications for monetary benefits reveals how the applicants in *Yenko* and *Dytiapco* were first forcibly removed from their posts, and thus, had a factually existing impetus for seeking reinstatement. In this case, on the other hand, Moralde's application for benefits prior to dismissal indicates that his voluntary cessation of employment overtook his removal. He had already simulated resignation before the Province had the chance to terminate his employment.

Moreover, in *Yenko* and *Dytiapco*, the applications for separation benefits were done openly or publicly. The basic matter of their factuality were not points of contention. What was disputed was only the applications' consequence on the viability of reinstatement. In contrast, Moralde applied for Republic Act No. 8291's benefits in total secrecy. He also kept to himself its other incidents: first, the application's approval; second, the approval's retroactivity to the date of filing, which was the day before he was terminated from service; third, his actual receipt of separation benefits; and fourth, the assurance that he would start getting monthly pensions upon turning 60 years old. This fact of secrecy betrays ulterior intent.

The critical differences between Moralde's case on one hand and *Yenko* and *Dytiapco* on the other mean that the latter cannot be binding precedents here. They cannot bolster Moralde's claim to reinstatement and entitlement to backwages.

The conclusion made by *Yenko* and *Dytiapco* that acceptance of separation benefits does not equate to the abandonment of one's plea for reinstatement does not obtain here. Applying for retirement benefits before any ruling on his liability, appealing

---

[154] *Id.* at 26.

his dismissal during his application's pendency, benefitting from his application's approval, and now seeking to double his windfall by insisting that he be reinstated are clear signs that Moralde valued escaping a finding of guilt, while securing monetary benefits in the interim, more than maintaining the employment he had already enjoyed. It was never about him merely keeping his job. It was about circumventing the law: Moralde effected a contingency plan to forestall a forthcoming guilty verdict and the ensuing loss of his job, but he realized later on that by leaving, yet still appealing for reinstatement, he could doubly profit.

VIII

The truth of the circumstances and Moralde's discernible motivations reveal the Court of Appeals' error in maintaining that Moralde's application for benefits under Republic Act No. 8291 was made in good faith.

It strains credulity to insist that Moralde was naive to what his application for "retirement" benefits signified. He was neither uneducated nor plainly ignorant; he was a qualified Dental Aide.[155] He served in the government for 16.06735 years.[156] He must have had discussions, casual and serious, with colleagues on the matter of retirement. He must have had colleagues who actually retired in the course of his 16 years of service. He knew of the mechanics of separating from the government service and petitioning for that separation's attendant benefits. Indeed, he had the wherewithal to actually petition for and consummate his own availing of those benefits. [157]

Moralde's almost decade-long concealment of his successful application indicates not only his more than sufficient knowledge of how the application process worked, but also of the gains he could reap by preventing his successful application from impairing his chances of succeeding in his other gambit of seeking reinstatement. His double dealings reveal that he was, by no

---

[155] *Id*. at 10.

[156] *Id*. at 86.

[157] *Id.* at 11.

means, a hapless victim of circumstance but the percipient architect of an insidiously duplicitous design.

This Court cannot condone what the Civil Service Commission has rightly described as "reinstatement of a deceitful person to an institution when dishonesty is anathema in the civil service."[158]

Any such reinstatement strains the bounds of logic and tramples on common sense. Moralde was not forced out, he left of his own accord and did so in the face of a looming finding of liability. With his prior willful departure, there was not even a dismissal, let alone an illegal one, to speak of. Any discussion on reinstatement can make for interesting thought experiments, but they are just that: purely academic theorizing that is ineffectual in the face of Moralde's voluntary act of terminating his employment.

With his own cessation of employment, there was no longer an issue for the Civil Service Commission to resolve on appeal. It has been almost 20 years since Moralde filed his appeal on November 24, 1998. All these years, Moralde has taken the Civil Service Commission on a ride to nowhere, asking that he be restored to what he himself abandoned.

Moralde foisted unfairness and injustice on the Province, asking that it keep his seat warm until his complete vindication and return, even in the face of his written admission to committing repeated falsehoods. He foisted the same unfairness and injustice on the Civil Service Commission, perverting its procedures as tools in a double-dealing but antithetical gambit to both abandon and be restored. He did the same to GSIS, squandering it as a monetary fallback option as he evaded a looming guilty verdict.

He forces the same unfairness and injustice on the entire civil service, the government, and the Filipino people. His restoration to office rewards deceit and dishonesty. It sanctions the corrupting misuse of administrative remedies and undeserved availing of employee benefits. It will only perpetuate, by actual occupation of office and by feeding popular imagination, every caricature of a bureaucrat that festers in the government.

---

[158] *Id*. at 32.

This Court must end the inanity and debasement. It cannot allow a duplicitous former civil servant to use the Judiciary as a tool to render administrative disciplinary processes inutile. A decision rendered by this Court cannot be the means to restore Moralde to the service that he so willingly abandoned and against which he admitted to committing repeated falsehoods. Jurisprudence cannot be the key to enable him to wrest undue benefits from the government. This Court cannot be consigned as a tool to helplessly validate Moralde's duplicity.

Public officers and employees cannot forestall a finding of liability by opting out of employment. It is doubly worse when they reap financial benefits through severance packages upon opting out of employment. Public service is a public trust, and to hold a government position, no matter the rank, is a privilege, not a right.[159] As such, it must be earned, and to be kept, one must continuously prove oneself worthy not only in terms of competence, but also of integrity.

Let Moralde's case be a testament that in the public service, lying, even by omission, does not pay.

WHEREFORE, the consolidated petitions for review on certiorari are **GRANTED**. The assailed June 24, 2013 Decision and January 22, 2014 Resolution of the Court of Appeals in CA-G.R. SP No. 02720-MIN are **REVERSED and SET ASIDE**. The Civil Service Commission's Resolution No. 080805 dated April 28, 2008 and Resolution No. 082249 dated December 8, 2008 are **REINSTATED**.

SO ORDERED.

Leonardo-de Castro (Chairperson), *Bersamin, A. Reyes, Jr.*, and *Gesmundo, JJ.*, concur.

---

[159] CONST., Art. XI, Sec. 1 provides:

Section 1. 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.

FIRST DIVISION

[G.R. No. 218200. August 15, 2018]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **JEFFREY COLLAMAT *a.k.a.* "RIC-RIC", JIMBO SALADAGA and RONILO RONDINA,** *accused,* **JEFFREY COLLAMAT *a.k.a.* "RIC-RIC",** *accused-appellant.*

SYLLABUS

1. **REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; ASSESSMENT THEREON MADE BY THE TRIAL COURT IS ACCORDED THE HIGHEST RESPECT BY APPELLATE COURTS BECAUSE OF THE TRIAL JUDGE'S UNIQUE OPPORTUNITY TO OBSERVE THE WITNESSES FIRSTHAND.—** In cases where the issue rests on the credibility of witnesses, as in this case, it is important to emphasize the well-settled rule that "appellate courts accord the highest respect to the assessment made by the trial court because of the trial judge's unique opportunity to observe the witnesses firsthand and to note their demeanor, conduct and attitude under grueling examination." We explained in *Reyes, Jr. v. Court of Appeals* that the findings of the trial court will not be overturned absent any clear showing that it had *overlooked, misunderstood* or *misapplied* some facts or circumstances of weight or substance that could have altered the outcome of the case x x x. After a thorough review of the records, we find no reason to overturn the findings of the RTC, as affirmed by the CA, since it was not shown that the lower courts had overlooked facts or circumstances of weight that could have affected the result of the case.

2. **ID.; ID.; ALIBI AND DENIAL; MUST BE BRUSHED ASIDE WHEN THE PROSECUTION HAS SUFFICIENTLY AND POSITIVELY ASCERTAINED THE IDENTITY OF THE ACCUSED.—** [P]er the records, it appears that Benido *never wavered* in his positive identification of appellant as one of the perpetrators of the victim's stabbing. x x x In light of appellant's positive identification as one of the victim's assailants, his defenses of alibi and denial must necessarily

fail. After all, it is settled that "alibi and denial are inherently weak defenses and 'must be brushed aside when the prosecution has sufficiently and positively ascertained the identity of the accused'," as in this case.

3. CRIMINAL LAW; REVISED PENAL CODE; AGGRAVATING CIRCUMSTANCES; TREACHERY; ELEMENTS.— As regards the issue on the presence of the qualifying circumstance of treachery, we agree with the CA's conclusion that the victim's stabbing was carried out in such a way that afforded the victim no opportunity to escape or retaliate. "There is treachery when the offender employs means, methods or forms in the execution of any of the crimes against persons that tend directly and especially to ensure its execution without risk to himself arising from the defense which the offended party might make." In this case, appellant and two others *held the victim in place*, while Jimbo delivered the stabbing thrusts on the victim's body. And of the five punctured wounds sustained by the victim, three were fatal — the victim's left and right lungs, as well as his thoracic cavity, were punctured during the stabbing incident. Clearly, the victim's stabbing was attended by treachery, considering that (*a*) the means of execution of the attack gave the victim *no opportunity to defend himself* or to retaliate; and (*b*) said means of execution was *deliberately* adopted by appellant and his co-accused.

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 December 12, 2014 Decision[1] of the Court of Appeals (CA) in CA-G.R. CEB C.R.-H.C. No. 01674

---

[1] *Rollo*, pp. 4-12; penned by Associate Justice Ramon Paul L. Hernando and concurred in by Associate Justices Ma. Luisa C. Quijano-Padilla and Marie Christine Azcarraga-Jacob.

which affirmed with modification the July 3, 2012 Judgment[2] of the Regional Trial Court (RTC), Branch 28, Mandaue City, finding appellant Jeffrey Collamat guilty beyond reasonable doubt of the crime of murder.

The Antecedent Facts

Appellant, together with his co-accused, Jimbo Saladaga (Jimbo) and Ronilo Rondina (Ronilo), was charged with the crime of murder in an Information[3] dated May 10, 2002 which reads:

> That on or about the 13th day of January, 2002, at about 6:30 o'clock in the evening, at Sitio Simborio, Barangay Tayud, Municipality of Liloan, Province of Cebu, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and mutually helping one another, with deliberate intent to kill, with treachery and evident premeditation, did then and there willfully, unlawfully and feloniously attack, assault and stab Esmeralda Gelido with the used [sic] of an ice pick, thereby [inflicting] upon the victim the following, to wit: "hemorrhage, acute, severe, secondary to multiple punctures [sic] wounds (R) and (L) clavecular [sic] areas, and (R) chest," which caused the instantaneous death of the victim.
>
> CONTRARY TO LAW.

During his arraignment on July 5, 2002, appellant entered a plea of not guilty.[4] Trial thereafter ensued.

Version of the Prosecution

The prosecution's version of the incident is as follows:

On January 13, 2002, at around 4:00 p.m., Benido Jumao-as (Benido) and the victim were having a drinking spree at Analyn's Store in Simborio, Liloan, Cebu, when Benido accidentally spilled a glass of beer on appellant's table. At the

---

[2] Records, pp. 182-188; penned by Acting Presiding Judge Raphael B. Yrastorza, Sr.

[3] *Id*. at 1.

[4] See Order dated July 5, 2009, *id*. at 40; issued by Judge Marilyn Lagura-Yap.

time, appellant, too, was drinking with Jimbo, Ronilo, and several others.[5]

The incident unfortunately resulted in a fistfight between the two parties. It was Ramon Judaya (Ramon) who interfered and pacified both sides, even offering a bottle of beer to appellant's group as a gesture of goodwill.[6]

At around 6:30 p.m., Benido and the victim left Analyn's Store. Benido even said farewell to appellant's group. While they were walking along the national highway, Benido saw the victim being attacked by four persons whom he identified later as the group he had an altercation with earlier that day at Analyn's Store. He saw the victim held in place on the right side by appellant, and on the left by Ronilo, while an unidentified person held the victim's feet. Thereafter, he witnessed Jimbo stab the victim with an ice pick. Fearing for his life, Benido immediately ran away and sought shelter at Ramon's house.[7]

The following day, Dr. Jesus Cerna performed an autopsy on the victim's body. Based on the post-mortem report, the victim sustained five stab wounds, and the immediate cause of death was massive hemorrhage secondary to multiple punctured wounds on the right chest, and right and left clavicular areas.[8]

Version of the Defense

Appellant denied taking part in the victim's killing. He testified that:

> x x x [On January 13, 2002,] at around 3:00 o'clock in the afternoon[,] they were singing at the [v]ideoke in Analyn['s] Store situated at Simborio, Tayud, Liloan, Cebu; his companions were Ronilo Rondina, Benjie Marianito, Junry Collamat, Armando Solitano, [and] Elmo Dela Peña; they arrived at the store at around 3:00 o'clock in the afternoon; there were other customers in the store; they finished

---

[5] CA *rollo*, p. 73.

[6] *Id*.

[7] *Id*.

[8] *Id.* See also TSN, July 2, 2003, pp. 4-7.

drinking at around 7:00 o'clock in the evening; they consumed 1 1/2 cases of beer grande; Benido Jumao-as arrived at the store at around 3:30 o'clock with Esmeraldo; both were drinking redhorse beer; later[,] there was a verbal altercation between Benjie Marianito and Benido after the latter happened to topple the former's glass on the table and he tried to appease them; shortly thereafter[,] Ramon Judaya arrived and patched up Benjie and Benido; both group[s] continued singing and drinking; he left at around 7:00 o'clock; he was the last to leave the store; he went to [his] cousin['s] in Opao, Mandaue City and stayed for the night; in the morning[,] he was arrested for being the suspect of a killing in Simborio.[9]

Ruling of the Regional Trial Court

In its Judgment dated July 3, 2012, the RTC found appellant guilty beyond reasonable doubt of the crime of murder under Article 248 of the Revised Penal Code.[10]

The RTC gave full faith and credence to Benido's positive and straightforward testimony, and rejected appellant's defense of denial.[11] It also held that the victim's killing was attended by the qualifying circumstance of treachery, *viz.*:

> Treachery was clearly shown by the testimony of Benido who stated that: At around 6:30 o'clock in the evening, he left the store followed by the victim. Accused Jimbo and Jeffrey in fact said, "*Sige bay[,] sunod lang mi ninyo*" (OK bay, we'll just follow you.) x x x That they never noticed accused were behind them. What he noticed then was when accused put their arms on the shoulder of the victim. The victim was already down when Ramon came back[,] which showed the suddenness of the attack "depriving the victim of any chance to defend himself.["] The accused Jimbo put his arm around the victim to ensure a means of perpetrating the killing of which the victim was not able to [wrest] away from his hold.[12]

---

[9] *Id*. at 27.

[10] Records, p. 188.

[11] *Id*. at 186.

[12] *Id*. at 186-187. Italics supplied.

Accordingly, the RTC sentenced appellant to suffer the penalty of *reclusion perpetua*. It likewise ordered appellant to pay the heirs of the victim: P50,000.00 as moral damages and P25,000.00 as temperate damages.[13]

Appellant thereafter appealed the RTC Judgment before the CA.

Ruling of the Court of Appeals

In its Decision dated December 12, 2014, the CA affirmed the RTC Judgment with modification in that, the appellate court directed appellant to pay the heirs of the victim ₱30,000.00 as exemplary damages, in addition to the damages awarded by the RTC.[14]

The CA ruled that appellant was clearly identified as one of the perpetrators of the crime.[15] It noted that:

> Here, prior to the stabbing of the victim, the assailants' group and that of the victim's group were all drinking and singing [at] Analyn's Videoke Store. Both groups had an altercation but were pacified. The group of appellant was even offered a round of beer just to appease them which they willingly accepted. It should be pointed out that the two groups started their beer drinking around three o'clock in the afternoon and ended about past six o'clock. Thus, there was an interval of about three hours prior to the stabbing incident. In our firm view, the time interval was sufficient for the eyewitness to recognize appellant's group as among the persons who followed them from the store. It should be emphasized that Benido even bid the other group good-bye when he and the victim left the store ahead of the appellant's group.[16]

The CA further held that Benido's positive identification of appellant as one of the victim's assailants was bolstered by his

---

[13] *Id*. at 188.

[14] *Rollo*, p. 12.

[15] *Id*. at 10.

[16] *Id*.

detailed account of how the crime was carried out and appellant's exact participation in it.[17]

Moreover, the CA found that the victim's stabbing was attended by the qualifying circumstance of treachery, as "the manner of the execution of the crime clearly reflects that its commission was made in a manner that would afford no opportunity for the victim to escape or retaliate."[18]

Aggrieved, appellant filed the present appeal.

The Issues

Appellant raises the following issues for the Court's resolution:

First, whether the identity of appellant as one of the perpetrators of the crime was proven beyond reasonable doubt;[19]

And *second*, whether the victim's stabbing was attended by the qualifying circumstance of treachery.[20]

The Court's Ruling

The appeal is unmeritorious.

In cases where the issue rests on the credibility of witnesses, as in this case, it is important to emphasize the well-settled rule that "appellate courts accord the highest respect to the assessment made by the trial court because of the trial judge's unique opportunity to observe the witnesses firsthand and to note their demeanor, conduct and attitude under grueling examination."[21]

We explained in *Reyes, Jr. v. Court of Appeals*[22] that the findings of the trial court will not be overturned absent any clear showing that it had *overlooked, misunderstood* or

---

[17] *Id.*

[18] *Id*. at 11.

[19] CA *rollo*, pp. 29-30.

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

[21] *People v. Aquino*, 396 Phil. 303, 306-307 (2000).

[22] 424 Phil. 829 (2002).

misapplied some facts or circumstances of weight or substance that could have altered the outcome of the case, *viz.*:

> Also, the issue hinges on credibility of witnesses. We have consistently adhered to the rule that **where the culpability or innocence of an accused would hinge on the issue of credibility of witnesses and the veracity of their testimonies, findings of the trial court are given the highest degree of respect**. These findings will not be ordinarily disturbed by an appellate court absent any clear showing that the trial court has overlooked, misunderstood or misapplied some facts or circumstances of weight or substance which could very well affect the outcome of the case. It is the trial court that had the opportunity to observe 'the witnesses' manner of testifying, their furtive glances, calmness, sighs or their scant or full realization of their oaths. It had the better opportunity to observe the witnesses firsthand and note their demeanor, conduct and attitude under grueling examination. Inconsistencies or contradictions in the testimony of the victim do not affect the veracity of the testimony if the inconsistencies do not pertain to material points.[23] (Emphasis supplied)

After a thorough review of the records, we find no reason to overturn the findings of the RTC, as affirmed by the CA, since it was not shown that the lower courts had overlooked facts or circumstances of weight that could have affected the result of the case.

In fact, per the records, it appears that Benido *never wavered* in his positive identification of appellant as one of the perpetrators of the victim's stabbing. For clarity and precision, we quote the pertinent portion of his direct testimony below:

> [PROS. RAMON O. CARISMA:]
>
> Q: Let's go back to the point where you happened to spill somebody else's glass and where you said a fistfight ensued. Do you know these persons?
> A: Yes.
>
> Q: How many persons were there?
> A: There were many of them but I know only 4 in that group.

---

[23] *Id*. at 836.

Q: Of the four[,] do you see all or some of them inside the courtroom?
A: Yes.

Q: Will you please point to these persons inside the courtroom?
A: Jimbo...

Q: Will you please approach them?

COURT INTERPRETER:

Witness, after coming down from the witness stand, pointed to the persons of Jimbo Saladaga and Jeffrey Collamat, who, after being asked their names, answered their names to be so.[24]

x x x x x x x x x

PROS. CARISMA:

Q: Who stabbed ompanion?
A: Jimbo.

Q: What were the others doing?
A: They were holding the victim.[25]

x x x x x x x x x

Q: And the three others who held your companion, whom you said earlier was Esmeraldo, is one among these three persons inside the courtroom?
A: **Yes, Jeffrey Collamat.**[26]

Even during his grueling cross-examination, Benido remained steadfast in his positive identification of appellant, *viz.*:

[ATTY. GIA RODRIGUEZ:]

Q: Is it not possible that you were mistaken when you claimed that the group of the accused was the one who stabbed your companion with an icepick[,] considering that it was dark?
A: No.

---

[24] TSN, January 15, 2003, pp. 5-6.

[25] *Id*. at 6.

[26] *Id*. at 7. Emphasis supplied.

Q: Why are you so certain?
A: **Because I clearly saw them.**[27]

In light of appellant's positive identification as one of the victim's assailants, his defenses of alibi and denial must necessarily fail.[28] After all, it is settled that "alibi and denial are inherently weak defenses and 'must be brushed aside when the prosecution has sufficiently and positively ascertained the identity of the accused'," [29] as in this case.

As regards the issue on the presence of the qualifying circumstance of treachery, we agree with the CA's conclusion that the victim's stabbing was carried out in such a way that afforded the victim no opportunity to escape or retaliate.

"There is treachery when the offender employs means, methods or forms in the execution of any of the crimes against persons that tend directly and especially to ensure its execution without risk himself arising from the defense which the offended party might make."[30]

In this case, appellant and two others *held the victim in place*,[31] while Jimbo delivered the stabbing thrusts on the victim's body.[32] And of the five punctured wounds sustained by the victim, three were fatal— the victim's left and right lungs, as well as his thoracic cavity, were punctured during the stabbing incident.[33]

Clearly, the victim's stabbing was attended by treachery, considering that (*a*) the means of execution of the attack gave the victim *no opportunity to defend himself* or to retaliate; and (*b*) said means of execution was *deliberately* adopted by appellant and his co-accused.[34]

---

[27] TSN, January 29, 2003, p. 16.

[28] See *S/Sgt. Vergara v. People*, 425 Phil. 124, 138 (2002).

[29] *People v. Clemeno*, G.R. No. 215202, March 14, 2018.

[30] *People v. Alajay*, 456 Phil. 83, 92 (2003).

[31] TSN, January 15, 2003, p. 6.

[32] *Id*.

[33] TSN, July 2, 2003, pp. 4-5.

[34] See *People v. Alajay*, *supra* note 30.

Given these circumstances, we find no cogent reason to overturn the factual findings and conclusions of the lower courts, as they are supported by the evidence on record and applicable laws.

However, we deem it appropriate to *award* ₱75,000.00 as civil indemnity and *increase* the amounts of moral and exemplary damages to ₱75,000.00 each and temperate damages to ₱50,000.00 in conformity with prevailing jurisprudence.[35] In addition, interest at the rate of 6% *per annum* is imposed on all damages awarded from date of finality of this Decision until full payment.

WHEREFORE, the appeal is **DISMISSED**. The December 12, 2014 Decision of the Court of Appeals in CA-G.R. CEB C.R.-H.C. No. 01674 is hereby **AFFIRMED with MODIFICATIONS** in that:

(a) Appellant Jeffrey Collamat a.k.a. "Ric-Ric" is ordered to pay the heirs of the victim ₱75,000.00 as civil indemnity;

(b) The awards of moral and exemplary damages are increased to ₱75,000.00 each;

(c) The award of temperate damages is increased to ₱50,000.00; and,

(d) All damages awarded shall earn interest at the rate of 6% *per annum* from finality of this Decision until fully paid.

SO ORDERED.

Peralta[*] *(Acting Chairperson)*, *Bersamin,*[**] *Tijam*, and *Gesmundo,*[***] *JJ.*, concur.

---

[35] *People v. Jugueta*, 783 Phil. 806, 846-848 (2016).

[*] Designated Acting Chairperson per Special Order No. 2582 (Revised) dated August 8, 2018.

[**] Per October 9, 2017 raffle vice *J.* Jardeleza who recused due to prior action as Solicitor General.

[***] Designated Acting Member per Special Order No. 2560 dated May 11, 2018.

FIRST DIVISION

[G.R. No. 220220. August 15, 2018]

PHILIPPINE INDEPENDENT CHURCH, *petitioner, vs.* **BISHOP MARTIN BASAÑES,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; UNLAWFUL DETAINER; NATURE, EXPLAINED; THE PROVISIONAL DETERMINATION OF OWNERSHIP IS NOT THE PRIMORDIAL CONSIDERATION IN AN EJECTMENT CASE.— The rule is settled that in an unlawful detainer case, the physical or material possession of the property involved, *independent* of any claim of ownership by any of the parties, is the sole issue for resolution. However, where the issue of ownership is raised, the courts may pass upon said issue in order to determine who has the right to possess the property. This adjudication is only an initial determination of ownership for the purpose of settling the issue of possession, the issue of ownership being inseparably linked thereto. Accordingly, the lower court's adjudication of ownership in the ejectment case is merely provisional and would not bar or prejudice an action between the same parties involving title to the property. Let it be emphasized that the provisional determination of ownership is not the primordial consideration in an ejectment case. If the courts can resolve the question of who has the better right of physical or material possession, the issue of ownership should not be touched upon, it being unessential in an action for unlawful detainer.

2. ID.; ID.; ID.; AS THE PETITIONER HAS SUFFICIENTLY DEMONSTRATED A CAUSE OF ACTION AND THE RESPONDENT FAILED TO REFUTE THE FACT OF PETITIONER'S PRIOR AND CONTINUOUS POSSESSION, THE ISSUE OF MATERIAL POSSESSION IS EASILY RESOLVED IN PETITIONER'S FAVOR WITHOUT DELVING INTO THE ISSUE OF OWNERSHIP.— Inasmuch as petitioner's amended complaint recites: that petitioner owns the 248-square meter portion of a parcel of land and built thereon a church and a convent, which

property had been continuously used by petitioner and occupied by its authorized parish priests and co-parish priests; that the original defendant, Fr. Ramon Dollosa, violated the conditions of being a co-parish priest; that a demand to vacate the property was made upon Fr. Ramon Dollosa but to no avail; and, that within one (1) year from the date of last demand, the amended complaint for unlawful detainer was filed, petitioner has demonstrated a cause of action against Fr. Dollosa who was later on substituted by herein respondent Bishop Basañes. Tellingly, respondent's answer to the foregoing allegations set forth in the amended complaint for unlawful detainer does not refute the fact of prior and continuous possession of the property by the petitioner through its *authorized* parish priests. Instead, respondent banks on the defense that in the 1980's, the heirs of Catalino built a church and a convent on the property and in 2005, amended in 2008, executed a donation covering the property in favor of the newly-registered Philippine Independent Catholic Church. It can, thus, be reasonably inferred that Bishop Basañes and his predecessor's possession over the property was only by virtue of petitioner's prior authorization. However, such authority to possess the property ceased when Bishop Basañes' predecessor committed a breach of the conditions of being a co-parish priest in operating the Parish of Sta. Felomena of the Philippine Independent Church. That the Philippine Independent Catholic Church was later on caused to be registered under the leadership of Bishop Basañes further highlights the fact that the former seeks a personality separate from the petitioner. Bishop Basañes also claimed that the Philippine Independent Catholic Church does not owe any allegiance to the petitioner but only recognizes Bishop Basañes' and its officials' authority. Notwithstanding this clear separatist movement, Bishop Basañes continued occupying the subject property. As correctly ruled by the RTC, these representations demonstrate that the occupation and possession by Bishop Basañes was no longer sanctioned by petitioner nor bear any color of authority from the latter. Given the foregoing, the issue of material possession is easily resolved in favor of petitioner even without delving into the issue of ownership raised as a defense. Hence, there is no need for the Court to delve into the issue of ownership which is better threshed out in an appropriate proceeding where such issue becomes properly justiciable.

APPEARANCES OF COUNSEL

Torrecampo and Gorgonio Law Offices for petitioner.
Lorendo K. Dilag for respondent.

D E C I S I O N

TIJAM, *J.*:

Assailed in this Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Court are the Decision[2] dated February 28, 2014 and the Resolution[3] dated July 20, 2015 of the Court of Appeals (CA) in CA-G.R. CEB-SP No. 05661. Reversing the identical decisions of the lower courts, the CA held that petitioner Philippine Independent Church had no cause of action for unlawful detainer against respondent Bishop Martin Basañes, they being co-owners of the subject property.

The Antecedents

Petitioner Philippine Independent Church, also known as Iglesia Filipina Independiente, Iglesia Catolica Filipina Independiente, Iglesia Catolica Filipina or the Aglipayan Church, is a religious organization which existed since the 1900's. According to petitioner, as early as the 1900's, it built a church and a convent on a 248-square meter portion of a larger parcel of land located in Pulupandan, Negros Occidental, designated as Lot No. 1204, Valladolid Cadastre, and covered by Original Certificate of Title No. RO-12808 (666) registered under the name of Catalino Riego Magbanua (Catalino).[4]

Petitioner claimed that in 1903, this 248-square meter of land on which the church and the convent were built was donated to petitioner by Catalino. Said donation was formalized by

---

[1] Dated September 23, 2015; *rollo*, pp. 10-40.

[2] Penned by Associate Justice Maria Elisa Sempio Diy, and concurred in by Associate Justices Edgardo L. Delos Santos and Pamela Ann Abella Maxino; *id.* at 42-52.

[3] *Id.* at 55-56.

[4] *Id.* at 12, 105.

Catalino's heirs under a Declaration of Heirship and Deed of Donation[5] dated October 24, 2001. The church and the convent were occupied by Fr. Daniel De Los Reyes who was then succeeded by Msgr. Macario V. Ga (Msgr. Ga).[6]

Sometime in the 1980's, a faction, separating from petitioner, was formed by Msgr. Ga.[7] Among those joining the faction of Msgr. Ga were Fr. Ramon Dollosa (Fr. Dollosa) and herein respondent Bishop Martin Basañes (Bishop Basañes). Petitioner claimed that because of an agreement signed by the members of the faction whereby they submitted themselves to petitioner's authority, Fr. Dollosa was allowed by then Diocesan Bishop Tiples, Jr., to remain as co-parish priest of the Parish of Sta. Felomena of the Philippine Independent Church of Pulupandan, Negros Occidental.[8]

However, due to an alleged violation committed by Fr. Dollosa, petitioner sent him on October 1, 2003 a demand letter[9] to vacate the premises of the church and the convent. When the demand went unheeded, petitioner filed against Fr. Dollosa a complaint[10] for forcible entry which was later on amended to one for unlawful detainer.

By way of answer, Fr. Dollosa countered that the complaint states no cause of action against him, and that in any case, petitioner is not the owner of the subject property since the heirs who executed the Declaration of Heirship and Deed of Donation in petitioner's favor were illegitimate children of Catalino.[11] On the other hand, Fr. Dollosa maintained that it was the legitimate heirs of Catalino who built the church and the convent in the 1980's and who later on adhered to the

---

[5] *Id.* at 282-283.

[6] *Id*. at 13.

[7] *Id*. at 205.

[8] *Id*. at 13.

[9] *Id.* at 292.

[10] *Id*. at 120-124.

[11] *Id*. at 126.

Philippine Independent Catholic Church, which is separate and distinct from petitioner having been registered with the SEC on January 17, 2007.[12] He also added that Catalino's legitimate heirs, who are members of the Philippine Independent Catholic Church, had executed a Deed of Donation dated February 5, 2005 and amended in 2008, covering the subject property in the latter's favor.[13]

Fr. Dollosa passed away during the pendency of the unlawful detainer case. Bishop Basañes was substituted in his place.

The Municipal Circuit Trial Court (MCTC) of Valladolid-San Enrique-Pulupandan, Negros Occidental, rendered a Decision in favor of petitioner, the dispositive portion of which reads:

WHEREFORE, foregoing premises considered, judgment is hereby rendered in favor of the plaintiff, as follows:

1. Ordering the defendant and/or Bishop Martin Basañes and all other persons claiming rights under him to vacate the premises of the subject lot, the church and the convent of the Philippine Independent Church in Pulupandan, Negros Occidental;

2. No pronouncement as to cost.[14]

This adverse ruling prompted Bishop Basañes to appeal to the Regional Trial Court (RTC).

The RTC Ruling

In appreciating the records before it, the RTC held that it was the petitioner which ran the Church, as well as the physical church and the convent built on the property. When the faction of Msgr. Ga separated from the petitioner, the faction continued to occupy the church and the convent.[15] Bishop Basañes, who

---

[12] *Id*. at 205.

[13] *Id*. at 117.

[14] Quoted from the RTC, Branch 62-Bago City Decision dated July 27, 2010; *id*. at 109.

[15] *Id.* at 114.

belonged to Msgr. Ga's faction, later on formed the Philippine Independent Catholic Church, Diocese of Negros Occidental, Inc., but continued to occupy the church and the convent.[16] The RTC, thus, approved the MCTC's conclusion that petitioner's possessory right antedates that of Bishop Basañes and that his stay thereon was merely by petitioner's tolerance.[17] The RTC also noted Bishop Basañes' admission that his church, the Philippine Independent Catholic Church, does not owe any allegiance to the petitioner and, thus, concluded that Bishop Basañes' possession of the subject property is no longer authorized by petitioner.[18]

Aggrieved, Bishop Basañes went to the CA and claimed right to possess the subject property on the basis of ownership as evidenced by a Deed of Donation executed by the alleged legitimate heirs of Catalino in favor of the Philippine Independent Catholic Church.

The CA Ruling

Departing from the findings of the MCTC and the RTC, the CA emphasized that both parties claim ownership over the disputed property. Petitioner claims it by virtue of a Deed of Donation executed by the heirs of Catalino with one Juana Jacinto; while Bishop Basañes claims that the Philippine Independent Catholic Church owns the same on the basis of a Deed of Donation executed by the heirs of Catalino with one Francisca Escaro. The CA, thus, assumed that all of Catalino's heirs are co-owners of the subject property and that being heirs, they may dispose of their ideal share in the co-ownership. The CA concluded that both sets of heirs have donated their *pro indiviso* shares in the subject property to the parties and thus, the latter are now co-owners thereof. As such, petitioner has no cause of action against Bishop Basañes and the members of the Philippine Independent Catholic Church since the latter is a co-owner with a right to possess the disputed property.[19]

---

[16] *Id*. at 115.

[17] *Id*.

[18] *Id*. at 115-116.

[19] *Id*. at 49-52.

In disposal, the CA held:

WHEREFORE, the Petition for Review is **GRANTED**. The Decision dated July 27, 2010 of Branch 62, Regional Trial Court of Bago City in Civil Case No. 1656 is **REVERSED** and **SET ASIDE**. The complaint of the Philippine Independent Church before the MCTC of Valladolid-San Enrique-Pulupandan, Valladolid, Negros Occidental in Civil Case No. 04-001-P is **DISMISSED** without prejudice.

SO ORDERED.[20]

Thus, the present petition.

The Issue

The pivotal issue to be resolved is who, between petitioner and respondent Bishop Basañes of the Philippine Independent Catholic Church, has the better right to the physical possession of the disputed property.

The Ruling of the Court

We grant the petition.

In order to resolve the contentions raised by the parties, the Court necessarily had to revisit the factual findings of the lower courts and the CA, as well as, to consider the factual matters raised by the parties. To emphasize, such route is improper in a petition for review on *certiorari* which should raise only questions of law, and not of fact.[21] By way of exception, the Court resolves factual issues when, among others,[22] the factual

---

[20] *Id*. at 52.

[21] See *Dr. Seriña v. Caballero*, 480 Phil. 277, 284 (2004).

[22] These exceptions as cited in *Land Bank of the Phils. v. Monet's Export & Mfg. Corp.*, 493 Phil. 327, 338-339 (2005) are when:

"(1) the factual findings of the Court of Appeals and the trial court are contradictory; (2) the findings are grounded entirely on speculation, surmises or conjectures; (3) the inference made by the Court of Appeals from its findings of fact is manifestly mistaken, absurd or impossible; (4) there is grave abuse of discretion in the appreciation of facts; (5) the appellate court, in making its findings, goes beyond the issues of the case and such findings are contrary to the admissions of both appellant and appellee; (6) the judgment of the Court of Appeals is premised on a misapprehension of facts; (7) the

findings of the CA and the trial courts are contradictory, the judgment is based on a misapprehension of facts, or the CA manifestly overlooked certain relevant and undisputed facts that, if properly considered, would justify a different legal conclusion. These exceptions are extant in the instant case.

The rule is settled that in an unlawful detainer case, the physical or material possession of the property involved, *independent* of any claim of ownership by any of the parties, is the sole issue for resolution. However, where the issue of ownership is raised, the courts may pass upon said issue in order to determine who has the right to possess the property. This adjudication is only an initial determination of ownership for the purpose of settling the issue of possession, the issue of ownership being inseparably linked thereto. Accordingly, the lower court's adjudication of ownership in the ejectment case is merely provisional and would not bar or prejudice an action between the same parties involving title to the property.[23]

Let it be emphasized that the provisional determination of ownership is not the primordial consideration in an ejectment case. If the courts can resolve the question of who has the better right of physical or material possession, the issue of ownership should not be touched upon, it being unessential in an action for unlawful detainer.

A careful perusal of the assailed CA decision shows that the appellate court precipitately concluded that petitioner and Bishop Basañes, as representing the Philippine Independent Catholic Church, are now co-owners of the subject property, being donees of the same, albeit under different deeds of donation executed

---

Court of Appeals fails to notice certain relevant facts which, if properly considered, will justify a different conclusion; and (8) the findings of fact of the Court of Appeals are contrary to those of the trial court or are mere conclusions without citation of specific evidence, or where the facts set forth by the petitioner are not disputed by respondent, or where the findings of fact of the Court of Appeals are premised on the absence of evidence but are contradicted by the evidence on record."

[23] *Sps. Pascual v. Sps. Coronel*, 554 Phil. 251, 359-360 (2007).

by different sets of Catalino's heirs. Although this pronouncement as to ownership is admittedly provisional, such is not entirely accurate and misses key factual matters which, if considered, could have easily resolved the issue of the better right of physical or material possession.

We begin by examining the allegations in the amended complaint for unlawful detainer, which alleges:

x x x x x x x x x

3. That the plaintiff is the owner of a portion of a parcel of land designated as Lot No. 1204, Valladolid Cadastre, covered by Original Certificate of Title No. RO-12808 (666), x x x;

4. That this portion with an area of TWO HUNDRED FORTY EIGHTY [sic] (248) SQUARE METERS, more or less, was donated to the plaintiff by the late Catalino Riego way back in 1903 and formalized by his heirs in a document known as Declaration of Heirship and Deed of Donation dated October 24, 2001 x x x;

5. That on this portion of the said lot is a church and a convent both belonging to the plaintiff;

6. That the defendant is a member of the faction of the Philippine Independent Church under the 1947 Constitution and Canons headed by Msgr. Macario V. Ga who in 1981 questioned the validity of the ratification of the 1977 Constitution and Canons of the Philippine Independent Church including the election of the Supreme Bishop under the said Constitution and Canons before the Securities and Exchange Commission (SEC);

x x x x x x x x x

8. That on account of the signed document on November 16, 1994, whereby members of the faction headed by Msgr. Macario V. Ga submitted themselves to the legitimate authority of Philippine Independent Church under the 1977 Constitution and Canons, defendant Fr. Ramon Dollosa and his predecessors were allowed by then diocesan bishop, Rt. Rev. Tiples, Jr. to remain as co-parish priest of the Philippine Independent Church, Pulupandan, Negros Occidental, the parish of St. Felomena;

9. That even since the time of Fr. de los Reyes, the immediate predecessor of defendant Fr. Ramon Dollosa, the parish belonging

to the faction headed by Msgr. Macario V. Ga have already violated the conditions of being co-parish priest in operating the above-named parish under the 1947 Constitution and Canons;

10. That on October 1, 2003 demand was made on the defendant by the Deputy Diocesan Bishop, Rt. Rev. Wenceslao Molato, to vacate the premises of the church as evidenced by the demand letter x x x;

11. That the defendant refused to vacate the premises within the time given to him in the demand letter and up to the present he is still illegally occupying the church and the convent including the parcel of land on which these are constructed to the damage and prejudice of the herein plaintif.[24]

The rule on the matter is spelled under Section 1, Rule 70 of the Rules of Court which provides:

Section 1. *Who may institute proceedings, and when.* — Subject to the provisions of the next succeeding section, a person deprived of the possession of any land or building by force, intimidation, threat, strategy, or stealth, or a lessor, vendor, vendee, or other person against whom the possession of any land or building is unlawfully withheld after the expiration or termination of the right to hold possession, by virtue of any contract, express or implied, or the legal representatives or assigns of any such lessor, vendor, vendee, or other person, may, at any time within one (1) year after such unlawful deprivation or withholding of possession, bring an action in the proper Municipal Trial Court against the person or persons unlawfully withholding or depriving of possession, or any person or persons claiming under them, for the restitution of such possession, together with damages and costs.

Consistently, case law[25] treats a complaint as having sufficiently allege a cause of action for unlawful detainer if it contains the following:

(1) initially, possession of the property by the defendant was by contract with or by tolerance of the plaintiff;

---

[24] *Id*. at 120-122.

[25] *Zacarias v. Anacay, et al.*, 744 Phil. 201 (2014).

(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.[26]

Inasmuch as petitioner's amended complaint recites: that petitioner owns the 248-square meter portion of a parcel of land and built thereon a church and a convent, which property had been continuously used by petitioner and occupied by its authorized parish priests and co-parish priests; that the original defendant, Fr. Ramon Dollosa, violated the conditions of being a co-parish priest; that a demand to vacate the property was made upon Fr. Ramon Dollosa but to no avail; and, that within one (1) year from the date of last demand, the amended complaint for unlawful detainer was filed, petitioner has demonstrated a cause of action against Fr. Dollosa who was later on substituted by herein respondent Bishop Basañes.

Tellingly, respondent's answer to the foregoing allegations set forth in the amended complaint for unlawful detainer does not refute the fact of prior and continuous possession of the property by the petitioner through its *authorized* parish priests. Instead, respondent banks on the defense that in the 1980's, the heirs of Catalino built a church and a convent on the property and in 2005, amended in 2008, executed a donation covering the property in favor of the newly-registered Philippine Independent Catholic Church. It can, thus, be reasonably inferred that Bishop Basañes' and his predecessor's possession over the property was only by virtue of petitioner's prior authorization. However, such authority to possess the property ceased when Bishop Basañes' predecessor committed a breach of the conditions of being a co-parish priest in operating the Parish of Sta. Felomena of the Philippine Independent Church.[27]

---

[26] *Id*. at 208-209.

[27] *Rollo*, p. 111.

That the Philippine Independent Catholic Church was later on caused to be registered under the leadership of Bishop Basañes further highlights the fact that the former seeks a personality separate from the petitioner. Bishop Basañes also claimed that the Philippine Independent Catholic Church does not owe any allegiance to the petitioner but only recognizes Bishop Basañes' and its officials' authority.[28] Notwithstanding this clear separatist movement, Bishop Basañes continued occupying the subject property. As correctly ruled by the RTC, these representations demonstrate that the occupation and possession by Bishop Basañes was no longer sanctioned by petitioner nor bear any color of authority from the latter.[29]

Given the foregoing, the issue of material possession is easily resolved in favor of petitioner even without delving into the issue of ownership raised as a defense. Hence, there is no need for the Court to delve into the issue of ownership which is better threshed out in an appropriate proceeding where such issue becomes properly justiciable.

At any rate, the deed of donation allegedly covering the subject property which the heirs of Catalino executed in favor of the Philippine Independent Catholic Church to which Bishop Basañes claims to belong could not tilt the issue of material possession in the latter's favor. As aptly observed by the RTC:

> In contrast to the Deed of Donation executed in favor of the plaintiff-appellee x x x, the Deed of Donation executed much later, on February 5, 2005 by the alleged heirs of Catalino Riego in favor of the Philippine Independent Catholic Church, which was later on amended in 2008 x x x, merely stated the location of the lot and the Tax Declaration Control Number covering the same. The lot number and the certificate of title covering the lot donated were not stated therein. **Further, the Court noted that the later Deed of Donation was executed one (1) year after the present case was filed before the court a quo. Moreover, it was sufficiently established that the church to which the defendant-appellant belongs came into existence only sometime in the late 1980's when there was a split in the national**

---

[28] *Id*. at 115-116.

[29] *Id*.

level brought about by the division of the Iglesia Filipina Independiente into two (2) factions, i.e. those that follow the 1947 Constitution and Canons under the late Msgr. Macario Ga and those that follow the duly approved Constitution and Canons of 1977. The Philippine Independent Catholic Church (PICC) was later on organized. Its Articles of Incorporation and By-Laws was approved by the Securities and Exchange Commission on January 17, 2007. How then could the defendant claim that his group had been in possession of the premises of the lot subject matter of this case and the church and convent standing thereon for twenty-nine years already when in truth and in fact it came into existence only later. It is the mainstream church, the Philippine Independent Church that existed a long time ago.[30] (Emphasis ours)

Without necessarily making a pronouncement as to the validity and binding effect of the deed of donation executed in favor of the Philippine Independent Catholic Church, it appears that such deed was executed only as a belated cure which should not have been the determining factor to decide the issue of material possession.

WHEREFORE, the petition is **GRANTED**. The Decision dated February 28, 2014 and the Resolution dated July 20, 2015 of the Court of Appeals in CA-G.R. CEB-SP No. 05661 are **REVERSED** and **SET ASIDE**. The Decision dated January 4, 2010 of the Municipal Circuit Trial Court-Valladolid-San Enrique-Pulupandan, Negros Occidental, affirmed *in toto* by the Regional Trial Court, is **REINSTATED**.

SO ORDERED.

Peralta,[*] *(Acting Chairperson)*, *del Castillo, Jardeleza*, and *Gesmundo,*[**] *JJ.*, concur.

---

[30] *Id.* at 205.

[*] Designated as Acting Chairperson per Revised Special Order No. 2582 dated August 8, 2018

[**] Designated as Acting Member pursuant to Revised Special Order No. 2560 dated May 11, 2018.

SECOND DIVISION

[G.R. No. 221199. August 15, 2018]

GEMINIANO S. MURILLO, *petitioner, vs.* **PHILIPPINE TRANSMARINE CARRIERS, INC., NORWEGIAN CREW MANAGEMENT A/S, and CARLOS C. SALINAS,** *respondents.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; PHILIPPINE OVERSEAS EMPLOYMENT ADMINISTRATION STANDARD EMPLOYMENT CONTRACT (POEA-SEC); SECTION 20 ON DISABILITY BENEFITS; IN CASE OF DISAGREEMENT BETWEEN THE FINDINGS OF THE COMPANY-DESIGNATED PHYSICIAN AND THE SEAFARER'S DOCTOR OF CHOICE, THE EMPLOYER AND THE SEAFARER MAY AGREE JOINTLY TO REFER THE MATTER TO A THIRD DOCTOR WHOSE DECISION SHALL BE FINAL AND BINDING ON THEM. –– According to the case of *Andrada vs. Agemar Manning Agency, Inc.*, the issue of whether the petitioner can legally demand and claim disability benefits from the respondents for an illness suffered is best addressed by the provisions of the POEA-SEC which incorporated the 2000 Amended Standard Terms and Conditions Governing the Employment of Filipino Seafarers on Board Ocean-Going Vessels. x x x **If a doctor appointed by the seafarer disagrees with the assessment, a third doctor may be agreed jointly between the Employer and the seafarer. The third doctor's decision shall be final and binding on both parties.** Thus, while it is the company-designated physician who is entrusted with the task of assessing the seafarer's disability, whether total or partial, due to either injury or illness, during the term of the latter's employment, the same is not automatically final, binding or conclusive.

2. ID.; ID.; ID.; ID.; THE REFERRAL TO A THIRD DOCTOR IS MANDATORY, FAILURE OF WHICH IS A BREACH OF THE POEA-SEC, AND THE ASSESSMENT OF THE COMPANY-DESIGNATED PHYSICIAN SHALL BE FINAL AND BINDING. — In *Formerly INC Shipmanagement,*

Inc. vs. Rosales, the Court further clarified the ruling in *Philippine Hammonia Ship Agency, Inc.* by categorically saying that **the referral to a third doctor is mandatory, and should the seafarer fail to abide by this method, he/she would be in breach of the POEA-SEC, and the assessment of the company-designated physician shall be final and binding**.

3. **ID.; ID.; APPLICATION OF SECTION 32 WARRANTS AWARD OF COMPENSATION EQUIVALENT TO THE INJURY SUSTAINED AS ASSESSED BY THE COMPANY-DESIGNATED PHYSICIAN. ––** In the instant case, the company-designated physician's findings indicated that the petitioner suffered from an injury in both of his knees during the term of his employment with the respondents. His condition, later on diagnosed as that which was caused by "ostheoarthritis," prompted the company-designated physician to issue a disability grading of ***"Grade 10 x 2 - stretching leg or ligaments of a knee."*** x x x Petitioner [should be awarded] with the compensation equivalent to the injury which [petitioner] sustained and which was assessed by the company-designated physician. In this regard, an examination of Section 32 of the POEA-SEC, under number 20 of the section concerning "Lower Extremities," a disability of "Stretching leg of the ligaments of a knee resulting in instability of the joint" has a disability of Grade 10. According to the "Schedule of Disability Allowances," still under the POEA-SEC, such impediment grade shall be entitled to 20.15% of US$50,000.00, which in this case is US$10,075.00. Considering that both knees of the petitioner are affected, again as indicated in the medical assessment of the company-designated physician, the total amount to which the petitioner is rightfully entitled is US$20,150.00.

APPEARANCES OF COUNSEL

Tolentino And Bautista Law Offices for petitioner.
Nolasco & Associates Law Offices for respondents.

D E C I S I O N

A. REYES, JR., *J.*:

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 in CA-G.R. SP No. 135856 promulgated on June 17, 2015 and October 26, 2015, respectively. The decision and resolution annulled and set aside the decision of the National Labor Relations Commission (NLRC), which upheld the decision of the Labor Arbiter.

The Antecedent Facts

The petitioner is a Filipino seafarer who signed a Contract of Employment[3] with Norwegian Crew Management A/S through its manning agent in the Philippines, Philippine Transmarine Carriers, Inc. (respondents). The petitioner was accepted as an able seaman aboard the vessel "THORSCAPE" for a duration of eight (8) months, receiving a basic monthly salary of US$689.00 on a 44-hour work week, with overtime pay of US$383.00 and vacation leave with pay for ten (10) days per month.[4]

On January 12, 2013, while securing a lifeboat, the petitioner figured in an accident and sustained an injury that affected both of his knees.[5] He was thereafter brought to the Rumah Sakit Port Medical Center in Indonesia where he was diagnosed to be suffering from "ostheoarthritis."[6] He was repatriated for medical reasons on January 29, 2013.

---

[1] Penned by Associate Justice Agnes Reyes-Carpio and concurred in by Associate Justices Remedios A. Salazar-Fernando and now Presiding Justice Romeo F. Barza; *rollo*, pp. 74-82.

[2] *Id.* at 84-86.

[3] *Id.* at 111.

[4] *Id.*

[5] *Id.* at 75.

[6] *Id.*

Upon arrival in the Philippines, the petitioner was referred to the Metropolitan Medical Center under the care of the company-designated physician, Dr. Robert D. Lim (Dr. Lim). He thereafter underwent surgery, medication and physical therapy to improve his knee function.

On August 8, 2013, Dr. Lim assessed the disability grading of the petitioner to be "Grade 10 x 2-stretching leg or ligaments of a knee."[7]

The petitioner disagreed with this assessment, and as a result of which, he consulted his personal physician, Dr. Rogelio P. Catapang (Dr. Catapang). On August 10, 2013, Dr. Catapang issued a medical report declaring the petitioner to be permanently unfit in any capacity to resume his sea duties.[8]

After the parties' failure to arrive at an amicable settlement, the petitioner initiated a complaint before the Labor Arbiter for payment of disability benefits including illness allowance and reimbursement of medical expenses, plus damages and attorney's fees.[9]

On January 15, 2014, the Labor Arbiter promulgated its Decision in favor of the petitioner, the dispositive portion of which reads:

> WHEREFORE, premises considered, judgment is hereby rendered finding [petitioner] entitled to permanent and total disability benefits and, correspondingly, holding all Respondents jointly and severally liable to pay Complainant (sic) US$90,000 and ₱2,983.37, or their peso equivalents at the time of payment, plus attorney's fees equal to 10% of the judgment awards.
>
> All other claims are dismissed for lack of merit.
>
> SO ORDERED.[10]

---

[7] *Id*. at 76.

[8] *Id.*

[9] *Id*. at 173.

[10] *Id*. at 76.

Aggrieved, the respondents appealed to the NLRC, which later on affirmed the decision of the Labor Arbiter.

Once again, the respondents were dissatisfied with the judgment. And so, they elevated the case to the Court of Appeals *via* a petition for *certiorari* under Rule 65 of the Rules of Court. In granting the petition, the appellate court emphasized that the medical report by the company-designated physician was issued merely two (2) days prior to the medical report of the petitioner's personal physician. By this, the Court of Appeals pointed out that the petitioner "could have signified his desire to resolve the conflict by engaging a third doctor."[11]

However, rather than adopting the medical assessment of the company-designated physician, the Court of Appeals concluded that "[t]he Complaint should have been dismissed for prematurity."[12] Thus, the *fallo* of the decision reads:

> WHEREFORE, the Petition is GRANTED. The Resolutions dated February 26, 2014 and March 31, 2014 of the National Labor Relations Commission are ANNULLED AND SET ASIDE. Accordingly, the Complaint is DISMISSED.
>
> SO ORDERED.[13]

Upon the denial of the petitioner 's motion for reconsideration, he filed the instant petition.

The Issue

In asking for the reversal of the decision and resolution of the Court of Appeals, the petitioner asks whether or not the decision and resolution are issued with grave abuse of discretion amounting to lack or excess of jurisdiction. The petitioner argues that: (1) the LA and NLRC Decisions are promulgated on the basis of substantial evidence and could no longer be overturned; (2) the appellate court misappreciated the assessment of the

---

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

[12] *Id*. at 18.

[13] *Id*. at 81.

company-designated physician; and (3) there is error when the appellate court reiterated that the rule on the referral to a third doctor as a method of conflict-resolution is mandatory.[14]

The Court's Ruling

After a careful perusal of the arguments presented and the evidence submitted, the Court finds partial error in the decision of the Court of Appeals, and thus finds partial merit in the petition.

First, the Court of Appeals is correct in stating that the referral to a third doctor is mandatory, and that the petitioner's failure to abide thereby is a breach of the Philippine Overseas Employment Administration Standard Employment Contract (POEA-SEC), which makes the assessment of the company-designated physician final and binding.

According to the case of *Andrada vs. Agemar Manning Agency, Inc.*,[15] the issue of whether the petitioner can legally demand and claim disability benefits from the respondents for an illness suffered is best addressed by the provisions of the POEA-SEC which incorporated the 2000 Amended Standard Terms and Conditions Governing the Employment of Filipino Seafarers on Board Ocean-Going Vessels. Section 20 thereof provides:

> Section 20 [B]. Compensation and Benefits for Injury or Illness
>
> x x x x x x x x x
>
> 2. x x x
>
> However, if after repatriation, the seafarer still requires medical attention arising from said injury or illness, he shall be so provided at cost to the employer until such time as he is declared fit or the degree of his disability has been established by the company-designated physician.
>
> 3. Upon sign-off from the vessel for medical treatment, the seafarer is entitled to sickness allowance equivalent to his basic wage until

---

[14] *Rollo*, p. 33.

[15] 698 Phil. 170, 181 (2012).

he is declared fit to work or the degree of his permanent disability has been assessed by the company-designated physician, but in no case shall this period exceed one hundred twenty (120) days.

For this purpose, the seafarer shall submit himself to a post-employment medical examination by a company-designated physician within three working days upon his return except when he is physically incapacitated to do so, in which case, a written notice to the agency within the same period is deemed as compliance. Failure of the seafarer to comply with the mandatory reporting requirement shall result in his forfeiture of the right to claim the above benefits.

If a doctor appointed by the seafarer disagrees with the assessment, a third doctor may be agreed jointly between the Employer and the seafarer. The third doctor's decision shall be final and binding on both parties.[16] (Emphasis and underscoring supplied)

Thus, while it is the company-designated physician who is entrusted with the task of assessing the seafarer's disability, whether total or partial, due to either injury or illness, during the term of the latter's employment,[17] the same is not automatically final, binding or conclusive.[18]

According to *Andrada*,[19] should the seafarer disagree with the assessment, he/she may dispute the same by seasonably exercising his/her prerogative to seek a second opinion and consult a doctor of his/her choice.[20] In case of disagreement between the findings of the company-designated physician and the seafarer's doctor of choice, the employer and the seafarer may agree jointly to refer the latter to a third doctor whose

---

[16] *Id*.

[17] *Coastal Safeway Marine Services, Inc. v. Esguerra*, 671 Phil. 56, 65-66 (2011); *German Marine Agencies, Inc. v. National Labor Relations Commission*, 403 Phil. 572, 588 (2001).

[18] *Supra* note 15, at 182.

[19] *Id.*

[20] Citing *Seagull Maritime Corp. v. Dee*, 548 Phil. 660, 668 (2007).

decision shall be final and binding on them. This is explicitly stated in Section 20 of the POEA-SEC.

In the seminal case of *Philippine Hammonia Ship Agency, Inc. vs. Dumagdag*,[21] the Court had the opportunity to further elaborate on this method of dispute resolution between two competing opinions of medical experts.

In asking how the foregoing should be resolved, the Court looked into the POEA-SEC and the CBA of the parties as the binding documents which govern the employment relationship between them. The Court said that, while there is nothing inherently wrong in seeking a second opinion on the medical assessment of the seafarer, the latter should not pre-empt the mandated procedure provided for in Section 20 of the POEA-SEC "by filing a complaint for permanent disability compensation on the strength of his chosen physicians' opinions, without referring the conflicting opinions to a third doctor for final determination."[22]

In *Formerly INC Shipmanagement, Inc. vs. Rosales*,[23] the Court further clarified the ruling in *Philippine Hammonia Ship Agency, Inc.*[24] by categorically saying that **the referral to a third doctor is mandatory, and should the seafarer fail to abide by this method, he/she would be in breach of the POEA-SEC, and the assessment of the company-designated physician shall be final and binding**. Thus, the Court said:

> This referral to a third doctor has been held by this Court to be a **mandatory procedure** as a consequence of the provision that it is the company-designated doctor whose assessment should prevail. In other words, **the company can insist on its disability rating even against a contrary opinion by another doctor, unless the seafarer expresses his disagreement by asking for the referral to a third doctor who shall make his or her determination and whose**

---

[21] 712 Phil. 507 (2013).

[22] *Id*. at 521.

[23] 744 Phil. 774 (2014).

[24] *Id*. at 787.

decision is final and binding on the parties. We have followed this rule in a string of cases x x x. (Emphasis supplied)

This is reiterated by the Court in the recent case of *Silagan vs. Southfield Agencies, Inc.*,[25] to wit:

> Second, petitioner failed to comply with the procedure laid down under Section 20 (B) (3) of the 2000 POEA-SEC with regard to the joint appointment by the parties of a third doctor whose decision shall be final and binding on them in case the seafarer's personal doctor disagrees with the company-designated physician's fit-to-work assessment. This referral to a third doctor has been held by this Court to be a **mandatory procedure** as a consequence of the provision that it is the company-designated doctor whose assessment should prevail. **In other words, the company can insist on its disability rating even against the contrary opinion by another doctor, unless the seafarer expresses his disagreement by asking for a referral to a third doctor who shall make his or her determination and whose decision is final and binding on the parties.** (Emphasis supplied, citations omitted)

In the case at hand, the disability assessment by the company-designated physician was issued on August 8, 2013, when the seminal case of *Philippine Hammonia Ship Agency, Inc.* was already in effect. Therefore, upon knowledge of the difference in opinion between the company-designated physician and the petitioner's personal physician, the latter should have initiated the mandatory conflict-resolution procedure of referring the case to a third doctor.

That the petitioner failed to abide by this procedure is a breach of the POEA-SEC, and thus makes the finding of the company-designated physician final and binding.

Second, the Court of Appeals committed reversible error when, in the dispositive portion of its Decision, it set aside the NLRC Decision completely without regard to the disability rating issued by the company-designated physician. As already quoted, the dispositive portion of the Court of Appeals decision reads:

---

[25] 793 Phil. 751, 764 (2016).

WHEREFORE, the Petition is **GRANTED**. The Resolutions dated February 26, 2014 and March 31, 2014 of the National Labor Relations Commission are **ANNULLED AND SET ASIDE**. Accordingly, the Complaint is **DISMISSED**.

SO ORDERED.[26]

In annulling and setting aside the NLRC decision, and in dismissing the complaint **entirely**, the Court of Appeals inadvertently ruled that the petitioner is also **not** entitled to any disability benefits. This, however, is a direct contradiction to the findings of the Court of Appeals itself when it accorded credence to the medical assessment of the company-designated physician over that of the petitioner's personal physician. The decision said:

"Even on the merits, **We are constrained to rule that the company-designated physician's assessment is more credible**. This must be so, considering that the company-designated physicians conducted several medical check-ups as against the one-day check-up conducted by Dr. Catapang."[27]

In the instant case, the company-designated physician's findings indicated that the petitioner suffered from an injury in both of his knees during the term of his employment with the respondents. His condition, later on diagnosed as that which was caused by "ostheoarthritis," prompted the company-designated physician to issue a disability grading of ***"Grade 10 x 2 — stretching leg or ligaments of a knee."***[28]

Therefore, rather than completely dismissing the complaint, the Court of Appeals should have awarded the petitioner with the compensation equivalent to the injury which the latter sustained and which was assessed by the company-designated physician.

---

[26] *Rollo*, p. 81.

[27] *Id*. at 18.

[28] *Id*. at 76.

In this regard, an examination of Section 32 of the POEA-SEC, under number 20 of the section concerning "Lower Extremities," a disability of "Stretching leg of the ligaments of a knee resulting in instability of the joint" has a disability of Grade 10. According to the "Schedule of Disability Allowances," still under the POEA-SEC, such impediment grade shall be entitled to 20.15% of US$50,000.00, which in this case is US$10,075.00. Considering that both knees of the petitioner are affected, again as indicated in the medical assessment of the company-designated physician, the total amount to which the petitioner is rightfully entitled is US$20,150.00.

WHEREFORE, premises considered, the instant petition is **PARTLY GRANTED**. The Decision of the Court of Appeals in CA-G.R. SP No. 135856 dated June 17, 2015 is hereby **MODIFIED**. The petitioner Geminiano S. Murillo, is hereby **DECLARED** to be entitled to, and the respondents Philippine Transmarine Carriers, Inc., Norweigan Crew Management A/S, and Carlos C. Salinas, are **DECLARED** to be jointly and severally liable of, the amount of **US$20,150.00**, or its peso equivalent. The petitioner is hereby **DIRECTED** to return to the respondents any amount received in excess thereof.

SO ORDERED.

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

---

[*] Designated Additional Member as per Special Order No. 2587, dated August 28, 2018.

FIRST DIVISION

[G.R. No. 224127. August 15, 2018]

BENEDICTO O. BUENAVENTURA, JR., *petitioner, vs.* **CAREER PHILIPPINES SHIPMANAGEMENT, INC., COLUMBIA SHIPMANAGEMENT LTD., and SAMPAGUITA D. MARAVE,** *respondents.*

SYLLABUS

1. **LABOR AND SOCIAL LEGISLATION; SEAFARER; TOTAL AND PERMANENT DISABILITY BENEFITS; TWO ELEMENTS THAT MUST CONCUR FOR DISABILITY BENEFITS TO BE COMPENSABLE; WORK-RELATED INJURY AND WORK-RELATED ILLNESS, DEFINED.—** "For disability to be compensable under Section 20(B)(4) of the POEA-SEC, two elements must concur: (1) the injury or illness must be work-related; and (2) the work-related injury or illness must have existed during the term of the seafarer's employment contract." The POEA-SEC defines a **work-related injury** as "injury(ies) resulting in disability or death arising out of and in the course of employment," and a **work-related illness** as "any sickness resulting to disability or death as a result of an occupational disease listed under Section 32-A of this Contract with the conditions set therein satisfied."

2. **ID.; ID.; ID.; ID.; WHERE SEAFARER'S INJURY UNDISPUTEDLY TOOK PLACE WITHIN THE PERIOD OF EMPLOYMENT WHILE HE IS FULFILLING HIS DUTY, SAID INJURY IS WORK-RELATED.—** While in the course of his employment, he suffered a "superior labral tear" which is an injury to the glenoid labrum (fibrocartilaginous rim attached around the margin of the glenoid cavity) on his left shoulder. It is undisputed that said injury took place within the period of his employment, *i.e.,* five months and 14 days into the contract; at the place where he reasonably may be, *i.e.*, at the laundry area; and while he is fulfilling his duty, *i.e.*, climbing up and down the vessel's ladder to collect laundry and check on his equipment. Said circumstances correspond to the definition of "arising out of and in the course of employment"; thus, Buenaventura's injury is work-related.

3. ID.; ID.; ID.; WHEN SEAFARER FAILED TO FOLLOW STRICTLY THE PROCEDURE IN CASE OF CONFLICTING ASSESSMENTS OF HIS OWN DOCTOR AND THAT OF THE COMPANY-DESIGNATED PHYSICIAN, THE LATTER'S ASSESSMENT STANDS.— The company-designated physician issued disability grading 11 for Buenaventura's shoulders and disability grading 12 for his neck. On the other hand, the independent physicians declared him unfit for sea duty. On this note, Section 20(A)(3) of the POEA-SEC states that should the seafarer's appointed doctor disagree with the assessment, a third doctor may be agreed upon by the employer and the seafarer and the latter's decision shall be final and binding on both parties. Hence, it is imperative that in case of conflicting assessments, the seafarer must submit to a third doctor, who should be mutually agreed upon by him and his employer. This procedure must be strictly followed otherwise, if not availed of or followed strictly by the seafarer, the assessment of the company-designated physician stands. In this case, Buenaventura failed to comply with such requirement. As it is, the assessment of the company-designated physician prevails.

APPEARANCES OF COUNSEL

Tolentino & Bautista Law Offices for petitioner.
Retoriano & Olalia-Retoriano for respondents.

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 December 18, 2015 and the Resolution[3] dated April 18, 2016 of the Court of Appeals (CA) in CA-G.R. SP No. 138400 which reversed

[1] *Rollo*, pp. 35-76.

[2] Penned by Associate Justice Agnes Reyes-Carpio, concurred in by Presiding Justice Andres B. Reyes, Jr. (now a Member of the Court) and Associate Justice Romeo F. Barza (now Presiding Justice); *id*. at 11-29.

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

and set aside the Decision[4] dated July 22, 2014 of the Labor Arbiter (LA) in NLRC-NCR-OFW-Case No. (M) 02-01655-14 and the Decision[5] dated September 22, 2014 of the National Labor Relations Commission (NLRC) in NLRC LAC (OFW-M)-09-000722-14, which found that petitioner Benedicto O. Buenaventura, Jr. (Buenaventura) is entitled to total and permanent disability benefits under the Collective Bargaining Agreement (CBA).

Facts of the Case

On July 11, 2012, Buenaventura entered into a nine-month contract with respondent Columbia Shipmanagement Ltd. (Columbia), through its local agent, respondent Career Shipmanagement, Inc. (Career), as a laundryman. After he was declared fit for duty following a pre-employment medical examination, he went on board MV Columbus 2.[6]

On December 25, 2012, Buenaventura allegedly slipped and hit his left shoulder on the door of a washing machine. He alleged that he immediately reported his condition to the ship doctor. He was thus given medication. However, despite the same, Buenaventura continued to feel pain on his left shoulder.[7]

When MV Columbus 2 had a stopover in Manila, the ship doctor accompanied Buenaventura to St. Luke's Medical Center for laboratory tests. When the results came out, it was suspected that Buenaventura has a coronary artery disease. Thus, his repatriation was recommended.[8]

To determine the cause of his pain, Buenaventura was subjected to the care of company-designated doctors, and

---

[4] Rendered by Labor Arbiter Lilia S. Savari; *id*. at 165-185.

[5] Penned by Presiding Commissioner Alex A. Lopez, concurred in by Commissioners Gregorio O. Bilog III and Pablo C. Espiritu, Jr.; *id*. at 148-164.

[6] *Id.* at 12.

[7] *Id*. at 266.

[8] *Id*. at 12.

underwent a series of medical examinations and laboratory tests. The Magnetic Resonance Imaging study cleared him of serious heart ailments. However, the findings on his left shoulder are as follows:

> IMPRESSION
>
> Superior labral tear
> Degenerative changes, superior glenoid rim
> Mild supraspinatus tendinosis
> Mild acromioclavicular joint hypertrophy.[9]

To address the pain on his left shoulder, Buenaventura underwent a surgical operation called arthroscopic superior labral repair on March 18, 2013. He was placed on therapy from March 2013 to May 2013. During this period, he was paid his sickness allowance.[10]

On July 8, 2013, the company-designated physician issued a Final Report, stating:

> This is a final report on [Benedicto Buenaventura] with a disability grading of 12 for the neck and grade 11 for the shoulder.[11]

After such report, Buenaventura consulted independent physicians who all issued Medical Certificates,[12] stating that Buenaventura is unfit to resume work as a seaman.

Respondents were unaware of such consultation and medical evaluation by an independent physician.[13]

In the meantime, Buenaventura continued to receive medical treatment from the company-designated physicians until August 2013.[14]

---

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

[19] *Id*. at 13.

[11] *Id*. at 258.

[12] *Id*. at 364-367, 368-371, 373-374.

[13] *Id.* at 13-14.

[14] *Id.* at 14.

On February 14, 2014, Buenaventura filed a complaint for disability benefits and insisted that his condition was caused by an accident suffered while on board MV Columbus 2.[15]

For their part, respondents denied any liability under the CBA as Buenaventura's condition did not arise from an accident. Moreover, respondents averred that Buenaventura failed to comply with the rules set under the CBA and the Philippine Overseas Employment Administration-Standard Employment Contract (POEA-SEC) relative to the matter disputing the assessment of the company-designated physicians.[16]

Ruling of the LA

In a Decision[17] dated July 22, 2014, the LA declared that Buenaventura is suffering from disability grading 1 or total and permanent disability. The LA gave credence to Buenaventura's claim that he suffered an accident on board when he slipped while in the performance of his duty. The dispositive portion of the Decision reads:

> **WHEREFORE**, a Decision is hereby rendered ordering Respondents [Career] and [Columbia] to jointly and severally pay [Buenaventura] **US$125,000.00** as total and permanent disability Grade 1, plus **10%** of the total award as and by way of attorney's fees in its peso equivalent at the time of payment.
>
> **SO ORDERED.**[18] (Emphasis in the original)

Aggrieved, respondents appealed the Decision of the LA to the NLRC.

---

[15] *Id*.

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

[17] *Id*. at 165-185.

[18] *Id*. at 185.

Ruling of the NLRC

In a Decision[19] dated September 22, 2014, the NLRC affirmed the ruling of the LA and denied respondents' appeal for lack of merit, thus:

WHEREFORE, the appeal of respondents is hereby DENIED for lack of merit.

The judgment on appeal is AFFIRMED IN TOTO.

SO ORDERED.[20]

Respondents' motion for reconsideration[21] was likewise denied in a Resolution[22] dated October 16, 2014.

The matter was elevated to the CA in a Petition for *Certiorari*[23] under Rule 65.

Ruling of the CA

The CA, in its Decision[24] dated December 18, 2015, granted the petition and set aside the ruling of the NLRC. The CA ruled that Buenaventura failed to prove that his injury was caused by an accident as the pieces of evidence proving the same, *e.g.* the medical reports issued by the company-designated physicians, constitute hearsay evidence because the doctors cannot credibly testify regarding such occurrence.[25] Also, the CA maintained that Buenaventura did not follow the prescribed procedure of having conflicting assessments on his disability referred to a third doctor for a binding opinion before filing a complaint for disability benefits.[26] Moreover, the independent physician's

---

[19] *Id*. at 148-164.

[20] *Id*. at 163.

[21] *Id*. at 188-202.

[22] *Id*. at 186-187.

[23] *Id*. at 104-145.

[24] *Id*. at 11-29.

[25] *Id.* at 18-21.

[26] *Id*. at 22-26.

assessment cannot prevail over the conclusions of the company-designated doctors as the former was consulted for one day only and merely relied on the same medical history and analysis provided by the latter.[27] The dispositive portion of the Decision reads:

> **WHEREFORE**, premises considered, the petition is **GRANTED**. The decision of the NLRC in NLRC LAC (OFW-M)-09-000722-14 (NLRC-NCR-OFW (M) 02-01655-14) is hereby **SET ASIDE**. Accordingly, the complaint before the [LA] is hereby **DISMISSED**.
>
> **SO ORDERED.**[28] (Emphasis in the original)

Buenaventura's motion for reconsideration was denied m its Resolution[29] dated April 18, 2016.

Hence, this petition.

The Issue

Essentially, the issue in the present case is whether or not Buenaventura is entitled to total and permanent disability benefits.

Ruling of the Court

To recall, the LA and the NLRC ruled that Buenaventura suffered an accident in the performance of his duty. The labor tribunals maintained that as his injury was a result of an accident, the same is compensable under the terms of the CBA, to wit:

> ITF CRUISE SHIP
> MODEL AGREEMENT FOR
> CATERING PERSONNEL
> 1998
>
> x x x x x x x x x
>
> Article 10
> Death and Disability Insurance:

---

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

[28] *Id.* at 28.

[29] *Id.* at 101-102.

x x x x x x x x x

2. Disability

A Seafarer who suffers injury as a result of an accident from any cause whatsoever whilst in the employment of the Company, regardless of fault, including accidents occurring whilst traveling to or from the Ship and whose ability to work is reduced as a result thereof, shall in addition to his sick pay, be entitled to compensation according to the provisions of this Collective Agreement.[30]

However, the CA reversed and set aside the decision of both labor tribunals and held that Buenaventura failed to prove that an accident had indeed occurred. In ruling so, the CA altogether dismissed the complaint for disability benefits filed by Buenaventura.

We disagree with the CA in dismissing altogether the complaint for disability benefits filed by Buenaventura.

The fact of accident was not sufficiently proven as: (1) there was neither a report on the ship's logbook nor on the Master's report regarding said incident; and (2) the factual findings of the LA, as adopted by the NLRC, on the fact of accident have no basis since the former merely drew a conclusion that an accident occurred just because a "superior labral tear x x x implies an abrupt impact on [Buenaventura's] left shoulder" which, to the words of the LA, is merely *suggestive* of an accident.[31] We rule that the foregoing do not imply that Buenaventura is not entitled to disability benefits just because the CBA does not apply in his case. Aside from the CBA, the POEA-SEC finds application, thus:

Deemed incorporated in every seafarer's employment contract, denominated as the POEA-SEC or the Philippine Overseas Employment Administration-Standard Employment Contract, is a set of standard provisions determined and implemented by the POEA, called the "Standard Terms and Conditions Governing the Employment of Filipino Seafarers on Board Ocean Going Vessels," which are

---

[30] *Id.* at 238-241.

[31] *Id.* at 183.

considered to be the minimum requirements acceptable to the government for the employment of Filipino seafarers on board foreign ocean-going vessels.[32] (Citation omitted)

In other words, "[t]he POEA-SEC and the CBA govern the employment relationship between [Buenaventura] and the [respondents]. The two instruments are the law between them. They are bound by their terms and conditions, particularly in relation to this case, the mechanism prescribed to determine liability for a disability benefits claim."[33]

"For disability to be compensable under Section 20(B)(4) of the POEA-SEC, two elements must concur: (1) the injury or illness must be work-related; and (2) the work-related injury or illness must have existed during the term of the seafarer's employment contract."[34]

The POEA-SEC defines a **work-related injury** as "injury(ies) resulting in disability or death arising out of and in the course of employment," and a **work-related illness** as "any sickness resulting to disability or death as a result of an occupational disease listed under Section 32-A of this Contract with the conditions set therein satisfied."[35]

In the case of *Sy v. Philippine Transmarine Carriers, Inc., et al.*,[36] we had the occasion to explain work-related injury, to wit:

The two components of the coverage formula — "arising out of" and "in the course of employment" — are said to be separate tests which must be independently satisfied; however, it should not be

---

[32] *Racelis v. United Philippines Lines, Inc., et al.*, 746 Phil. 758, 766 (2014).

[33] *Phil. Hammonia Ship Agency, Inc., et al. v. Dumadag*, 712 Phil. 507, 520 (2013).

[34] *Lamberto M. De Leon v. Maunlad Trans, Inc., Seacrest Associates, et al.*, G.R. No. 215293, February 8, 2017.

[35] *Id.*

[36] 703 Phil. 190 (2013).

forgotten that the basic concept of compensation coverage is unitary, not dual, and is best expressed in the word, "work-connection," because an uncompromising insistence on an independent application of each of the two portions of the test can, in certain cases, exclude clearly work-connected injuries. The words "arising out of" refer to the origin or cause of the accident, and are descriptive of its character, while the words "in the course of" refer to the time, place and circumstances under which the accident takes place.

As a matter of general proposition, **an injury or accident is said to arise "in the course of employment" when it takes place within the period of the employment, at a place where the employee reasonably may be, and while he is fulfilling his duties or is engaged in doing something incidental thereto**.[37] (Citation omitted and emphasis ours)

In this case, Buenaventura was a laundryman, whose tasks include:

1. Keeps the laundry area and line/uniform rooms clean and tidy at all times.
2. Maintain[s] laundry equipment in good working order.
3. Reports any loss or damage of uniforms and fixtures and maintenance deficiencies.
4. Issues uniforms to new and returning sign-on crew as needed.
5. Receives, issues and records supplies according to company policy and procedures.
6. Accounts for the exchange of soiled crew uniforms on a one-to-one basis.
7. Accounts for the exchange of crew lines on a one-to-one basis.[38]

While in the course of his employment, he suffered a "superior labral tear" which is an injury to the glenoid labrum (fibrocartilaginous rim attached around the margin of the glenoid cavity)[39] on his left shoulder. It is undisputed that said injury

---

[37] *Id*. at 198-199, citing *Iloilo Dock & Eng'g. Co. v. WCC, et al.*, 135 Phil. 95, 97-98 (1968).

[38] *Rollo*, p. 166.

[39] < https://www.physio-pedia.com/SLAP_Lesion> (visited August 8, 2018).

took place within the period of his employment, *i.e.*, five months and 14 days into the contract; at the place where he reasonably may be, *i.e.*, at the laundry area; and while he is fulfilling his duty, *i.e.*, climbing up and down the vessel's ladder to collect laundry and check on his equipment.[40] Said circumstances correspond to the definition of "arising out of and in the course of employment"; thus, Buenaventura's injury is work-related.

As his injury is deemed work-related, we now determine the corresponding disability benefits to which Buenaventura is entitled to.

The company-designated physician issued disability grading 11 for Buenaventura's shoulders and disability grading 12 for his neck.[41] On the other hand, the independent physicians declared him unfit for sea duty.

On this note, Section 20(A)(3)[42] of the POEA-SEC states that should the seafarer's appointed doctor disagree with the assessment, a third doctor may be agreed upon by the employer

---

[40] *Rollo*, p. 166.

[41] Id. at 258.

[42] SEC. 20. COMPENSATION AND BENEFITS

A. COMPENSATION AND BENEFITS FOR INJURY OR ILLNESS

x x x x x x x x x

3. x x x

x x x x x x x x x

For this purpose, the seafarer shall submit himself to a post-employment medical examination by a company-designated physician within three working days upon his return except when he is physically incapacitated to do so, in which case, a written notice to the agency within the same period is deemed as compliance. In the course of the treatment, the seafarer shall also report regularly to the company-designated physician specifically on the dates as prescribed by the company-designated physician and agreed to by a seafarer. Failure of the seafarer to comply with the mandatory reporting requirement shall result in his forfeiture of the right to claim the above benefits

If a doctor appointed by the seafarer disagrees with the assessment, a third doctor may be agreed jointly between the Employer and the seafarer. The third doctor's decision shall be final and binding on both parties.

and the seafarer and the latter's decision shall be final and binding on both parties. Hence, it is imperative that in case of conflicting assessments, the seafarer must submit to a third doctor, who should be mutually agreed upon by him and his employer. This procedure must be strictly followed otherwise, if not availed of or followed strictly by the seafarer, the assessment of the company-designated physician stands.[43]

In this case, Buenaventura failed to comply with such requirement. As it is, the assessment of the company-designated physician prevails.

Lastly, we delete the award of attorney's fees for there was no showing that respondents acted in gross and evident bad faith in refusing to satisfy [Buenaventura's] demands.[44]

WHEREFORE, premises considered, the petition is **GRANTED**. The Decision dated December 18, 2015 and the Resolution dated April 18, 2016 of the Court of Appeals in CA-G.R. SP No. 138400 are **REVERSED and SET ASIDE**. Accordingly, respondents Career Philippines Shipmanagement, Inc. and Columbia Shipmanagement Ltd. are hereby **ORDERED** to pay petitioner Benedicto O. Buenaventura, Jr. the amount of US$7,465.00 corresponding to disability grading 11 and US$5,225.00 corresponding to disability grading 12, both in its equivalent in Philippine currency at the time of payment.

SO ORDERED.

Peralta[*] *(Acting Chairperson), del Castillo, Jardeleza*, and *Gesmundo,*[**] *JJ.*, concur.

---

[43] *Calimlim v. Wallem Maritime Services, Inc., et al.*, 800 Phil. 830, 843 (2016).

[44] *Reynaldo Y. Sunit v. OSM Maritime Services, Inc., et al.*, G.R. No. 223035, February 27, 2017.

[*] Designated Acting Chairperson per Special Order No. 2582 (Revised) dated August 8, 2018.

[**] Designated Acting Member per Special Order No. 2560 (Revised) dated May 11, 2018.

SECOND DIVISION

[G.R. No. 225033. August 15, 2018]

SPOUSES ANTONIO BELTRAN AND FELISA BELTRAN, *petitioners, vs.* **SPOUSES APOLONIO CANGAYDA, JR. and LORETA E. CANGAYDA,** *respondents.*

SYLLABUS

1. **CIVIL LAW; CIVIL CODE; CONTRACTS; CONTRACT TO SELL, DEFINED; DISTINGUISHED FROM CONTRACT OF SALE.—** "[A] contract to sell, [on the other hand], is defined as a bilateral contract whereby the prospective seller, while expressly reserving the ownership of the subject property despite its delivery to the prospective buyer, commits to sell the property exclusively to the prospective buyer" upon full payment of the purchase price. Jurisprudence defines the distinctions between a contract of sale and a contract to sell to be as follows: In a contract of sale, title passes to the vendee upon the delivery of the thing sold; **whereas in a contract to sell, by agreement, the ownership is reserved in the vendor and is not to pass until the full payment of the price. In a contract of sale, the vendor has lost and cannot recover ownership until and unless the contract is resolved or rescinded;** whereas in a contract to sell, title is retained by the vendor until the full payment of the price[.]

2. **ID.; ID.; ID.; CONTRACT OF SALE; CONSENSUAL IN NATURE AND PERFECTED UPON CONCURRENCE OF ITS REQUISITES.—** A contract of sale is consensual in nature, and is perfected upon the concurrence of its essential requisites, thus: **The essential requisites of a contract under Article 1318 of the New Civil Code are: (1) consent of the contracting parties; (2) object certain which is the subject matter of the contract; and (3) cause of the obligation which is established.** x x x **Being a consensual contract, sale is perfected at the moment there is a meeting of minds upon the thing which is the object of the contract and upon the price.**

3. **ID.; ID.; ID.; ID.; THE ORAL AGREEMENT ENTERED INTO BY THE PARTIES CONSTITUTES A CONTRACT OF**

SALE AND NOT A CONTRACT TO SELL; FORMAL DOCUMENT IS NOT NECESSARY FOR THE SALE TO ACQUIRE BINDING EFFECT.— [N]either respondent Loreta's testimony nor clause 6 of the Amicable settlement supports the conclusion that the parties' agreement is *not* a contract of sale, but *only* a contract to sell — the reason being that it is not evident from said testimony and clause 6 that there was an express agreement to reserve ownership despite delivery of the disputed property. A plain reading of respondent Loreta's testimony shows that the parties' oral agreement constitutes a meeting of the minds as to the sale of the disputed property and its purchase price. Respondent Loreta's statements do not in any way suggest that the parties intended to enter into a contract of sale at a later time. Such statements only pertain to the time at which petitioners expected, or at least hoped, to acquire the sufficient means to pay the purchase price agreed upon. x x x Clause 6 of the Amicable Settlement merely states respondent Apolonio, Jr.'s commitment to formalize and reduce the oral agreement of the parties into a public instrument upon payment of petitioners' outstanding balance. It bears emphasizing that a formal document is *not* necessary for the sale transaction to acquire binding effect. Hence, the subsequent execution of a formal deed of sale does not negate the perfection of the parties' oral contract of sale which had already taken place upon the meeting of the parties' minds as to the subject of the transaction and its purchase price.

4. **ID.; ID.; ID.; ID.; RESCISSION MAY NOT BE RESORTED TO IN THE ABSENCE OF BREACH OF FAITH; SLIGHT DELAY IS NOT SUFFICIENT TO JUSTIFY RESCISSION ESPECIALLY WHEN THE VENDORS DO NOT CLAIM TO HAVE MADE A DEMAND FOR RESCISSION BEFORE THE VENDEES MADE THE OFFER TO PAY.—** [I]n a contract of sale, the vendor's failure to pay the price agreed upon *generally* constitutes breach, and extends to the vendor the right to demand the contract's fulfillment or rescission. It is important to stress, however, that the right of rescission granted to the injured party under Article 1191 is predicated on a breach of faith by the other party who violates the reciprocity between them. Stated otherwise, rescission may not be resorted to in the absence of breach of faith. In this connection, Article 1592 extends to the vendee in a sale of immovable property

the right to effect payment even after expiration of the period agreed upon, as long as no demand for rescission has been made upon him by the vendor. x x x A reading of Article 1592 in conjunction with Article 1191 thus suggests that in the absence of any stipulation to the contrary, the vendor's failure to pay within the period agreed upon shall *not* constitute a breach of faith, as long as payment is made before the vendor demands for rescission, either judicially, or by notarial act. x x x [P]etitioners acknowledge that they failed to settle the purchase price of the disputed property in full within the deadline set by the Amicable Settlement. Nevertheless, the Court does not lose sight of the fact that petitioners have already paid more than three-fourths of the purchase price agreed upon. Further, petitioners have constituted their family home on the disputed property in good faith, and have lived thereon for 17 years without protest. In addition, respondents do not dispute that petitioners offered to settle their outstanding balance of ₱5,310.00 "two (2) days after the deadline [set by the Amicable Settlement] and a few times thereafter," which offers respondents refused to accept. Respondents also do not claim to have made a demand for rescission at any time before petitioners made such offers to pay, either through judicial or extra-judicial means, such as through a notarial act.

5. ID.; ID.; ID.; ID.; WHERE THE VENDORS' ACTION WAS FILED 17 YEARS AFTER EXPIRATION OF THE PAYMENT PERIOD STIPULATED IN THE SETTLEMENT, IT IS ALREADY BARRED BY PRESCRIPTION.— Respondents' Complaint was filed *17 years* after the expiration of the payment period stipulated in the Amicable Settlement. Assuming that petitioners' failure to pay within said period constitutes sufficient breach which gives rise to a cause of action, such action has clearly prescribed.

APPEARANCES OF COUNSEL

Rama Rama Edig Tenala & Partners for petitioners.
Mario B. Sapilan, Jr. for respondents.

D E C I S I O N

CAGUIOA, *J.*:

The Case

This is a Petition for Review on *Certiorari* (Petition) filed under Rule 45 of the Rules of Court against the Decision[1] dated October 19, 2015 (assailed Decision) and Resolution[2] dated May 17, 2016 (assailed Resolution) in CA-G.R. CV No. 03414-MIN rendered by the Court of Appeals-Cagayan de Oro City (CA) Twenty-First Division and Special Former Twenty-First Division, respectively.

The assailed Decision and Resolution stem from an appeal from the Decision[3] dated July 15, 2013 issued by the Regional Trial Court (RTC), 11th Judicial Region, Davao del Norte, Branch 31 in Civil Case No. 4020, directing petitioners Antonio and Felisa Beltran (collectively, petitioners) to vacate a 300-square-meter residential lot situated in Barangay Magugpo, Tagum City, Davao del Norte (disputed property) registered in the name of respondents Apolonio, Jr. and Loreta Cangayda (collectively, respondents) under TCT No. T-74907.

The Facts

Sometime in August 1989,[4] respondents verbally agreed to sell the disputed property to petitioners for ₱35,000.00. After making an initial payment,[5] petitioners took possession of the disputed property and built their family home thereon.[6] Petitioners

---

[1] *Rollo,* pp. 17-24. Penned by Associate Justice Romulo V. Borja, with Associate Justices Oscar V. Badelles and Pablito Perez concurring.

[2] *Id.* at pp. 15-16. Penned by Associate Justice Romulo V. Borja, with Associate Justices Edgardo A. Camello and Oscar V. Badelles concurring.

[3] The RTC Decision is not part of the records.

[4] *Rollo,* p. 26.

[5] The amount of the initial payment and the date on which it was paid cannot be ascertained from the records.

[6] *Rollo,* p. 17.

subsequently made additional payments, which, together with their initial payment, collectively amounted to ₱29,690.00.[7]

However, despite respondents' repeated demands, petitioners failed to pay their remaining balance of ₱5,310.00.[8] This prompted respondents to refer the matter to the Office of the Barangay Chairman of Barangay Magugpo, Tagum City (OBC).[9]

Before the OBC, the parties signed an Amicable Settlement dated August 24, 1992, bearing the following terms:

> 3. That herein [petitioner Antonio] have already (sic) paid the amount of x x x ₱29,690.00 x x x to [respondent Apolonio, Jr.] and [there is a] remaining balance of x x x ₱5,310.00 x x x;
>
> 4. That herein [petitioner Antonio] promise(s) to pay the aforesaid balance to [respondent Apolonio, Jr.] [within a] one week period (sic) to start AUGUST 24, 1992 (Monday);
>
> 5. That herein [petitioner Antonio] is willing to pay the all (sic) expenses of the titling of the aforesaid lot; and
>
> 6. **That herein [respondent Apolonio, Jr.] is also willing to signed (sic) a deed of sale agreement after [petitioner Antonio] were (sic) able to pay the remaining balance** x x x.
>
> Failure to comply on (sic) the said agreement[,] the [OBC] is willing to indorse (sic) this case to the higher court for proper legal action.[10] (Emphasis supplied)

Petitioners failed to pay within the period set forth in the Amicable Settlement.[11]

On January 14, 2009, or nearly 17 years after the expiration of petitioners' period to pay their remaining balance, respondents

---

[7] *Id*. Stated as ₱29,960.00 in the CA Decision.

[8] *Id*.

[9] *Id*.

[10] *Id*. at 26.

[11] *Id*. at 18.

served upon petitioners a "Last and Final Demand" to vacate the disputed property within 30 days from notice. This demand was left unheeded.[12]

RTC Proceedings

Consequently, on March 12, 2009, respondents filed a complaint for recovery of possession and damages (Complaint) before the RTC.[13] Respondents alleged, among others, that petitioners had been occupying the disputed property without authority, and without payment of rental fees.[14]

In their Answer, petitioners admitted that they failed to settle their unpaid balance of ₱5,310.00 within the period set in the Amicable Settlement. However, petitioners alleged that when they later attempted to tender payment two days after said deadline,[15] respondents refused to accept their payment, demanding, instead, for an additional payment of ₱50,000.00.[16]

On July 15, 2013, the RTC issued a Decision, the dispositive portion of which reads:

> WHEREFORE, premises considered, [petitioners], their heirs, successors-in-interest and/or assigns are ordered to vacate the portion of Lot No. 11 presently occupied by them within [60 days] from receipt of x x x this Decision.
>
> However, as there was no express agreement between the parties that [respondents] may retain the sum of ₱29,600.00 already paid to them by [petitioners], **[respondents] are hereby ordered to return the said sum to [petitioners], likewise within [60] days from receipt of this Decision.**[17] (Emphasis supplied)

---

[12] *Id*. at 18, 55.

[13] *Id*. at 52.

[14] *Id*. at 18.

[15] *Id*. at 5.

[16] *Id*. at 18.

[17] As quoted in the CA Decision, see *id*. at 19.

In so ruling, the RTC characterized the oral agreement between the parties as a contract to sell. The RTC held that the consummation of this contract to sell was averted due to petitioners' failure to pay the purchase price in full.[18] Hence the RTC held that ownership over the disputed property never passed to petitioners.[19]

Petitioners filed a Motion for Reconsideration, which the RTC denied.[20]

CA Proceedings

Aggrieved, petitioners brought the case to the CA *via* ordinary appeal. Therein, petitioners argued that the oral agreement they had entered into with respondents was not a contract *to* sell but rather, a contract *of* sale which had the effect of transferring ownership of the disputed property upon its delivery.[21]

Petitioners also raised, for the first time on appeal, that the sale of the disputed property constitutes a sale on installment covered by Republic Act (R.A.) No. 6552,[22] otherwise known as the *Maceda Law*. Corollarily, petitioners argued that respondents should not be granted relief, since they failed to comply with the specific procedure for rescission of sales of real estate on installment basis set forth under the statute.[23]

On October 19, 2015, the CA rendered the assailed Decision, disposing the appeal as follows:

---

[18] *Id*. at 5.

[19] As narrated in the CA Decision, see *id*. at 20.

[20] *Id*. at 5.

[21] *Id*. at 20.

[22] AN ACT TO PROVIDE PROTECTION TO BUYERS OF REAL ESTATE ON INSTALLMENT PAYMENTS (REALTY INSTALLMENT BUYER PROTECTION ACT), dated August 26, 1972.

[23] See R.A. No. 6552, Sec. 3.

WHEREFORE, the appeal is DISMISSED. The July 15, 2013 Decision of the [RTC], Branch 31, 11th Judicial Region, Tagum City, Davao del Norte, in Civil Case No. 4020 is AFFIRMED.[24]

The CA affirmed the findings of the RTC anent the nature of the contract entered into by the parties.[25]In addition, it rejected petitioners' invocation of the *Maceda Law*. According to the CA, to allow petitioners to seek protection under said law for the first time on appeal would violate the tenets of due process and fair play.[26]

Petitioners filed a Motion for Reconsideration which was later denied through the assailed Resolution.

Thus, the present Petition now prays that the Court: (i) reverse the judgment of the CA and RTC; and (ii) direct respondents to allow them to settle their remaining balance of ₱5,310.00 and, subsequently, convey the disputed property in their favor.

Petitioners maintain, as they did before the CA, that the oral agreement they entered into with respondents is a contract *of* sale, and that, as a necessary incident of such contract, ownership over the disputed property had been transferred in their favor when they took possession and built improvements thereon.[27]

Further, petitioners argue that respondents are not entitled to recover possession of the disputed property since they failed to cancel their oral agreement by way of a notarial act, in accordance with the provisions of the *Maceda Law*.[28]

Finally, petitioners aver that respondents' Complaint is an action upon a written agreement, as it is based on the Amicable Settlement. Thus, petitioners conclude that respondents' action already prescribed, since it was filed more than 10 years after the lapse of petitioners' period to pay their outstanding balance.

---

[24] *Rollo,* p. 24.

[25] *Id*. at 20-22.

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

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

[28] *Id*. at 8-9.

Petitioners further argue that the Complaint is also barred by laches, considering that respondents allowed petitioners to continue staying in the disputed property for a period of 17 years after such failure to pay.[29]

The Issues

The Petition calls on the Court to resolve the following issues:

1. Whether the CA erred when it affirmed the RTC Decision characterizing the oral agreement between the parties as a contract to sell;
2. Whether the oral agreement between the parties is covered by the *Maceda Law;* and
3. Whether respondents' action for recovery of possession should have been dismissed on the ground of prescription and/or laches.

The Court's Ruling

The Petition is meritorious.

The agreement between the parties is an oral contract of sale. As a consequence, ownership of the disputed property passed to petitioners upon its delivery.

The CA characterized the parties' agreement as a contract to sell primarily on the basis of respondent Loreta's testimony which purportedly confirms their intent to reserve ownership of the disputed property until full payment of the purchase price. The CA held:

> At trial, [respondent Loreta] testified thus —
>
> [x x x x]
>
> Q: Now, if any, tell us who are in possession of the [disputed property] x x x?
> A: [Petitioners] and their children who are also married.

---

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

Q: Now, if you know, how did [petitioners] and their children occupied (sic) the land you have just mentioned?
A: I know because we have [an oral] agreement with [petitioners] that they will buy [the disputed property].

Q: Tell us what happened to the [oral] agreement of (sic) [petitioners] if you can recall?
A: Our [oral] agreement with [petitioner Antonio] that about 300 square meters lot (sic) that they will pay ₱35,000.00 to us but [petitioner Antonio] told us that they will pay the amount of ₱35,000.00 when [their] house will be sold, then they will pay us.

Q: If you can recall, did [petitioners] comply with the [oral] agreement to pay you ₱35,000.00?
A: At that time, [petitioners] gave me only ₱15,000.00.

Q: Other than the ₱15,000.00 *(sic)* if you can recall, did they pay you?
A: x x x [Petitioners] has a rattan furniture, they made us a chair and it costs about ₱14,600.00.

Q: In short, Miss witness, please tell us how much amount (sic) [petitioners] paid you?
A: According to their total, they paid me ₱29,690.00

[Respondent Loreta's] testimony — that at the moment the [oral] agreement was entered into by the parties, [petitioners] "will buy that property" — suggests that the contract of sale was expected to be entered into at some future date when a condition has been fulfilled. In this case, that condition appears to be the full payment of the purchase price. The Court notes that this testimony was not controverted. In their Brief, [petitioners] merely counter with the bare insistence that what the parties entered into verbally was a contract of sale.[30] (Emphasis supplied.)

According to the CA, the foregoing finding is further bolstered by clause 6 of the Amicable Settlement, to which petitioner Antonio expressed his assent. Clause 6 reads:

---

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

That herein [respondent Apolonio, Jr.] is also willing to signed (sic) a deed of sale agreement after [petitioner Antonio] were (sic) able to pay the remaining balance x x x.[31]

The CA's finding is erroneous.

Article 1458 of the Civil Code defines a contract of sale:

By the contract of sale one of the contracting parties obligates himself to transfer the ownership of and to deliver a determinate thing, and the other to pay therefor a price certain in money or its equivalent.

"[A] contract to sell, [on the other hand], is defined as a bilateral contract whereby the prospective seller, while expressly reserving the ownership of the subject property despite its delivery to the prospective buyer, commits to sell the property exclusively to the prospective buyer"[32] upon full payment of the purchase price.

Jurisprudence defines the distinctions between a contract of sale and a contract to sell to be as follows:

In a contract of sale, title passes to the vendee upon the delivery of the thing sold; **whereas in a contract to sell, by agreement the ownership is reserved in the vendor and is not to pass until the full payment of the price. In a contract of sale, the vendor has lost and cannot recover ownership until and unless the contract is resolved or rescinded;** whereas in a contract to sell, title is retained by the vendor until the full payment of the price, x x x.[33] (Emphasis supplied)

Based on the foregoing distinctions, the Court finds, and so holds, that the oral agreement entered into by the parties constitutes a contract of sale and not a contract to sell.

A contract of sale is consensual in nature, and is perfected upon the concurrence of its essential requisites,[34] thus:

---

[31] *Id*. at 26.

[32] *Platinum Plans Phil. Inc. v. Cucueco,* 522 Phil. 133, 144 (2006).

[33] *San Lorenzo Development Corp. v. Court of Appeals,* 490 Phil. 7, 19 (2005).

[34] *Province of Cebu v. Heirs of Morales,* 569 Phil. 641, 650 (2008).

The essential requisites of a contract under Article 1318 of the New Civil Code are: (1) consent of the contracting parties; (2) object certain which is the subject matter of the contract; and (3) cause of the obligation which is established. Thus, contracts, other than real contracts are perfected by mere consent which is manifested by the meeting of the offer and the acceptance upon the thing and the cause which are to constitute the contract. Once perfected, they bind other contracting parties and the obligations arising therefrom have the force of law between the parties and should be complied with in good faith. The parties are bound not only to the fulfillment of what has been expressly stipulated but also to the consequences which, according to their nature, may be in keeping with good faith, usage and law.

Being a consensual contract, sale is perfected at the moment there is a meeting of minds upon the thing which is the object of the contract and upon the price. From that moment, the parties may reciprocally demand performance, subject to the provisions of the law governing the form of contracts. A perfected contract of sale imposes reciprocal obligations on the parties whereby the vendor obligates himself to transfer the ownership of and to deliver a determinate thing to the buyer who, in turn, is obligated to pay a price certain in money or its equivalent. Failure of either party to comply with his obligation entitles the other to rescission as the power to rescind is implied in reciprocal obligations.[35] (Emphasis supplied)

Contrary to the CA's findings, neither respondent Loreta's testimony nor clause 6 of the Amicable Settlement supports the conclusion that the parties' agreement is *not* a contract of sale, but *only* a contract to sell — the reason being that it is not evident from said testimony and clause 6 that there was an express agreement to reserve ownership despite delivery of the disputed property.

A plain reading of respondent Loreta's testimony shows that the parties' oral agreement constitutes a meeting of the minds as to the sale of the disputed property and its purchase price. Respondent Loreta's statements do not in any way suggest that the parties intended to enter into a contract of sale at a later

---

[35] *Macasaet v. R. Transport Corp.,* 561 Phil. 605, 612-613 (2007).

time. Such statements only pertain to the time at which petitioners expected, or at least hoped, to acquire the sufficient means to pay the purchase price agreed upon. For emphasis, the Court reproduces the relevant statements relied upon by the CA:

> Our [oral] agreement with [petitioner Antonio] that about 300 square meters lot (sic) that they will pay ₱35,000.00 to us **but [petitioner Antonio] told us that they will pay the amount of ₱35,000.00 when [their] house will be sold,** then they will pay us.[36] (Emphasis supplied)

Clause 6 of the Amicable Settlement merely states respondent Apolonio, Jr.'s commitment to formalize and reduce the oral agreement of the parties into a public instrument upon payment of petitioners' outstanding balance. It bears emphasizing that a formal document is *not* necessary for the sale transaction to acquire binding effect.[37] Hence, the subsequent execution of a formal deed of sale does not negate the perfection of the parties' oral contract of sale which had already taken place upon the meeting of the parties' minds as to the subject of the transaction and its purchase price.

In a contract of sale, ownership of a thing sold shall pass to the buyer upon actual or constructive delivery thereof in the absence of any stipulation to the contrary.[38] Reference to Articles 1477 and 1478 of the Civil Code is in order:

> Article 1477. The ownership of the thing sold shall be transferred to the vendee upon the actual or constructive delivery thereof.
>
> Article 1478. The parties may stipulate that ownership in the thing shall not pass to the purchaser until he has fully paid the price.

---

[36] *Rollo,* p. 21.

[37] "Subject to the provisions of the Statute of Frauds, a formal document is not necessary for the sale transaction to acquire binding effect. For as long as the essential elements of a contract of sale are proved to exist in a given transaction, the contract is deemed perfected regardless of the absence of a formal deed evidencing the same." See generally *Province of Cebu v. Heirs of Morales, supra* note 34 at 649.

[38] CIVIL CODE, Arts. 1477 and 1488. See generally *Dignos v. Court of Appeals,* 242 Phil. 114, 121 (1988).

In accordance with the cited provisions, ownership of the disputed property passed to petitioners when its possession was transferred in their favor, as no reservation to the contrary had been made.

Considering that respondents' Complaint is anchored upon their alleged ownership of the disputed property, their prayer to recover possession thereof as a consequence of such alleged ownership cannot prosper.

Slight delay is not sufficient to justify rescission.

Article 1191 of the Civil Code[39] lays down the remedies that the injured party may resort to in case of breach of a reciprocal obligation — fulfillment of the obligation *or* rescission thereof, with damages in either case.

Thus, in a contract of sale, the vendor's failure to pay the price agreed upon *generally* constitutes breach, and extends to the vendor the right to demand the contract's fulfillment or rescission.[40]

It is important to stress, however, that the right of rescission granted to the injured party under Article 1191 is predicated on a breach of faith by the other party who violates the reciprocity

---

[39] Article 1191 provides:

Article 1191. The power to rescind obligations is implied in reciprocal ones, in case one of the obligors should not comply with what is incumbent upon him.

The injured party may choose between the fulfillment and the rescission of the obligation, with the payment of damages in either case. He may also seek rescission, even after he has chosen fulfillment, if the latter should become impossible.

The court shall decree the rescission claimed, unless there be just cause authorizing the fixing of a period.

This is understood to be without prejudice to the rights of third persons who have acquired the thing, in accordance with Articles 1385 and 1388 and the Mortgage Law.

[40] See *Province of Cebu, supra* note 34 at 651.

between them.[41] Stated otherwise, rescission may not be resorted to in the absence of breach of faith.

In this connection, Article 1592 extends to the vendee in a sale of immovable property the right to effect payment even after expiration of the period agreed upon, as long as no demand for rescission has been made upon him by the vendor. The provision states:

> Article 1592. In the sale of immovable property, even though it may have been stipulated that upon failure to pay the price at the time agreed upon the rescission of the contract shall of right take place, the vendee may pay, even after the expiration of the period, as long as no demand for rescission of the contract has been made upon him either judicially or by a notarial act. After the demand, the court may not grant him a new term.

A reading of Article 1592 in conjunction with Article 1191 thus suggests that in the absence of any stipulation to the contrary, the vendor's failure to pay within the period agreed upon shall *not* constitute a breach of faith, so long as payment is made before the vendor demands for rescission, either judicially, or by notarial act.

Hence, in *Taguba v. Peralta,*[42] *(Taguba)* the Court held that **slight delay in the payment of the purchase price does not serve as a sufficient ground for the rescission of a sale of real property:**

> Despite the denomination of the deed as a "Deed of Conditional Sale" a reading of the conditions x x x therein set forth reveals the contrary. Nowhere in the said contract in question could we find a proviso or stipulation to the effect that title to the property sold is reserved in the vendor until full payment of the purchase price. There is also no stipulation giving the vendor (petitioner Taguba) the right to unilaterally rescind the contract the moment the vendee (private respondent de Leon) fails to pay within a fixed period x x x.

---

[41] See generally *Sps. Velarde v. Court of Appeals,* 413 Phil. 360, 373 (2001).

[42] 217 Phil. 690 (1984).

Considering, therefore, the nature of the transaction between petitioner Taguba and private respondent, which We affirm and sustain to be a contract of sale, absolute in nature the applicable provision is Article 1592 of the New Civil Code x x x.

x x x x x x x x x

In the case at bar, it is undisputed that petitioner Taguba never notified private respondent by notarial act that he was rescinding the contract, and neither had he filed a suit in court to rescind the sale.

Finally, it has been ruled that "where time is not of the essence of the agreement, a slight delay on the part of one party in the performance of his obligation is not a sufficient ground for the rescission of the agreement". Considering that in the instant case, private respondent had already actually paid the sum of ₱12,500.00 of the total stipulated purchase price of ₱18,000.00 and had tendered payment of the balance of ₱5,500.00 within the grace period of six months from December 31, 1972, equity and justice mandate that she be given additional period within which to complete payment of the purchase price.[43] (Emphasis supplied)

The Court applied the foregoing principles in the subsequent case of *Dignos v. Court of Appeals,*[44] *(Dignos)* where it resolved to grant respondent therein an additional period within which to settle his outstanding balance of ₱4,000.00, considering that he "was delayed in payment *only* for one month."[45] It is worth noting that in *Dignos,* the Court granted the vendee an additional period to pay the balance, despite the fact that no grace period had been stipulated upon by the parties therein, as in *Taguba.*

Here, petitioners acknowledge that they failed to settle the purchase price of the disputed property in full within the deadline set by the Amicable Settlement. Nevertheless, the Court does not lose sight of the fact that petitioners have already paid more

---

[43] *Id*. at 696-697.

[44] 242 Phil. 114 (1988).

[45] *Id*. at 123.

than three-fourths of the purchase price agreed upon. Further, petitioners have constituted their family home on the disputed property in good faith, and have lived thereon for 17 years without protest.

In addition, respondents do not dispute that petitioners offered to settle their outstanding balance of ₱5,310.00 "two (2) days after the deadline [set by the Amicable Settlement] and a few times thereafter,"[46] which offers respondents refused to accept.[47] Respondents also do not claim to have made a demand for rescission at any time before petitioners made such offers to pay, either through judicial or extra-judicial means, such as through a notarial act.

Thus, pursuant to Article 1592, and consistent with the Court's rulings in *Taguba* and *Dignos,* the Court deems it proper to grant petitioners a period of 30 days from notice of this Decision to settle their outstanding balance.

Assuming that petitioners' failure to pay constitutes breach, respondents' cause of action is already barred by prescription.

Respondents hinge their cause of action on petitioners' failure to pay within the period set by the Amicable Settlement. Hence, this would mean that respondents' action is one that proceeds from a breach of a written agreement, which, under Article 1144 of the Civil Code, prescribes in 10 years.[48]

---

[46] *Rollo,* p. 5.

[47] *Id.*

[48] Article 1144 provides:

The following actions must be brought within ten years from the time the right of action accrues:

(1) Upon a written contract;

(2) Upon an obligation created by law;

(3) Upon a judgment.

Respondents' Complaint was filed *17 years* after the expiration of the payment period stipulated in the Amicable Settlement. Assuming that petitioners' failure to pay within said period constitutes sufficient breach which gives rise to a cause of action, such action has clearly prescribed.

Considering the foregoing, the Court deems it unnecessary to delve into the other issues raised in the Petition.

WHEREFORE, the Petition is **GRANTED.** The Decision and Resolution respectively dated October 19, 2015 and May 17, 2016 rendered by the Court of Appeals-Cagayan de Oro City in CA-G.R. CV No. 03414-MIN, and the Decision dated July 15, 2013 issued by the Regional Trial Court, Branch 31, 11th Judicial Region, Davao del Norte (RTC) in Civil Case No. 4020 are **REVERSED and SET ASIDE.**

Petitioners Antonio and Felisa Beltran are **ORDERED** to pay respondents Apolonio Cangayda, Jr. and Loreta E. Cangayda the sum of ₱5,310.00, representing their outstanding balance, within 30 days from notice of this Decision. In case of refusal or inability on the part of respondents to receive said amount, petitioners are **DIRECTED** to deposit the same with the RTC for the account of respondents. The sum due shall earn interest at the rate of six percent (6%) per annum from the date of finality of this Decision until full payment, in accordance with the Court's ruling in *Nacar v. Gallery Frames.*[49]

Upon receipt of the foregoing sum, or the deposit of such sum with the RTC, respondents are **DIRECTED** to **EXECUTE** a Deed of Absolute Sale in favor of petitioners for the purpose of formalizing the oral contract of sale concerning the 300-square-meter residential lot situated in Barangay Magugpo, Tagum City, Davao del Norte, covered by TCT No. T-74907, and **DELIVER** to petitioners the original owner's duplicate copy of TCT No. T-74907. In case of refusal or inability on

---

[49] 716 Phil. 267 (2013).

the part of respondents to execute a Deed of Absolute Sale and/or deliver said owner's duplicate copy, this Decision shall be sufficient to grant the proper Registrar of Deeds the necessary authority to cancel TCT No. T-74907 and issue a new title in the name of petitioners.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 231096. August 15, 2018]

LORNA B. DIONIO, *petitioner, vs.* **ND SHIPPING AGENCY AND ALLIED SERVICES, INC., CARIBBEAN TOW AND BARGE (PANAMA) LTD.,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; PETITION FOR REVIEW ON *CERTIORARI*; LIMITED TO REVIEWING ERRORS OF LAW THAT MAY HAVE BEEN COMMITTED BY THE LOWER COURTS; EXCEPTIONS.— Well-settled is the rule that the Court is not a trier of facts. The function of the Court in petitions for review on *certiorari* is limited to reviewing errors of law that may have been committed by the lower courts. Nevertheless, the Court has enumerated several exceptions to this rule: (1) the conclusion is grounded on speculations, surmises or conjectures; (2) the inference is manifestly mistaken, absurd

---

[*] Designated additional Member per Special Order No. 2587 dated August 28, 2018.

or impossible; (3) there is grave abuse of discretion; (4) the judgment is based on misapprehension of facts; (5) the findings of fact are conflicting; (6) there is no citation of specific evidence on which the factual findings are based; (7) the findings of absence of facts are contradicted by the presence of evidence on record; (8) the findings of the CA are contrary to those of the trial court; (9) the CA manifestly overlooked certain relevant and undisputed facts that, if properly considered, would justify a different conclusion; (10) the findings of the CA are beyond the issues of the case; and (11) such findings are contrary to the admissions of both parties.

2. LABOR AND SOCIAL LEGISLATION; 2000 PHILIPPINE OVERSEAS EMPLOYMENT ADMINISTRATION-STANDARD EMPLOYMENT CONTRACT; COMPENSATION AND BENEFITS FOR INJURY OR ILLNESS; POST-EMPLOYMENT MEDICAL EXAMINATION; FAILURE OF THE SEAFARER TO SUBMIT HIMSELF THERETO RESULTS IN THE FORFEITURE OF HIS CLAIM FOR DISABILITY BENEFITS; EXCEPTIONS.— Sec. 20(B) (3) of the 2000 Amended POEA-SEC*(Sec. 20(B) (3)*, lays down the procedure in order for a seafarer to claim disability benefits x x x. [R]eporting the illness or injury by the seafarer within three (3) working days from repatriation fairly makes it easier for a physician to determine the cause of the illness or injury. Ascertaining the real cause of the illness or injury beyond the period may prove difficult. To ignore the rule might set a precedent with negative repercussions, like opening floodgates to a limitless number of seafarers claiming disability benefits, or causing unfairness to the employer who would have difficulty determining the cause of a claimant's illness because of the passage of time. The employer would then have no protection against unrelated disability claims. Moreover, the provision mandated a period of three (3)-working day period within which the seafarer should report so as to ensure that the medical diagnosis can be promptly arrived at. It must be underscored that the company-designated physician has either 120 or 240 days, depending on the circumstances, within which to complete the medical assessment of the seafarer; otherwise, the disability claim shall be granted. x x x [A] seafarer claiming disability benefits is required to submit himself to a post-employment medical examination by a company-designated physician within three (3) working days from repatriation. Failure to comply

with such requirement results in the forfeiture of the seafarer's claim for disability benefits. There are, however, exceptions to the rule: (1) when the seafarer is incapacitated to report to the employer upon his repatriation; and (2) when the employer inadvertently or deliberately refused to submit the seafarer to a post-employment medical examination by a company-designated physician. Moreover, it is the burden of the employer to prove that the seafarer was referred to a company-designated doctor.

3. **ID.; ID.; ID.; ID.; THE REPORTING OF THE SEAFARER TO THE EMPLOYER FROM HIS REPATRIATION INITIATES THE PROCEDURE FOR THE DETERMINATION OF THE DISABILITY OR FITNESS OF THE SEAFARER, AND THE COST OF THE SEAFARER'S MEDICAL TREATMENT SHALL BE SHOULDERED BY THE EMPLOYER.—** [I]t is the employer that shall shoulder the cost of the seafarer's medical treatment after his repatriation until such time that he is declared fit to work or the degree of his disability has been established by the company-designated physician. The POEA-SEC is the law between the seafarer and his or her employer, thus, its provisions must be respected. A seafarer who had just been medically repatriated is already burdened with the obligation to immediately report to his employer in spite of his illness or injury. His failure to report forfeits his right to claim disability benefits. Thus, the POEA-SEC deemed it proper not to impose any financial burden to the seafarer until such time that he is fit to work or until his degree of disability is established by the company-designated physician. x x x The reporting of the seafarer to the employer from his repatriation initiates the procedure for the determination of the disability or fitness of the seafarer. Upon his reporting, he shall then be referred by the employer to the company-designated physician for medical diagnosis and treatment, at the employer's cost. The company-designated physician has 120 or 240 days, depending on the circumstances to complete the medical assessment and to determine whether the seafarer is fit to work or to establish the degree of disability. The seafarer may avail the separate medical assessment of his physician of choice. If there is a difference between the medical assessment of the company-designated physician and the seafarer's physician of choice, the seafarer's medical condition

shall be referred to a third doctor, whose medical assessment shall be deemed final.

4. **ID.; ID.; ID.; OCCUPATIONAL DISEASES; DISPUTABLE PRESUMPTION OF COMPENSABILITY; EVEN IF THE ILLNESS IS NOT LISTED AS AN OCCUPATIONAL DISEASE, IT WILL STILL BE PRESUMED AS WORK-RELATED, AND THE SEAFARER MUST PROVE HIS ENTITLEMENT TO DISABILITY BENEFITS BY SUBSTANTIAL EVIDENCE OF HIS ILLNESS' WORK-RELATEDNESS.—** The POEA-SEC defines work-related injury as injury resulting in disability or death arising out of and in the course of employment and as any sickness resulting to disability or death as a result of an occupational disease listed under Sec. 32-A of this contract with the conditions set therein satisfied. x x x However, the list of illness/diseases in Sec. 32-A does not exclude other illnesses/diseases not so listed from being compensable. The POEA-SEC cannot be presumed to contain all the possible injuries that render a seafarer unfit for further sea duties. So much so that Sec. 20(B) (4) of the same explicitly provides that the liabilities of the employer when the seafarer suffers work-related injury or illness during the term of his contract are as follows: **those illnesses not listed in Sec. 32 of this Contract are disputably presumed as work-related**. In other words, a disputable presumption is created in favor of compensability. Illnesses not listed in Sec. 32 are disputably presumed as work-related. This means that even if the illness is not listed under Sec. 32-A of the POEA-SEC as an occupational disease or illness, it will still be presumed as work-related, and it becomes incumbent on the employer to overcome the presumption. Nevertheless, this disputable presumption is made in the law to signify that the non-inclusion in the list of compensable diseases/illnesses does not translate to an absolute exclusion from disability benefits. In other words, the disputable presumption does not signify an automatic grant of compensation and/or benefits claim; the seafarer must still prove his entitlement to disability benefits by substantial evidence of his illness' work-relatedness.

5. **CIVIL LAW; CIVIL CODE; OBLIGATIONS AND CONTRACTS; WAIVER OR QUITCLAIMS; WHEN VALID.—** To be valid, a deed of release, waiver and/or quitclaim must meet the following requirements: (1) that there was no

fraud or deceit on the part of any of the parties; (2) that the consideration for the quitclaim is credible and reasonable; and (3) that the contract is not contrary to law, public order, public policy, morals or good customs, or prejudicial to a third person with a right recognized by law. Courts have stepped in to invalidate questionable transactions, especially where there is clear proof that a waiver, for instance, was obtained from an unsuspecting or a gullible person, or where the agreement or settlement was unconscionable on its face. A quitclaim is ineffective in barring recovery of the full measure of a worker's rights, and the acceptance of benefits therefrom does not amount to estoppel. Moreover, a quitclaim in which the consideration is scandalously low and inequitable cannot be an obstacle to the pursuit of a worker's legitimate claim.

APPEARANCES OF COUNSEL

Villa Villa Setias & Alimodian Law Offices for petitioner.
Nograles Law Offices for respondents.

D E C I S I O N

GESMUNDO, *J.*:

This is an appeal by*certiorari* seeking to reverse and set aside the February 21, 2017 Decision[1] of the Court of Appeals *(CA)* in CA-G.R. SP No. 05007. The CA affirmed the September 29, 2009 Decision[2] and November 27, 2009 Resolution[3] of the National Labor Relations Commission *(NLRC)* in NLRC Case No. OFW-VAC-08-000046-09. The NLRC vacated and set aside the May 29, 2009 Decision[4]of the Labor Arbiter *(LA)* in SRAB

---

[1] *Rollo,* pp. 34-49; penned by Associate Justice Pamela Ann Abella Maxino with Associate Justices Pablito A. Perez and Gabriel T. Robeniol, concurring.

[2] *Id*. at 79-92; penned by Presiding Commissioner Violeta Ortiz-Bantug, with Commissioners Aurelio D. Menzon and Julie C. Rendoque, concurring.

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

[4] *Id.* at 69-77; penned by Executive Labor Arbiter Danilo C. Acosta.

Case No. 06-OFW(M)-08-11-0042, a case for death benefits and attorney's fees of a seafarer.

The Antecedents

On May 9, 2006, Gil T. Dionio, Jr. *(Gil),* the husband of Lorna B. Dionio *(petitioner),* was hired by ND Shipping Agency and Allied Services, Inc. *(ND Shipping),* for its foreign principal, Caribbean Tow and Barge (Panama), Ltd., collectively referred as respondents, to serve as a Second Engineer on board the vessel MT Caribbean Tug. He had a basic monthly salary of US$772.00 and the period of his employment contract was six (6) months.[5] Before assuming his employment, Gil had a clean bill of health evidenced by his Medical and Laboratory Examination Result.[6]

Upon the expiration of his employment contract, respondents and Gil mutually consented to extend the latter's contract until February 13, 2007.[7]

On January 30, 2007, while in the course of his extended employment, Gil suffered from a Urinary Tract Infection *(UTI)* and prostate enlargement. While the vessel was in Turk and Caicos Islands, he was examined by Dr. Victoria Smith *(Dr. Smith).* In the Medical Report[8] dated January 31, 2007, Dr. Smith confirmed that Gil indeed suffered UTI and an enlarged prostate. She declared him unfit for work and recommended his repatriation. Dr. Smith also advised that Gil be assessed by another physician specializing on surgery and prostate examination. On February 13, 2007, Gil was medically repatriated.

On February 14, 2007, Gil arrived in the Philippines. He immediately went to ND Shipping's office where he was issued

---

[5] *Id.* at 149.

[6] *Id.* at 150.

[7] *Id.* at 151.

[8] *Id.* at 152-153.

a Referral Slip[9] for medical examination at the Micah Medical Clinic and Diagnostic Laboratory. The referral slip, however, stated that the expenses shall be paid for by Gil.

On the same day, a representative of the ND Shipping sent an email[10] to K. Arnesen Shipping, the owner of the vessel, requesting for the medical check-up of Gil at the ship owner's expense. The request was denied and stated that Gil must arrange for his own medical check-up. Thus, Gil was never examined by the company-designated physician.

Gil's health condition became worse. Sometime in February 2007, he went for a medical examination at Biñan Doctor's Hospital in Biñan, Laguna at his own expense.

On April 2, 2007, Gil signed a Release, Waiver and Quitclaim[11] in favor of respondents and he received the total amount of ₱31,200.00. It stated that he was discharging ND Shipping, its stockholders, directors and/or its employees from any and all actions in connection with his employment with respondents. According to petitioner, her husband was in a hapless condition when he signed the waiver.

As Gil's health was deteriorating, he went home to his hometown in Iloilo. On June 5, 2007, he was admitted at the Iloilo Doctor's Hospital. In the Medical Certificate[12] dated June 20, 2007, Dr. Glenn Maclang*(Dr. Maclang)* diagnosed Gil with "Prostatic Cancer Stage IV with wide spread metastasis." He also remarked that Gil undergo bilateral orchiectomy.

Due to his worsening condition, on March 12, 2008, Gil was again hospitalized at the Seamen's Hospital — Iloilo. In the Medical Certificate[13] dated March 24, 2008, Dr. Suset Gargalicana*(Dr. Gargalicana)* diagnosed him with "Prostatic

---

[9] *Id*. at 154.

[10] *Id*. at 155.

[11] *Id*. at 159-160.

[12] *Id*. at 156.

[13] *Id*. at 157.

Cancer with Bone Metastasis." She recommended the treatment of blood transfusion. Nonetheless, Dr. Gargalicana could not determine the period of his healing.

On March 26, 2008, Gil was again admitted at the West Visayas State University Medical Center. In the Medical Certificate[14] dated April 12, 2008, Dr. Elma Marañon*(Dr. Marañon)* diagnosed Gil with "Prostatic Cancer Stage IV with Bone Metastasis and Cord Compression Anemia Secondary" which caused the paralysis of his lower extremities.

On May 4, 2008, after more than a year of battling cancer, Gil succumbed to his illness. In the Death Certificate[15] issued by Dr. Rhodelyn Almenana*(Dr. Almenana)*, it was stated that Gil died due to cardiopulmonary arrest secondary to multiple organ failure. The underlying cause of his death was due to prostatic malignancy with pulmonary metastasis while other significant conditions contributing to his death were pneumonia in the immunocompromised host and UTI.

Thus, petitioner, the legal wife of Gil, filed a complaint before the LA for payment of death benefits, sickness allowance, burial expenses, moral and exemplary damages, and attorney's fees.

For their part, respondents denied any liability. They contended that Gil's death is not compensable because he did not die during the term of his contract and his illness is not one of those listed as an occupational disease under Section 32 of the 2000 Philippine Overseas Employment Administration– Standard Employment Contract *(POEA-SEC).* Respondents also argued that Gil failed to submit himself for a post-employment medical examination within three (3) days after repatriation even though he was issued a referral slip to the company-designated physician.

The LA Ruling

In its decision dated May 29, 2009, the LA ruled in favor of petitioner. It held that it was clear that Gil was declared unfit

---

[14] *Id*. at 158.

[15] *Id.* at 161-162.

for work on January 31, 2007 and he was medically repatriated on February 13, 2007, hence, he was entitled to sickness allowance. The LA held that respondent was wrong when it turned down the request of Gil to be medically evaluated and treated. It emphasized that Gil was forced to submit himself to further medical examination at his own expense. The LA observed that the illness of Gil was work-related because he was medically repatriated due to his prostate ailment and his cause of death was prostatic malignancy with pulmonary metastasis. It ruled that it is not required that the seafarer's ailment be acquired during his employment for it is sufficient that his employment contributed, even in a small measure, to the development of the disease. The *fallo* of the LA ruling states:

WHEREFORE, premises considered[,] respondent is hereby directed to pay complainant the following:

1.	Sickness allowance	US$3,088.00
2.	Death Benefits	US$50,000.00
[3.]	Additional Compensation for Two children of the deceased Below 21 years old	US$14,000.00
4.	Burial Expenses	US$1,000.00
		US$68,088.00
	Or its Philippine peso equivalent of	Php3,234,180.00
5.	Attorney's fees	323,418.00
	Total	Php3,557,598.00

The rest of the claims are dismissed for lack of merit.

SO ORDERED.[16]

Aggrieved, respondents appealed to the NLRC.

The NLRC Ruling

In its decision dated September 29, 2009, the NLRC granted the appeal and reversed and set aside the LA ruling. It held that Gil failed to submit himself to the medical examination of

---

[16] *Id*. at 77.

the company-designated physician within three (3) days from repatriation, hence, he violated the POEA-SEC. The NLRC stated that Gil was given a referral slip but he did not go to the company-designated physician. It also found that petitioner failed to present sufficient evidence to prove that Gil's illness was work-related. The dispositive portion of the NLRC ruling reads:

> WHEREFORE, premises considered, the decision of ELA Danilo C. Acosta is hereby vacated and set aside. A NEW Decision is entered dismissing this case for lack of merit.
>
> The monetary award in the assailed decision is hereby deleted for lack of legal and factual basis.
>
> SO ORDERED.[17]

Petitioner moved for reconsideration but it was denied by the NLRC in its resolution dated November 27, 2009.

Undaunted, petitioner filed a petition for *certiorari* before the CA.

In its resolution dated October 26, 2010, the CA dismissed the petition for not having been filed within the 60-day reglementary period. In its resolution dated June 21, 2011, the CA declared that the October 26, 2010 resolution had attained finality.[18]

Petitioner filed a motion for reconsideration and recall of entry of judgment. In its February 29, 2012, the CA recalled its June 21, 2011 resolution. However, in its February 1, 2013 resolution, the CA eventually denied petitioner's motion for reconsideration because it was not persuaded to relax the procedural rules.[19]

Unconvinced, petitioner filed a petition for review on *certiorari* before the Court,docketed as G.R. No. 206063,entitled *Lorna B. Dionio v. NLRC.*

---

[17] *Id*. at 91.

[18] *Id*. at 190.

[19] *Id*. at 191.

In its resolution dated October 8, 2014, the Court found compelling reasons to relax the procedural rules and required the CA to tackle the case on the merits. The dispositive portion of the Court's resolution states:

> WHEREFORE, the petition is GRANTED. The October 26, 2010 and February 1, 2013 Resolutions of the Court of Appeal (CA) in CA-G.R. CEB SP No. 05007 are REVERSED and SET ASIDE. The case is REMANDED to the Court of Appeals for proper disposition of the merits of the case.[20]

Respondents filed a motion for reconsideration but it was denied by the Court in its resolution dated March 16, 2015.[21] Hence, the case was remanded to the CA.

The CA Ruling

In its decision dated February 21, 2017, the CA denied the petition on the merits. It held that petitioner failed to prove with substantial evidence that the illness of Gil was work-related. The CA ruled that petitioner cannot simply rely on the disputable presumption that the illness of a seafarer is work-related. Further, it opined that Gil failed to comply with the mandatory post-employment medical examination within three (3) days upon repatriation. The CA observed that petitioner did not sufficiently establish that ND Shipping refused to pay for Gil's medical examination. It disposed the case in this wise:

> IN LIGHT OF ALL THE FOREGOING, the petition for *certiorari* is DISMISSED. The Decision dated September 29, 2009 and the Resolution dated November 27, 2009 of the National Labor Relations Commission, Seventh Division, in NLRC Case No. OFW-VAC-08-000046-09, dismissing the complaint for payment of death benefits and other money claims filed by petitioner Lorna B. Dionio, are AFFIRMED.
>
> SO ORDERED.[22]

---

[20] *Id*.

[21] *Id*.

[22] *Id.* at 48.

Hence, this petition raising the sole issue:

THE COURT A QUO GRAVELY ERRED IN DISMISSING THE *PETITION FOR CERTIORARI* FILED BY PETITIONER UNDER RULE 65 OF THE RULES OF COURT ON CA-G.R. CEB SP No. 05007 FOR FAILING TO COMPLY WITH THE MANDATORY REPORTING REQUIREMENT PROVIDED UNDER THE POEA-SEC.[23] (italics supplied)

Petitioner argues that Gil complied with the mandatory post-employment medical examination within three (3) days upon repatriation but the company-designated physician ignored him because ND Shipping did not heed his request to shoulder the medical expenses. Thus, Gil was forced to seek medical examination to different hospitals at his own expense. Petitioner also underscored that a seafarer is allowed to seek the opinion of his physician of choice.

Further, petitioner avers that Gil's illness was work-related. She highlighted that while on board respondents' vessel, her husband Gil was already diagnosed with UTI and prostate enlargement and he later died of prostate cancer. Petitioner emphasized that UTI and prostate enlargement are symptoms of prostate cancer and he should have been immediately treated by respondents upon repatriation. She also contends that by the nature of Gil's work on board the vessel, he was naturally exposed to stress and strains that are calculated to have affected his health and, even on a small degree, contributed to the development of his disease.

In their Comment,[24] respondents countered that petitioner raises issues that would require an examination of the records and that the Court cannot entertain questions of fact. They also alleged that Gil's illness was not work related because petitioner failed to prove that his work on board the vessel was the cause of his illness or that his work aggravated his condition. Respondents further averred that Gil failed to comply with the

---

[23] *Id*. at 11.

[24] *Id*. at 186-225.

mandatory post-employment examination with the company-designated physician. They are also doubtful that Gil's health was deteriorating because he was still able to travel from Biñan, Laguna to Iloilo City for his medical examinations. Respondents insisted that the findings of the CA must be given due respect.

In her Reply,[25] petitioner reiterated that Gil complied with the mandatory post-examination requirement because he immediately reported to ND Shipping upon his arrival in the Philippines. However, ND Shipping refused to shoulder his medical expenses as evidenced by the referral slip to the company-designated physician.

The Court's Ruling

The Court finds the petition meritorious.

Generally, a question of fact cannot be entertained by the Court; exceptions

Petitioner chiefly raises the issue of whether Gil complied with the mandatory post-employment examination and work-relatedness of his illness. The questions posited are evidently factual because it requires an examination of the evidence on record. Well-settled is the rule that the Court is not a trier of facts. The function of the Court in petitions for review on *certiorari* is limited to reviewing errors of law that may have been committed by the lower courts.[26]

Nevertheless, the Court has enumerated several exceptions to this rule: (1) the conclusion is grounded on speculations, surmises or conjectures; (2) the inference is manifestly mistaken, absurd or impossible; (3) there is grave abuse of discretion; (4) the judgment is based on misapprehension of facts; (5) the findings of fact are conflicting; (6) there is no citation of specific evidence on which the factual findings are based; (7) the findings of absence of facts are contradicted by the presence of evidence

---

[25] *Id*. at 329-337.

[26] *Gepulle-Garbo, et al. v. Spouses Garabato,*750 Phil. 846, 855(2015).

on record; (8) the findings of the CA are contrary to those of the trial court; (9) the CA manifestly overlooked certain relevant and undisputed facts that, if properly considered, would justify a different conclusion; (10) the findings of the CA are beyond the issues of the case; and (11) such findings are contrary to the admissions of both parties.[27]

Here, two of the exceptions exists – the findings of absence of facts are contradicted by the presence of evidence on record and the findings of the CA and the NLRC are contrary to those of the LA. They had different appreciations of the evidence in determining the propriety of petitioner's claim for death benefits. To finally resolve the factual dispute, the Court deems it proper to tackle the factual question presented.

Post-employment medical examination of seafarers

Sec. 20(B) (3) of the 2000 Amended POEA-SEC*(Sec. 20(B) (3)*, lays down the procedure in order for a seafarer to claim disability benefits, to wit:

COMPENSATION AND BENEFITS FOR INJURY OR ILLNESS

The liabilities of the employer when the seafarer suffers work-related injury or illness during the term of his contract are as follows:

x x x x x x x x x

3. Upon sign-off from the vessel for medical treatment, the seafarer is entitled to sickness allowance equivalent to his basic wage until he is declared fit to work or the degree of permanent disability has been assessed by the company-designated physician but in no case shall this period exceed one hundred twenty (120) days.

For this purpose, **the seafarer shall submit himself to a post-employment medical examination by a company-designated physician within three working days upon his return** except when he is physically incapacitated to do so, in which case, a written notice to the agency within the same period is deemed as compliance. **Failure**

---

[27] *Carbonell v. Carbonell-Mendes,* G.R. No. 205681, July 1, 2015, 762 SCRA 529, 537.

of the seafarer to comply with the mandatory reporting requirement shall result in his forfeiture of the right to claim the above benefits. If a doctor appointed by the seafarer disagrees with the assessment, a third doctor may be agreed jointly between the Employer and the seafarer. The third doctor's decision shall be final and binding on both parties. (emphases supplied)

The rationale for this requirement is that reporting the illness or injury by the seafarer within three (3) working days from repatriation fairly makes it easier for a physician to determine the cause of the illness or injury. Ascertaining the real cause of the illness or injury beyond the period may prove difficult. To ignore the rule might set a precedent with negative repercussions, like opening floodgates to a limitless number of seafarers claiming disability benefits, or causing unfairness to the employer who would have difficulty determining the cause of a claimant's illness because of the passage of time. The employer would then have no protection against unrelated disability claims.[28]

Moreover, the provision mandated a period of three (3)-working day period within which the seafarer should report so as to ensure that the medical diagnosis can be promptly arrived at. It must be underscored that the company-designated physician has either 120 or 240 days, depending on the circumstances, within which to complete the medical assessment of the seafarer; otherwise, the disability claim shall be granted.[29]

Nevertheless, in *De Andres v. Diamond H Marine Services & Shipping Agency, Inc.*[30]*(De Andres),* the Court stated that there are exceptions to the mandatory post-employment examination, to wit:

---

[28] *Scanmar Maritime Services, Inc. v. De Leon*, G.R. No. 199977, January 25, 2017, citing *Wallem Maritime Services, Inc. v. Tanawan,* 693 Phil. 416 (2012).

[29] See *Elburg Shipmanagement Phils., Inc. et al. v. Quiogue, Jr.,*765 Phil. 341, 360(2015).

[30] G.R. No. 217345, July 12, 2017.

First, Section 20 (B) (3) expressly provides that a seafarer is not required to submit himself to post-employment medical examination by a company-designated physician within three (3) working days from repatriation when he is physically incapacitated to do so. In such event, a written notice to the agency within the same period is deemed as compliance.

x x x x x x x x x

Second, another exception is when the seafarer failed to timely submit himself to post-employment medical examination due to the employer's fault. xxx[This exception was established by jurisprudence in response to **an employer's unscrupulous practice of] deliberately or inadvertently refusing to refer the seafarer to the company-designated physician to deny his disability claim**.[31] (emphasis supplied)

In *Interorient Maritime Enterprises, Inc. v. Remo,*[32] the seafarer therein reported to the employer for post-employment medical examination. The employer, however, did not refer him to a company-designated physician because he allegedly signed a quitclaim. The Court ruled that the absence of post-employment medical examination should not be taken against the seafarer because the employer declined to provide the same pursuant to an invalid quitclaim, which lacks sufficient consideration.

Similarly, in *Apines v. Elburg Shipmanagement Philippines, Inc., et al.,*[33] the repatriated seafarer reported to the employer, however, he was not referred to the company-designated physician. The Court emphasized that the employer, and not the seafarer, has the burden to prove that the seafarer was referred to a company-designated doctor. It was also ruled therein that without the assessment of the said doctor, there was nothing for a seafarer's own physician to contest, rendering the requirement of referral to a third doctor as superfluous.

---

[31] *Id*.

[32] 636 Phil. 240 (2010).

[33] G.R. No. 202114, November 9, 2016, 808 SCRA 239.

Finally, in *De Andres,* the seafarer immediately reported to the employer after repatriation. However, before he could even commence the post-employment medical examination, the employer pre-empted him and stated that it would not entertain any of his claims and that he should find a lawyer instead. Thus, the seafarer was not anymore given an opportunity to submit himself to a post-employment medical examination by a company-designated physician.

In the same case, the Court ruled that the *onus* of establishing that the seafarer was referred to a company-designated physician is on the employer. The burden to prove with evidence whether the seafarer was referred to a company-designated doctor rests on the employer as the latter has custody of the documents, and not the seafarer. Accordingly, a seafarer has done his dutyunder Sec. 20(B) (3) once he reported to the employer within three (3) working days from repatriation. Consequently, upon the timely reporting, the employer has the duty to refer the seafarer to a company-designated physician for a post-employment medical examination knowing fully well that he has a claim for disability benefits.[34]

To recapitulate, a seafarer claiming disability benefits is required to submit himself to a post-employment medical examination by a company-designated physician within three (3) working days from repatriation. Failure to comply with such requirement results in the forfeiture of the seafarer's claim for disability benefits. There are, however, exceptions to the rule: (1) when the seafarer is incapacitated to report to the employer upon his repatriation; and (2) when the employer inadvertently or deliberately refused to submit the seafarer to a post-employment medical examination by a company-designated physician.[35] Moreover, it is the burden of the employer to prove that the seafarer was referred to a company-designated doctor.

---

[34] *Supra* note 30.

[35] *Id.*

Respondents failed to properly refer Gil to the company-designated physician

In this case, petitioner argues that Gil sufficiently complied with the mandatory post-employment medical examination under the POEA-SEC. When Gil was medically repatriated to the Philippines,he immediately went to the office of ND Shipping on February 14, 2007, for his post-employment medical examination. However, ND Shipping did not heed his request for an extended medical check-up at the ship owner's expense and the company-designated physician did not conduct the said medical examination. Thus, he was forced to seek medical assistance at his own expense elsewhere.

The argument has merit.

Records show that when Gil was repatriated on February 13, 2007, respondents were fully aware that he was medically repatriated and that he was requesting for an extended check-up at the ship owner's expense. The medical repatriation was due to the earlier medical report, which stated that Gil should see another doctor. The email of the representative of the respondents reads:

DATE	:	WED 14 FEBRUARY 2007
TO	:	K.ARNESEN SHIPPING A/S [ship owner]
ATTN	:	KJELL
CC	:	NDS – DAVAO
FROM	:	NDS – MANILA
SUBJECT	:	CARIBBEAN TUG – REPAT 2/E GIL T. DIONIO FOR MEDICAL CHECK-UP

KJELL,

REPAT 2/E DIONIO REPORTED AT NDS-MANILA THIS MORNING DIRECT FROM [THE] AIRPORT.

HE IS REQUESTING FOR [AN] EXTENDED MEDICAL CHECK-UP BECAUSE OF HIS ILLNESS AT THE [SHIP OWNER'S EXPENSE].

ACCORDING TO HIS MEDICAL REPORT[,] HE SHOULD SEE ANOTHER DOCTOR.

WE AWAIT FOR YOUR COMMENT AND APPROVAL.

THANK YOU & BEST REGARDS,

CAPT. SOLOMON[36] (emphasis supplied)

Further, the Referral Slip to the Micah Medical Clinic & Diagnostic Laboratory[37] dated February 14, 2007 proves that Gil indeed immediately reported to the office of ND Shipping upon his repatriation in the Philippines. The Court is of the view that petitioner established with substantial evidence that Gil complied with the reportorial requirement. Accordingly, pursuant to *De Andres,* **Gil has performed his duty under Sec. 20(B) (3) to immediately report to the employer within three (3) working days from repatriation.** Consequently, at that moment, it was the duty of respondents to refer Gil to a company-designated physician for a post-employment medical examination.

However, respondents did not perform their duty because they refused to refer Gil to the company-designated physician at their expense. The email-reply of the ship owner to ND Shipping states:

Date:	Wed, 14 Feb 2007 13:21:14 +0100
From:	"Kjell Arnesen" <kjell@kas-shipping.com>
Subject:	SV: CARIBBEAN TUG – REPAT 2/E GIL T. DIONIO FOR MEDICAL CHECK-UP
To:	"Naido Duldulao" <ndship@yahoo.com.ph>

He must arrange for his own medical now.
If his check up proves that he has a sickness which can be related

---

[36] *Id*. at 155.

[37] *Id*. at 154.

to the vessel, then obviously he will be covered under vessels P and I cover.
Kjell[38] (emphasis supplied)

Evidently, when the ship owner replied to ND Shipping that Gil must arrange for his own medical check-up, it did not anymore heed the request of Gil to have a post-employment medical examination at the expense of the ship owner. On the other hand, the referral slip states:

Instruction To Worker:

1. **You are scheduled for Medical Examination on _____, 20____at MICAH MEDICAL CLINIC & DIAGNOSTIC LABORATORY**

x x x x x x x x x

3. The Examination to be performed and the rates to be paid are indicated at the back of this page. PLEASE ASK FOR AN OFFICIAL RECEIPT FOR ANY PAYMENT GIVEN.

Type of payment: (please check) ☒ **Applicant paid** ☒ Billed Agency

xxx[39] (emphases supplied)

Clearly, the referral slip given to Gil provides that he will pay for the expenses of his post-employment medical examination at the company-designated physician. Glaringly, respondents did not even state when Gil should visit the company-designated physician, raising doubts on their sincerity to medically assess and treat him**.** Respondents left Gil to fend for himself. As he could not secure the medical assistance from respondents, Gil had no choice but to seek medical treatment elsewhere at his own expense.

Respondents argue that Gil should first shoulder his medical expenses with the company-designated physician. If proven that his illness was work-related, only at that moment will respondents shoulder his medical treatment.

---

[38] *Supra* note 36.

[39] *Supra* note 37.

This argument is wrong and unjust.

Sec. 20(B) (2) of the POEA-SEC states:

> 2. If the injury or illness requires medical and/or dental treatment in a foreign port, the employer shall be liable for the full cost of such medical, serious dental, surgical and hospital treatment as well as board and lodging until the seafarer is declared fit to work or to be repatriated.**However, if after repatriation, the seafarer still requires medical attention arising from said injury or illness, he shall be so provided at cost to the employer until such time he is declared fit or the degree of his disability has been established by the company-designated physician.**(emphasis and underscoring supplied)

It is clear from the cited provision that it is the employer that shall shoulder the cost of the seafarer's medical treatment after his repatriation until such time that he is declared fit to work or the degree of his disability has been established by the company-designated physician. The POEA-SEC is the law between the seafarer and his or her employer, thus, its provisions must be respected. A seafarer who had just been medically repatriated is already burdened with the obligation to immediately report to his employer in spite of his illness or injury. His failure to report forfeits his right to claim disability benefits. Thus, the POEA-SEC deemed it proper not to impose any financial burden to the seafarer until such time that he is fit to work or until his degree of disability is established by the company-designated physician.

The importance of respecting the provision regarding post-employment medical examination cannot be overemphasized. The reporting of the seafarer to the employer from his repatriation initiates the procedure for the determination of the disability or fitness of the seafarer. Upon his reporting, he shall then be referred by the employer to the company-designated physician for medical diagnosis and treatment, at the employer's cost.[40] The company-designated physician has 120 or 240 days,

---

[40] *Supra* note 30.

depending on the circumstances to complete the medical assessment and to determine whether the seafarer is fit to work or to establish the degree of disability.[41] The seafarer may avail the separate medical assessment of his physician of choice. If there is a difference between the medical assessment of the company-designated physician and the seafarer's physician of choice, the seafarer's medical condition shall be referred to a third doctor, whose medical assessment shall be deemed final.[42]

Evidently, the first step in the procedure provided by the POEA-SEC is essential. Any improper act of the parties that causes the non-compliance with the said procedure should not be tolerated by the Court. In this case, since respondents unreasonably denied the request of Gil to be referred to the company-designated physician at the former's expense, in spite of his timely reporting, they should be held liable.

Gil was forced to seek medical assistance elsewhere

As respondents refused to answer the medical treatment of Gil upon his repatriation, contrary to the provisions of the POEA-SEC, Gil was never examined by the company-designated physician. *A fortiori,* respondents could not present any medical report prepared by the company-designated physician on the medical condition of Gil. They could not state whether Gil was fit to return to work or the specific grading of his disability.

It is the doctor's findings that should prevail as he or she is equipped with the proper discernment, knowledge, experience and expertise on what constitutes total or partial disability. The doctor'sdeclaration serves as the basis for the degree of disability that can range anywhere from Grade 1 to Grade 14. Notably, this is a serious consideration that cannot be determined by simply counting the number of treatment lapsed days.[43] Absent

---

[41] *Supra* note 29 at 355.

[42] See *Marlow Navigation Philippines, Inc., et al. v. Osias,*773 Phil. 428, 446(2015).

[43] *INC Shipmanagement, Inc., et al. v. Rosales,* 744 Phil. 774, 786 (2014).

the company-designated physician's medical assessment, respondents could only present unsupported allegations and suppositions regarding Gil's medical condition.

On the other hand, as respondents completely ignored the medical needs of Gil upon his repatriation, he had no choice but to seek medical attention from other physicians at his own expense. In February 2007, Gil's health became worse and he went for a medical examination at Biñan Doctor's Hospital in Biñan, Laguna.

As Gil's health was deteriorating, he went home to his province in Iloilo and on June 5, 2007,was admitted at the Iloilo Doctor's Hospital. In the medical certificate dated June 20, 2007, Dr. Maclang diagnosed Gil with "Prostatic Cancer Stage IV with wide spread metastasis." On March 12, 2008, Gil was again hospitalized at the Seamen's Hospital - Iloilo. In the medical certificate dated March 24, 2008, Dr. Gargalicana diagnosed him with "Prostatic Cancer with Bone Metastases." Notably, Dr. Gargalicana could not determine the period of healing for Gil's condition.

On March 26, 2008, Gil was again confined at the West Visayas State University Medical Center. In the medical certificate dated April 12, 2008, Dr. Marañon diagnosed Gil with "Prostatic Cancer Stage IV with Bone Metastasis and Cord Compression Anemia Secondary" which caused the paralysis of his lower extremities. On May 4, 2008, Gil died and the death certificate, issued by attending physician Dr. Almenana, stated that the underlying cause of his death was prostatic malignancy with pulmonary metastasis.

Gil consulted four physicians, namely: Dr. Maclang, Dr. Gargalicana, Dr. Marañon and Dr. Almenana. All of them issued medical findings contained in a certificate. They consistently found that Gil had prostatic cancer. At one point, Dr. Gargalicana noted in her medical certificate that she could not determine the period of healing of Gil's disease.

Between the non-existent medical assessment of a company-designated physician of respondents and the medical assessment

of Gil's physicians of choice, the latter evidently stands.[44] Respondents were obliged to refer Gil to a company-designated physician and shoulder the medical expenses, but they reneged on their responsibility and simply ignore the plight of their seafarer.

Petitioner properly invokes the disputable presumption that an illness of a seafarer is work-related

The POEA-SEC defines work-related injury as injury resulting in disability or death arising out of and in the course of employment and as any sickness resulting to disability or death as a result of an occupational disease listed under Sec. 32-A of this contract with the conditions set therein satisfied. Sec. 32-A thereof provides:

Section 32-A. OCCUPATIONAL DISEASES

For an occupational disease and the resulting disability or death to be compensable, all of the following conditions must be satisfied:

1. The seafarer's work must involve the risks described herein;

2. The disease was contracted as a result of the seafarer's exposure to the described risks;

3. The disease was contracted within a period of exposure and under such other factors necessary to contract it; and

4. There was no notorious negligence on the part of the seafarer.

However, the list of illness/diseases in Sec. 32-A does not exclude other illnesses/diseases not so listed from being compensable. The POEA-SEC cannot be presumed to contain all the possible injuries that render a seafarer unfit for further sea duties. So much so that Sec. 20(B) (4) of the same explicitly provides that the liabilities of the employer when the seafarer suffers work-related injury or illness during the term of his contract are as follows: **those illnesses not listed in Sec. 32 of this Contract are disputably presumed as work-related**. In

[44] *Supra* note 30.

other words, a disputable presumption is created in favor of compensability. Illnesses not listed in Sec. 32 are disputably presumed as work-related. This means that even if the illness is not listed under Sec. 32-A of the POEA-SEC as an occupational disease or illness, it will still be presumed as work-related, and it becomes incumbent on the employer to overcome the presumption.[45]

Nevertheless, this disputable presumption is made in the law to signify that the non-inclusion in the list of compensable diseases/illnesses does not translate to an absolute exclusion from disability benefits. In other words, the disputable presumption does not signify an automatic grant of compensation and/or benefits claim; the seafarer must still prove his entitlement to disability benefits by substantial evidence of his illness' work-relatedness.[46]

It is not required that the employment be the sole factor in the growth, development or acceleration of the illness to entitle the claimant to the benefits provided therefor. It is enough that the employment had contributed, even in a small degree, to the development of the disease and in bringing about his death.[47]

In *Licayan v. Seacrest Maritime Management, Inc.,*[48] the Court ruled that the seafarer was able to establish with substantial evidence that his illness of panic disorder was work-related. Thus, there was a disputable presumption that his disease was work-related. On the other hand, it was found therein that the employer failed to overcome the said disputable presumption because it failed to substantiate its argument that panic disorder was not work-related because the company-designated physician

---

[45] *Licayan v. Seacrest Maritime Management, Inc., et al.,*773 Phil. 648, 658 (2015).

[46] *Jebsen Maritime, Inc., et al. v. Ravena,*743 Phil. 371, 388 (2014).

[47] *Canuel v. Magsaysay Maritime Corp., et al.,* 745 Phil. 252, 272 (2014), citing *Wallen Maritime Service, Inc., v. NLRC,* 376 Phil. 378 (1999).

[48] *Supra* note 45.

did not consider the varied factors to which the seafarer was exposed to while on board the vessel.

In this case, Gil suffered from prostate cancer. Petitioner argues that the said disease was contracted while on board the vessel or, at the very least, was a pre-existing condition. The stress and strains that Gil was exposed to on board the vessel contributed, even to a small degree, to the development or deterioration of his disease. Moreover, Gil was already suffering from UTI and prostate enlargement, which are symptoms of prostate cancer, while on board the vessel. Petitioner presented the medical findings of the doctor that attended to him during the period of his employment. She also presented the different medical certificates of Gil's physicians until his demise. Thus, she concludes that Gil's disease was work-related and respondent failed to overcome the disputable presumption under the POEA-SEC.

The Court finds the argument impressed with merit.

Prostate cancer or carcinoma of prostate is the development of cancer in the prostate gland in the male reproductive system.[49] Prostate cancer is an age related male problem, with high incidence and mortality in the USA, Europe andlow prevalence in Asia. Early diagnosis and treatment has better prognosis.[50] The primary risk factors are obesity, age and family history. Prostate cancer is very uncommon in men younger than 45, but becomesmore common with advancing age.Men with high blood pressure are more likely to develop prostate cancer.There is a small increased risk of prostate cancer associated with lack of exercise.[51]

---

[49] Murtaza Mustafa, AF.Salih, EM.Illzam, AM.Sharifa, M.Suleiman and SS.Hussain, *Prostate Cancer: Pathophysiology, Diagnosis, and Prognosis*, IOSR JOURNAL OF DENTAL AND MEDICAL SCIENCES, Volume 15, Issue 6 Ver. II, page 4 (June, 2016).

[50] *Id*. at 8.

[51] *Id*. at 5.

Prostate cancer symptoms can include erectile dysfunction, blood in the semen, pain in the lower back, hips, and/or upper thighs, **urinary problems, or enlargement of the prostate**. Enlargement of the prostate can lead to obstruction with reduced flow, hesitancy, post-micturition dribbling, or even retention, bleeding, and/or infection.[52]

In the case at bench, during Gil's employment contract and while the vessel was in Turk and Caicos Islands, he was examined by Dr. Smith. In the medical report dated January 31, 2007, Dr. Smith confirmed that Gil indeed suffered UTI and an enlarged prostate. She declared him unfit for work and recommended his repatriation. Dr. Smith also advised that Gil must be assessed by another physician specializing on surgery and prostate examination. Thus, on the basis of such medical finding, Gil was medically repatriated on February 13, 2007.

As correctly pointed out by petitioner, Gil was already suffering from UTI and enlargement of the prostate while on board the vessel. These are symptoms of prostate cancer. Thus, Dr. Smith advised that Gil be treated by another physician and recommended his repatriation. Further, at the time of his employment, Gil was already 54 years old.[53] He was already within the age group that is susceptible to prostate cancer.To add to his dilemma, Gil was exposed to the stress and strains on board the vessel that every seafarer faces. Respondents should have been mindful of the health condition of Gil, especially when Dr. Smith already found him to be suffering from UTI and an enlarged prostate during his employment.

As discussed-above, early diagnosis and treatment of prostate cancer has better prognosis or probability of recovery. However, instead of immediately addressing the illness of Gil upon his repatriation, respondents simply ignored his request for extensive medical examination at the expense of the ship owner, contrary to the provisions of the POEA-SEC. Gil was left on his own.

---

[52] Dr. James Nicholas, *Clinical features and diagnosis of prostate cancer,* PRIMER ON PROSTATE CANCER, 1st Edition, page 7 (2014).

[53] *Supra* note 6.

Due to the indifference of respondents to the medical condition of Gil, it was only on June 5, 2007, when Gil went to his hometown in Iloilo and was admitted at the Iloilo Doctor's Hospital, that he was able to receive extensive medical treatment at his own expense. In the medical certificate dated June 20, 2007, Dr. Maclang diagnosed Gil with "Prostatic Cancer Stage IV with wide spread metastasis." From the time of his repatriation, it took almost four (4) months before the illness of Gil was confirmed; regrettably, it was already at the later stage of cancer and it was already spreading.

The medical certificates of his chosen physicians, Dr. Maclang, Dr. Gargalicana, Dr. Marañon and Dr. Almenana, consistently found that Gil suffered from prostate cancer. Notably, Dr. Gargalicana attested to the severity of his illness as she could not determine its period of healing. Consequently, the illness of Gil was already permanent and total, and resulted to his death.

Based on these pieces of evidence, the Court finds that petitioner proved with substantial evidence that the illness of Gil was work-related. Thus, she can invoke the disputable presumption that her husband's decease was worked-related. It is now the burden of respondent to overcome such disputable presumption by presenting their own evidence.

However, respondents miserably failed to overcome the said disputable presumption of the work-related illness. They did not present a scintilla of proof to establish the lack of casual connection of the Gil's disease with his employment as a seafarer. No medical finding of a company-designated physician was presented because respondents did not observe Gil's plea for an extensive medical check-up at the ship owner's expense. The said medical findings of the company-designated physician could have been the proper avenue to determine the seafarer's illness, whether it was, indeed, work-related or its specific grading of disability.

This case is similar to the case of *Leonis Navigation Co., Inc. v. Villamater*,[54] where the seafarer was diagnosed with colon cancer during the period of his employment. Although colon cancer was not listed as an occupational disease, the Court found that there was a disputable presumption of compensability. It noted that the seafarer's age of 58, where the incidence of colon cancer is more likely, and the lack of food choice in the vessel contributed to the development of his disease. On the other hand, the employer therein failed to overcome the disputable presumption of compensability because it was not able to present any medical explanation.

The Release, Waiver and Quitclaim signed by Gil deserves scant consideration

In their last ditch attempt to escape liability, on April 2, 2007, respondents entered into a release, waiver and quitclaim with Gil. It stated that he was discharging ND Shipping, its stockholder, director and/or its employees from any and all actions in connection with his employment with respondents.

The Court finds that the said waiver must be set aside.

To be valid, a deed of release, waiver and/or quitclaim must meet the following requirements: (1) that there was no fraud or deceit on the part of any of the parties; (2) that the consideration for the quitclaim is credible and reasonable; and (3) that the contract is not contrary to law, public order, public policy, morals or good customs, or prejudicial to a third person with a right recognized by law. Courts have stepped in to invalidate questionable transactions, especially where there is clear proof that a waiver, for instance, was obtained from an unsuspecting or a gullible person, or where the agreement or settlement was unconscionable on its face. A quitclaim is ineffective in barring recovery of the full measure of a worker's rights, and the acceptance of benefits therefrom does not amount to estoppel.

---

[54] 628 Phil. 81 (2010).

Moreover, a quitclaim in which the consideration is scandalously low and inequitable cannot be an obstacle to the pursuit of a worker's legitimate claim.[55]

In this case, the release, waiver and quitclaim did not state the specific consideration that Gil received from respondents. Nevertheless, petitioner stated that respondents gave Gil a total amount of ₱31,200.00, which was confirmed by the court and tribunals *a quo*. Manifestly, this consideration is greatly disproportionate to the illness that Gil suffered. He already had prostate cancer and respondents still refused to grant him medical treatment as provided under the POEA-SEC. The gravity of his illness deteriorated his health, which eventually lead to his death on May 4, 2008. In spite of the severity of his illness, respondent only gave Gil ₱31,200.00 and he had to shoulder the expense of his own medical treatment. The compensation is not even equivalent to the basic salary he receives as a seafarer.

Further, it was not proven that the contents of the waiver were explained to him by respondents or their representatives. As argued by petitioner, Gil was in a worsening and hapless condition when he signed the said waiver. He was not even given any medical assistance by respondents. Thus, he had no other option but to sign the document in favor of respondents in order to receive a meager compensation for his medical needs.

Verily, the release, waiver and quitclaim dated April 2, 2007, must be struck down because it did not have a valid consideration, the contents were not explained to Gil, and his deteriorating health forced him to sign the same.

It is a time-honored rule that in controversies between a laborer and his master, doubts reasonably arising from the evidence or in the interpretation of agreements and writings should be resolved in the former's favor. The policy is to extend the applicability to a greater number of employees who can avail of the benefits under the law, which is in consonance with the

---

[55] *City Government of Makati v. Odeña,*716 Phil. 284, 319 (2013), citing *Interorient Maritime Enterprises, Inc. v. Remo,* 636 Phil. 240 (2010).

avowed policy of the State to give maximum aid and protection to labor.[56]

Final Note

The Court acknowledges the arduous and protracted legal battle that petitioner endured to uphold the right of her deceased husband. These proceedings could have been avoided had respondents provided Gil with the proper medical treatment upon his repatriation, pursuant to the provisions of the POEA-SEC.

Sec. 20(B) specifically outlines the procedure in determining the proper compensation of a seafarer's disability. The rigorous process therein aims to provide a fair and definitive assessment on the seafarers' medical condition and to ensure that they will receive a just compensation for their injuries. At the same time, it protects the interest of the employer by ensuring that only genuine disability or injuries shall be entitled to compensation.[57] The Court shall rectify any unlawful deviations from the procedure laid down by the POEA-SEC and ensure that social justice is observed.

WHEREFORE, the petition is **GRANTED.** The February 21, 2017 Decision of the Court of Appeals in CA-G.R. SP No. 05007is hereby **REVERSED** and **SET ASIDE**. The May 29, 2009 Decision of the Labor Arbiter in SRAB Case No. 06-OFW(M)-08-11-0042 is hereby **REINSTATED**.

SO ORDERED.

Leonardo de Castro (Chairperson), *Bersamin, Leonen,* and *A. Reyes, Jr., JJ.,* concur.

---

[56] *Metropolitan Bank and Trust Co. v. National Labor Relations Commission*, *et al.,* 607 Phil. 359, 375 (2009).

[57] *Supra* note 30.

THIRD DIVISION

[G.R. Nos. 236577 and 236597. August 15, 2018]

PHILIPPINE CHARITY SWEEPSTAKES OFFICE, *petitioner, vs.* **HON. MAXIMO M. DE LEON, Presiding Judge of the Makati City Regional Trial Court, Branch 143, and PHILIPPINE GAMING AND MANAGEMENT CORPORATION,** *respondents.*

SYLLABUS

REMEDIAL LAW; CIVIL PROCEDURE; PROVISIONAL REMEDIES; PRELIMINARY INJUNCTION; TO BE ISSUED, THE APPLICANT MUST SHOW, BY *PRIMA FACIE* EVIDENCE, AN EXISTING RIGHT BEFORE TRIAL, A MATERIAL AND SUBSTANTIAL INVASION OF THIS RIGHT, AND THAT A WRIT OF PRELIMINARY INJUNCTION IS NECESSARY TO PREVENT IRREPARABLE INJURY.— A Writ of Preliminary Injunction is issued "to prevent threatened or continuous irremediable injury to some of the parties before their claims can be thoroughly studied and adjudicated." x x x The issuance of a Writ of Preliminary Injunction is governed by Rule 58, Section 3 of the 1997 Rules of Civil Procedure x x x. In *Department of Public Works and Highways (DPWH) v. City Advertising Ventures Corporation*, this Court held that "[f]or a writ of preliminary injunction to be issued, the applicant must show, by *prima facie* evidence, an existing right before trial, a material and substantial invasion of this right, and that a writ of preliminary injunction is necessary to prevent irreparable injury."

APPEARANCES OF COUNSEL

Office of the Government Corporate Counsel for petitioner.
Ponce Enrile Reyes Manalastas for private respondent.

D E C I S I O N

LEONEN, *J.*:

Absent the showing of an existing right to be protected, a party's application for an injunctive relief must necessarily be denied.

This is a Petition for Certiorari[1] under Rule 65 of the 1997 Rules of Civil Procedure, praying that the August 3, 2017[2] and November 7, 2017[3] Resolutions and the August 10, 2017 Writ of Preliminary Injunction[4] of the Regional Trial Court be reversed and set aside.[5] The Regional Trial Court granted the Philippine Gaming and Management Corporation's application for injunctive relief.[6]

Petitioner Philippine Charity Sweepstakes Office likewise prays for the issuance of a *status quo ante* order or a Temporary Restraining Order and/or Writ of Preliminary Injunction to enjoin the Philippine Gaming and Management Corporation and Presiding Judge Maximo M. De Leon (Judge De Leon): (1) "from committing or performing any acts pursuant to the Assailed Resolution and Writ and/or barring or preventing [the Philippine Charity Sweepstakes Office] from bidding the [Nationwide On-line Lottery System] project and/or from proceeding with any procurement activities to procure online lottery equipment";[7]

---

[1] *Rollo*, pp. 3-58.

[2] *Id*. at 59-67. The Resolution, docketed as Civil Case Nos. 12-530 and 12-1011, was penned by Presiding Judge Maximo M. De Leon of Branch 143, Regional Trial Court, Makati City.

[3] *Id*. at 68-75. The Resolution, docketed as Civil Case Nos. 12-530 and 12-1011, was penned by Presiding Judge Maximo M. De Leon of Branch 143, Regional Trial Court, Makati City.

[4] *Id*. at 76-77.

[5] *Id.* at 50.

[6] *Id.* at 67.

[7] *Id*. at 49.

and (2) "from doing anything that will adversely affect, impede, obstruct, and/or prevent the smooth conduct of the bidding for the [Nationwide On-line Lottery System] project."[8]

This case arose from the Equipment Lease Agreement[9] executed on January 25, 1995 by the Philippine Charity Sweepstakes Office and the Philippine Gaming and Management Corporation. The Equipment Lease Agreement provided that the Philippine Charity Sweepstakes Office, as lessee, will lease the lottery equipment and accessories of the Philippine Gaming and Management Corporation, as lessor, for the operation of its on-line lottery in Luzon. The term of the Equipment Lease Agreement was eight (8) years or until 2003.[10]

On November 14, 1997, the Philippine Charity Sweepstakes Office and the Philippine Gaming and Management Corporation amended the Equipment Lease Agreement "to reduce the original number of required terminals from 2,000 to 1,250 terminals."[11] Several cases were filed in court causing the 8-year term of the Equipment Lease Agreement to commence in 1999. With the 4-year delay, the Equipment Lease Agreement would end in 2007.[12]

On December 29, 2004, the Philippine Charity Sweepstakes Office and the Philippine Gaming and Management Corporation executed another lease agreement, amending the Equipment Lease Agreement.[13] One of the provisions in the Amendments to Equipment Lease Agreement[14] was on the extension of the

---

[8] *Id*.

[9] *Id*. at p. 109-120.

[10] *Id*. at 109-111.

[11] *Id*. at 144, Senate Blue Ribbon Committee Report No. 95.

[12] *Id*.

[13] *Id*. at p. 5, Petition for *Certiorari*, 60, Regional Trial Court Resolution dated August 3, 2017 in Civil Case Nos. 12-530 and 12-1011, and 121, Amendments to Equipment Lease Agreement.

[14] *Id*. at 121-125.

lease duration to another eight (8) years or until 2015.[15] Paragraph 3 of the Amendments to Equipment Lease Agreement provides:

> 3. **Paragraph 3** of the [Equipment Lease Agreement] is hereby amended by extending the lease term for a period of eight (8) years commencing 23 August 2007; provided that, all of the upgraded/replacement equipment shall be ready for commercial operation no later than 23 August 2007; and provided further that, every two (2) years thereafter until the end of the term of this Agreement, as required by mutual agreement of the parties, the LESSOR guarantees the periodic upgrading of all equipment at no additional cost on the part of the LESSEE.[16] (Emphasis in the original)

In 2011, the Equipment Lease Agreement was investigated by the Philippine Senate Blue Ribbon Committee.[17] The investigation was conducted due to an alleged "lapse in financial judgment"[18] when the Philippine Charity Sweepstakes Office rented lottery machines for US$148,000,000.00, instead of purchasing them for US$25,000,000.00.[19] After investigation, the Philippine Senate Blue Ribbon Committee recommended that the Philippine Charity Sweepstakes Office proceed with the renegotiation of the rental fee "to ensure that the basis for the fees is commensurate to the cost of the subject of the lease and that the amount thereof is not unduly burdensome to the public."[20] The Philippine Senate Blue Ribbon Committee also recommended that the renegotiations should be pursued not only with the Philippine Gaming and Management Corporation

---

[15] *Id*. at p. 5, Petition for *Certiorari*, 60, Regional Trial Court Resolution dated August 3, 2017 in Civil Case Nos. 12-530 and 12-1011, and 123, Amendments to Equipment Lease Agreement.

[16] *Id*. at 123, Amendments to Equipment Lease Agreement.

[17] *Id*. at 7, Petition for *Certiorari*.

[18] *Id.* at 136, Senate Blue Ribbon Committee Report No. 95.

[19] *Id.*

[20] *Id*. at 154.

but also with the Pacific Online Systems Corporation (Pacific Online), the on-line lottery operator for Visayas and Mindanao.[21]

Pursuant to the Philippine Senate Blue Ribbon Committee's recommendation, the Philippine Charity Sweepstakes Office sought the renegotiation of the lease rental rate with the Philippine Gaming and Management Corporation, and Pacific Online. Pacific Online conceded for the reduction of the lease rental to 7.85% of the gross lotto sales. Since the Philippine Gaming and Management Corporation declined to reduce the rental rate of 10% of the gross lotto sales, the Philippine Charity Sweepstakes Office allowed Pacific Online to provide lottery equipment for the on-line lottery operations in Luzon.[22]

On June 8, 2012, while the Amendments to Equipment Lease Agreement was still in effect, the Philippine Gaming and Management Corporation filed a Petition for Indirect Contempt with Temporary Restraining Order and/or Writ of Preliminary Injunction before the Regional Trial Court of Makati City. The case was docketed as SCA Case 12-530.[23] The Philippine Gaming and Management Corporation argued that the Philippine Charity Sweepstakes Office "violated a Court order confirming its exclusiv[e] right."[24] Impleaded as respondents were the Philippine Charity Sweepstakes Office, its Chairman Margarita P. Juico, and its Board of Directors, namely, Ma. Aleta L. Tolentino, Betty B. Nantes, Mabel V. Mamba, and Francisco G. Joaquin III (collectively, the Philippine Charity Sweepstakes Office and its Board and Officials).

On the other hand, the Philippine Charity Sweepstakes Office and its Board and Officials filed an Omnibus Motion to Dismiss Ad Cautelam[25] on June 26, 2012 and a Supplemental Motion

---

[21] *Id*. at 141-142 and 154.

[22] *Id*. at 8, Petition for *Certiorari*.

[23] *Id*.

[24] *Id.*

[25] *Id*. at 160-176.

to Dismiss on July 9, 2012.[26] They contended that the Regional Trial Court has no jurisdiction over the case and that the Philippine Gaming and Management Corporation "has no exclusive right as the sole supplier of on-line lottery equipment to [the Philippine Charity Sweepstakes Office] in Luzon territory."[27]

On July 12, 2012, then Acting Presiding Judge Rommel Baybay (Judge Baybay) issued a Resolution[28] granting the Philippine Gaming and Management Corporation's application for a Writ of Preliminary Injunction.[29] The Philippine Charity Sweepstakes Office moved for reconsideration.[30]

In October 2012, another Petition for contempt,[31] docketed as SCA Case No. 12-1011, was filed by the Philippine Gaming and Management Corporation against the Philippine Charity Sweepstakes Office and its Board and Officials. The Philippine Gaming and Management Corporation alleged that the Philippine Charity Sweepstakes Office refused to comply with the Writ of Preliminary Injunction.[32] SCA Case Nos. 12-530 and 12-1011 were then consolidated before Branch 143, Regional Trial Court, Makati City.[33]

On November 14, 2012, Judge Baybay issued a Resolution,[34] denying the June 26, 2012 Motion to Dismiss Ad Cautelam and the July 9, 2012 Supplemental Motion to Dismiss filed by the Philippine Charity Sweepstakes Office and its Board and Officials.[35]

---

[26] *Id*. at 177-184.

[27] *Id*. at 8, Petition for *Certiorari*.

[28] *Id*. at 185-189.

[29] *Id*. at 189.

[30] *Id*. at 9, Petition for *Certiorari*.

[31] *Id*. at 190-198.

[32] *Id.* at 192-194.

[33] *Id*. at 9, Petition for *Certiorari*.

[34] *Id*. at 199-204.

[35] *Id*. at 204.

On January 18, 2013, the Philippine Charity Sweepstakes Office and its Board and Officials filed a Petition for Certiorari[36] against Judge Baybay before the Court of Appeals. The case was docketed as CA-G.R. SP No. 128259.[37] They alleged that Judge Baybay committed grave abuse of discretion when he denied their Motion to Dismiss and granted the Philippine Gaming and Management Corporation's application for a Writ of Preliminary Injunction.[38]

On December 11, 2013, during the pendency of SCA Case Nos. 12-530 and 12-1011 before the Regional Trial Court, the Philippine Charity Sweepstakes Office and the Philippine Gaming and Management Corporation entered into an Interim Settlement,[39] which provided:

> 3. The parties hereby agree that the exclusivity issue and all matters arising related to or consequential therefrom, shall be resolved through an arbitration proceeding using [International Chamber of Commerce] Rules by a three[-]member Arbitral Tribunal in Manila;
>
> 4. The parties further agree to archive in the meantime the two contempt cases, docketed as SCA 12-520 (sic) and 12-1011 now pending before the Makati City RTC until the parties shall proceed to arbitration[.][40]

In accordance with the Interim Settlement, a Request for Arbitration[41] was filed by the Philippine Gaming and Management Corporation on March 13, 2014 before the International Chamber of Commerce, International Court of Arbitration. The Philippine Gaming and Management Corporation raised the issue of whether it has "the exclusiv[e] right to supply online lottery equipment

---

[36] *Id*. at 205-262.

[37] *Id*. at 205.

[38] *Id*. at 219-230.

[39] *Id*. at 263-265.

[40] *Id*. at 264.

[41] *Id.* at 274-294.

to [the Philippine Charity Sweepstakes Office] in Luzon."[42] The Philippine Charity Sweepstakes Office filed its Answer.[43] Thereafter, preliminary hearings were conducted.[44]

Meanwhile, the Philippine Charity Sweepstakes Office and the Philippine Gaming and Management Corporation executed a Supplemental and Status Quo Agreement[45] on August 13, 2015. They agreed to extend the term of the Equipment Lease Agreement from August 22, 2015 to August 21, 2018.[46] The Supplemental and Status Quo Agreement provided:

II. STATUS QUO

1. The parties shall dismiss all pending judicial and civil actions between them but shall continue with the arbitration proceedings until resolved with finality, for the purpose of determining territorial exclusivity. [The Philippine Gaming and Management Corporation] shall no longer claim any damages from the [Philippine Charity Sweepstakes Office], Board and officials in said arbitration proceedings, without prejudice to the claim for performance, if warranted.

2. Except as otherwise provided, upon the execution of this Agreement, the parties agree to maintain the status quo existing as provided in the Interim Settlement for a period of three years from 22 August 2015.[47] (Emphasis in the original)

Pursuant to the Interim Settlement, and the Supplemental and Status Quo Agreement, the Philippine Charity Sweepstakes Office and its Board and Officials filed on January 20, 2016 two (2) motions to dismiss: (1) a Manifestation with Motion to Dismiss[48] before the Court of Appeals; and (2) a Consolidated

---

[42] *Id*. at 10, Petition for Review.

[43] *Id*. at 295-327.

[44] *Id*. at 10, Petition for Review.

[45] *Id*. at 328-332.

[46] *Id*. at 330.

[47] *Id.*

[48] *Id.* at 337-339.

Motion to Revive and to Dismiss Cases Based on Status Quo Agreement[49] before Branch 143, Regional Trial Court, Makati City.[50] They sought to dismiss the Petition for Certiorari against Judge Baybay docketed as CA-G.R. SP No. 128259 pending before the Court of Appeals[51] and the Indirect Contempt cases docketed as SCA Case Nos. 12-530 and 12-1011 pending before the Makati City Regional Trial Court.[52]

Meanwhile, the Philippine Charity Sweepstakes Office and its Board and Officials filed a Request to Direct Philippine Gaming and Management Corporation to Amend its Memorials Pursuant to the Parties' August 13, 2015 Status Quo Agreement[53] dated January 21, 2016 before the International Chamber of Commerce, International Court of Arbitration. They alleged that the Philippine Gaming and Management Corporation's Memorials "raised several issues that fall outside the limited scope of 'exclusivity issue'."[54]

On March 1, 2016, the Court of Appeals issued a Resolution[55] granting the Philippine Charity Sweepstakes Office and its Board and Officials' Manifestation with Motion to Dismiss and directed the Division Clerk of Court to issue an Entry of Judgment.[56] Thus, an Entry of Judgment[57] was issued on March 1, 2016.

---

[49] *Id*. at 353-355.

[50] *Id*. at 11, Petition for *Certiorari*.

[51] *Id*. at 338, Manifestation with Motion to Dismiss.

[52] *Id*. at 354, Consolidated Motion to Revive and to Dismiss Cases Based on Status Quo Agreement.

[53] *Id*. at 356-361.

[54] *Id*. at 358.

[55] *Id*. at 363-366. The Resolution, docketed as CA-G.R. SP Nos. 128259 and 141474, was penned by Associate Justice Maria Elisa Sempio-Diy and concurred in by Associate Justices Ramon M. Bato, Jr. and Manuel M. Barrios of the Twelfth Division, Court of Appeals, Manila.

[56] *Id*. at 365-366.

[57] *Id*. at 367-368.

On March 30, 2016, the Philippine Charity Sweepstakes Office and its Board and Officials immediately filed a Manifestation and Motion for Reconsideration[58] before the Court of Appeals. They prayed for the reversal of the March 1, 2016 Resolution of the Court of Appeals because the Supplemental and Status Quo Agreement's validity was being questioned by the Philippine Gaming and Management Corporation before the International Chamber of Commerce, International Court of Arbitration. They stressed that the Supplemental and Status Quo Agreement was the basis of the Philippine Charity Sweepstakes Office and its Board and Officials' filing of the Manifestation with Motion to Dismiss.[59]

On November 2, 2016, the Court of Appeals issued a Resolution,[60] denying the Philippine Charity Sweepstakes Office and its Board and Officials' Manifestation and Motion for Reconsideration.[61]

On December 29, 2016, the Philippine Charity Sweepstakes Office and its Board and Officials filed a Petition for Review[62] against the Philippine Gaming and Management Corporation before this Court, assailing the March 1, 2016 and November 2, 2016 Resolutions of the Court of Appeals.[63] This case was docketed as G.R. No. 228801 and is also pending with the Third Division.[64]

Meanwhile, since the term of the Equipment Lease Agreement was about to expire in August 2018, the Philippine Charity

---

[58] *Id*. at 369-373.

[59] *Id*. at 370-371.

[60] *Id*. at 387-392. The Resolution, docketed as CA-G.R. SP No. 128259, was penned by Associate Justice Maria Elisa Sempio-Diy and concurred in by Associate Justices Ramon M. Bato, Jr. and Manuel M. Barrios, of the Twelfth Division, Court of Appeals, Manila.

[61] *Id*. at 392.

[62] *Id*. at 393-416.

[63] *Id*. at 409.

[64] *Id*. at 12 and 15.

Sweepstakes Office started preparations for the public bidding of the Nationwide On-line Lottery System.[65]

On July 11, 2017, the Philippine Gaming and Management Corporation filed a new application[66] for the issuance of a Temporary Restraining Order and a Writ of Preliminary Injunction in SCA Case Nos. 12-530 and 12-1011. It sought for the cessation of the nationwide bidding for the procurement of the Nationwide On-line Lottery System.[67]

After the conduct of the summary hearing on the Philippine Gaming and Management Corporation's application for Temporary Restraining Order, Judge De Leon, the new presiding judge of Branch 143, granted the Temporary Restraining Order application in a July 21, 2017 Order.[68] He enjoined the Philippine Charity Sweepstakes Office and its officials from proceeding with the nationwide public bidding that was scheduled on July 27, 2017.[69]

On August 3, 2017, Judge De Leon issued a Resolution[70] granting the Philippine Gaming and Management Corporation's application for a Writ of Preliminary Injunction, which was issued on August 10, 2017.[71] The dispositive portion of the August 3, 2017 Resolution provided:

> WHEREFORE, premises considered, pending the conclusion of the trial of the instant cases and the arbitration proceedings before the Arbitral Tribunal, petitioner's application for the issuance of a writ of preliminary injunction is **GRANTED**, subject to the posting of an injunction bond in the amount of TWENTY[-]FIVE MILLION

---

[65] *Id*. at 13.

[66] *Id*. at 439-451.

[67] *Id*. at 14.

[68] *Id*. at 527-531.

[69] *Id*. at 531.

[70] *Id*. at 59-67.

[71] *Id*. at 76-77.

PESOS (Php 25,000,000.00). Upon posting of the said bond, let a writ of preliminary injunction issue, ENJOINING respondent Philippine Charity Sweepstakes Office (PCSO) as represented by its board of directors not to proceed with its public bidding process BUT INSOFAR as Luzon territory only is concerned.

Furthermore, this Resolution is without prejudice to any ruling of the Honorable Supreme Court in connection with the pending application for [Temporary Restraining Order]/Prohibitory Injunction filed by [the Philippine Charity Sweepstakes Office].

Meanwhile, it is understood that this Injunction will only cover the area of Luzon territory and will not cover Visayas and Mindanao territories.

Let these cases remain in the archive pursuant to May 10, 2016 Resolution.

SO ORDERED.[72] (Emphasis in the original)

The Philippine Charity Sweepstakes Office filed a Motion for Reconsideration,[73] which was denied by the Regional Trial Court in its November 7, 2017 Resolution.[74]

On February 1, 2018, the Philippine Charity Sweepstakes Office filed a Petition for Certiorari[75] against Judge De Leon and the Philippine Gaming and Management Corporation before this Court. This case was docketed as G.R. Nos. 236577 and 236597.[76]

Petitioner alleges that respondent Judge De Leon committed grave abuse of discretion:

A. Judge De Leon gravely abused his discretion amounting to lack or excess of jurisdiction when he issued the assailed injunctive writ because it is an interference to the arbitral

---

[72] *Id*. at 67, Regional Trial Court Resolution dated August 3, 2017.

[73] *Id*. at 78-108.

[74] *Id*. at 68-75.

[75] *Id.* at 3-58.

[76] *Id*. at 3.

panel's jurisdiction in [International Chamber of Commerce] Case 20105CYK pending before the [International Chamber of Commerce] International Court of Arbitration.

B. . . . when he assumed jurisdiction over the application for relief.

C. . . . when he ruled that [the Philippine Gaming and Management Corporation] has a right that must be protected pursuant to Section 2 of the Interim Settlement.

D. . . . when he relied on the pendency of the arbitral proceeding as basis in granting the injunctive relief application.

E. . . . when he ruled that [the Philippine Gaming and Management Corporation]'s action in immediately applying for [Temporary Restraining Order]/Injunctive relief is an indicia that it has a right to be violated.

F. . . . in finding that [the Philippine Gaming and Management Corporation] will suffer grave and irreparable injury if [the Philippine Charity Sweepstakes Office] pursues the [Nationwide On-line Lottery System] bidding and that no extreme urgency exists.[77]

Petitioner argues that respondent Judge De Leon should have denied or deferred action on respondent Philippine Gaming and Management Corporation's application for Temporary Restraining Order/Writ of Preliminary Injunction considering that the latter already instituted a similar application before the International Chamber of Commerce, International Court of Arbitration. In granting the application, respondent Judge De Leon violated Section 28(1) of the International Chamber of Commerce Rules and Rule 5.15 of the Special Rules of Court on Alternative Dispute Resolution. Petitioner also notes that the Philippine Gaming and Management Corporation's application was filed without a verified petition, in violation of Rule 5.5 of the Supreme Court Administrative Matter No. 07-11-08 or the Special Rules of Court on Alternative Dispute Resolution.[78]

---

[77] *Id*. at 16-17.

[78] *Id*. at 17-21.

Petitioner claims that despite respondent Judge De Leon's declaration that he did not rule on the contractual rights between petitioner and respondent Philippine Gaming and Management Corporation, the August 3, 2017 Resolution stated otherwise.[79] In respondent Judge De Leon's Resolution, he "practically made a preliminary finding on the contractual right of [the Philippine Gaming and Management Corporation] on the [Interim Settlement] which is strictly prohibited in an indirect contempt proceeding like the present case."[80]

Petitioner avers that contrary to respondent Judge De Leon's findings, respondent Philippine Gaming and Management Corporation "has no right to be protected by the writ."[81] Respondent Judge De Leon ruled that the Interim Settlement is the source of the Philippine Gaming and Management Corporation's right, which needed to be protected. However, he also held that the Supplemental and Status Quo Agreement already supplemented the Interim Settlement. This was also admitted by respondent Philippine Gaming and Management Corporation.[82]

Petitioner contends that respondent Judge De Leon erred when he used the pending arbitral proceeding as basis in issuing the Writ of Preliminary Injunction. It points out that the only issue before the International Chamber of Commerce, International Court of Arbitration is the alleged exclusive right of respondent Philippine Gaming and Management Corporation with respect to the Equipment Lease Agreement and the Amendments to Equipment Lease Agreement, which was extended until August 22, 2018. On the other hand, the writ applied for by respondent Philippine Gaming and Management Corporation is on the Nationwide On-line Lottery System bidding covering the period of five (5) years starting on August 23, 2018. Thus, the pending

---

[79] *Id*. at 21-24.

[80] *Id*. at 23.

[81] *Id*. at 24.

[82] *Id*. at 24-31.

arbitration proceeding is irrelevant to the application of the writ and should not have been relied upon by respondent Judge De Leon.[83]

Petitioner maintains that respondent Philippine Gaming and Management Corporation failed to show "any positive, clear and unmistakable right to be protected, much less, the right to be the Lessor for on-line lottery equipment after 22 August 2018 and 5 years thereafter or until 2023."[84] Without any legal right to be protected, respondent Philippine Gaming and Management Corporation cannot claim to suffer irreparable injury.[85] Absent respondent Philippine Gaming and Management Corporation's legal right and proof of irreparable injury, respondent Judge De Leon should not have issued the injunctive writ.[86]

Petitioner likewise notes that "[t]here was no extreme urgency for the issuance of an injunctive writ."[87] It asserts:

> [I]f the [Nationwide On-line Lottery System] project is awarded to a winning bidder following the opening of bids on 27 July 2017, a 10-month period is still necessary to conduct a test-run to ensure that the lottery system is workable and acceptable to [the Philippine Charity Sweepstakes Office] by the time [the Philippine Gaming and Management Corporation]'s extended [Equipment Lease Agreement] expires in August 2018.[88]

Finally, petitioner alleges that respondent Judge De Leon violated its freedom to contract. By issuing the Writ of Preliminary Injunction, "the [Regional Trial Court] has practically, without authority, extended already [the Philippine Gaming and Management Corporation's Equipment Lease Agreement] beyond 22 August 2018."[89] It will have to adjust

---

[83] *Id*. at 31-35.

[84] *Id*. at 36.

[85] *Id*. at 37.

[86] *Id*. at 37-38.

[87] *Id.* at 38.

[88] *Id*. at 39.

[89] *Id*. at 40.

its timetables for the procurement of the Nationwide On-line Lottery System and will need another 10 months for the test run. As a result, it will be forced to extend the unfavorable lease agreement with respondent Philippine Gaming and Management Corporation until the procurement of a new provider.[90]

Petitioner prays for the issuance of a *status quo ante* order or a Temporary Restraining Order to enjoin respondents "from committing or performing any acts pursuant to the Assailed Resolution and Writ and/or barring or preventing [the Philippine Charity Sweepstakes Office] from bidding the [Nationwide On-line Lottery System] project and/or from proceeding with any procurement activities to procure online lottery equipment."[91] It also prays for the issuance of a Writ of Preliminary Injunction to enjoin respondents "from doing anything that will adversely affect, impede, obstruct, and/or prevent the smooth conduct of the bidding for the [Nationwide On-line Lottery System] project."[92]

On March 12, 2018, this Court issued a Resolution[93] requiring respondent Philippine Gaming and Management Corporation to submit its Comment on the Petition and on petitioner's prayer for the issuance of a *status quo ante* order or a Temporary Restraining Order.

On March 7, 2018, petitioner filed a Manifestation with Extremely Urgent Motion for Early Resolution.[94] It informed this Court that on February 20, 2018, the International Chamber of Commerce, International Court of Arbitration rendered a Final Award[95] in its favor. The dispositive portion of the Final Award reads:

---

[90] *Id*. at 39-44.

[91] *Id*. at 49.

[92] *Id*.

[93] *Id*. at 544-545.

[94] *Id*. at 546-553.

[95] *Id*. at 554-596.

XII. DISPOSITIVE PART

365. Having considered all of the evidence and submissions placed before it, and for the reasons set out above, the Tribunal hereby **FINALLY DECIDES** and **DETERMINES** as follows:

(a) The Claimant does not have an exclusive contractual right to supply an online lottery system for Luzon in the Republic of the Philippines and the Claimant's case is therefore dismissed in its entirety;

(b) The Claimant shall pay all of the Respondent's reasonable costs and expenses in the arbitration, which amount to Php 53,592,202.09;

(c) The Claimant shall bear its own costs and expenses in the arbitration;

(d) The Claimant shall bear the costs of the arbitration including the fees and expenses of the Arbitral Tribunal and the administrative fees of the [International Chamber of Commerce] fixed by the [International Chamber of Commerce] Court in the amount of US$ 850,000. The Claimant shall also pay US$ 200,000 to the Respondent as reimbursement for the share of the advance on costs that was paid by the Respondent; and

(e) All other claims, counterclaims and requests for relief are hereby dismissed.[96]

Petitioner also notifies this Court that on October 20, 2017, respondent Philippine Gaming and Management Corporation filed a Motion to Dismiss[97] in the indirect contempt cases it filed against petitioner in SCA Nos. 12-530 and 12-1011 before

---

[96] *Id.* at 595.

[97] *Id.* at 597-599.

the Regional Trial Court.[98] After the Regional Trial Court denied respondent Philippine Gaming and Management Corporation's motion to dismiss, the latter moved for reconsideration, which is currently pending resolution.[99]

Petitioner reiterates its prayer for the issuance of: (1) a *status quo ante* order; (2) a temporary restraining order and/or prohibitory injunction enjoining the Regional Trial Court from proceeding with the trial of SCA Case Nos. 12-530 and 12-1011 and/or performing acts that would prevent petitioner from continuing with the bidding of the Nationwide On-line Lottery System; (3) a temporary restraining order and/or prohibitory injunction enjoining respondent Philippine Gaming and Management Corporation from resorting to any legal action that would prevent petitioner from continuing with the bidding of the Nationwide On-line Lottery System; and (4) an order dissolving the writ of preliminary injunction and "declaring it *functus officio* to allow [petitioner] to continue with the competitive bidding for the [Nationwide On-line Lottery System] project without delay."[100]

On June 4, 2018, respondent Philippine Gaming and Management Corporation filed its Comment[101] and counters that respondent Judge De Leon did not commit any grave abuse of discretion.[102] It argues that "the [International Chamber of Commerce] Rules and the [Alternative Dispute Resolution] Rules allow for the simultaneous filing of an application for interim (or injunctive) relief before the regular courts even while the arbitration process is ongoing."[103] It adds that the Regional Trial Court acted "within its jurisdiction when it entertained

---

[98] *Id.* at 548, the Philippine Charity Sweepstakes Office's Manifestation with Extremely Urgent Motion for Early Resolution.

[99] *Id*.

[100] *Id*. at 549.

[101] *Id*. at 603-628.

[102] *Id*. at 604-624.

[103] *Id*. at 606.

[respondent Philippine Gaming and Management Corporation's] application for injunctive relief, as well as when it granted the same."[104]

In addition, respondent Philippine Gaming and Management Corporation contends that it complied with the requirements for the issuance of an injunctive writ under Rule 58 of the Rules of Court:

> 2.57 Notably, [the Philippine Gaming and Management Corporation] has shown that it has **clear legal rights** to be protected based on the: (a) *Writ of Preliminary Injunction* dated September 5, 2012, (b) the *Interim Settlement* dated December 11, 2013, and (c) the pending arbitration proceedings, and that the [Philippine Charity Sweepstakes Office] is **threatening to commit acts in violation of [the Philippine Gaming and Management Corporation]'s clear legal rights** by publicly announcing its intention to conduct a public bidding for the "FIVE (5) YEARS LEASE OF THE NATIONWIDE ONLINE LOTTERY SYSTEM (NOLS)." Unless the public bidding for the [Nationwide On-line Lottery System] or any related conducted shall be enjoined by this Honorable Court, **[the Philippine Gaming and Management Corporation] will suffer grave and irreparable damage and injury** in the form of sever business and financial losses as a consequence of the complained acts. If the bidding is held and a new contract is awarded to parties other than [the Philippine Gaming and Management Corporation], [the Philippine Gaming and Management Corporation] will be divested of its clear rights, and shall suffer losses which are impossible to compute with accuracy due to the price nature of lottery operation, unpredictability of market forces, and such other factors affecting profitability.[105] (Emphasis in the original)

Respondent Philippine Gaming and Management Corporation prays that this Court dismiss the petition considering that petitioner failed to comply with the requirements for the issuance of a *status quo ante* order, temporary restraining order, or a writ of preliminary injunction.[106]

---

[104] *Id*. at 608.

[105] *Id*. at 624.

[106] *Id*. at 624-626.

On June 6, 2018, petitioner filed a Consolidated Manifestation with Extremely Urgent Motion for Clarification[107] to inform this Court that on May 25, 2018, the Regional Trial Court issued a Resolution,[108] recognizing the decision of the arbitration court and confirming the Arbitral Award in favor of petitioner.[109] The Regional Trial Court held:

> Corollarily, the court is not executing the decision but only recognizing the decision of the Arbitral Tribunal. It should be noted that the parties had agreed to bring the issue on exclusivity of contract before the Arbitral Tribunal. Thus, to the mind of this court, the parties are bound by the Arbitral Court's action/decision not only because that is what is provided by Art. 35(6) of [International Chamber of Commerce] Rules of Arbitration but also because they themselves agreed to submit themselves to the jurisdiction of the Arbitration Court to determine the exclusivity issue save in the cases where there is violation of the parties' rights to due process (both procedural and substantive) which is not obtaining in this case. Records reveal that the parties were given their day in court to present their respective evidence. Nothing in the decision could show that the Arbitral Tribunal has committed violations in their respective rights or abused its discretion warranting the denial of the motion for confirmation or to vacate the decision. Suffice it to state that the court can do nothing except to recognize the decision as the same is not contrary to law, morals, public policy and public order.
>
> **WHEREFORE**, in view of all the foregoing, the Arbitral Award dated February 20, 2018, being not contrary to law or against morals, good customs, public order or public policy, is hereby **CONFIRMED**.
>
> SO ORDERED.[110] (Emphasis in the original)

Petitioner seeks clarification from this Court if it is now allowed to proceed with the Nationwide On-line Lottery System's bidding considering that the Regional Trial Court already

---

[107] *Id*. at 632-638.

[108] *Id*. at 639-643.

[109] *Id*. at 633-634.

[110] *Id*. at 643, Regional Trial Court Resolution dated May 25, 2018.

confirmed the Arbitral Award and prays for the issuance of a resolution in answer to their query.[111]

The sole issue for this Court's resolution is whether or not respondent Presiding Judge Maximo M. De Leon committed grave abuse of discretion when he granted respondent Philippine Gaming and Management Corporation's application for injunctive relief.

The petition has merit.

Respondent Philippine Gaming and Management Corporation insists that its right based on the Interim Settlement will be violated if petitioner continues with the bidding of the Nationwide On-line Lottery System. However, a scrutiny of the records shows otherwise.

To recapitulate, the original contract between petitioner and respondent Philippine Gaming and Management Corporation is the Equipment Lease Agreement with a term of eight (8) years—from 1995 to 2003:

> **3. TERM**
>
> This lease shall have a *term of eight (8) years*, commencing on the date of commercial operation by the LESSEE of all the Equipment included in the first delivery pursuant to the Delivery Schedule.[112] (Emphasis supplied)

On November 14, 1997, the Equipment Lease Agreement was amended to extend the term until 2007:

> WHEREAS, under the existing Equipment Lease Agreement dated 25 January 1995 as amended on 14 November 1997 . . . , LESSOR has contractual exclusivity in providing the central computer system for the Luzon on-line lottery project *until 2007* and the complete proprietary rights to the central computer system's hardware and software.[113] (Emphasis supplied)

---

[111] *Id*. at 634.

[112] *Id*. at 111.

[113] *Id*. at 122, Amendments to the Equipment Lease Agreement.

On December 29, 2004, the Equipment Lease Agreement was further amended. The parties executed the Amendments to Equipment Lease Agreement, which extended the term of the lease to another eight (8) years—from August 23, 2007 to August 22, 2015:

> 3. **Paragraph 3** of the [Equipment Lease Agreement] is hereby amended by *extending the lease term for a period of eight (8) years commencing 23 August 2007*; provided that, all of the upgraded/replacement equipment shall be ready for commercial operation no later than 23 August 2007; and provided further that, every two (2) years thereafter until the end of the term of this Agreement, as required by mutual agreement of the parties, the LESSOR guarantees the periodic upgrading of all equipment at no additional cost on the part of the LESSEE.[114] (Emphasis supplied)

It was during the effectivity of the Amendments to Equipment Lease Agreement that petitioner "allowed [Pacific Online] to supply a number of lottery equipment for its Luzon operation."[115]

On December 11, 2013, while the Amendments to Equipment Lease Agreement was still in effect, petitioner and respondent Philippine Gaming and Management Corporation entered into an Interim Settlement and agreed to bring the exclusivity issue before an arbitral tribunal. Thus, on March 12, 2014, respondent Philippine Gaming and Management Corporation initiated the arbitration before the International Chamber of Commerce.[116]

While the arbitration case was pending, petitioner and respondent Philippine Gaming and Management Corporation executed a Supplemental and Status Quo Agreement, extending the term of the Equipment Lease Agreement to another three (3) years "to ensure unhampered lotto operation."[117]:

---

[114] *Id*. at 123.

[115] *Id*. at 8.

[116] *Id*. at 572–572-A, ICC International Court of Arbitration Final Award.

[117] *Id*. at 268, Supplemental and Status Quo Agreement.

I. TERM

The Term of the [Equipment Lease Agreement] is hereby extended beginning **22 August 2015 until 21 August 2018**.[118] (Emphasis and underscoring in the original)

Since the extended Equipment Lease Agreement between petitioner and respondent Philippine Gaming and Management Corporation was about to expire in August 2018, petitioner started preparing for the bidding of the Nationwide On-line Lottery System, which would have a term of five (5) years—from August 2018 to August 2023. Claiming that it is "the exclusive supplier/lessor of lottery equipment for Luzon,"[119] respondent Philippine Gaming and Management Corporation applied for a temporary restraining order and a writ of preliminary injunction on July 11, 2017. It sought to enjoin petitioner from further proceeding with the bidding process.

From the brief outline of the aforestated facts, it is evident that respondent Philippine Gaming and Management Corporation's basis for its Writ of Preliminary Injunction application is its purported exclusive rights for the period beyond what was agreed upon in the extended Amendments to Equipment Lease Agreement. To emphasize, respondent Philippine Gaming and Management Corporation's exclusive rights, if any, extend only until August 21, 2018. After the expiration of the Supplemental and Status Quo Agreement, it can no longer claim any alleged right to exclusively provide on-line lottery equipment in Luzon.

This Court finds that the Regional Trial Court committed grave abuse of discretion in granting respondent Philippine Gaming and Management Corporation's application for injunctive relief. A Writ of Preliminary Injunction is issued "to prevent threatened or continuous irremediable injury to some of the parties before their claims can be thoroughly studied

---

[118] *Id*.

[119] *Id*. at 439, the Philippine Gaming and Management Corporation's Application for Temporary Restraining Order and Preliminary Injunction.

and adjudicated."[120] In *Mabayo Farms, Inc. v. Court of Appeals*:[121]

A preliminary injunction is an order granted at any stage of an action prior to final judgment, requiring a person to refrain from a particular act. As an ancillary or preventive remedy, a writ of preliminary injunction may therefore be resorted to by a party *to protect or preserve his rights* and for no other purpose during the pendency of the principal action.[122] (Emphasis supplied, citations omitted)

The issuance of a Writ of Preliminary Injunction is governed by Rule 58, Section 3 of the 1997 Rules of Civil Procedure:

Section 3. *Grounds for issuance of preliminary injunction.* — A preliminary injunction may be granted when it is established:

(a) That the applicant is entitled to the relief demanded, and the whole or part of such relief consists in restraining the commission or continuance of the act or acts complained of, or in requiring performance of an act or acts, either for a limited period or perpetually;

(b) That the commission, continuance or non-performance of the act or acts complained of during the litigation would probably work injustice to the applicant; or

(c) That a party, court, agency or a person is doing, threatening, or is attempting to do, or is procuring or suffering to be done, some act or acts probably in violation of the rights of the applicant respecting the subject of the action or proceeding, and tending to render the judgment ineffectual.

---

[120] *First Global Realty and Development Corporation v. San Agustin*, 427 Phil. 593, 601 (2002) [Per *J*. Panganiban, Third Division], *citing Republic of the Philippines v. Silerio*, 338 Phil. 784, 791–792 (1997) [Per *J*. Romero, Second Division].

[121] 435 Phil. 112 (2002) [Per *J*. Quisumbing, Second Division].

[122] *Id*. at 118.

In *Department of Public Works and Highways (DPWH) v. City Advertising Ventures Corporation*,[123] this Court held that "[f]or a writ of preliminary injunction to be issued, the applicant must show, by *prima facie* evidence, an existing right before trial, a material and substantial invasion of this right, and that a writ of preliminary injunction is necessary to prevent irreparable injury."[124]

Respondent Philippine Gaming and Management Corporation's claim of exclusive rights, as stated in the Interim Settlement and which was brought to arbitration, pertained to its rights under the Amendments to Equipment Lease Agreement, which will expire on August 21, 2018. It failed to provide proof that the Amendments to Equipment Lease Agreement was extended beyond August 21, 2018. It cannot claim that it has alleged exclusive rights to be protected and that it will suffer irreparable injury if petitioner continued with the Nationwide On-line Lottery System bidding process. This is precisely because the bidding was for the next supplier of the Nationwide On-line Lottery System for a period of five (5) years *after* August 21, 2018 or commencing on August 22, 2018.

Additionally, with the Regional Trial Court's confirmation of the arbitral tribunal's Final Award, the Writ of Preliminary Injunction is deemed lifted and petitioner may now proceed with the bidding process of the Nationwide Online Lottery System for Luzon.

WHEREFORE, premises considered, the petition is **GRANTED**. The Philippine Charity Sweepstakes Office may proceed with the bidding process for the Nationwide On-line Lottery System for Luzon.

SO ORDERED.

Leonardo-de Castro (Chairperson), *Bersamin, A. Reyes, Jr.,* and *Gesmundo, JJ.,* concur.

---

[123] G.R. No. 182944, November 9, 2016 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2016/november2016/182944.pdf> [Per *J.* Leonen, Second Division].

[124] *Id.* at 1.

INDEX

INDEX

ACTIONS, DISMISSAL OF

Lack of jurisdiction as a ground –– Records show that respondents actively participated in the proceedings before the MTC and belatedly questioned the alleged underpayment of docket fees only for the first time on appeal before the RTC, or five (5) years later after the institution of the instant case; the Court is aware that lack of jurisdiction, as a ground to dismiss a complaint, may, as a general rule, be raised at any stage of the proceedings; however, in *United Overseas Bank*, the Court has observed that the same is subject to the doctrine of estoppel by *laches*, which squarely applies here. (Ramones *vs*. Sps. Guimoc, Jr., G.R. No. 226645, Aug. 13, 2018) p. 542

Payment of additional docket fees –– Considering that the CA did not specify the period within which respondents should comply with its ruling, it is understood that payment of the additional docket fee, or the motion for exemption therefrom due to indigence, must be made within a reasonable period of time; what constitutes a reasonable period is relative and depends on the factual circumstances of the case; the filing of respondents' Omnibus Motion roughly five (5) months after the RTC's directive to pay the additional filing fee was reasonable. (Ayala Land, Inc. *vs*. Heirs of the Late Lucas Lactao, G.R. No. 208213, Aug. 8, 2018) p. 441

–– The CA was mistaken in holding that the RTC's Order granting respondents' motion to litigate as indigent parties rendered the issue of payment of additional filing fees moot and academic; a case or issue, when considered moot and academic; petitioner moved for the reconsideration of the Order and said motion "remains pending resolution"; thus, respondents' indigence remains a litigated issue; with the mere possibility of its reversal, the Order cannot be regarded as a supervening event that would automatically moot the issues in CA-G.R. SP No. 122999. (*Id*.)

the identity of the accused'," as in this case. (People *vs.* Collamat, G.R. No. 218200, Aug. 15, 2018) p. 888

— Well-established is the rule that "a mere denial, without any strong evidence to support it, can scarcely overcome the positive declaration by the victim of the identity and involvement of appellant in the crimes attributed to him"; appellant failed to prove his physical impossibility to be at the crime scene during their alleged commissions. (People *vs.* Quiapo @ "Lando", G.R. No. 218804, Aug. 6, 2018) p. 260

AN ACT ADJUSTING THE AMOUNT OR THE VALUE OF PROPERTY AND DAMAGE ON WHICH A PENALTY IS BASED, AND THE FINES IMPOSED UNDER THE REVISED PENAL CODE, AMENDING FOR THE PURPOSE ACT NO. 3815, OTHERWISE KNOWN AS "THE REVISED PENAL CODE", AS AMENDED (R.A. NO. 10951)

Modification of penalties — While the petitioner correctly invoked R.A. No. 10951 for the modification of her sentence, in the recent case of *In Re: Correction/ Adjustment of Penalty pursuant to R.A. No. 10951 in Relation to Hernan v. Sandiganbayan – Rolando Elbanbuena y Marfil,* however, the Court ruled that the determination of whether the petitioner is entitled to immediate release would necessarily involve ascertaining, among others, the actual length of time actually served and whether good conduct time allowance should actually be allowed, and thus should be better undertaken by the trial court, which is relatively more equipped to make findings of both fact and law; thus, the Court issued Guidelines considering the anticipated influx of similar petitions, in the interest of justice and efficiency. (In Re: Correction/Adjustment of Penalty Pursuant to R.A. No. 10951, in Relation to *Hernan v. Sandiganbayan vs.* Montillano *y* Basig, G.R. No. 240563, Aug. 14, 2018) p. 636

(In Re: Correction/Adjustment of Penalty Pursuant to R.A. No. 10951, in Relation to *Hernan v. Sandiganbayan*

APPEALS

Appeal in criminal cases — 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; "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." (People *vs*. Patacsil *y* Moreno, G.R. No. 234052, Aug. 6, 2018) p. 320

Perfection of — The right to appeal is neither a natural nor a constitutional right, but is a mere statutory right; the perfection of appeal in the manner and within the period set by law is not only mandatory but jurisdictional, and the failure to perfect the same renders the judgment final and executory; execution of the judgment then follows, for just as a losing party has the privilege to appeal within the prescribed period, so does the winner have the correlative right to enjoy the finality of the decision. (Lopez *vs*. Court of Appeals, G.R. No. 163959, Aug. 1, 2018) p. 1

Petition for certiorari before the Court of Appeals — A thorough reading of the *Morales* decision, would reveal that it was limited in its application — that it was meant to cover only decisions or orders of the Ombudsman in administrative cases; the Court never intimated, much less categorically stated, that it was abandoning its rulings in *Kuizon* and *Estrada* and the distinction made therein between the appellate recourse for decisions or orders of the Ombudsman in administrative and non-administrative cases; it cannot thus be read to apply to decisions or orders of the Ombudsman in non-administrative or criminal cases. (Gatchalian *vs*. Office of the Ombudsman, G.R. No. 229288, Aug. 1, 2018) p. 140

— The Court in *Morales* held that the CA had subject matter jurisdiction over the petition for *certiorari* under Rule 65 filed therein because what was assailed in the said

conjectures; (2) the inference is manifestly mistaken, absurd or impossible; (3) there is grave abuse of discretion; (4) the judgment is based on a misapprehension of facts; (5) the findings of fact are conflicting; (6) there is no citation of specific evidence on which the factual findings are based; (7) the findings of absence of fact are contradicted by the presence of evidence on record; (8) the findings of the CA are contrary to those of the trial court; (9) the CA manifestly overlooked certain relevant and undisputed facts that, if properly considered, would justify a different conclusion; (10) the findings of the CA are beyond the issues of the case; and (11) such findings are contrary to the admissions of both parties; some of the exceptions are present in this case. (Bernas *vs*. Estate of Felipe Yu Han Yat, G.R. No. 195908, Aug. 15, 2018) p. 710

— Petitioner raised a factual issue which is not proper in a Petition for Review on *Certiorari*; this Court does not review factual findings in Rule 45 Petitions; it only entertains questions of law—those which ask to resolve which law applies on a given set of facts; it does not rule on questions which determine "the truth or falsehood of alleged facts." *Spouses Miano v. Manila Electric Co*., cited. (Rodriguez *vs*. Your Own Home Dev't. Corp. (YOHDC), G.R. No. 199451, Aug. 15, 2018) p. 749

— The function of the Court in petitions for review on *certiorari* is limited to reviewing errors of law that may have been committed by the lower courts; exceptions to this rule: (1) the conclusion is grounded on speculations, surmises or conjectures; (2) the inference is manifestly mistaken, absurd or impossible; (3) there is grave abuse of discretion; (4) the judgment is based on misapprehension of facts; (5) the findings of fact are conflicting; (6) there is no citation of specific evidence on which the factual findings are based; (7) the findings of absence of facts are contradicted by the presence of evidence on record; (8) the findings of the CA are contrary to those of the trial court; (9) the CA manifestly overlooked certain relevant and undisputed facts that, if properly considered,

a leap year and the period to file a Rule 65 *certiorari* petition is not later than 60 days from notice of the judgment, order or resolution pursuant to Sec. 4, Rule 65 of the Rules. (Medina *vs*. Sps. Lozada, G.R. No. 185303, Aug. 1, 2018) p. 17

— Sec. 13 (c), Rule 124 of the Rules of Court, as amended, states that "in cases where the CA imposes *reclusion perpetua*, life imprisonment or a lesser penalty, it shall render and enter judgment imposing such penalty; the judgment may be appealed to the Supreme Court by notice of appeal filed with the Court of Appeals"; an appeal to this Court by petition for review on *certiorari* shall raise only questions of law; when the CA imposed a penalty of *reclusion perpetua* or life imprisonment, an accused may: (1) file a notice of appeal under Sec. 13 (c), Rule 124 to avail of an appeal as a matter of right before the Court and open the entire case for review on any question; or (2) file a petition for review on *certiorari* under Rule 45 to resort to an appeal as a matter of discretion and raise only questions of law. (Macad @ Agpad *vs*. People, G.R. No. 227366, Aug. 1, 2018) p. 102

— The petition filed before this Court invokes grave abuse of discretion in assailing the CA decision, which is a ground under a petition for *certiorari* under Rule 65 of the Rules of Court; in any event, even if the instant petition is treated as a petition for review on *certiorari* under Rule 45, which is limited to questions of law, it still raises questions of fact because it essentially assails the appreciation of the testimonial and documentary evidence by the CA and the RTC; as a rule, these questions of fact cannot be entertained by the Court under Rule 45; thus, the petition is procedurally infirm. (*Id*.)

— When the CA overturned its own Resolution dismissing respondent's Petition for *Certiorari* for being tardy and lacking in the requisite attachments and thus reinstated the same, petitioner took no action to question the reinstatement; as correctly ruled by the CA, petitioner may not, after participating in the proceedings before it,

ARRESTS

when it ceases to present a justiciable controversy, so that a declaration on the issue would be of no practical use or value"; there is no actual substantial relief to which petitioners would be entitled and which would be negated by the dismissal of the petition. (*Id.*)

COMMISSION ON AUDIT (COA)

Powers and duties –– The COA as constitutional office and guardian of public funds is endowed with the exclusive authority to determine and account government revenue and expenditures, and disallow irregular, unnecessary excessive use of government funds; the limitation of the Court's power of review over COA rulings merely complements its nature as an independent constitutional body to: (i) determine whether the government entities comply with the law and the rules in disbursing public funds; and (ii) disallow legal disbursements of these funds. (Phil. Health Insurance Corp. Regional Office – CARAGA *vs*. Commission on Audit, G.R. No. 230218, Aug. 14, 2018) pp. 600-604

Splitting of contracts –– COA Circular No. 76-41, dated July 30, 1976, is instructive on the matter of splitting of contracts, to wit: Forms of Splitting: 1) Splitting of Requisitions consists in the non-consolidation of requisitions for one or more items needed at or about the same time by the requisitioner; 2) Splitting of Purchase Orders consists in the issuance of two or more purchase orders based on two or more requisitions for the same or at about the same time by different requisitioners; and 3) Splitting of Payments consists in making two or more payments for one or more items involving one purchase order; the above-enumerated forms of splitting are usually resorted to in the following cases: 1) Splitting of requisitions and purchase orders to avoid inspection of deliveries; 2) Splitting of requisitions and purchase orders to avoid action, review or approval by higher authorities; and 3) Splitting of requisitions to avoid public bidding. (Re: Contracts with Artes Int'l., Inc., A.M. No. 12-6-18-SC, Aug. 7, 2018) p. 355

COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (R.A. NO. 9165)

Article 21 –– While nowhere in the prosecution evidence disclose an explanation why the police operatives failed to secure the presence of a representative from the Department of Justice, such omission shall not render the accused's arrest illegal or the items seized/confiscated from him as inadmissible in evidence; *People v. Dasigan*, cited; 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; the prosecution's failure to submit in evidence the physical inventory and photograph of the seized drugs as required under Art. 21 of R.A. No. 9165, will not render the accused's arrest illegal or the items seized from him inadmissible. (People *vs*. Aspa, Jr. *y* Rasimo, G.R. No. 229507, Aug. 6, 2018) p. 302

Buy-bust operations –– Buy-bust operations are legally sanctioned procedures for apprehending drug-peddlers and distributors; these operations are often utilized by law enforcers for the purpose of trapping and capturing lawbreakers in the execution of their nefarious activities; there is no textbook method of conducting buy-bust operations; a prior surveillance, much less a lengthy one, is not necessary, especially where the police operatives are accompanied by their informant during the entrapment; hence, the said buy-bust operation is a legitimate, valid entrapment operation. (People *vs*. Ocampo *y* Ebesa, G.R. No. 232300, Aug. 1, 2018) p. 157

–– The prosecution failed to prove the legitimacy of the buy-bust operation simply because it failed to proffer any documentary proof of the same; the testimony of the police officer during cross-examination reveal that there was no coordination report submitted with the PDEA prior to the buy-bust operation; while minor deviations from the procedures under R.A. No. 9165 would not automatically exonerate an accused, this rule, however, could not defeat the findings that the police operatives

— Sec. 21, Art. II of R.A. No. 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 R.A. No. 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 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 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; *People v. Mendoza*, cited. (People *vs*. Patacsil *y* Moreno, G.R. No. 234052, Aug. 6, 2018) p. 320

— Sec. 21 of the IRR provides a saving clause which states that non-compliance with these requirements shall not render void and invalid such seizures of and custody over the confiscated items provided that such non-compliance were under justifiable grounds and the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer or team; the exception found in the IRR of R.A. 9165 comes into play when strict compliance with the prescribed procedures is not observed; this saving clause, however, applies only: (1) where the prosecution recognized the procedural lapses, and thereafter explained the cited justifiable grounds; and (2) when the prosecution established that the integrity and evidentiary value of the evidence seized had been preserved; the prosecution, thus, loses the benefit of invoking the presumption of regularity and bears the burden of proving - with moral certainty - that the illegal drug presented in court is the same drug that was confiscated from the accused during his arrest. (Macad @ Agpad *vs*. People, G.R. No. 227366, Aug. 1, 2018) p. 102

— Sec. 21 of R.A. No. 9165 requires the apprehending team, after seizure and confiscation, to immediately conduct a physical inventory; and photograph the same in the presence of: (1) the accused or the persons from whom such items were confiscated and/or seized, or his/her representative or counsel; (2) a representative from the media; (3) the DOJ; and (4) any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof; in the amendment of R.A. No. 10640, the apprehending team is now required to conduct a physical inventory of the seized items and photograph the same in: (1) the presence of the accused or the persons from whom such items were confiscated and/or seized, or his/her representative or counsel; (2) with an elected public official; and (3) 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; in the present case, as the alleged crimes were committed on Nov. 27, 2011, then the provisions of Sec. 21 of R.A. No. 9165 and its IRR shall apply. (Macad @ Agpad *vs*. People, G.R. No. 227366, Aug. 1, 2018) p. 102

— There were unjustified deviations committed by the police officers in the handling of the confiscated items after petitioner's arrest in breach of the chain of custody procedure; the mere marking of the seized drugs, unsupported by a physical inventory and taking of photographs, and in the absence of the necessary personalities under the law, as in this case, fails to approximate compliance with the mandatory procedure under Sec. 21 of R.A.No. 9165; it is well-settled that the procedure in Sec. 21 of R.A. No. 9165 is a matter of substantive law, and cannot be brushed aside as a simple procedural technicality; it must be shown that earnest efforts were exerted by the police officers involved to comply with the mandated procedure so as to convince the Court that the failure to comply was reasonable under the given circumstances; such is not the case here;

must be present: (a) the essential reduction of the patrimony of the donor; (b) the increase in the patrimony of the donee; (c) the intent to do an act of liberality or *animus donandi*; (d) the donation must be contained in a public document; and e) that the acceptance thereof be made in the same deed or in a separate public instrument; if acceptance is made in a separate instrument, the donor must be notified thereof in an authentic form, to be noted in both instruments. (The Missionary Sisters of Our Lady of Fatima (Peach Sisters of Laguna) *vs*. Alzona, G.R. No. 224307, Aug. 6, 2018) p. 283

Legal capacity or personality of the donee — Under Art. 737 of the Civil Code, "the donor's capacity shall be determined as of the time of the making of the donation"; by analogy, the legal capacity or the personality of the donee, or the authority of the latter's representative, in certain cases, is determined at the time of acceptance of the donation; Art. 738, in relation to Art. 745, of the Civil Code provides that all those who are not specifically disqualified by law may accept donations either personally or through an authorized representative with a special power of attorney for the purpose or with a general and sufficient power. (The Missionary Sisters of Our Lady of Fatima (Peach Sisters of Laguna) *vs*. Alzona, G.R. No. 224307, Aug. 6, 2018) p. 283

DUE PROCESS

Administrative due process — In *Vivo v. Phil. Amusement and Gaming Corporation*, the Court had ruled that ''the essence of due process is to be heard, and, as applied to administrative proceedings, this means a fair and reasonable opportunity to explain one's side, or an opportunity to seek a reconsideration of the action or ruling complained of"; in administrative cases, "a formal or trial-type hearing is not always necessary"; it has long been settled that administrative due process only requires that "the decision be rendered on the evidence presented at the hearing, or at least contained in the record and disclosed to the parties affected"; otherwise

to have a say in, by virtue of her position in the company; as this Court previously held: There is constructive dismissal when an employee's functions, which were originally supervisory in nature, were reduced; and such reduction is not grounded on valid grounds such as genuine business necessity; the reduction in respondent's duties and responsibilities as HR Manager amounted to a demotion that was tantamount to constructive dismissal. (*Id*.)

Just causes — Basic is the rule that an employer may validly terminate the services of an employee for any of the just causes enumerated under Art. 296 (formerly Art. 282) of the Labor Code, namely: (a) Serious misconduct or willful disobedience by the employee of the lawful orders of his employer or representative in connection with his work; (b) Gross and habitual neglect by the employee of his duties; (c) Fraud or willful breach by the employee of the trust reposed in him by his employer or duly authorized representative; (d) Commission of a crime or offense by the employee against the person of his employer or any immediate member of his family or his duly authorized representatives; and (e) Other causes analogous to the foregoing. (Gaite *vs*. Filipino Society of Composers, Authors and Publishers, Inc., G.R. No. 219324, Aug. 8, 2018) p. 479

— Case law characterizes "misconduct" as an improper or wrong conduct; it is the transgression of some established and definite rule of action, a forbidden act, a dereliction of duty, willful in character, and implies wrongful intent and not mere error in judgment; the misconduct, to be serious within the meaning of the Labor Code, must be of such a grave and aggravated character and not merely trivial or unimportant; for misconduct or improper behavior to be a just cause for dismissal: (a) it must be serious; (b) it must relate to the performance of the employee's duties; and (c) it must show that the employee has become unfit to continue working for the employer. (*Id*.)

EVIDENCE

(Rodriguez *vs*. Your Own Home Dev't. Corp. (YOHDC), G.R. No. 199451, Aug. 15, 2018) p. 749

—— The Court affirms the ruling of the Court of Appeals and gives more credence to the Affidavit, which is a public document; a notarized document is presumed valid, regular, and genuine; it carries evidentiary weight with respect to its due execution; as such, it need not be proven authentic before it is admitted into evidence; a notarized Deed of Absolute Sale has in its favor the presumption of regularity, and it carries the evidentiary weight conferred upon it with respect to its due execution. (*Id*.)

—— To nullify a notarized document on account of flaws and defects, there must be a strong, complete, and conclusive proof of its falsity; the required quantum of proof is a clear, strong, and convincing evidence; absent evidence of falsity so clear, strong and convincing, and not merely preponderant, the presumption of regularity must be upheld; the burden of proof to overcome the presumption of due execution of a notarial document lies on the party contesting the same; *Rufina Patis Factory v. Alusitain*, cited. ((*Id*.)

Retractions —— The Court assumes that the Acknowledgement is in the nature of a retraction; it has consistently held that retractions are looked upon with disfavor because of its unreliable nature and the likely probability that it may again be repudiated; the rationale for this ruling stems from retractions being easily obtained from witnesses through intimidation or monetary consideration; there must be a comparison of the two (2) testimonies and the general rules of evidence must still be applied; here, this Court hesitates to accord the retraction any weight or credibility. (Rodriguez *vs*. Your Own Home Dev't. Corp. (YOHDC), G.R. No. 199451, Aug. 15, 2018) p. 749

Sweetheart defense —— 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

asserted and reliefs prayed for, the relief being founded on the same facts; and (c) the identity of the two preceding particulars, such that any judgment rendered in the other action will, regardless of which party is successful, amounts to *res judicata* in the action under consideration. (Fenix (CEZA) Int'l., Inc. *vs*. Exec. Sec., G.R. No. 235258, Aug. 6, 2018) p. 344

— Notwithstanding the RTC's denial of LSDC's application for a writ of preliminary mandatory injunction in an Order, as well as the pendency of the main case therein, respondent lawyer nonetheless lodged a complaint before the HLURB praying for the same relief as that pleaded for in its answer with counterclaim – to compel BPI to execute deeds of absolute sale and deliver the titles over the subdivided lots; the elements of *litis pendentia* are present, considering: (*a*) the identity of parties, *i.e.*, BPI and LSDC; (*b*) identity of rights or causes of action, *i.e.*, BPI and LSDC being parties to the JVA, from which sprang their respective rights and obligations; and (*c*) identity of reliefs sought, *i.e.*, to compel BPI to execute the deeds of absolute sale and deliver the titles of the purchased lots. (Buenavista Properties, Inc. *vs*. Atty. Deloria, A.C. No. 12160, Aug. 14, 2018) p. 583

— Petitioners did not commit forum shopping by filing separate appeals; in *Young v. Spouses Sy*, the Court held that there is forum shopping where there exist: (a) identity of parties, or at least such parties as represent the same interests in both actions; (b) identity of rights asserted and relief prayed for, the relief being founded on the same facts; and (c) the identity of the two preceding particulars is such that any judgment rendered in the pending case, regardless of which party is successful would amount to *res judicata*; while there was identity of rights asserted and relief prayed for, there was no identity of parties in the case at bar. (Bernas *vs*. Estate of Felipe Yu Han Yat, G.R. No. 195908, Aug. 15, 2018) p. 710

the obligations thereunder are subsumed under their conjugal partnership; Art. 161(1) of the New Civil Code (now Art. 121 [2 and 3] of the Family Code of the Philippines) provides: Art. 161. The conjugal partnership shall be liable for: (1) All debts and obligations contracted by the husband for the benefit of the conjugal partnership, and those contracted by the wife, also for the same purpose, in the cases where she may legally bind the partnership; considering that the obligation entered into clearly appeared to be a transaction that their conjugal partnership is liable for, they were therefore correctly made co-defendants as they had the same interests therein. (Villarama *vs*. Guno, G.R. No. 197514, Aug. 6, 2018) p. 236

—— The parties were married prior to the effectivity of the Family Code on August 3, 1988; as there is nothing on record evincing that they executed any marriage settlement, the regime of conjugal partnership of gains governs their property relations; all property acquired during the marriage is presumed to be conjugal unless the contrary is proved; conjugal property, defined in *Carandang vs. Heirs of Quirino A. de Guzman*; credits loaned during the time of the marriage are presumed to be conjugal property. (*Id*.)

MOTION TO DISMISS

Grounds —— Sec. 1, Rule 16 of the Rules of Court provides for the grounds that may be raised in a motion to dismiss a complaint; as a general rule, the listed grounds must be invoked by the party-litigant at the earliest opportunity, as in a motion to dismiss or in the answer; otherwise, such grounds are deemed waived; as an exception, however, the courts may order the *motu proprio* dismissal of a case on the grounds of lack of jurisdiction over the subject matter, *litis pendentia, res judicata,* and prescription of action, pursuant to Section 1, Rule 9 of the Rules of Court. (Lansangan *vs*. Caisip, G.R. No. 212987, Aug. 6, 2018) p. 252

moral damages; ₱75,000.00 as civil indemnity; ₱75,000.00 as exemplary damages; and ₱50,000.00 as temperate damages as well as the payment of 6% interest *per annum* on all amounts from finality of this Decision until full payment. (People *vs.* Flores, G.R. No. 228886, Aug. 8, 2018) p. 499

NATIONAL INTERNAL REVENUE CODE (NIRC)

Requisites for entitlement to refund — Requisites for entitlement to the refund as listed in *Republic v. Team (Phils.) Energy Corporation, supra*: 1. That the claim for refund was filed within the two-year reglementary period pursuant to Sec. 229 of the NIRC; 2. When it is shown on the ITR that the income payment received is being declared part of the taxpayer's gross income; and 3. When the fact of withholding is established by a copy of the withholding tax statement, duly issued by the payor to the payee, showing the amount paid and income tax withheld from that amount; given their expertise on the matter, the Court accords weight and respect to the CTA First Division's finding that Rhombus had satisfied the requirements for its claim for refund of its excess creditable withholding taxes for the year 2005. (Rhombus Energy, Inc. *vs.* Commissioner of Internal Revenue, G.R. No. 206362, Aug. 1, 2018) p. 69

Section 76 — Based on the disquisition in *Republic v. Team (Phils.) Energy Corporation, supra*, the irrevocability rule took effect when the option was exercised; in the case of Rhombus, therefore, its marking of the box "To be refunded" in its 2005 annual ITR constituted its exercise of the option, and from then onwards Rhombus became precluded from carrying-over the excess creditable withholding tax; the fact that the prior year's excess credits were reported in its 2006 quarterly ITRs did not reverse the option to be refunded exercised in its 2005 annual ITR; as such, the CTA *En Banc* erred in applying the irrevocability rule against Rhombus. (Rhombus Energy, Inc. *vs.* Commissioner of Internal Revenue, G.R. No. 206362, Aug. 1, 2018) p. 69

occurrence of hypertension, even as it is work-related and concurs with the four (4) basic requisites of the first paragraph of Sec. 32-A, does not suffice; the POEA-SEC requires an element of gravity; it speaks of essential hypertension only as an overture to the impairment of function of body organs like kidneys, heart, eyes and brain; this impairment must then be of such severity as to be resulting in permanent disability; Sec. 32-A, par. 2, thus, requires three successive occurrences: first, the contracting of essential hypertension; second, organ impairment arising from essential hypertension; and third, permanent disability arising from that impairment; the mere averment of essential hypertension and its incidents do not suffice. (C.F. Sharp Crew Mgm't., Inc. *vs*. Santos, G.R. No. 213731, Aug. 1, 2018) p. 82

— In *INC Shipmanagement, Inc. v. Rosales*, the Court stated that to definitively clarify how a conflict situation should be handled, upon notification that the seafarer disagrees with the company doctor's assessment based on the duly and fully disclosed contrary assessment from the seafarer's own doctor, the seafarer shall then signify his intention to resolve the conflict by the referral of the conflicting assessments to a third doctor whose ruling, under the POEA-SEC, shall be final and binding on the parties; upon notification, the company carries the burden of initiating the process for the referral to a third doctor commonly agreed between the parties; in this case, petitioner's chosen physician issued a medical certificate indicating a total and permanent disability because of hypertension and uncontrolled diabetes, which conflicted with the assessment of the company-designated physicians; glaringly, respondent only presented a lone medical certificate from the doctor, which was in contrast with the extensive and numerous medical assessment of the company-designated physicians; it is only through the procedure provided by the POEA-SEC, in which he was a party, can he question the timely medical assessment of the company-designated physician and compel the petitioners to jointly seek an appropriate third doctor;

— In *Marlow Navigation Philippines, Inc. v. Osias,* the Court reaffirmed: (1) that mere inability to work for a period of 120 days does not entitle a seafarer to permanent and total disability benefits; (2) that the determination of the fitness of a seafarer for sea duty is within the province of the company-designated physician, subject to the periods prescribed by law; (3) that the company-designated physician has an initial 120 days to determine the fitness or disability of the seafarer; and (4) that the period of treatment may only be extended to 240 days if a sufficient justification exists such as when further medical treatment is required or when the seafarer is uncooperative. (C.F. Sharp Crew Mgm't., Inc. *vs*. Santos, G.R. No. 213731, Aug. 1, 2018) p. 82

— It is undisputed that the injury took place within the period of his employment, *i.e.,* five months and 14 days into the contract; at the place where he reasonably may be, *i.e*., at the laundry area; and while he is fulfilling his duty, *i.e*., climbing up and down the vessel's ladder to collect laundry and check on his equipment; said circumstances correspond to the definition of "arising out of and in the course of employment"; thus, his injury is work-related. (Buenaventura, Jr. *vs*. Career Phils. Shipmanagement, Inc., G.R. No. 224127, Aug. 15, 2018) p. 923

— Sec. 20(B) (3) of the 2000 Amended POEA-SEC lays down the procedure in order for a seafarer to claim disability benefits; the company-designated physician has either 120 or 240 days, depending on the circumstances, within which to complete the medical assessment of the seafarer; otherwise, the disability claim shall be granted; a seafarer claiming disability benefits is required to submit himself to a post-employment medical examination by a company-designated physician within three (3) working days from repatriation; failure to comply with such requirement results in the forfeiture of the seafarer's claim for disability benefits; exceptions to the rule, enumerated; it is the burden of the employer to prove that the seafarer was referred to a company-

Partial disability benefit –– Hypertension and diabetes do not *ipso facto* warrant the award of permanent and total disability benefits to a seafarer; Sec. 32-A of the POEA-SEC recognizes that a seafarer can still be employed even if he has hypertension and/or diabetes provided that he shows compliance with the prescribed maintenance medications and doctor-recommended lifestyle changes; as the company-designated physicians opined that respondent only had a Grade 12 disability, then he is only entitled to the partial disability benefit; the sickness pay during respondent's period of treatment is also affirmed; *Nacar v. Gallery Frames*, cited. (C.F. Sharp Crew Mgm't., Inc. *vs.* Santos, G.R. No. 213731, Aug. 1, 2018) p. 82

Total or partial disability –– While a seafarer is entitled to temporary total disability benefits during his treatment period, it does not follow that he should likewise be entitled to permanent total disability benefits when his disability was assessed by the company-designated physician after his treatment; he may be recognized to have permanent disability because of the period he was out of work and could not work, but the extent of his disability (whether total or partial) is determined, not by the number of days that he could not work, but by the disability grading the doctor recognizes based on his resulting incapacity to work and earn his wages; the physician's declaration serves as the basis for the degree of disability that can range anywhere from Grade 1 to Grade 14. (C.F. Sharp Crew Mgm't., Inc. *vs.* Santos, G.R. No. 213731, Aug. 1, 2018) p. 82

PLEADINGS AND PRACTICE

Actionable document –– Sec. 7, Rule 8 of the Rules of Court, cited; the Court agrees with the holding of the Court of Appeals that the respondent substantially, and ultimately, complied with the provision given that petitioner himself did, and does not even deny, the Partnership Agreement nor the arbitration clause. (Strickland *vs.* Ernst & Young LLP, G.R. No. 193782, Aug. 1, 2018) p. 25

in the performance of official duty must be seen in the context of an existing rule of law or statute authorizing the performance of an act or duty or prescribing a procedure in the performance thereof; the presumption, in other words, obtains only where nothing in the records is suggestive of the fact that the law enforcers involved deviated from the standard conduct of official duty as provided for in the law; otherwise, where the official act in question is irregular on its face, an adverse presumption arises as a matter of course; where no ill motives to make false charges was successfully attributed to the members of the buy-bust team, the presumption prevails that said police operatives had regularly performed their duty, but the theory is correct only where there is no showing that the conduct of police duty was irregular. (People *vs.* Ocampo *y* Ebesa, G.R. No. 232300, Aug. 1, 2018) p. 157

PROPERTY

Exercise of proprietary rights — For purposes of Arts. 20 and 21, the construction of the concrete fence is not contrary to any law, morals, good customs, or public policy; there was also no negligence on the part of respondent; the act of replacing the steel grille gate with a concrete fence was within the legitimate exercise of respondent's proprietary rights over its property; the law recognizes in the owner the right to enjoy and dispose of a thing, without other limitations than those established by law; Art. 430 of the Civil Code. (Sps. Ermino *vs.* Golden Village Homeowners Assoc., Inc., G.R. No. 180808, Aug. 15, 2018) p. 651

QUASI DELICTS

Concept — The petitioners' cause of action was upon a *quasi-delict*; as such, their counterclaim against the respondent was based on Art. 2184, in relation to Art. 2180 and Art. 2176, all of the *Civil Code;* the omission of the driver in violation of Art. 365 of the *Revised Penal Code* could give rise not only to the obligation *ex delicto,* but also to the obligation based on *culpa aquiliana* under

RAPE THROUGH SEXUAL INTERCOURSE

Elements — 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. (People *vs*. Ramos *y* Buenaflor, G.R. No. 210435, Aug. 15, 2018) p. 797

REPLEVIN

Action for — Replevin is an action for the recovery of personal property; it is both a principal remedy and a provisional relief; when utilized as a principal remedy, the objective is to recover possession of personal property that may have been wrongfully detained by another; when sought as a provisional relief, it allows a plaintiff to retain the contested property during the pendency of the action; Rule 60 of the Rules of Court outlines the procedure for the application of a writ of replevin. (Enriquez *vs*. The Mercantile Insurance Co., Inc., G.R. No. 210950, Aug. 15, 2018) p. 816

Replevin bond — Of all the provisional remedies provided in the Rules of Court, only Rule 60, Section 2 requires that the amount of the bond be double the value of the property; rationale to the requirement that the bond for a writ of seizure in a replevin be double the value of the property; any application of the bond in a replevin case is premised on the judgment rendered in favor of the defendant; the Rules of Court imply that there must be a prior judgment on the merits before there can be any application on the bond. (Enriquez *vs*. The Mercantile Insurance Co., Inc., G.R. No. 210950, Aug. 15, 2018) p. 816

— The doctrine is encapsulated in Section 47 (b) and (c), Rule 39 of the Rules of Court; there are two (2) distinct concepts of *res judicata*, namely: (*a*) bar by former judgment; and (*b*) conclusiveness of judgment; the bar by prior judgment requires the following elements to be present for it to operate: (*a*) a former final judgment that was rendered on the merits; (*b*) the court in the former judgment had jurisdiction over the subject matter and the parties; and (*c*) identity of parties, subject matter and cause of action between the first and second actions; in contrast, the elements of conclusiveness of judgment are identity of: (*a*) parties; and (*b*) subject matter in the first and second cases. (*Id.*)

REVISED GOVERNMENT SERVICE INSURANCE ACT OF 1977 (R.A. NO. 8291)

Reinstatement — By definition, reinstatement works to restore a person to his or her former status; reinstatement is given as a remedy to those whose employment was illegally terminated because the law considers them as having been unduly deprived of their positions; in *Verdadero v. Barney Autolines Group of Companies Transport, Inc.*: Reinstatement and backwages are reliefs available to an illegally dismissed employee; it is preposterous to consider reinstatement when there was no prior removal; *Verdadero*'s pronouncements on reinstatement cannot encompass those who, like respondent, did not only voluntarily intend and declare their intent to relinquish their position, but even petitioned to receive monetary benefits available only through the consummation of such relinquishment; *United Laboratories, Inc. v. Domingo*, cited. (Civil Service Commission *vs.* Moralde, G.R. No. 211077, Aug. 15, 2018) p. 840

Retirement and separation benefits — The Court of Appeals rightly differentiated between the receipt of retirement benefits, under Sec. 13, and the receipt of separation benefits, under Sec. 11, of R.A. No. 8291; they differ on the specific benefits they confer and on the qualifications required of those who seek to avail of those benefits; the

latter; the issue of material possession is easily resolved in favor of petitioner even without delving into the issue of ownership raised as a defense; hence, there is no need for the Court to delve into the issue of ownership which is better threshed out in an appropriate proceeding where such issue becomes properly justiciable. (Phil. Independent Church *vs*. Bishop Basañes, G.R. No. 220220, Aug. 15, 2018) p. 899

–– The rule is settled that in an unlawful detainer case, the physical or material possession of the property involved, *independent* of any claim of ownership by any of the parties, is the sole issue for resolution; however, where the issue of ownership is raised, the courts may pass upon said issue in order to determine who has the right to possess the property; this adjudication is only an initial determination of ownership for the purpose of settling the issue of possession, the issue of ownership being inseparably linked thereto; the provisional determination of ownership is not the primordial consideration in an ejectment case; if the courts can resolve the question of who has the better right of physical or material possession, the issue of ownership should not be touched upon, it being unessential in an action for unlawful detainer. (*Id*.)

WAIVER OR QUITCLAIMS

Validity of –– To be valid, a deed of release, waiver and/or quitclaim must meet the following requirements: (1) that there was no fraud or deceit on the part of any of the parties; (2) that the consideration for the quitclaim is credible and reasonable; and (3) that the contract is not contrary to law, public order, public policy, morals or good customs, or prejudicial to a third person with a right recognized by law; Courts have stepped in to invalidate questionable transactions, especially where there is clear proof that a waiver, for instance, was obtained from an unsuspecting or a gullible person, or where the agreement or settlement was unconscionable on its face.

CITATION

Page

I. LOCAL CASES

Page

Page

Page

Page

Page

Page

Page

Page

Page

Page

Page

Page

Page

Page

Page

Page

Page

Page

Page

II. FOREIGN CASES

Page

REFERENCES

I. LOCAL AUTHORITIES

A. CONSTITUTION

B. STATUTES

Page

Page

Page

Page

Page

C. OTHERS

Page

D. BOOKS

(Local)

II. FOREIGN AUTHORITIES

BOOKS